

NATIVE WOMEN'S  
ASSOCIATION OF CANADA

L'ASSOCIATION DES FEMMES  
AUTOCHTONES DU CANADA



*The national voice of Aboriginal women since 1974.*

# Aboriginal Women and ABS:

Input and Insight into Access and Benefit Sharing of  
Genetic Resources and Aboriginal Traditional Knowledge



*Aboriginal women represent and maintain cultures rich in knowledge, history, skills, and environmental stewardship. Aboriginals' close relationship and dependence on the land and environment comes from their understanding that their life and livelihood is dependent upon the nurturing and caring of them.*



# Aboriginal Women and ABS

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## Background

This report provides guidance from Aboriginal women as well as their initial concerns and priorities in regards to Canada's Access & Benefit Sharing (ABS) policies, including access to Traditional Knowledge (or Aboriginal Traditional Knowledge: ATK). It should be noted that this report was conducted over a short period of time with a small group of Aboriginal women.

The Native Women's Association of Canada's (NWAC) Membership at the 2014 AGA required the following disclaimer. It needs to be noted that neither the presentation session presented to NWAC members during the 2014 AGA, nor the survey, nor other research conducted for this report constitutes consultation with Aboriginal women on the issue of Access and Benefit Sharing. It is merely the beginning of a conversation that needs to be ongoing between Environment Canada, NWAC, and its membership on the topic of ABS. In no way can NWAC's participation in this report be perceived as permission to move forward on any initiatives or be deemed consultation or approval of any subsequent actions by Environment Canada.

## Introduction

### *Native Women's Association of Canada*

The Native Women's Association of Canada is a national Aboriginal organization representing the political voice of Aboriginal women throughout Canada. NWAC works to advance the well-being of Aboriginal women and girls, as well as their families and communities, through advocacy, policy, and legislative analysis in order to improve policies, programs, and legislation.

NWAC's mission is to help empower women by being involved in developing and changing laws and issues that affect them, and by involving them in the development and delivery of programs promoting equality for Aboriginal women and girls. This work includes identifying

gaps in Aboriginal women's human rights and by mobilizing action to address these gaps. It must be noted that Aboriginal women in Canada continue to suffer from violations of human rights and fundamental freedoms.

Aboriginal women have helped maintain and continue cultures rich in knowledge, history, skills, and environmental stewardship. Their close ties with the land and their roles in communities as caregivers and nurturers meant that Aboriginal women were and remain close to the environment as well as active advocates for its well-being. Aboriginal women's belief that traditional knowledge is equal to, if not more valuable than scientific/western knowledge was communicated to us throughout this project.

Access and Benefit Sharing (ABS) is a collection of policies enacted by the Canadian government that guides how we access the genetic materials of the environment and also provides protocols for accessing traditional knowledge of Aboriginal peoples. ABS is intended to protect genetic resources in Canada and ensure that the use of these resources is fair and equitable. Recently, the Canadian Government has been working towards creating a more inclusive and comprehensive set of ABS policies.

Because Aboriginal women often carry unique traditional knowledge and have their own roles and relationships with nature, Environment Canada has approached NWAC to involve Aboriginal women in giving insight to the development of ABS policy in Canada. Although increasingly recognized as positive role models and leaders, Aboriginal women remain seldom involved in discussions regarding Access and Benefit Sharing (ABS) of genetic resources. As part of its mandate to empower Aboriginal women, NWAC conducted a survey inviting Aboriginal women to provide input on ABS and genetic resources, as well as insights into ABS federal policy. This survey intends to foster dialogue between Environment Canada and Aboriginal peoples so to inform future federal approaches regarding the use of genetic resources.

## *Nagoya Protocol*

Inspired by the *UN Convention on Biological Diversity* (1992), the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* (2010) promotes the “fair and equitable sharing of benefits from the utilization of genetic resources” (Environment Canada, n.d., p. 1). These resources encompass those of plant, animal, microbial, or other origins and contain functional units of heredity. To achieve this objective, the *Nagoya Protocol* encourages the use of ABS systems under which users and providers of genetic resources would negotiate and agree upon an arrangement that protects providers’ control of genetic resources and benefits from their use. These benefits would ideally be directed towards biological diversity and sustainability. As well, an agreement must satisfy *access provisions*, which require users obtain explicit, informed consent to access said resources; *user compliance provisions*, outlining the terms under which resources are accessed; and *traditional knowledge* that can be accessed in accordance to those provisions. All conditions and consent must be captured in written documentation.

Canada is a Party to the Convention on Biological Diversity, but it has not signed on to the *Nagoya Protocol* at this time. Currently, it is using the insights into ABS policy provided by the *Nagoya Protocol* to inform its own ongoing development process for Canada’s ABS policies.

## *Assess and Benefit Sharing Policies in Canada*

Despite not ratifying the *Nagoya Protocol*, the federal government has expressed interest in the creation of an ABS Policy. It should be noted that there already exists protections for environmental resources and traditional knowledge in Canada; however, there is a clear need for an upgraded and expanded revision of current policy.

For genetic resources under complete federal authority, such as marine fisheries or national parks, the Government of Canada is responsible for developing an ABS approach; however, its policy

must respect existing environmental laws and/or traditional Aboriginal rights.<sup>1</sup> When multiple actors share control, they must work in collaboration to design an ABS approach to which all partners agree. As such, “on Aboriginal land, Aboriginal communities will provide permission for access to genetic resources and will negotiate mutually agreed terms, where so desired” (Environment Canada, n.d., p. 8).

To support this process, Environment Canada and other departments plan to assemble templates that users and providers of genetic resources can use to outline terms and issue consent.

Environment Canada also intends to conduct a comprehensive review every seven years, engaging provinces and territories, Aboriginal communities, in addition to key stakeholders to ensure ABS systems remain effective and relevant.

## Literature Review

### *Examining ABS*

Because so little time was given to engage Aboriginal women from the Environment Canada, NWAC decided to do a literature review to present a fuller picture of the issues and concerns involved regarding ABS. There appears to be little literature that specifically addresses ABS and Aboriginal women. Actually, very little research explores environmental concerns and gender in general. Reed and Christie’s (2009) review of the literature, “published by the top interdisciplinary environmental social science journals between 1980 and 2005 revealed that only 3.9% of all items contained the words ‘sex’, ‘gender,’ or ‘feminism’” (p. 247). NWAC ultimately approached the literature from a perspective that engagement with environmental resources and associated traditional knowledge would be encapsulated by the terms Aboriginal Traditional Knowledge (ATK), Indigenous Knowledge (IK), and Traditional Ecological Knowledge (TEK). Because ABS relates to ethical access of environmental resources as well as

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<sup>1</sup> With respect to the Territories, because the federal government has devolved its authority, “the Territories will be responsible for the further development of ABS policies applicable to genetic resources on land or... water” (Environment Canada, n.d. p. 7).

ensures their sustainability, it can be addressed through an examination of these epistemologies (ATK, IK, and TEK) and Aboriginal women.

