

**Expert Group Meeting**

**Good practices in realizing women's rights to productive resources, with a focus on land**

Geneva, Switzerland

25-27 June 2012

**Good practices in realizing women's rights to productive resources, with a focus  
on land: the case of indigenous women with examples from Canada**

**Expert paper prepared by:**

Celeste McKay\*  
Celeste McKay Consulting  
Canada

---

\* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

## I. Introduction

The realization of Indigenous women's rights to productive resources, particularly those involving land, requires advancing the human rights of Indigenous peoples along with advancing women's rights, in an integrated manner. This background paper aims to set out an Indigenous women's perspective on the realization of the right to productive resources, referencing relevant provisions of the UN *Declaration on the Rights of Indigenous Peoples* (the UN *Declaration*) as a key part of the normative framework to be applied. It then provides case examples from Canada of lessons learned and good practices from Indigenous women's perspectives, including Métis, Inuit and First Nations women. This is followed by recommendations for consideration by participants at the UN Women's Expert Group Meeting on Good Practices in Realizing Women's Rights to Productive Resources, with a Focus on Land.

## II. Background: Indigenous Women's Perspectives

Indigenous women have long called for the human rights community to recognize the multi-faceted nature of human rights violations that lead to their oppression.<sup>1</sup> The International Indigenous Women's Forum (FIMI) has assessed this, stating that the systemic violation of the collective rights of Indigenous women is the "single greatest risk factor for gender-based violence" while also acknowledging that "...every woman in the world is entitled to exercise the full range of her rights, without exceptions based on culture, tradition, or religion."<sup>2</sup> This is the essential challenge for Indigenous women – to realize their individual and collective rights in tandem – which is of particular relevance in the context of the productive use of resources and land. To fully understand this context, one must understand the unique relationship that Indigenous peoples have to the land:

“I believe that the land is our heritage, our life. Without land, we are useless as Indigenous Peoples. When we lose land, we lose culture; we lose language and identity. After that is lost, you are no longer yourself. You are no longer the Indigenous person you used to be. You are only a shell of yourself [...] Through the loss of land you become assimilated, which is the beginning of your end.”  
Margaret Koileken, Maasai, Kenya<sup>3</sup>

---

<sup>1</sup> See Permanent Forum on Indigenous Issues (PFII), *Report on the third session (10-21 May 2004)*. New York: PFII, 2004, UN Doc. E/2004/43/E/C.19/2004/23, p. 18 which states, “Indigenous women throughout the world are among the most marginalized groups, suffering discrimination not only on the basis of gender, but also on the basis of race, culture and class as well. The complex interaction of the combined factors of colonization, the spread of western-style capitalism, globalization, nationalism, and top down and paternalistic approaches to development have provided a social and economic environment whereby indigenous women have suffered from the effects of poverty, the breakdown of traditional social mechanisms and institutions, violence and militarization, dislocation and migration, and the depletion of their natural environment and resources.” See also Committee on the Elimination of Racial Discrimination, “General Recommendation XXIII on the rights of indigenous peoples,” adopted on 18 August 1997 (51<sup>st</sup> Session).

<sup>2</sup> FIMI, *Mairin Iwanka Raya: Indigenous Women Stand Against Violence: A Companion Report to the United Nations Secretary-General's Study on Violence against Women* [hereinafter *Mairin Iwanka Raya*]. New York: FIMI, 2006, p. 15.

<sup>3</sup> *Ibid*, p. 38.

Thus, Indigenous women's rights to productive resources, including land, represents more than securing their livelihood, food security, economic independence and physical security, which are all fundamentally important, but also their sense of identity and very survival as Indigenous peoples. Indigenous women are recognized as playing a unique role in protecting their lands, territories and resources, through the transmission of traditional Indigenous knowledge from one generation to the next, with an emphasis on achieving balance between humanity and the natural and spiritual world as a whole.<sup>4</sup> The maintenance of these spiritual and cultural relationships to resources and the land by Indigenous women support environmental protection efforts that improve the productive capacity of resources and land.<sup>5</sup> In advancing the particular rights of Indigenous women, the UN *Declaration* provides a normative framework that is applicable specifically to Indigenous peoples, including the right to self-determination and rights related to lands, territories and resources; traditional Indigenous knowledge and medicines; and sustainable development.

