



# Assembly of First Nations

## POLICY RECOMMENDATIONS

June 2007



### Introduction

*"We maintain our authority to be the law-makers and caretakers of our Nations, our families and our lands. First Nation holistic laws will continue to guide our decision-making in the face of any and all federal, provincial and territorial legislation. The Crown continues to breach this original compact and interfere with this Inherent jurisdiction, thereby creating and perpetuating poverty conditions amongst our peoples."*<sup>i</sup> -

Consensus Statement by First Nations Women Chiefs and Councillors,  
Vancouver, February 14, 2007

The Assembly of First Nations (AFN) applauds the organizers of this event which brings attention to the needs, interests and aspirations of First Nations, Inuit and Métis women. As many of those who attend the Summit will know, the AFN is the national organization representing First Nations citizens in Canada. The AFN represents all citizens regardless of age, gender or place of residence.

As a participant in this summit - entitled *Strong Women, Strong Communities* - the AFN has developed this paper to identify recommendations to coincide with the 3 themes of this event:

1. Health, Safety and Wellness
2. Equality and Empowerment
3. Strength, Balance and Honour

In an effort to ensure the best possible outcomes from this summit, the AFN has also worked to refine these themes to achieve the most concrete and constructive outcomes possible. In the words of the AFN Women's Council strategic plan's mission statement, the goal is *"to establish a balanced perspective that honours the rights and aspirations of First Nation women"*<sup>ii</sup>.

First Nations women are the backbone of our communities. By strengthening the roles of First Nations women, we strengthen our communities. To this end, the AFN is emphasizing the concepts of *investment*, *recognition* and *revitalization* to correspond to the three Summit themes. In applying our approach, we make a series of recommendations that speak to both the need for fundamental change at the broadest levels, as well as specific areas requiring immediate action and/or redress.

## **Theme 1: Health, Safety and Wellness – Focus on *Investment***

Issues such as violence, poverty, a lack of access to adequate medical care and illiteracy are all symptoms of a much broader failure to recognize and invest in the unique socio-economic needs of First Nations women. The failure to adequately recognize the role of First Nations women in their communities - for example, in managing resources, as bearers of language and tradition, and as decision-makers - has resulted in a corresponding failure to support the specific and unique roles of women that have made for strong and dynamic First Nations communities since time immemorial.

To improve the health, safety and wellness of First Nations women, there must be investment in the capacities of First Nations women to assume and carry out their rightful roles as leaders within their communities and **recognition** of those roles. This applies not only in the sense of leaders holding a political office (i.e., Chiefs), but also to more traditional forms of leadership where women direct and oversee the functioning of households and extended families, communities and clan relationships. Women's responsibilities for caring and nurturing go beyond children and families, extending to stewardship over resources and the environment, ensuring that access to food and other subsistence materials is preserved for generations to come. These roles, often invisible to outsiders, form a vital part of what keep First Nation communities functioning.

From family gatherings to traditional feasts, women play a vital role in sustaining relationships that, ultimately, are the basis of sustainable communities. Moreover, in matrilineal societies, it was through the women that names, songs, dances and other teachings were passed. It is, in part, through the erosion of these roles that many First Nation peoples and communities find themselves in perpetual crisis. It is with the **revitalization** of these roles that First Nation communities will re-emerge as strong and vibrant entities on the national landscape.

The failure to support the roles of women within their communities has undermined the continuation of these roles and, with it, the place of First



Nations women. As the position of women within their communities and societies is undermined, women themselves begin to be under-valued, and this in turn leads to a cascade of other consequences including violence, substance abuse, poor health and a lack of self-esteem.

Through the extensive engagement of First Nation women through AFN's national dialogue on matrimonial real property, AFN brought forward the circumstances and clear articulation of requirements for change. Access to justice was identified as one of the most critical issues impacting First Nation women. Due to the significantly lower income levels on reserves, both men and women face significant challenges accessing existing legal remedies and, for a variety of specific reasons (several of which are identified in this paper), women find themselves at a disadvantage in achieving a satisfactory resolution.

AFN brought forward recommendations to address these concerns including the further support for the Aboriginal Justice Strategy and recognition of the importance of community mediation and resolution, the establishment of a Family Law Legal Aid Fund as well as Video Court for Remote Communities.

Family violence in First Nation communities has been described as a "consequence to colonization, forced assimilation, and cultural genocide, the learned negative, cumulative, multi-generational actions, values, beliefs, attitudes and behavioural patterns practices by one or more people that weaken or destroy the harmony and well-being of an aboriginal family, extended family, community or nationhood."<sup>iii</sup> First Nations have a strong interest in strengthening First Nation families and communities and in ensuring the safety of all First Nation citizens, particularly women and children.

Likewise, AFN brought forward specific recommendations relating to family violence to include community based prevention and treatment programming and expansion of First Nation women's shelters.

