



Aboriginal Women and Self-Determination

An Issue Paper

**Prepared for the
National Aboriginal Women's Summit
June 20-22, 2007
in Corner Brook, NL**

Background

The fundamental importance of self-determination, including through self-government,¹ cannot be over-emphasized. All the concerns to be addressed at the National Aboriginal Women's Summit (NAWS) from health, safety and wellness to equality and empowerment to strength, balance and honour all cannot be fully achieved without recognizing the right to self-determination of Indigenous peoples and without recognizing the central role that Indigenous women must play in the exercise of this right.

Self-government is a fundamental part of reversing the effects of colonization through recognition of Indigenous peoples' control over their lives, from governance to reclaiming lands, resources and territories. There is a strong link between revitalization of sustainable development practices by Indigenous Peoples and self-governance:

“Despite their tremendous diversity, Indigenous Peoples have built a consensus on the basic elements of a model of economic development, rooted in broad civil participation and principles of social justice:

1. Self-determination, understood as the possibility of independent management of their territories and resources by their own institutions, exercising their right to self-government.
2. Recovery of the culture of sustainability as a base of the local economy, to strengthen their capacities and assure food security, as well as opportunities to participate in market economies.
3. The recovery and fortification of local knowledge, spiritual, and rights systems.

¹ Self-determination is a broader right than the right of self-government. Self-determination is codified by article 3 of the *UN Declaration on the Rights of Indigenous Peoples* (the *UN Declaration*) which states, “Article 3. Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Self-government is codified under article 4 which states, “Article 4. Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.” The *UN Declaration* was adopted by the UN Human Rights Council in 2006 and is to be considered for adoption by the UN General Assembly by September 2007. Currently, the federal government of Canada is opposing its adoption by the General Assembly. When Canada opposes recognition of the human rights of Indigenous peoples, this undermines the capacity of the federal government of Canada and Aboriginal peoples in Canada to build positive relationships based on respect for human rights and equality.

4. The access to use and benefit from collective communal property such as territories, natural resources, biodiversity, and collective intellectual knowledge.”²

The interrelationship between self-determination and other rights necessary to improve the socio-economic status of Indigenous peoples, such as land and resources rights necessary for sustainable development, the right to health and the right to live free from violence is well-recognized.³ The federal, provincial and territorial governments must recognize the inter-relationship of these rights and advance all of them if the status quo is to be improved for Aboriginal women, their families and their Nations.

Current Situation

Aboriginal peoples in Canada have constitutional protection under section 35 of the *Constitution Act, 1982* to Aboriginal and treaty rights, including the right to self-government. This is recognized in the federal government’s policy framework, such as the *Federal Policy Guide: Aboriginal Self-Government: The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* where the right is framed as strictly an internal right:

“Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources.” (at 3)

Unfortunately, since 1982, considerable resources have been spent litigating the meaning of Aboriginal and Treaty rights under section 35, to the detriment of focusing on building strong relationships based on the recognition of the right of self-determination of Aboriginal peoples in Canada. Yet, some positive developments have occurred, including the successful negotiations of specific and comprehensive claims.

² FIMI, *Mairin Iwanka Raya: Indigenous Women Stand Against Violence: A Companion Report to the United Nations Secretary-General’s Study on Violence Against Women*. (International Indigenous Women’s Forum: New York, 2006) at 27.

³ *Ibid* at 16, where it states, “Thus, the conventional human rights paradigm does not recognize that Indigenous women commonly experience human rights violations at the crossroads of their individual and collective identities. For example, widespread incidences of toxic dumping on Indigenous territories have caused a scourge of miscarriages, cancers and other diseases among Indigenous women. The individual human rights of these women are violated in such cases, but so are their collective rights, because toxic dumping degrades Indigenous Peoples’ collectively owned and managed territory. Like many other violations of Indigenous women’s rights, toxic dumping thus constitutes a violation of individual *and* collective rights, and requires a human rights remedy that can address both types of violations.”

A gendered approach to Aboriginal rights, including self-determination, is still lacking and in need of attention. Aboriginal women's right to equality is constitutionally protected by both section 15 of the *Canadian Charter of Rights and Freedoms* as well as by section 35(4) of the *Constitution Act, 1982*. A good example of this is the need to protect gendered forms of section 35 rights, such as traditional harvesting methods that were traditionally practiced by Aboriginal women.⁴ When applying a culturally relevant gender based analysis (CRGBA) to the right to equality, it is clear that the type of protections of Aboriginal women's equality rights can be based on Aboriginal legal systems and traditions. For example, the inclusion of an Aboriginal specific Charter of Rights and Freedoms in a self-government agreement would be a welcome development from NWAC's perspective. For Indigenous women, it is imperative that such developments occur in the context of recognition of international human rights norms, where individual and collective human rights are recognized as mutually coexisting, including the right of self-determination, the right to equality and the right to non-discrimination.