The ways in which this set of rights inter-relates to women's rights typically identified in discourse about their productive use of resources, particularly land, will be briefly examined. These rights include equality and non-discrimination; economic, social and cultural rights (such as adequate housing and adequate standard of living); and civil and political rights (such as the right to participate in decision-making and the right to property). These rights are important too, given that Indigenous women in Canada strive to gain recognition of their equal rights to property ownership, particularly in the First Nations matrimonial real property context, and to overcome discrimination that leads to their socio-economic marginalization, including overrepresentation in homelessness and inadequate access to quality housing. Furthermore, these rights are important in advancing Indigenous women's equal rights to participate in decision-making in relation to the implementation of Indigenous peoples' rights.<sup>6</sup>

---

<sup>4</sup> For example, the Malukan Declaration sets out the critical role played by Indigenous women in conservation and environmental protection as "Indigenous women...are the guardians of Indigenous knowledge and it is our main responsibility to protect and perpetuate this knowledge."

<sup>5</sup> United Nations Department of Economic and Social Affairs Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues 2009: pp. 42-43:

"Indigenous peoples carry millennial knowledge founded in generations of hunting and agricultural practices, land management and sustainable water use, and agriculture-related engineering and architecture..."

The maintenance of these cultural and spiritual relationships is also vital to the conservation of biodiversity...Many traditional practitioners are experts at reading indicator species that provide very early warning signals of impending environmental or food catastrophes and changes such as global warming."

<sup>6</sup> Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), *Final report of the study on indigenous peoples and the right to participate in decision-making*. (UN Doc. No. A/HRC/18/42) (17 August 2011), p. 10-11.

### III. The UN *Declaration on the Rights of Indigenous Peoples*

#### 1. Collective Rights to Self-Determination and Rights related to Lands, Territories and Resources

Integral to Indigenous peoples' enjoyment of the right to productive resources, is recognition of their rights to self-determination, related to lands, territories and resources; traditional Indigenous knowledge and medicines; and sustainable development. The UN *Declaration on the Rights of Indigenous Peoples*, adopted by the UN General Assembly in 2007, sets out the minimum standards for the survival, dignity and well-being of Indigenous peoples.<sup>7</sup> The rights and freedoms contained in the UN *Declaration* are rooted in existing treaties, such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the *International Labour Organization Convention No. 169*.

A core right recognized in the UN *Declaration* is the right to self-determination, under article 3, which states, "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>8</sup> Article 4 of the UN *Declaration* recognizes an internal right to self-determination and several articles recognize and promote governance by Indigenous political, legal, economic, social and cultural institutions.<sup>9</sup> Furthermore, rights of Indigenous peoples to own, conserve and manage their territories, lands and resources are recognized,<sup>10</sup> including the right to free, prior and informed consent.<sup>11</sup>

These are important rights to rectify historic inequalities facing Indigenous peoples that have a negative impact on the participation of Indigenous women in sustainable development. These inequalities facing Indigenous peoples are often linked to their forced migration to urban areas due to dispossession of their lands, through colonization or in contemporary times, due to privatization of lands, or large scale development projects (including hydro dams, mining and logging) by governments, private corporations and international financial institutions; natural disasters including droughts and floods; physical and economic insecurity caused by armed conflict; and socio-economic marginalization in the areas of employment, housing, health care, childcare and economic development.<sup>12</sup>

#### 2. Rights to Equality and Non-Discrimination

Rights to equality and non-discrimination, as peoples *and* as individuals are recognized, which is important to Indigenous women in terms of seeking equality of opportunity for participation in self-determination, resource development, land ownership and other property rights.<sup>13</sup>

---

<sup>7</sup> Article 43 of the UN *Declaration on the Rights of Indigenous Peoples* adopted by GA Resolution 61/295 of 13 September 2007 (UN Doc. A/RES/61/295) [hereinafter UN *Declaration*].

<sup>8</sup> *Ibid*, article 3.

<sup>9</sup> *Ibid*, article 4 and see, for example, articles 5, 14, 18, 19 and 20.

<sup>10</sup> *Ibid*, articles 25 to 30 of the UN *Declaration*.

<sup>11</sup> *Ibid*, see, *inter alia*, articles 19 and 28.

<sup>12</sup> UN-HABITAT, *Securing Land Rights for Indigenous Peoples in Cities: Policy Guide to Secure Land Rights for Indigenous Peoples in Cities*, (Nairobi: UN-HABITAT, 2011), p. 2.

<sup>13</sup> *Supra* note 6, articles 1, 2 and 9.