Currently, INAC's Family Prevention Program has an annual budget of about \$18.5 million. This includes funding for a network of 35 shelters across Canada of approximately \$11.5 million per year and about \$7 million per year for community-driven family violence prevention projects in First Nation communities.

The current Minister recently announced a one-time investment of \$6 million for 2006-07 to address the immediate needs of existing shelters and to help First Nation communities improve family violence prevention programs and services. While this additional investment is much needed, far more shelters are needed. With only 35 shelters to service 633 First Nations across Canada, there are many First Nation families who are unable to seek the supports offered by the existing 35 shelters. There is clearly a need for additional



investments in shelters to address the immediate needs of First Nations women and children, until such time that there is greater progress in reducing the rates of domestic violence in First Nation communities through public education campaigns and the introduction of more treatment programs and facilities.

A lack of adequate investment in the specific needs and interests of girls and women also has an impact on the skills that they are able to develop in order to meaningfully contribute to their communities. Illiteracy, for example, can have a tremendous impact on the life chances of an adolescent girl. With the traditional roles of women not fully recognized, a young woman with poor literacy and/or numeracy finds little opportunity to work and contribute in either her own community or in communities beyond.

This has a tremendous negative impact on women's abilities to secure stable employment and/or corresponding economic support, thereby placing these women - at times - at great risk. They are forced to become dependent upon others, including the government, and have little opportunity to rectify the situation themselves.

However, opportunities for women to realize their full potential can be created and supported. For example, through initiatives that emphasize educational opportunities for young girls, training for adult women, and affordable and accessible childcare within their communities, women are much more able to develop the knowledge and skills that will enable them to set their own course in life.

Innovative initiatives such as micro-credit investment can also help to harness the tremendous potential that First Nation women have when presented with the opportunity to couple newly acquired skills with more traditional roles in their communities. Moreover, investment in broader social policies that support such measures can help women with children to pursue educational and employment opportunities without sacrificing their roles as caregivers.

The traditional responsibilities of women in the broader community can also be revitalized through investments in training, particularly in band governance and environmental stewardship, and adequate housing to allow women to live and work within their own communities.

More fundamentally, issues around poverty - both for those who have no paid work and for those whose work is under-appreciated and under-rewarded - must be addressed in order to first protect and then unleash the full potential of First Nations women. An investment in addressing poverty will do more to secure the health and safety of First Nations women than any other single initiative.



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The AFN, therefore, makes the following recommendations:

1. To restore core programs and services for women in areas such as education and housing, the federal government must increase its investment in First Nations to redress the accumulated loss of purchasing power since the 1996 implementation of the 2% cap on funding growth at Indian and Northern Affairs Canada;
2. To ensure that core programs and services for women do not again fall behind minimum levels of need:
  - a. the federal government must commit to a new funding formula that meets inflation and population growth and **new fiscal relations structures** that include appropriate research and information-gathering on the economic circumstances of First Nations women;
  - b. the provincial and territorial governments must work together to address unresolved interjurisdictional funding issues and lack of funding comparability (ie: implementation of Jordan's Principle)
3. To ensure that the urgent needs of First Nations women are met, there must be **targeted women-specific funding** to support:
  - a. Personal and family-related safety and policing initiatives;
  - b. Access to health care;
  - c. Education and employment training;
  - d. Governance and holistic and relational environmental stewardship opportunities; and
  - e. Business development.
4. Further specific and targeted investment is required for:
  - a. **Child care** to ensure accessible, appropriate, and nurturing child care within First Nation communities;
  - b. **Family law and legal aid funding**;
  - c. Enhancement of the **Aboriginal Justice Strategy** to secure alternatives that maximize access to justice including community-



- based programs and video courts for remote communities; and,
- d. **Programs and Treatment Facilities** to promote family wellness & safety, including additional investment in shelters and public education to promote family wellness and safety.



## Theme 2: Equality and Empowerment – Focus on *Recognition*

To achieve equality and empowerment for First Nations women, greater recognition must be given to the traditional roles of women within and on behalf of First Nation communities and the rights that these imply. In both matrilineal and patrilineal societies, First Nations women have clear leadership roles that are critical to the healthy functioning of these societies.

This issue speaks to recognition of the roles and rights of women individually as well as collectively. There is a need to identify the unique ways that the roles of women are made manifest within First Nation communities and to provide the structures for that to be respected. Solutions must address not only the manner in which the relationship between women and men within communities plays out, but how the relationship between First Nation communities and the broader Canadian society is managed as well.

Specifically, the relationship between the governments of which First Nations women are part and the Government of Canada must be one built on mutual recognition and respectful dialogue. This includes a focus on the structures of governance and finance, and how these inform politics, accountability and citizenship issues.