Among the literature, there is no consensus about a concrete definition of ATK, except regarding the need to approach ATK with flexibility, as it changes between peoples and regions of Canada (AFN, n.d.; Crowshoe, 2005; McGregor, 2008; Chiefs of Ontario, 2007). Nevertheless, sources agreed that ATK is constituted from, “a system of classification, asset of empirical observations about the local environment, and a system of self-management that governs resource use” (Chiefs of Ontario, 2007, p. 6). The Chiefs of Ontario report further articulates the connection between ATK and ABS policy:

ATK usually refers to those indigenous systems of knowledge, as well as cultural practices and methodologies related to the production of knowledge based on traditional belief systems, relationships to the environment, and community practices. It is the accumulated and living knowledge possessing a depth and breadth of information built upon the historic experiences of peoples living on the land and adapts to social, economic, environmental, spiritual and political change. *Its value in understanding species, ecosystems, sustainable management, conservation and use is unparalleled. It comprises of a deep understanding of complex interrelationships between individual environment components, the dynamics of local ecosystems and the peoples that live in them* [emphasis added]. (Chiefs of Ontario, 2007, p. 6)

As these issues are interconnected, both ATK and Aboriginal women’s connections to ATK hold relevance to ABS policy.

### *Aboriginal Women’s Engagement with ATK*

Given the absence of a gendered lens from most research into the environment (Reed & Christie, 2009), it is important to note the risks of neglecting women’s perspectives. The *International Union for Conservation of Nature* (IUCN), self-described as the largest professional global conservation network, recently published a report to support countries’ efforts to achieve



sustainable biodiversity and conservation. In its report, the IUCN references the United Nations Development Programme (UNDP) in order to emphasize that women must be included in discussions about environmental policies:

Women's participation in decision-making at higher levels has specifically benefitted environmental policy, such that countries with more women in their parliaments are more likely to set aside protected land areas and ratify international environmental treaties. In fact, new data reveals that there is a causal relationship between environment and gender; when gender inequality is high, forest depletion, air pollution and other measures of environmental degradation are also high. (UNDP, 2011, as cited in IUCN, 2012, p. 8)

Yet, such engagement must not be superficial, as the nature of their participation also matters. Given their traditional role in the household and community, women have a unique, protective relationship with the environment. The *UNDP's* (2011) research notes a correlation between female participation and influence: "The more women on the management committee, the greater is the likelihood that they will attend committee meetings, speak up and become office holders" (p. 64). Its conclusions re-affirm the need to ensure women are empowered to have an influential voice, rather than a limited capacity in such discussions. NWAC's experience in working with communities, along with our research has established that when women are empowered, they are more likely to raise the profile of environmental concerns and increased action to conserve and protect resources; therefore, increased female representation and engagement in environmental issues often leads to stronger lobbying and activism for environmental protections.

Often in communities, groups possess specific knowledge and responsibilities as a consequence of their cultural and social dynamics. In the literature review, Aboriginal women are frequently linked to water (McGregor, 2005, 2012; Kattau, 2006; Chiefs of Ontario, 2007; Szach, 2013). McGregor adds that Aboriginal women are more likely to notice changes in water since they care for water in their communities. According to the Chief of Ontario (2007), ATK is developed

through observation and experimentation, and Aboriginal women have a special duty to care for water, suggesting that Aboriginal women might have critical knowledge of an area's water. Their report re-iterates that it is "imperative that women are well represented in discussions about water protection" (2007, p. 10).

Skye draws parallels between midwifery and ATK, noting both include the practice in which knowledge is, "passed down through familial generations of women" (2010, p. 31). Throughout Szach's interviews, Anishinaabe and Métis women in Ontario reveal that sharing and teaching is an integral part of one's responsibility as a water keeper (2013, p. 73). This knowledge exchange is not one-sided, as Aboriginal women also learn from others, including, "grandparents, aunts, and uncles" (p. 73). Although the responsibilities of a particular knowledge are not restricted to one group, it is still important to empower Aboriginal women to ensure that exchange does occur.

Also from her interviews, Szach discovers most of the Aboriginal women seemed to consider their complex water knowledge, in addition to the associated teachings and stories, as part of their identity. In fact, some participants even identified a connection between the act of reclaiming water, ATK, and decolonization (p. 121). In addition to promoting healthier and more sustainable lifestyles, water knowledge can be "empowering because it can be by turns liberating, political, culturally reaffirming, about choice and decision-making, and defining what womanhood means" (p. 122). Aboriginal women have diverse connections to ATK, and their influence on protecting the environment and natural resources cannot be neglected. Acknowledging the views of Aboriginal women encourages the consideration of relevant traditional knowledge, contributes to greater environmental sustainability and care, as well as enhances gender equality.

### *ATK Protocols*

The process of adapting ATK to Western practices and frameworks often means removing it from its deeply interconnected epistemology and placing it in a model that is very disconnected and compartmentalized. In much of the research, participants worry this adaptation relegated the

holistic, deeply relational knowledge-pool of ATK into categorization, reductionism, as well as distinct beginnings and ends (AFN, n.d; Chiefs of Ontario, 2007; McGregor, 2004, 2005, 2008, 2012; Skye, 2010; Szach, 2013). Such appropriation raises further concerns about the distortion of the intentions of ATK; the disregard for ATK; and the lack of Aboriginal control at the end of the project.

The relationship between ATK holders (individuals, groups, or communities) and those representing more Western approaches can seriously impede cooperation and collaboration if concerns are not addressed. There may be tensions when ATK holders feel the need to avoid exploitation of ATK (McGregor, 2004; Szach, 2013), which can happen easily considering that participants from both sides can have very different world views. McGregor defines discontent with ATK, or TEK as being, “from its definition to its utilization, has been for the most part controlled by interests external to the Aboriginal communities from which it originates” (2008, p. 144). If unaddressed, the concerns can lead to negative impacts to the environment, as well as negative impacts to the needs, concerns, and priorities of impacted Aboriginal peoples. McGregor sums up the current impressions amongst those she has worked with or the research she has read on ATK research and initiatives as, “unsatisfactory from an Aboriginal perspective” (2008, p. 144).

The development of ATK depends heavily upon a relationship with nature. It is also partly a process of enculturation that reinforces the value of nature and the interdependence of different species, including plants, natural resources, and people. The idea of interdependence is both an anchor for viewing nature and for viewing how we must interact with it. In an emic-based ethnographic examination of these protocols, Dannenmann, an Anishinaapekwe from Namekosipiink in northern Ontario, explains her relationship with the environment as well as the Indigenous Knowledge Instructors Program, through which she imparts Indigenous Knowledge:

Traditional teachers tell us [...] our homes, our canoes, our tools and equipment, are not ours but are on loan to us. Even the articles of our clothing are is [sic] on loan to us. [...] We are

very carefully taught that everything on loan to us must be cared for and then returned in the condition, or even better condition, than it was when we acquired it. (2008, p. 214)

For her, the environment is part of Mother Earth. The relationship she has with the environment is not limited to the outdoors: it is also connected to other relationships, including with family, animals, plants, rocks, etc. This is a relationship, “characterized by a spirituality and sacredness, an intimate knowledge and huge reciprocal respect and reverence where we all know our rights and responsibilities” (p. 214). Understanding the approach that many ATK holders use with the environment will help those attempting to negotiate relationships and processes of accessing ATK.

The literature ultimately suggests that the meaningful participation of Aboriginal women in ATK discussions and in ABS policy is imperative. In one regard, Aboriginal women may often be holders of specific ATK knowledge that is critical to the environmental discussion of that region or area. In another regard, Aboriginal women’s role in co-leading a discussion on environmental concerns and ABS policy is essential for boosting environmental protections and conservation. Finally, by the very nature of ATK processes and protocols, any discussion that excludes gender (or other groups like youth and Elders) is both a poor reflection of the very wisdom gained by ATK and a poor regard for how it was developed in the first place.