Furthermore, article 21(2) requires states to take effective measure aimed at improving the social and economic conditions of Indigenous women.<sup>14</sup> Article 22(1) calls for particular attention to be paid to the special needs of Indigenous women in the implementation of the UN *Declaration* and article 22(2) requires states and Indigenous peoples to take measures aimed at addressing violence and discrimination against Indigenous women.<sup>15</sup> Article 44 recognizes that all the rights and freedoms contained in the UN *Declaration* are to be equally enjoyed by men and women.<sup>16</sup> These provisions are relevant to addressing the reality that Indigenous women often face discrimination at disproportionately high rates in the areas of gender-based violence, employment, economic development (including that related specifically to resource development), decision-making, and housing.<sup>17</sup> In Canada, this is relevant because of the collective ownership system set up by the *Indian Act* rather than customary systems of Indigenous peoples, the operation of which has led to a gender bias against First Nations women as property landholders on reserve.

### 3. Indigenous Women' Rights to Lands and Resources and the Inter-relationship to the Right to Live Free from Violence

The inter-relationship between the enjoyment of the individual rights, such as the right to live free from violence and the collective rights, such as the right to participate in decision-making in the area of extractive industries, has been highlighted by the UN Expert Mechanism on the Rights of Indigenous Peoples, referring to the findings of the recent international expert group meeting on the theme on “Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples”

“There are several unique considerations relating to indigenous women and the right to participate in decision-making in the area of extractive industries...[including] violence against indigenous women and girls by State and non-State actors and corporate actors in the public domain as including: ‘militarization and the activities of multinational corporations and extractive industries that operate with impunity on indigenous peoples’ territories. Those actors and their activities have a detrimental impact on indigenous women and girls, which manifests itself in sexual assault, sex trafficking, prostitution, bonded labour, the exploitation of overseas contract workers, the internal displacement of women and environmental violence’...Furthermore, unsustainable extractive industry development can have unique ecological, economic and spiritual impacts on indigenous women in their role as traditional caretakers of the environment...[which] must be resolved through an understanding of the structural nature of violence against indigenous women, through the full participation of indigenous women in all aspects of decision-making and through

---

<sup>14</sup> *Ibid* article 21(2)

<sup>15</sup> *Ibid* article 22.

<sup>16</sup> *Ibid* article 44.

<sup>17</sup> *Supra* note 11, p. 4; See also: *Indigenous peoples' right to adequate housing: A global overview: UN-HABITAT Report No. 7* (2005) and *Housing Indigenous Peoples in Cities: Urban Policy Guides for Indigenous Peoples* (2009).

consideration of this problem by indigenous communities as an integral part of self-determination...<sup>18</sup>

Thus, there are several serious human rights violations related to the right to live free from violence facing Indigenous women related to productive resources and land, including unsustainable extractive industry development, militarization and development without seeking to obtain the free, prior and informed consent of Indigenous peoples, sexual assault, sex trafficking, prostitution, bonded labour, exploitation of overseas workers and internal displacement of women. These violations must be addressed at all levels (from the individual to the structural) through measures aimed at overcoming socio-economic marginalization, unequal participation of Indigenous women at the community level and structural and environmental degradation of Indigenous peoples' lands, territories and resources by states and private corporations.

#### 4. Indigenous Women's Rights to Traditional Indigenous Knowledge and Medicines and Related Intellectual Property

Article 31 of the UN *Declaration* provides for the protection of traditional Indigenous knowledge and medicines, stating that "Indigenous peoples have the right to control, protect, and develop their cultural heritage, traditional knowledge and traditional cultures expressions..." and their related intellectual property.<sup>19</sup> To adequately protect rights related to traditional Indigenous knowledge and medicines and intellectual property, Indigenous women must advance these rights in international fora such as the World Intellectual Property Organization, the Working Group on Article 8(j) of the Convention on Biological Diversity (CBD)<sup>20</sup> as well as in the implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD. The Committee on Economic, Social and Cultural Rights has commented upon the need for culturally appropriate measures to promote traditional Indigenous knowledge related to traditional preventative health care, healing practices and medicines.<sup>21</sup> It has noted the negative impact that resource development activities have had on Indigenous peoples' rights to have control over their traditional Indigenous knowledge and medicines.<sup>22</sup>

---

<sup>18</sup> EMRIP, *Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries*. Geneva: EMRIP, 2012. UN Doc. No. A/HRC/EMRIP/2012/2, p. 12.

<sup>19</sup> *Supra* note 6, article 31 of the UN *Declaration*.

<sup>20</sup> Article 8(j) of the CBD requires parties to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities relevant for the conservation of biological diversity and to promote their wider application with the approval of knowledge-holders and to encourage equitable sharing of benefits arising out of the use of biological diversity.