NWAC asserts that all self-government developments must respect the distinct cultures, traditions and languages of Aboriginal peoples which includes equal respect for women. It is imperative that political leaders (Aboriginal and non-Aboriginal) remember the teachings of many of our nations that women are the first teachers to our children of our cultures, language and traditions. An integration of Aboriginal women's perspectives is critical to all policy discussions in Canada. We know that currently Aboriginal women are under-represented in some Aboriginal governance structures, particularly Chief and Councils operated by the *Indian Act*.⁵ It is imperative that mechanisms be established to foster increased participation of Aboriginal women in leadership positions. At the same time, some Indigenous legal traditions that promote the leadership of women remain in operation today, despite the effects of colonization, even within the constraints of the *Indian Act*. These traditions need to be examined and promoted as best practices for reference by other Aboriginal governments.

A full application of a CRGBA requires recognition of the multiple forms of discrimination facing Aboriginal women and girls, including discrimination based on disability, sexual orientation and age. For example, Aboriginal women with disabilities face many hardships and challenges in their day-to-day lives, including poverty, racism and lack of access to disability

⁴ Patricia A. Monture, "The Right of Inclusion: Aboriginal Rights and/or Aboriginal Women?" (2004), unpublished, on file with NWAC at 20.

⁵ For example, in 2001 only 87 out of 633 chiefs were women. See Judith F. Sayers and Kelly A. MacDonald, "A Strong and Meaningful Role for First Nations Women in Governance" in Judith F. Sayers et al. *First Nations Women, Governance and the Indian Act: A Collection of Policy Research Reports* (Ottawa: Status of Women Canada, 2001) at 11.

related goods and services. This oppression is further exacerbated by negative stereotyping and myths surrounding persons with disabilities. For Aboriginal women, this results in feelings of low self esteem and self worth. As such, they lack the knowledge and skills to empower themselves and stand up for their rights. These unique challenges of Aboriginal women with disabilities need to be considered and overcome by all leaders involved in self-government processes.

Similarly, two-spirited Aboriginal women have suffered from a subjugation of their status as a result of colonization from one where their sexual orientation was not considered a negative trait to current realities where discrimination against sexual minorities is rampant and has had the effect of marginalizing the voices of two-spirited individuals.⁶ Young Aboriginal women also have significant contributions to make to self-governance – as the future leaders we need to foster pride, healthy living and independence in our youth and give them the opportunity to be heard in terms of their vision for our governance structures.

It is imperative that the strength and importance of the role of all Aboriginal women is recognized as Aboriginal peoples strive for increased self-government and self-determination. To the extent that women's roles as leaders are undermined or undervalued, the collective good of a nation is also undermined. Further, it is only when all human rights, such as the right to live free from violence, equality rights, the right to lands, resources and territories and the right of self-determination are fully recognized to Indigenous peoples and individuals that we will truly be able to close the socio-economic gap between Aboriginal and non-Aboriginal people living in Canada.

Recommendations

Based on the above review of self-determination, the following recommendations are made:

1. The federal, provincial and territorial governments should collectively support the immediate adoption of the *UN Declaration on the Rights of Indigenous Peoples* by the UN General Assembly without amendments. This is a key standard-setting instrument that demonstrates to the international community that Indigenous peoples matter and that their human rights, including the right of self-determination, are worthy of recognition.

⁶ Paula Gunn Allen, *The Sacred Hoop: Renewing the Feminine in American Indian Traditions* (Boston: Beacon Press, 1986) in FIMI, *supra* note 2 at 28.

2. Self-government, as one form of the right of self-determination, is inter-related and indivisible from other human rights of Indigenous peoples, including the right to live free from violence and the right to lands, resources and territories necessary to reclaim traditional knowledge methods and sustainable development practices. All of these rights must be recognized, respected, protected and fulfilled if equality is to be achieved for Aboriginal individuals and peoples.
3. All levels of governments, (including federal, provincial, territorial and Aboriginal) involved in self-government policy, practices and negotiations must apply a culturally relevant gender based analysis as a means to ensuring that the needs, perspectives and rights of all Aboriginal women and girls are adequately addressed. Proactive, effective measures to ensure the full and effective participation of all Aboriginal women and girls need to be implemented.
4. Best practices of self-government models currently in place in Canada that foster the participation of Aboriginal women need to be researched and used as the basis for future initiatives aimed at increasing these practices. These initiatives should take particular note of ways in which the marginalization of Aboriginal women with disabilities, two-spirited Aboriginal women and young women can be overcome.