## Methodology

The purpose of this report was to gather input and perspectives from Aboriginal women on environmental priority issues including access and benefit sharing of genetic resources. To collect input, NWAC engaged in a few initiatives. A presentation was made at NWAC’s Annual General Assembly to communicate and share information with NWAC’s membership, and collect input on ABS. Another presentation was made at the Board of Directors Meeting (2014) and input invited from participants. A survey was drafted by NWAC technical staff; reviewed,

revised, and approved by Environment Canada; and then distributed at the Annual General Assembly as well as online through Survey Monkey to collect responses.

To help determine relevant survey questions, a review of the literature was used to identify key themes and topics for questioning. The literature search used related terms for ATK (Aboriginal Traditional Knowledge; Traditional Ecological Knowledge; Traditional Knowledge) and Aboriginal women (also, Native, American Indian, and Indigenous) in order to collect information pertinent to discussions of access and benefit sharing. The timespan was intended for a 10-year limit but we allowed a few exceptions for relevance, the limited resources available on the topic, and for the fact that little changed in the perspectives from the earliest paper to most recent. NWAC also depended on its experience engaging with Aboriginal women on environmental issues to help determine relevancy of questions for the survey.

From a review of the literature and to fulfill the needs of EC for feedback, it was determined to focus questions on the following topics:

- Awareness of ABS in general and in Aboriginal communities.
- Issues around ABS in relation to Aboriginal communities.
- The role of Aboriginal women in environmental management.
- Feedback on EC's or the federal government's role in developing ABS policy.

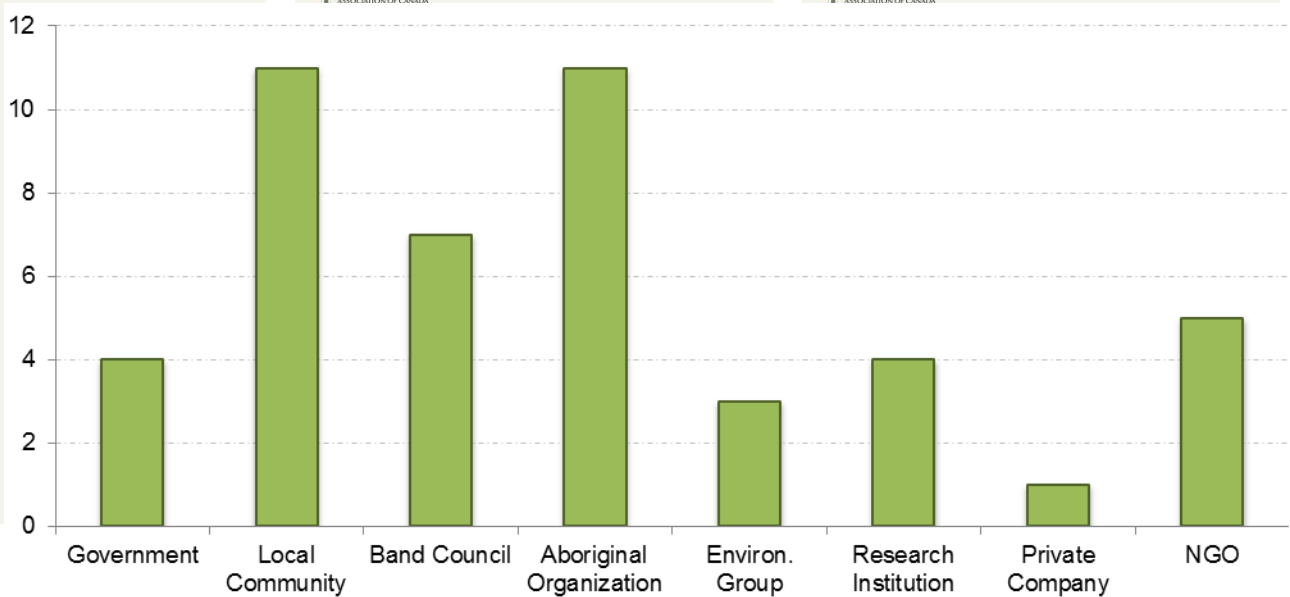
As mentioned, the survey was circulated within NWAC's membership at their 2014 Annual General Assembly and online. Online participants were reached through NWAC's networks and would have been open to Aboriginal women across Canada. In total, there were a total of 36 respondents (2 in French). The survey can be viewed in the Appendix I to this report. Although there were dozens of other women who had initially filled out the surveys at the Annual General Assembly, after the representative from the Environment Canada (EC) gave their presentation at the meeting, the women destroyed their surveys because they were worried that the short meeting with EC would be used as a way for the department to claim that there had been legal consultation with Aboriginal women on this issue.

## Survey Results

Although they are not representative of the entire target population, these survey results should provide input from Aboriginal women on the relevant issues around ABS policy. Among the 36 respondents, 32 women identified as First Nation (Status or Non-Status) and four as Métis.

These women had varying experiences in work related to ABS of genetic resources:

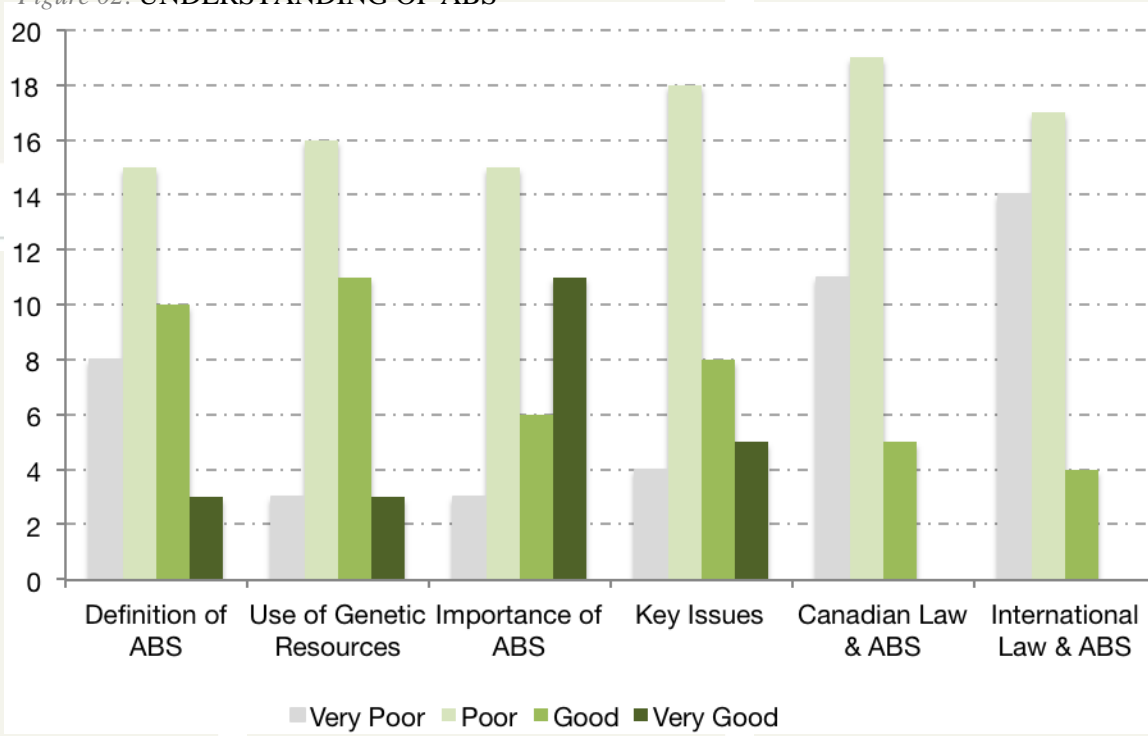
Figure 01: EXPERIENCE WORKING WITH ABS



Two women added that they worked on ABS issues in a university environment. It should also be noted that these results do not suggest all women worked with ABS of genetic resources; seven women had no experience, 16 women were involved in a single forum, and 10 women worked in multiple capacities. Another three women were unsure whether their experiences should be considered, with one stating that they did not understand the question.