<sup>21</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000): The right to the highest attainable standard of health* (UN Doc. No. E/C.12/2000/4 (11 August 2000), para's 22 to 24.

<sup>22</sup> *Ibid*, para. 27 which states, "The vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected. The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health."

#### **IV. Good Practices and Lessons Learned of Indigenous Women in Canada**

There are both good practices and lessons learned from Indigenous women in Canada that can be examined in determining how to most effectively advance women's rights to productive resources, focusing on land. These are set out below.

##### *1. A Good Practice: Inuit Women as Leaders in Decision-Making Processes*

Inuit women have played a central role in leadership efforts aimed at advancing Inuit rights to self-determination and environmental protection. This has had the impact of advancing Inuit women's equal rights to participate in decision-making. For example, from 2006 to 2012, Mary Simon held the presidency position of Inuit Tapiriit Kanatami (the national Inuit political organization in Canada), as well as holding executive positions within the Inuit Circumpolar Council and acting as a senior negotiator during the repatriation of the Canadian Constitution and other constitutional discussions in the 1980's and 1990's. Her focus has been on advancing the right to self-determination of Inuit as well as related human and environmental rights. Another prominent Inuit woman leader is Sheila Watt-Cloutier, who held the position of International Chair of the Inuit Circumpolar Council, advocating for a range of social and environmental issues affecting Inuit, specifically persistent organic pollutants and global warming. Ms. Watt-Cloutier is a Nobel peace prize nominee for her work on environmental stewardship and climate change. The central role of Inuit women as political leaders has been instrumental in advancing Inuit women's rights to productive resources and land.

##### *2. A Good Practice: Promoting the Traditional Knowledge of Métis Women*

Kathy Hodgson-Smith, a Métis leader who has worked to advance the traditional knowledge of the Métis underscores the central importance of Métis women in advancing their traditional knowledge:

“Traditional knowledge is the collective property of the Métis people. Individual members of the Métis community contribute to its development and share in its benefits. Cultural laws and practices govern the distribution of traditional knowledge from one generation to another. While individuals hold such knowledge, the intellectual property right to it is not so singly extinguished. Traditional knowledge underlies traditional cultural expressions such as hide tanning and beadwork, birch bark basket making and fish scale art. Traditional knowledge embodies cultural, spiritual and ecological understandings, informs the relationship between individuals and their families, their community and the natural and spiritual worlds in which they practice their culture. It guides practices and is often held in the Indigenous languages of the Métis, which include Michif, Cree, Saulteaux and Dene. The maintenance of traditional knowledge requires the ongoing access to the traditional lifestyle and the resources that sustain it.”

The promotion of Métis women's rights to traditional knowledge is a focus of the work of the Métis Nation. In particular, a research project emerged out of discussions held with Métis

leaders and citizens of northwest Saskatchewan about the matter of disenfranchisement of the Métis from their traditional lands and resources through the historic script process implemented under the *Manitoba Act* and the *Dominion Lands Act*.<sup>23</sup> This research project focuses on promoting intergenerational cultural knowledge and skills in relation to the lands through leaders and elders engaging young people through training and education in environmental research, in the Mechif language, about becoming stewards of the land and resources. In this research project, the unique role of Métis women in traditional knowledge preservation is profiled and advanced.<sup>24</sup>

This advancement of Métis women's rights to traditional knowledge and related intellectual property is a good practice in realizing Indigenous women's rights to productive resources and lands.

### 3. A Lesson Learned: First Nations Matrimonial Real Property Rights On-Reserve

Matrimonial real property rights provide for the equal distribution of property upon marital breakdown. In Canada, the *Indian Act*, a federal law, applies to most First Nations communities, or reserves. Section 88 of the *Indian Act* referentially incorporates provincial laws of general application unless the matter would invade exclusive federal authority, such as those that address "Indianness" or "lands reserved for Indians."<sup>25</sup> Until recently, this resulted in a legislative gap in the area of matrimonial real property rights, which were deemed to be under the purview of "lands reserved for Indians" under the relevant *Indian Act* provisions, which do not provide for a matrimonial real property regime.<sup>26</sup> Several Treaty Bodies called upon Canada to address this discriminatory legislative void that impacted Indigenous women upon marital breakdown.<sup>27</sup> In June 2006, the federal government of Canada announced a three stage process of consultation aimed at adopting matrimonial property legislation which included community consultation and dialogue sessions by two representative Indigenous organizations, the Native Women's Association of Canada and the Assembly of First Nations as well as trilateral discussions between the two organizations and the government of Canada.<sup>28</sup> This could have been a best practice except for the fact that the recommendations made by the Ministerial Representative, aimed at promoting the self-determination of First Nations and protecting the equality rights of First Nations women, were not adequately incorporated into the legislation.<sup>29</sup> Instead, it is a lesson learned in the importance of ensuring that the free, prior and informed consent of Indigenous peoples is obtained prior to instituting legislative and policy measures, and recognizing that where consultation processes lead to legislative or policy measures that do not

