



# Aboriginal Women and the Convention on Biological Diversity

An Issue Paper

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

## Background

The Rio Declaration recognizes the role of Indigenous peoples in environmental management and development and their unique knowledge and relationship to the land and they rely.<sup>i</sup> The *Convention on Biological Diversity* (CBD) further recognizes the relationship with Indigenous peoples and the state of biological diversity. In that:

Parties to the CBD recognize “the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.”<sup>ii</sup>

In regards to the protection of Indigenous knowledge of Indigenous peoples and local communities the CBD recognizes and protects the use of such knowledge in Article 8 (j) which states:

Each party, subject to its national legislation, shall:

- ❖ Respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;
- ❖ Promote the wider application of such knowledge, innovations and practices with the approval and involvement the holders; and
- ❖ Encourage the equitable sharing of the benefits arising from the use of such knowledge.

A fundamental principle regarding the CBD and article 8 (j) is the underlying principle of Indigenous custodial ownership of Indigenous and traditional knowledge. According to Metcalf, ‘States ability to unilaterally limit their obligations to Indigenous peoples in instruments such as the Bio-diversity convention and the Desertification Convention may help explain these Conventions broader adoption.’<sup>1</sup> The need for custodial ownership must reflect current practices and rights, without freezing us in time. Metcalf states: “A direct connection between traditional lifestyles of indigenous communities and the objective of promoting the conservation and sustainable use of bio diversity is the basis for extending protection to indigenous peoples under the Bio-Diversity Convention. The State obligations to respect preserve and maintain indigenous practices may have a territorial component extending protections to the natural environment required to support such practices. It is clear that the protections

---

<sup>1</sup> C. Metcalf, “Indigenous Rights and the Environment: Evolving International Law” 35 Ottawa L.Rev 101 2003-2004 at 137.

afforded by the Bio Diversity Convention extends only to practices that can be directly linked to traditional lifestyles which maintain the appropriate connection to the sustainable use of bio diversity. States are able to limit these rights through domestic legislation.”<sup>2</sup>

In Canadian statutory and common law, Aboriginal traditional knowledge also possesses an inherent right component through case law and Constitutional protections of existing Aboriginal and Treaty rights<sup>iii</sup>.

### **Indigenous Ownership to Indigenous Knowledge**

In *R v. Cote*, The Supreme Court of Canada acknowledged an incidental component of traditional knowledge where it states “...to ensure the continuity of Aboriginal practices, customs and traditions, a substantive Aboriginal right will normally include the incidental right to teach such a practice, custom or tradition to a younger generation.”<sup>iv</sup> In traditional societies, women held the main responsibilities of educating children to take on their adult roles. Elders often mean men and we must bring back women to ensure our spiritual and cultural knowledge does not disappear.

The control, management and protection, and economic benefit of Aboriginal traditional knowledge remain within the traditional or customary legal traditions of Indigenous peoples. In many Indigenous societies women carried out significant responsibilities and activities which contributed to the governance and wellbeing of Indigenous communities. Unfortunately, the contributions and associated rights of Aboriginal women to their societies is not fully understood or recognized within modern societies. Ongoing stereotypes about Aboriginal women limit society’s view of our contributions to our community, society, family and Nation. Even within the Mi’kmaq community, debate continues concerning the matriarchal structure of our society. Traditional anthropological studies often ignored women’s contributions. Aboriginal women need to trust their knowledge and to refuse exclusion in the development of our rights and benefits.

### **Recognition of Indigenous Women’s Specific Knowledge**

Current governing structures within Aboriginal communities lack the recognition of Aboriginal women’s participation and contributions within traditional and Indigenous societies. Aboriginal women face under representation and a lack of political voice in local, regional and national governments. Aboriginal women also face higher levels of poverty, poor health indicators and violence. To rectify this situation, we must have access to voice our political perspectives.

---

<sup>2</sup> C. Metcalf, “Indigenous Rights and the environment: Evolving International Law” 35 Ottawa L. Rev 101 2003-2004 at 110

The absence of recognition of Aboriginal women's specific rights in Canadian Aboriginal case law also illustrates a significant lack of understanding and recognition of the specific roles, activities and knowledge Aboriginal women possess. Currently, common law has not focused solely on Aboriginal women's rights and again, we face lack of recognition as the Courts narrowly define our treaty and Aboriginal rights and focus predominately on male activities such as hunting, fishing and limited access to lumber.

Aboriginal traditional knowledge and related rights specific to Aboriginal women would include discussions on food and food safety issues, protection of sacred sites and spiritual practices, recognition of women's responsibility to the protection and integrity of water and water safety, allocation of lands, political voice, and protection of medicines and habitats, education, and child welfare to mention only a few. One area in family law that deserves discussion involves grandparent's rights in divorce law. Traditionally, grandparents played a significant role in raising their grandchildren and passing on traditional knowledge related to the environment.