Participants also had different levels of understanding for aspects of ABS:

Figure 02: UNDERSTANDING OF ABS

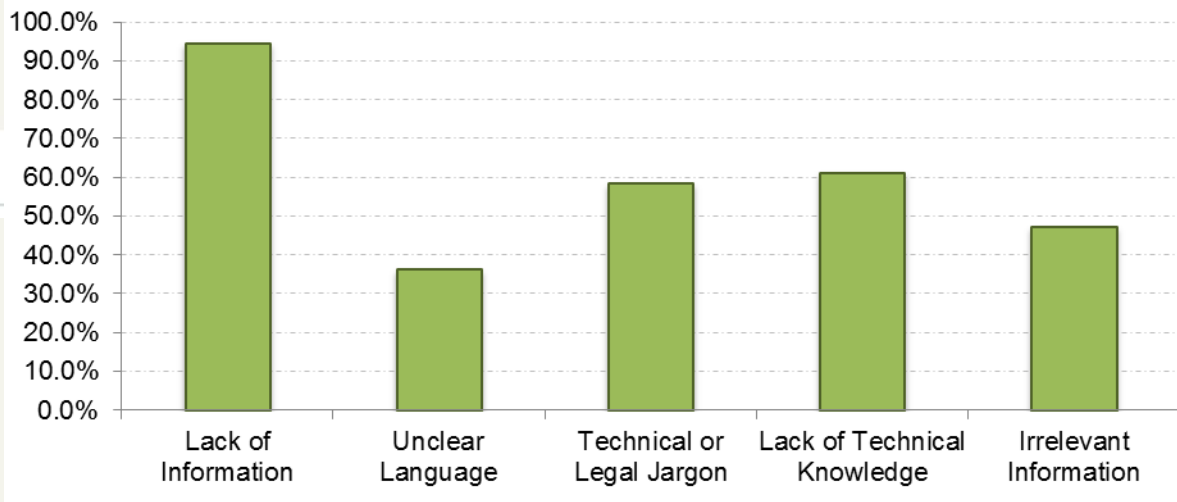


Most participants felt they had a poor understanding of Canadian law in connection to ABS as well as international law in connection to ABS; however, most considered themselves to be relatively more familiar with its definition and importance. An overwhelming majority (97.22%) of respondents highlighted a need for more awareness about ABS in Aboriginal communities.

Most women were unsure if their community had ever been approached regarding access to genetic resources (55.56%) or ATK related to genetic resources (58.33%). 25% indicated that they or their communities were contacted to access genetic resources, and 13.33% stated that they or their communities were asked about ATK in relation to genetic resources (traditional knowledge can refer to things not strictly related to the environment).

Participants ranked the following challenges as hindering their understanding of ABS:

Figure 03: OBSTACLES TO UNDERSTANDING ABS

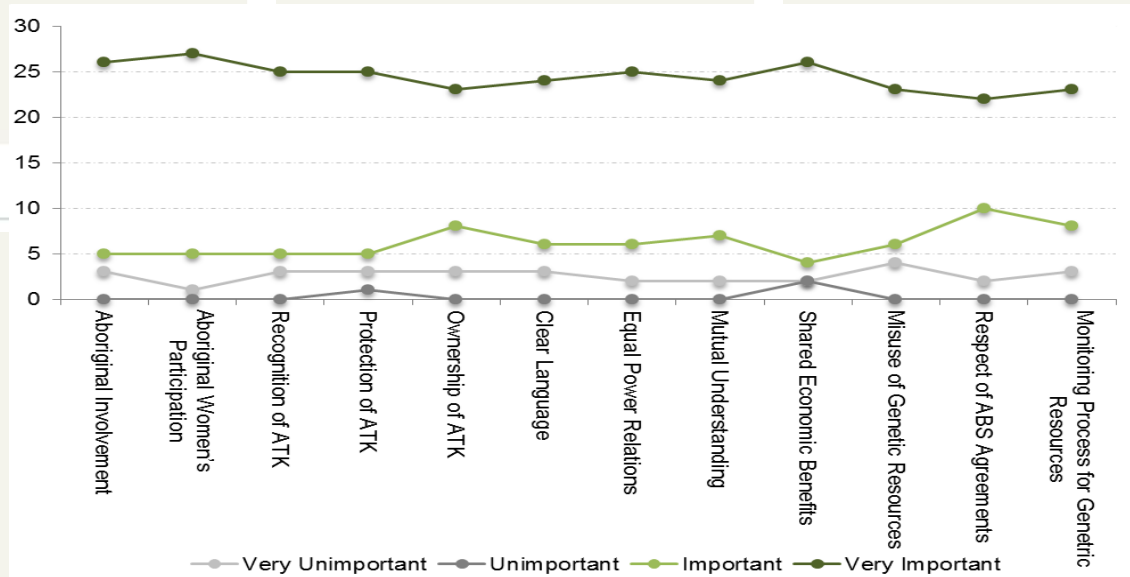


One woman further commented, “No information is going on; [we] need workshops so women understanding big decisions that need to be made” (NWAC Survey, 2014). While multiple participants emphasized multiple barriers to understanding ABS, inadequate information about ABS was selected the most often.



Aboriginal women were then invited to rank the importance of certain issues to ABS:

Figure 04: ISSUES RELATED TO ABS



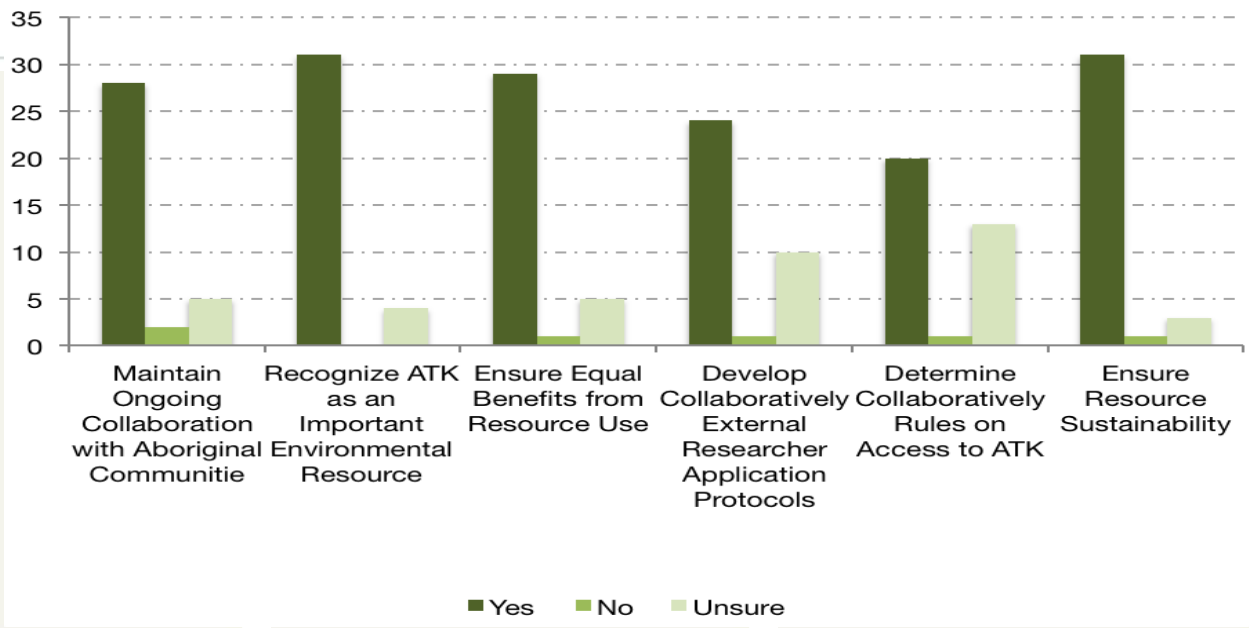
According to the responses, it was extremely important to engage Aboriginal peoples and Aboriginal women specifically during ABS policy development, recognize traditional knowledge in ABS as an important resource for environmental protection, protect the use of traditional knowledge, as well as clarify ownership of traditional knowledge and language around ABS. Also noted was the need to establish an equal power balance as well as mutual understanding between those using and protecting genetic resources, to ensure economic benefits for both parties; to address the misuse of genetic resource; and to develop a process that monitors the use of genetic resources.