There are areas of urgently needed investment that must be addressed to ensure that women are empowered and that their communities are strong enough to support and maintain the revitalization of those roles. As already noted, the history concerning the rightful roles of women within their communities and the need to empower women to assume and carry out such responsibilities, whether through political office, informally within the family and community relationships, or through taking on other roles in areas such as environmental stewardship, financial management or business development.

For the rights of women to be recognized, the legitimacy of First Nations choices must first be recognized and accepted. It was the colonial insistence on dealing with male counterparts that destabilized matrilineal societies and the political roles of women in those societies. Over this course of history, First Nation traditions, practices and governance structures were suppressed, while First Nations women were oppressed.

More recently, acknowledgement of First Nations political legitimacy has been limited and haphazard. What is needed is a complete and holistic restoration and revitalization of First Nation governments. This must begin with the recognition of inherent Aboriginal and Treaty rights that have been enshrined in section 35 of the *Constitution Act*, including the rightful roles of women and a balancing of collective rights with other Charter rights.



Internationally, the United Nations (UN) and Canada have taken the promotion of gender equality and empowerment as a priority within the Millennium Development Goals, and the UN Convention on the Elimination of Discrimination against Women has further supported this goal as has the UN Declaration on the Rights of Indigenous Peoples -- despite Canada's recent refusal to sign this latter document.

Nationally, the *First Nations - Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments* provides a foundation for moving forward. This agreement undertook to recognize First Nation governments through appropriate legal instruments. It promised to support the implementation of First Nation governments through a complete review and renewal of existing policies relating to self-government negotiations, capacity-building measures to ensure effective implementation of First Nation governments and agreement confirming jurisdictions, roles and responsibilities, and standards. It speaks of providing accountability through fiscal arrangements to support effective implementation of First Nation jurisdiction. All of these steps are essential to supporting First Nations women in assuming their rightful place within governance and decision-making structures.

AFN is furthermore supportive of the appropriate application of the *Canadian Human Rights Act*, one that clearly recognizes First Nation customs and laws and the need to balance collective and individual rights, as a further clear indication that First Nations fully support and embrace human rights protections.

The AFN, therefore, makes the following recommendations:

1. That the federal and provincial/territorial government support and pursue the rapid implementation of the *First Nations - Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments* in a manner that recognizes the **unique and important roles that First Nations women would play in this regard;**
2. That the federal government and provincial/territorial, jointly with First Nations, identify and implement new policy approaches to the recognition of First Nation governments and the implementation of treaties and inherent rights consistent with the traditional roles of First Nations women with respect to treaties;
3. That the federal government and provincial/territorial, jointly with First Nations, identify and implement new policy approaches for the negotiation of First Nation land rights and interests, including the unique



roles and perspectives of First Nations women. *“that negotiations and consultations regarding any federal, provincial or territorial initiatives that impact pre-existing Inherent First Nation jurisdictions and Treaty rights must take place with the leadership of First Nations governments.”*

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4. That all governments, jointly with First Nations, explore a potential statement of guiding principles for reconciling section 35 rights in the context of ongoing relationships with First Nation peoples (and, in particular, women), their governments, and Canada;
5. That all governments, jointly with First Nations, support new or existing opportunities to facilitate **First Nations governance capacity-building and accountability with an emphasis on supporting the roles of First Nations women and institutional development such as a First Nations Ombudsperson.**



### **Theme 3: Strength, Balance and Honour – Focus on *Revitalization***

Together, the recognition of First Nations women's rights, coupled with investment in capacity-building and the development of initiatives to empower the attainment of those rights will **revitalize** the role of women within First Nation communities and of First Nations within the broader Canadian population. Restoring pride and hope and unleashing the power of First Nations women will strengthen First Nation communities in turn. Honouring women in this fashion will allow First Nations women to act with strength, to find the balance between their own aspirations and their roles within their own communities and in the broader environment.

Part of that revitalization includes the restoration of matrilineal or matriarchal systems of governance. These rights will only find support and have a chance for attainment within legal and policy structures that respect the rights of First Nations as collectivities through a balance between section 35 rights and other rights under the *Charter*.

The matter of citizenship and membership in First Nation communities is of particular concern. Government policies have contravened basic **human rights** and created serious instances of discrimination, most notably against women and their descendents. Government policies have also created **governance and administration challenges**.

While the Government of Canada refuses to acknowledge the right of First Nations to define their own citizenship, it burdens First Nation governments with the unsupported responsibility for administering the federal government's rules and definitions. This creates unnecessary inefficiencies and renders the delivery of programs and services far less effective than would be otherwise. Significant policy and legislative change is required to, first and foremost, restore all aspects relating to First Nations citizenship as integral to First Nation inherent jurisdiction.