### **Full and Effective Participation of Aboriginal Women**

Article 10 (c) of the CBD encourages customary use of biological resources and Article 17.2 states:

- ❖ Parties must facilitate the exchange of information, including indigenous traditional knowledge.

States must include traditional information and knowledge, yet in western society, scientists debate the utility of Indigenous knowledge and our knowledge often falls far short of scientific acceptability. A current trend involves the inclusion of Aboriginal knowledge as long as such knowledge can be confirmed by western science. Because many of our knowledge holders do not have science degrees, their contributions often meet with resistance and disbelief.

Aboriginal women possess significant Aboriginal traditional knowledge that today can contribute to the environmental integrity and biodiversity of Canada. However, Aboriginal women face limited opportunities and resources to facilitate their participation at the table. Moreover, policies and laws have not been sufficient to ensure the unique traditional knowledge of Aboriginal women is included or protected.

### **Capacity and Community level**

Aboriginal women must have sufficient capacity to ensure meaningful and effective participation at any legislative, administrative and policy regime affecting Indigenous and traditional knowledge. Without effective and informed representatives Indigenous women face further exclusion and remain at risk of

further exploitation and mistrust. Statistics Canada found that Aboriginal women earn degrees at twice the rate of Aboriginal men but face discrimination in employment.

### **Equality provisions promoting Indigenous women**

The need for equality protections and specific provision for Aboriginal women in Canadian society is an unfortunate reality, but necessary to ensure the rights, concerns and issues specific to Aboriginal women are protected. Aboriginal women face intense discrimination and despite the protections of the Charter, Aboriginal women have not gained an equal voice in the political arena.

Governments have initiated International and national legal protections to ensure the rights of women and Aboriginal women receive equal protection. The following lists some of the International human rights that receive legal protection and recognition through various instruments:

- Right to Equality: <sup>v</sup>
- Right to Non-discrimination: <sup>vi</sup>
- Right to Culture<sup>vii</sup>

In addition to International tools, Canada has the following instrument to ensure equality for women. The Constitution of Canada: s 35 (4) states:

- ❖ Notwithstanding any other provision of this Act, the Aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

The Charter of Rights and Freedoms S. 15 (1), Equality Rights

- ❖ Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- ❖ Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

And s. Section 25, General states

- ❖ the guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada including:
  - a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
  - b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

### **National and International Human Rights**

The absence of Indigenous women in government and the lack of recognition of gender based rights and knowledge has created a systemic exclusion of protections and recognition of women specific knowledge and rights within Canada and, therefore, the need for such equality provisions.

The Native Women's Association of Canada welcomes the opportunity to participate in community, regional, national and international discussions and policy development regarding biological diversity, access and benefit sharing, prior informed consent and full and effective participation of Aboriginal women. Due to the historical impact of colonialism, the traditional roles of Aboriginal women have almost disappeared. Legal instruments such as the Indian Act legally precluded women from participating in traditional governance, and residential schools kept women from bringing up their children in an Aboriginal way.

Methods to ensure equal participation of Aboriginal women include equal political representation, the continued funding of NWAC to maintain our political voice,

### **Recommendation**

1. Whereas, the Native Women's Association of Canada, has not been a full partner with Canada in promoting biological diversity and other related environmental initiatives, programs and policy development. We, therefore, recommend inclusion of the Native Women's Association of Canada in all discussions, programs and policy initiatives of the Government of Canada at community, regional, national and international forums regarding biological diversity.

---

<sup>i</sup> Rio Declaration Principle 22

<sup>ii</sup> UN Convention on Biological Diversity 1992-Preamble para 12

<sup>iii</sup> Constitution Act 1982 s.35 (4)

<sup>iv</sup> R.v.Cote [1996] 3 S.C.R. 139 para 56.

<sup>v</sup> Articles 1 and 7 of the UN *Universal Declaration of Human Rights* (UDHR) Articles 3 of the UN *International Covenant on Economic, Social and Cultural Rights* (the ICESCR) and the *International Covenant on Civil and Political Rights* (the ICCPR), (specifically in relation to equality between men and women) Articles 2 and 44 of the UN *Declaration on the Rights of Indigenous Peoples* (DRIP).

<sup>vi</sup> Article 2 of the UDHR, Article 2 (2) of the ICESCR, Article 2(1) of the ICCPR, Article 2 of the DRIP The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides for the elimination of racial discrimination.

<sup>vii</sup> Article 27 of the ICCPR provides that persons belonging to "...minorities shall not be denied the right, in community with the other members of their group, to enjoy their culture..." (*Lovelace v. Canada* (24/1977)(R.6/24), ICCPR, A/36/40 (30 July 1981) 166), Article 15 1. (a) Of the ICESCR provides for the right of everyone to "take part in cultural life". Article 5 of the DRIP provides for a right of Indigenous peoples to their distinct cultural institutions (as well as political, economic, legal and social ones). Article 8 of the DRIP provides for protection against "forced assimilation or destruction of their culture".