When asked whether Aboriginal women played a role in their community in helping to preserve the environment and resources, 17 (or 48.57% of) participants said yes, that their community relies upon Aboriginal women to protect resources, five women (14.29%) responded that the community does not depend upon Aboriginal women, while another 13 people (37.14%) were unsure. Regarding what role participants felt Aboriginal women should play in the management of genetic resources and traditional knowledge, approximately 95% of respondents supported all

of the provided categories, which were including Aboriginal women in the following: in the management of genetic resources and traditional knowledge as participants in developing policies to protect such resources and knowledge; participate to establish protections of traditional knowledge so that its use is respected and valued; participate in developing access protocols for researchers and resource users; continue a guardianship role over natural resources; protect and conserve biodiversity; ensure the sustainability of resources; and participate in developing and implementing a Community Code of Ethics for external users (those not from the community).

While a majority of survey participants (74.29%) also expressed support for a federal ABS policy, fewer believed that the Government of Canada should be involved in its creation; only 38.24% of respondents agreed that the federal government should have a role in its development, while 35.29% were unsure, and 26.47% opposed federal involvement. Nevertheless, when asked to select the capacities in which the federal government should help to develop an ABS policy, numerous women identified the following roles for the government to consider:

Figure 05: FEDERAL ROLE IN ABS POLICIES



Participants' selections concluded that the Government of Canada should recognize and encourage the value of traditional knowledge as a tool for preserving the environment, as well as ensure the equal benefits from the sharing of genetic resources. Also suggested was collaboration between the federal government and Aboriginal communities during the development and implementation of an ABS policy, external researcher application protocols, and rules regarding the access of traditional knowledge.

Finally, the survey provided an opportunity for Aboriginal women to share further insights or information. Fourteen respondents commented:

- This is not consultation (repeated by 8 participants);
- Also need a community policy;
- Grassroots people should be informed and educated;
- Promote research involving Aboriginal women and the protection and value of Aboriginal traditional knowledge;
- This seems like a new and frivolous English-built knowledge, but it has medical and environmental aspects to it, which can be helpful in proactive health initiatives and understanding the environment. We can all benefit from biological/ecological relationships, including Indigenous perspectives and worldviews;
- The Federal Government should fund Aboriginal Communities to gather information on ABS & form an appropriate Jurisdictional Board to ensure protection of information and properly protocol; and,
- Promote research involving Aboriginal women and the protection and promotion of Indigenous Traditional Knowledge.<sup>2</sup>

## Analysis

When NWAC began to examine the details for conducting this report, we expected to find that Aboriginal women were under-represented in environmental engagement and on the margins of participation in discussions involving ATK. What we found matched to some degree with our expectations that these were indeed the case. The literature review indicated a significant dearth

<sup>2</sup> Answer was originally in French: "Favorise la recherche impliquant les femmes autochtones et la protection et valorisation des savoirs traditionnels autochtones."

of Aboriginal women's inclusion in research into environmental concerns and conservation. Survey participants reflected holding Aboriginal women's involvement as a priority. For every question about Aboriginal women's involvement, survey answers strongly urged for more involvement of Aboriginal women. Question 11, which asked the role Aboriginal women should play in the management of genetic resources and traditional knowledge had an extremely consistent response for every category. Every category received at least 94% voting yes by participants for more involvement by Aboriginal women.

One theme seen in the data was a lack of accessibility in terms of ABS language and process. In question 8, when participants were asked about challenges in understanding ABS, their main obstacle was a lack of information on ABS (94%) but also ABS language being too technical or legal (58%) and a lack of scientific or legal knowledge (61%) ranked high as obstacles. There was clearly an issue of language in terms of understanding and following ABS policy. This obstacle of accessibility is of concern, one that was reflected in a review of the literature. Participants in the reviewed studies indicated that incorporating ATK into Western frameworks removed much of what made ATK traditional knowledge. The suggestion between the survey findings and comments from the literature review is that right now it may be very difficult for Aboriginal peoples to see how ATK would be respected by fitting it into the current language used for ABS policy. Using plain language and communicating about the topic in a culturally appropriate way would facilitate more involvement and understanding, as well as help to improve communication between government and Aboriginal women.

Another surprise from the data comes from comparing question 4 with most other following questions in the survey. Question 4 asked participants to rate their current understanding of several aspects of ABS. Few participants indicated their knowledge as 'Very Good' (the highest category). Most rated themselves somewhere between 'Poor' and 'Good', with a few more in 'Very Poor' for knowledge of 'Canadian law in connection to ABS' and 'International law in connection to ABS'. The split in knowledge did not reflect itself in the differences in answers in the other survey questions. In other words, lack of knowledge of ATK did not seem to change

participant answers significantly from those who indicated ‘Very Good’ knowledge. Most participants agreed, to varying degrees, on making Aboriginal women’s involvement more of a priority, involving Aboriginal women in more roles and capacities in developing ABS policies, and discussions of environmental care.

Questions 12 and 13 may surprise some readers. In question 12, participants were asked about a need for a federal policy on ABS. Respondents overwhelmingly answered yes (74%). When asked if the federal government should play a role in developing this ABS policy, answers were very divided (yes, 38%; no, 26%; unsure, 35%). There is perhaps some interpretation of this split offered in question 14. Question 14 asked what possible roles the federal government should have in developing an ABS policy. Participants were provided with a number of possibilities with the options for each one of ‘Yes’, ‘No’, and ‘Unsure’. While participants answered in the affirmative for possibilities involving ongoing collaboration on developing ABS policies, one answer did not receive the same positive responses as the others: “Collaborate with Aboriginal communities to determine rules on whether and how to access traditional knowledge” (yes, 58%; no, 3%; unsure, 38%). While there was a majority positive, in hindsight, participants may have been reluctant to select ‘Yes’ in that instance because it may be interpreted to mean federal control (to some degree) of Aboriginal communities’ policies on ATK.