---

<sup>23</sup> Hodgson-Smith, Kathy, "Community-Based Research and Métis Women's Traditional Knowledge" (13 August 2011), p. 3.

<sup>24</sup> *Ibid*, p. 4-5.

<sup>25</sup> Section 88 of the *Indian Act*. *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010.

<sup>26</sup> *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285.

<sup>27</sup> See, for example, Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights (Canada)*, UN Doc. No. E/C.12/CAN/CO/4 and/5, 22 May 2006, para.'s 11, 17 and 45.

<sup>28</sup> Grant-John, Wendy, *Report of the Ministerial Representative, Matrimonial Real Property Issues on Reserve*, (Ottawa: Indian and Northern Affairs Canada, 2007) available online at:

[<http://www.nwac.ca/sites/default/files/download/admin/rmr\\_e.pdf.>](http://www.nwac.ca/sites/default/files/download/admin/rmr_e.pdf)

<sup>29</sup> *Bill S-4, the proposed Family Homes on Reserves and Matrimonial Interests or Rights Act*, available online at: [<http://www.nwac.ca/media/release/14-05-09.>](http://www.nwac.ca/media/release/14-05-09.>)



reflect the rights and perspectives sought through the consultation processes, the result falls short of advancing the human rights of those concerned.

#### 4. A Lesson Learned: Inadequate Housing Leads to Suicide

Violations to Indigenous women's right to adequate housing have had damaging effects on the marginalization of Indigenous women, leading to homelessness and poverty. In this alarming example below, the impact of inadequate housing for Indigenous women and their children lead this mother of five to commit suicide:

“An Aboriginal woman committed suicide earlier this year after the authorities apprehended her children. The woman, who had five children, was forced to leave her reserve due to a chronic housing shortage. However, she could not find affordable housing off the reserve. Due to her financial situation she was forced to live in a rundown boarding house with five children. She sought assistance from the authorities to seek affordable housing for her and her children. The authorities responded by apprehending her children. At that point, the woman, sadly, lost all hope and took her life.”<sup>30</sup>

The right to adequate housing is inextricably linked to the rights to adequate standard of living, to education, to employment and to live free from violence and discrimination. The gap in the standard of living between Indigenous and non-Indigenous people, leaves Indigenous peoples, and particularly Indigenous women at the margins of society. This must be lessened if the right to adequate housing and related rights is to be effectively addressed.

These lessons learned and good practices identify the ongoing challenges faced by Indigenous women in Canada, which are identified below, along with possible solutions to these challenges. This is followed by generalized recommendations for consideration by the Expert Group Meeting.

### **V. Ongoing Challenges & Possible Solutions**

The ongoing challenges and potential solutions facing Indigenous women in Canada in realizing their rights to resources and land relate to development-related activities, traditional knowledge, matrimonial real property and inadequate housing rights.

#### 1. Self-Determination, Land and Resource Rights & the Right to Participate in Decision-Making

Development-related activities have also been linked to the negative effects of climate change, particularly in the north of Canada. The ongoing climate change impacts to Arctic lands are now interfering with traditional activities, such as hunting and fishing, linked to the advancement of the Inuit's traditional knowledge and food security.<sup>31</sup> The solutions to these difficulties are to

---

<sup>30</sup> Mavis A. Erickson, *Where are the Women? Report of the Special Representative on the Protection of First Nations Women's Rights* (Hull: Indian and Northern Affairs Canada, 2001) at 65-66.

<sup>31</sup> Sheila Watt-Cloutier, Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, December 7, 2005,

promote the right to self-determination and rights related to lands, resources and territories of Indigenous peoples. To improve Indigenous women's role in this area, focus needs to be made to promote and support the advancement of Indigenous women's right to participate.