The Royal Commission on Aboriginal Peoples' (RCAP) report concluded that Section 35 of the *Constitution Act, 1982*, protected the right of First Nations to determine which individuals belong to the nation. The report held that this right was subject to two limitations: it cannot be exercised in a manner that is discriminatory toward women or men and it cannot specify a minimum 'blood quantum' as a general prerequisite for citizenship. The Commission rejected blood quantum because "*(m)odern Aboriginal nations, like other nations in the world today, represent a mixture of genetic heritages. Their identity lies in their collective life, their history, ancestry, culture, values, traditions and ties to the land, rather than in their race as such.*"



Without doubt, as First Nations proceed to define citizenship for themselves, there will be an accompanying need to deal with the question of status, its relevance and its meaning. Within the context of self-governing First Nations, the notion of any kind of status beyond citizenship is untenable. It would perforce create classes of citizens, the essence of discrimination.

The level of “out-marriage” within First Nation communities is having a significant impact on status entitlement. In 1987, the AFN made a submission to the Standing Committee on Aboriginal Affairs where it was recognized that the First Nation/non-First Nation marriage trends appeared to vary from 50% to 60% nationally. These trends will lead to the loss of Indian status for future generations as a result of section 6(2) of the *Indian Act*. For some First Nations in Manitoba, it is estimated that the last First Nation birth with a registration entitlement will occur in 2014.

Unstated paternity is another factor that is impacting status entitlement. Indian Affairs assumes that if the father is not listed on the birth certificate then he must be non-status. This, in turn, affects the status of the child. There will be cases where the child will not be entitled to register if its mother has section 6(2) status. Studies have shown that during the 1985-1999 periods, total unstated paternity affected 50,000 First Nations children. First Nations have consistently advocated by AFN resolution that this situation must be addressed on an urgent basis.

Understanding the specific impacts of policies on women and understanding how the circumstances of First Nations women differ from those of First Nations men, as well as how they differ from non-Aboriginal women in Canada, requires a focused approach to research and policy analysis.

The AFN supports a “gender-balanced” approach; one that is more culturally relevant than other mainstream approaches. The norm of balancing roles instills value and respect for all members of society: men, women, boys, girls, elders and two-spirited and trans-gendered people. It allows for a balancing of collective rights with individual rights, of perspectives from communities as well as individuals. The AFN has developed a gender-balanced analysis (GBA) framework that was endorsed by the Chiefs-in-Assembly in May 2007. It should be considered for widespread application to federal, First Nations-specific policies, programs and services.

Examples of some of the specific policy areas where the principles in this paper can be applied are justice and policing, as well as languages and culture. There are a number of ways in which the imposed non-Aboriginal justice system negatively affects First Nations women, of which the slow and seemingly disinterested responses of police forces to instances of violence against First Nations women is a singular reflection.



It will be necessary to develop much better information than currently exists to understand and address the circumstances that have, for example, led to policing failures in Vancouver's Downtown Eastside, in Edmonton, and on the highway of tears -- to name just three startling examples of all-too-frequent instances of violence against First Nations women. What can be said with certainty, however, is that a fuller recognition of the rights of First Nations women, and greater investment in empowering these women to exercise their rights, can only serve to mitigate the dependence-come-abuse that has led to these and so many other terrible tragedies perpetrated upon first Nations women.

The same can be said of the revitalization of First Nation cultures and languages. No doubt, women are fundamental to such revitalization, not only because of their role in sustaining culture, but also because of their role in educating children. Reference to one's "mother tongue" is a case in point, as it is the language learned early at home and reinforced throughout a child's young life that is the strongest and most durable.

To support linguistic and cultural teaching, inside and outside the home, women must have the support they need to carry out their responsibilities. This speaks to the need for greater recognition and investment. Beyond that, detailed research and gender-balanced policy analysis and development should provide the basis for issue-specific solutions in this area.

The AFN, therefore, makes the following recommendations:

1. That federal, provincial/territorial government support and resource the implementation of the **gender-balanced analysis framework** developed by the AFN;
2. That the federal government re-instate all funding for First Nations **languages preservation** and provide additional support to develop recommendations focused on the unique role of women in this regard;
3. That all governments engage with First Nations to recognize **First Nation jurisdiction over citizenship**. The framework for this engagement must be within the context of the *First Nations - Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments*

<sup>i</sup> Assembly of First Nations, Consensus Statement by Women Chiefs and Councillors, Vancouver, February 14, 2007, available at [www.afn.ca](http://www.afn.ca).

<sup>ii</sup> AFN Women's Council, Strategic Plan 2007, unpublished.



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<sup>iii</sup> Health Canada-National Clearinghouse on Family Violence, *Family violence in Aboriginal Communities: An Aboriginal Perspective* (Ottawa: Health Canada, 1996), p. 1.

<sup>iv</sup> Assembly of First Nations, Consensus Statement by Women Chiefs and Councillors, Vancouver, February 14, 2007, available at [www.afn.ca](http://www.afn.ca).