In the other categories, collaboration and cooperation were rated very positively, but in this one the hesitation may show a particular wariness on the part of Aboriginal women. The suggested, though not conclusive, interpretation may be that Aboriginal women (that participated in this survey) strongly support ongoing dialogue and discussion, but remain wary about where decision-making power rests. It was reiterated many times in the literature review that there was a concern for how Aboriginal peoples seem to lose control over ATK once it was used in initiatives, or that they had little say on project outcomes aside from giving input. The underlying interpretation from the survey seems to be strong encouragement for Environment Canada to maintain and increase dialogue with Aboriginal women (and peoples) on environmental issues.

However, there are still very serious issues and concerns about the true influence Aboriginal people have in the process: is it meaningful, or more so a placating gesture?<sup>3</sup>

## Recommendations

Survey participants overwhelmingly, without exception, indicated that more information and awareness was needed in Aboriginal communities on access and benefit sharing. In providing improved awareness and more information, it was recommended that Environment Canada make the language on ABS more accessible. While not part of this survey, NWAC has examined methods for increasing Aboriginal women's participation (on many topics/issues) on numerous occasions. When considering how to reach more Aboriginal women, Environment Canada should consider some of the following:

- Either providing transportation or be willing to make the trip out to meet with individual women;
- Childcare to be provided if possible as many women are caring for children; and,
- Advanced notice in a variety of mediums to ensure for more opportunities to hear about an engagement session or calls for ATK holders.

Involvement of Aboriginal women in discussions on the environment and development of environmental policies was both a priority of survey participants and a critical element for effective environmental conservation as found by the United Nations (UNDP, 2011).

Environment Canada needs to prioritize the involvement of women. Many participants (over 70% for each category) also ranked the following highly:

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<sup>3</sup> Free, Prior, and Informed Consent (FPIC) as well as the related topic of Consultation are underlying themes that remain important to understanding the perspectives of participants and the nature of their concerns. Because of their importance for understanding survey participants' answers, we have included relevant information on FPIC and Consultation in appendix II

- Recognizing traditional knowledge in ABS as an important resource for protecting the environment;
- Protecting the access and use of traditional knowledge in ABS;
- Making the language on ABS more clear and understandable;
- Creating an equal power balance between those who want to use genetic resources and those protecting it; and,
- Making sure both parties benefit economically from the use of genetic resources.

Regarding involvement in the management of genetic resources and traditional knowledge, participants overwhelmingly supported<sup>4</sup> that women:

- Participate in developing policies and procedures to protect genetic resources;
- Participate to establish protections of traditional knowledge so that its use is respected and valued;
- Participate in developing access protocols for researchers and resource users (like for-profit companies, non-government organizations, etc.);
- Continue a guardianship role of the natural resources;
- Protect and conserve biodiversity;
- Ensure the sustainability of resources; and,
- Participate in developing and implementing a Community Code of Ethics for external users (those not from the community).

## Conclusion

The Aboriginal women who completed the survey provided valuable information, recommendations, and concerns regarding the issue of access and benefit sharing of genetic resources as well as ATK. Participants made it very clear that a serious language barrier exists in

<sup>4</sup> The lowest-rated of these options was 94% of participants (NWAC, 2014)

making ABS policy materials and discussion more accessible. Current specialty language makes participation from some valued members of Aboriginal communities more challenging than it should be. There is also a lack of awareness amongst Aboriginal people that must be addressed. The survey generally indicated the topics were very important, but there was a lack of accessible information to become better informed on Environment Canada and ABS policy.

Aboriginal women also responded favourably to ongoing communication and dialogue on the environment and ATK; however, this dialogue must be balanced so that Aboriginal participants exercise influence over the ABS policy agenda. Both the literature review and survey responses indicated a strong distrust of a process that only asked their insight at a fixed point and then ended the discussion. True collaboration was considered to be an ongoing relationship where both parties wielded influence in the development of policies, initiatives, and environmental projects.

While many participants identified a need for a federal policy for ABS, results were split in terms of the federal government's role. While the limitations of a survey meant that element was not explored in-depth, it is hoped that this survey is one of many ongoing collaborations between Environment Canada and Aboriginal groups (such as NWAC).

It cannot be emphasized enough how important it is to ensure meaningful participation of Aboriginal women in ongoing discussions around ABS policy and the environment. Throughout the survey, participants were very clear in identifying that priority, which was then reinforced by the prevalent theme in the literature review: leadership on environmental issues that has strong dual-gender representation is more effective at preserving and protecting the environment. Gender equality leads to improved environmental policies, outcomes, and actions.



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## Appendix I

### 1. I am:

Answer Options	Response Percent	Response Count
Female	100.0%	36
Male	0.0%	0
Other		0
<i>answered question</i>		<b>36</b>
<i>skipped question</i>		<b>0</b>

### 2. Please select one that applies to you:

Answer Options	Response Percent	Response Count
First Nation (Status or non-Status)	88.9%	32
Métis	11.1%	4
Inuit	0.0%	0
Non-Aboriginal	0.0%	0
Multiple Aboriginal Identity	0.0%	0
<i>answered question</i>		<b>36</b>
<i>skipped question</i>		<b>0</b>

### 3. Do you work on the issue of Access and Benefit Sharing (ABS) of genetic resources?

Answer Options	Yes	No	Unsure	Response Count
Government institution	4	14	3	21
Member of an Aboriginal local community	11	10	3	24
Aboriginal government/band council	7	13	4	24
Aboriginal organization	10	10	4	24
Environmental group	3	13	3	19
Research institution	4	14	3	21
Private company	1	15	3	19
Non-Government Organization	5	13	3	21
Other				6
<i>answered question</i>				<b>34</b>
<i>skipped question</i>				<b>2</b>

Number	Response Date	Other
1	Nov 12, 2014 3:40 PM	Université
2	Oct 17, 2014 2:39 PM	Prov. member association of NWAC
3	Oct 17, 2014 2:34 PM	We are a Native woman advocate group
4	Jun 6, 2014 2:22 PM	I do't understand what this question is asking.
5	May 9, 2014 3:51 PM	activist INM
6	Apr 17, 2014 3:47 PM	University

#### 4. How would you rate your current understanding of each of the following aspects of ABS?

Answer Options	Very Poor	Poor	Good	Very Good	Response Count
What ABS is	8	15	10	3	36
The different uses of genetic resources	3	16	11	3	33
Why ABS is important to Aboriginal people and communities	3	15	6	11	35
The key issues on ABS for Aboriginal people	4	18	8	5	35
Canadian law in connection to ABS	11	19	5	0	35
International law in connection to ABS	14	17	4	0	35
<i>answered question</i>					<b>36</b>
<i>skipped question</i>					<b>0</b>

#### 5. Do you feel that more information and awareness is needed on ABS among Aboriginal communities?

Answer Options	Response Percent	Response Count
Yes	97.2%	35
No	0.0%	0
Unsure	2.8%	1
<i>answered question</i>		<b>36</b>
<i>skipped question</i>		<b>0</b>

#### 6. Have you or your community ever been approached to access Genetic Resources (GRs) on Aboriginal lands?

Answer Options	Response Percent	Response Count
Yes	11.1%	4
No	33.3%	12
Unsure	55.6%	20
<i>answered question</i>		<b>36</b>
<i>skipped question</i>		<b>0</b>

#### 7. Have you or your community ever been approached to access traditional knowledge associated with GRs?

Answer Options	Response Percent	Response Count
Yes	5.6%	2
No	36.1%	13
Unsure	58.3%	21
<i>answered question</i>		<b>36</b>
<i>skipped question</i>		<b>0</b>

#### 8. What do you feel are the top 3 main challenges in understanding ABS?

Answer Options	Response Percent	Response Count
Lack of information on ABS	94.4%	34
Language on ABS is unclear	36.1%	13
Language is too technical or legal on ABS	58.3%	21
Lack of scientific or legal knowledge	61.1%	22
Information provided is not relevant to Aboriginal people/community needs	47.2%	17

Other	1
<b>answered question</b>	<b>36</b>
<b>skipped question</b>	<b>0</b>

**Other**  
No information is going on-- need workshops so women understand big decisions that need to be made.

**9. What issues around ABS do you think are important or not important?**

Answer Options	Very Unimportant	Unimportant	Important	Very Important	Response Count
Aboriginal involvement in ABS policy development	3	0	5	26	34
Aboriginal women's participation in ABS policy development process	1	0	5	27	33
Recognition of traditional knowledge in ABS as an important resource for protecting the environment	3	0	5	25	33
Protecting the access and use of traditional knowledge in ABS	3	1	5	25	34
Clarifying ownership of traditional knowledge in ABS	3	0	8	23	34
Making the language on ABS more clear and understandable	3	0	6	24	33
Creating an equal power balance between those who want to use genetic resources and those protecting it	2	0	6	25	33
Creating mutual understanding between those who want to use genetic resources and those protecting it	2	0	7	24	33
Making sure both parties benefit economically from the use of genetic resources	2	2	4	26	34
Misuse or dishonest use of genetic resources	4	0	6	23	33
Making sure ABS requirements and agreements are respected and followed	2	0	10	22	34
Tracking and monitoring the use of genetic resources	3	0	8	23	34
Other					1
					<b>answered question</b>
					<b>34</b>
					<b>skipped question</b>
					<b>2</b>

Number	Response Date	Other
1	Oct 17, 2014 2:37 PM	Ensuring Native women naturally take the lead for women.

### 10. Does your community rely upon Aboriginal women to help preserve and protect the environment and resources?

Answer Options	Response Percent	Response Count
Yes	48.6%	17
No	14.3%	5
Unsure	37.1%	13
<i>answered question</i>		<b>35</b>
<i>skipped question</i>		<b>1</b>

### 11. What role do you feel Aboriginal women should play in the management of genetic resources and traditional knowledge?

Answer Options	Yes	No	Unsure	Response Count
Participate in developing policies and procedures to protect genetic resources	33	0	2	35
Participate in establishing protections of traditional knowledge so that its use is respected and valued	34	0	1	35
Participate in developing access protocols for researchers and resource users (like for-profit companies, non-government organizations, etc.)	34	0	1	35
Continue a guardianship role of the natural resources	33	1	1	35
Protect and conserve biodiversity	33	1	1	35
Ensure the sustainability of resources	33	1	1	35
Participate in developing and implementing a Community Code of Ethics for external users (those not from the community)	34	0	1	35
Other				0
<i>answered question</i>				<b>35</b>
<i>skipped question</i>				<b>1</b>

### 12. Do you think there is a need/ interest for an ABS Federal policy?

Answer Options	Response Percent	Response Count
Yes	74.3%	26
No	5.7%	2
Unsure	20.0%	7
<i>answered question</i>		<b>35</b>
<i>skipped question</i>		<b>1</b>

### 13. Do you think the federal government should play a role in developing an ABS policy?

Answer Options	Response Percent	Response Count
Yes	38.2%	13
No	26.5%	9
Unsure	35.3%	12
<i>answered question</i>		<b>34</b>
<i>skipped question</i>		<b>2</b>

#### 14. What role do you think the federal government should have in developing an ABS policy?

Answer Options	Yes	No	Unsure	Response Count
Maintain ongoing collaboration with Aboriginal communities in developing ABS policy	28	2	5	35
Recognize and encourage the value of traditional knowledge as an important resource for preserving and protecting natural resources and as a valid pool of scientific knowledge	31	0	4	35
Ensure the equal sharing of benefits arising from the use of resources	29	1	5	35
Collaborate with Aboriginal communities to develop and implement external researcher application protocols	24	1	10	35
Collaborate with Aboriginal communities to determine rules on whether and how to access traditional knowledge	20	1	13	34
Ensuring the sustainability of resources	31	1	3	35
Other				0
<b>answered question</b>				<b>35</b>
<b>skipped question</b>				<b>1</b>

#### 15. Please feel free to share any other information that you feel will help.

Answer Options	Response Count
	14
<b>answered question</b>	<b>14</b>
<b>skipped question</b>	<b>22</b>

Number	Response Date	Response Text
1	Nov 12, 2014 3:45 PM	Favorise la recherche impliquant les femmes autochtones et la protection et valorisation des savoirs traditionnels autochtones.
2	Nov 5, 2014 7:42 PM	Grass roots people should be informed and educated.
3	Oct 17, 2014 2:51 PM	This is NOT consultation.
4	Oct 17, 2014 2:48 PM	This is not consultation.
5	Oct 17, 2014 2:46 PM	Not consultation.
6	Oct 17, 2014 2:43 PM	This is not consultation.
7	Oct 17, 2014 2:41 PM	This is not consultation.
8	Oct 17, 2014 2:38 PM	This isn't consultation!!
9	Oct 17, 2014 2:33 PM	This is not consultation.
10	Oct 17, 2014 2:31 PM	This isn't consultation
11	Apr 17, 2014 3:55 PM	Promote research involving Aboriginal women and the protection and value of Aboriginal traditional knowledge. This seems like a new and frivolous english built knowledge. But it has medical and environmental aspects to it which can be helpful in proactive health initiatives and understanding the environment. We can all benefit from biological/ecological relationships, including Indigenous perspectives and world views.
12	Apr 8, 2014 3:57 PM	
13	Apr 7, 2014 7:39 PM	Also need a community policy Federal Government should fund Aboriginal Communities to gather information on ABS & form an appropriate Jurisdictional Board to ensure protection of information and properly protocol.
14	Mar 31, 2014 8:53 PM	



## Appendix II

### Joint Submission: Renewing the Federal Comprehensive Land Claims Policy<sup>5</sup>

The right of Indigenous peoples to own, control and use their traditional lands, territories and resources is directly and explicitly protected in international human rights law. Indigenous land rights are also understood to be an indispensable foundation for the full and equal enjoyment of a wide range of other human rights, including rights to culture and identity, the right to health, the right to subsistence, and the right to livelihood. All states have a positive obligation to recognize and provide effective legal protection to the territories of Indigenous peoples. This obligation must be met in a manner that is consistent with Indigenous peoples' unique cultures and histories, and which does not discriminate against them in any way.

Indigenous peoples' rights to own, control, use and develop their lands, territories and resources are further elaborated in Article 26 [of the United Nations Declaration on the Rights of Indigenous Peoples]:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

<sup>5</sup> The following excerpts came from a joint submission by multiple Non-Government Agencies in a letter in response to the department of Aboriginal Affairs and Northern Development Canada's new policy entitled, "Renewing the Federal Comprehensive Land Claims Policy of which NWAC was a signatory: Joint Submission of the Coalition on the UN Declaration on the Rights of Indigenous Peoples." To view the whole document, go to: <http://quakerservice.ca/wp-content/uploads/2014/11/Joint-submission-Renewing-the-Comprehensive-Claims-Policy.pdf>

In all, more than 19 articles in the *Declaration* address Indigenous peoples' land rights either directly or indirectly. This includes Article 3 (self-determination); Article 4 (self-government); Article 10 (prohibition of forcible removal); Articles 11, 12, 13 and 31 (rights to cultural practice and cultural heritage); Article 20 (right to their own means of subsistence and development, and to engage freely in all their traditional and other economic activities); Articles 23 and 32 (right to determine priorities and strategies for exercising the right to development, including any development of their lands, territories and resources); Article 24 (right to traditional medicines); Article 29 (right of conservation and protection of the environment); Article 30 (limitations on military activities on their lands or territories); Article 34 (right to maintain and develop distinctive institutions and juridical structures); and Article 37 (right to observance and enforcement of treaties and other constructive arrangements with states).

### **Indigenous systems of land ownership and management must be respected**

Recognition of Indigenous land rights must be accompanied by effective protection. As the Inter-American Court of Human Rights has stated, “the mere possibility of recognition of rights through a certain judicial process is no substitute for the actual recognition of such rights”<sup>i</sup> and “merely abstract or juridical recognition of indigenous lands, territories, or resources, is practically meaningless if the property is not physically delimited and established.”<sup>ii</sup>

This ruling by the Inter-American Court is part of an extensive body of jurisprudence recognizing a positive state obligation to work with Indigenous peoples to ensure effective formal protection of their land rights. The *Declaration* calls on states to “give legal recognition and protection” to Indigenous peoples' lands, territories and resources” and states that “Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”<sup>iii</sup>

### **Effective interim protections are required – including meaningful participation of Indigenous peoples in decision making**

Effective interim protection of Indigenous peoples' land rights necessarily includes Indigenous peoples' meaningful involvement in decisions over how that land will be used. In the *Saramaka* decision, the Court ruled that, as a safeguard “to preserve, protect and guarantee the special relationship that the members of the Saramaka community have with their territory, which in turn ensures their survival as a tribal people” the State must “must ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan... within Saramaka territory.”<sup>iv</sup> The Court went on to state that:

*in addition to the consultation that is always required when planning development or investment projects within traditional Saramaka territory, the safeguard of effective participation that is necessary when dealing with major development or investment plans that may have a profound impact on the property rights of the members of the Saramaka people to a large part of their territory must be understood to additionally require the free, prior, and informed consent of the Saramakas, in accordance with their traditions and customs.<sup>v</sup>*

The Inter-American Commission has similarly described the requirement of free, prior and informed consent “as a heightened safeguard for the rights of indigenous peoples, given its direct connection to the right to life, to cultural identity and other essential human rights, in relation to the execution of development or investment plans that affect the basic content of said rights.”<sup>vi</sup>

The right of free, prior and informed consent is similarly well established within the UN human rights system. In a general recommendation interpreting the *UN Convention on the Elimination of All Forms of Discrimination*, the UN Committee on the Elimination of Racial Discrimination has called on states to ensure that “no decisions directly relating” to the rights and interests of Indigenous peoples should be taken without their informed consent.<sup>vii</sup> The *UN Declaration* states that free, prior and informed consent should be the precondition for state approval of “any project” affecting Indigenous peoples’ lands, territories and resources:

*Article 32(2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*

## Aboriginal Title and Consent

In addressing Aboriginal title, the Supreme Court of Canada repeatedly emphasized the requirement of obtaining Indigenous peoples’ “consent”.<sup>viii</sup> The right to “control” title land “means that governments and others seeking to use the land must obtain the consent of the Aboriginal title holders.”<sup>ix</sup> If the Aboriginal group does not consent to the use, “the government’s only recourse is to establish that the proposed incursion on the land is justified under s. 35 of the *Constitution Act, 1982*.”<sup>x</sup>

The Court's ruling on "consent" is reinforced by the *UN Declaration* Article 26(2): "Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired."

"Consent" is not limited to Aboriginal title and applies to other Aboriginal rights.<sup>xi</sup> As described by the Supreme Court of Canada in *Haida Nation*, the high end of the spectrum of consultation requires "'full consent of [the] aboriginal nation' on very serious issues. This applies as much to unresolved claims as to intrusions on settled claims."<sup>xii</sup>

Former UN Special Rapporteur on the rights of indigenous peoples, James Anaya, has concluded: "Indigenous peoples' free, prior and informed consent [FPIC] is required, as a general rule, when extractive activities are carried out within indigenous territories."<sup>xiii</sup> In his July 2014 report on Canada, Anaya concluded:

In accordance with the Canadian constitution and relevant international human rights standards, as a general rule resource extraction should not occur on lands subject to aboriginal claims without adequate consultations with and the free, prior and informed consent of the indigenous peoples concerned. Further, Canada should endeavor to put in place a policy framework for implementing the duty to consult that allows for indigenous peoples' genuine input and involvement at the earliest stages of project development.<sup>xiv</sup>

Indigenous peoples' "consent", as elaborated by the Court, appears to reflect "free, prior and informed consent" in international law. "Consent" must always be "free", that is, obtained without duress. It must also be "prior and informed" in that all necessary information must be provided in a timely manner,<sup>xv</sup> so that a decision can be made with full knowledge of the risks involved.

<sup>i</sup> IACHR. *Case of the Saramaka People v. Suriname*. Judgment of November 28, 2007. Para 105. Cf. *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. General Assembly resolution 60/147 of 16 December 2005, Principle 11. UN Human Rights Committee, General Comment No. 31, *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 80th sess., UN Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004). Para. 8.

<sup>ii</sup> IACHR. *Case of the Indigenous Community Yakye Axa v. Paraguay, Final Decision*. Judgment of June 17, 2005. Para 143.

<sup>iii</sup> *UN Declaration*, Art. 26.

<sup>iv</sup> IACHR. *Case of the Saramaka People v. Suriname. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 185. Para. 129.

<sup>v</sup> *Ibid.*, Para. 137.

<sup>vi</sup> IACHR. *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 59/06. 2010. Para. 333.

<sup>vii</sup> UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII concerning Indigenous Peoples*, CERD/C/51/Misc.13/Rev.4, (adopted by the Committee on August 18, 1997).

<sup>viii</sup> *Ibid.*, paras. 2, 5, 76, 88, 90-92, 97 and 124.

<sup>ix</sup> *Ibid.*, para. 76. In regard to the right to “control”, see also paras. 2, 15, 18, 31, 36, 38, 47, 48, 50, 75 and 76.

<sup>x</sup> *Ibid.*

<sup>xi</sup> E.g., African Commission on Human and Peoples' Rights, Communication No. 276/2003, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Twenty-Seventh Activity Report, 2009, Annex 5, at para. 291: “any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions.”

<sup>xii</sup> *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, para. 24 (where Supreme Court quotes *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, para. 168). In regard to consent, the Court has yet to fully elaborate as to what “very serious issues” may entail.

<sup>xiii</sup> Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples*, UN Doc. A/HRC/24/41 (1 July 2013), para. 84. Anaya adds: “Indigenous consent may also be required when extractive activities otherwise affect indigenous peoples, depending on the nature of the activities and their potential impact on the exercise of indigenous peoples’ rights.” [emphasis added]

<sup>xiv</sup> Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Addendum: The situation of indigenous peoples in Canada*, UN Doc. A/HRC/27/52/Add.2 (4 July 2014), Annex (Conclusions), at para. 98. [emphasis added]

<sup>xv</sup> Such full and timely information must be provided by the Crown in carrying out its duty to consult: see, e.g., *Halfway River First Nation v. British Columbia (Ministry of Forests)*, [1999] 178 D.L.R. (4<sup>th</sup>) 666 (B.C.C.A.), at para. 160, cited with approval in *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388, para. 64