## 2. Traditional Knowledge and Medicines and Related Intellectual Property

While there are some examples of good practices of Indigenous women's role in protecting traditional knowledge and medicines is being maintained, there are many more examples where this is being lost or unfairly taken.<sup>32</sup>

The environmental destruction caused by unsustainable development that is not adequately regulated by states contributes to this loss of traditional knowledge and medicines. Another cause is urban migration away from traditional territories and the lack of opportunity for Indigenous women to practice these important aspects of their cultures. Furthermore, bioprospectors, biotechnologists, pharmaceutical and health care industries seek to patent Indigenous traditional knowledge without the free, prior and informed consent of Indigenous peoples and without their consent.

At an international level, there are many developments in fora such as the World Trade Organization, the World Intellectual Property Organization and CBD fora where narrow interpretations of the rights of Indigenous peoples in this area are being sought by state parties and transnational corporations, or where trade and other interests are viewed as paramount to those of Indigenous peoples.

Possible solutions include ensuring national laws are implemented that are consistent with the rights contained in the UN *Declaration*, improving support for Indigenous women's capacity in upholding their cultural practices in these areas, and advocating for the protection and promotion of Indigenous women's rights through legislative measures at the national level and recognition of Indigenous peoples' rights within international agreements and protocols.

## 3. Matrimonial Property Rights

Indigenous women in Canada, particularly First Nations women on-reserve, continue to have unequal matrimonial rights to other women in Canada. The legislative solution that is currently before Parliament for consideration is inadequate in reflecting the perspectives and rights of

---

available online at: <[http://www.ciel.org/Publications/ICC\\_Petition\\_7Dec05.pdf](http://www.ciel.org/Publications/ICC_Petition_7Dec05.pdf)>, p. 7.

<sup>32</sup> *Supra* note 22, p. 2 which states: "Métis traditional cultural and ecological knowledge is underutilized as a knowledge base, despite the fact that Canada's environmental legislative regime speaks to the importance of Aboriginal knowledge in addressing global environment crises, developing sustainable lifestyles and protecting global biodiversity. Conversely, traditional knowledge, especially that knowledge which is linked to medicine and health, is highly sought after by bioprospectors and biotechnology, pharmaceutical and human health care industries. Traditional knowledge is often at the core of new ideas in these industries. However, the Aboriginal people contributing such knowledge is rarely on the receiving end of any benefit, and is much more likely to find themselves stripped of access and use by way of intellectual property regimes such as patents and trademarks. Canada's intellectual property regime provides no protection to Aboriginal communities over this collectively held knowledge."

Indigenous women. A possible solution to this is the integration of the recommendations contained in the Ministerial Representative's Report on Matrimonial Real Property Issues On-Reserve, consistent with the rights contained in the UN *Declaration* including the right to free, prior and informed consent. Policy solutions aimed at ensuring the implementation of such a legislative measures should also be instituted to ensure the realization of First Nations' women's right to property on reserve.

#### 4. The Right to Adequate Housing

Violations to Indigenous women's right to adequate housing exist in rural, northern and urban areas in Canada, where Indigenous people are almost four times as likely as non-Indigenous people to live in a crowded dwelling and three times as likely to live in a dwelling in need of major repair.<sup>33</sup> Indigenous women face gender-based violence at alarmingly high rates, increasing their vulnerability to homelessness and inadequate housing. Possible solutions to this must be aimed at addressing the root causes of socio-economic marginalization through policies and legislation aimed at overcoming these human rights violations, in partnership with Indigenous peoples, particularly Indigenous women's representative organizations. In 2005, this type of legislative solution was initiated through the Kelowna Accord which aimed to address gaps between Indigenous and non-Indigenous peoples in Canada in the areas of education, employment, health, housing, and governance through long-term commitments by the federal, provincial and territorial governments in partnership with Indigenous peoples in Canada, including the Native Women's Association of Canada (a representative Indigenous women's organization). However, when the Conservative government came into power the following year, the Kelowna Accord was abandoned by the federal government and its commitments have yet to be realized.

The ongoing challenges and possible solutions facing Indigenous women in Canada in realizing their rights to productive resources and land can be applied to the situation facing Indigenous women globally. Thus, below, general recommendations for consideration of the Expert Group Meeting are set out below.

### **VI. Recommendations for Consideration by the Expert Group Meeting**

Ensure an integrated approach is taken to advancing the rights of Indigenous women to productive resources, with a focus on land, taking into consideration the unique human rights of Indigenous women related to self-determination, lands, territories and resources, and traditional knowledge and medicines.

Advance Indigenous women's right to participate in decision-making, including in the area of sustainable development activities. Solutions to climate change and unsustainable development can be improved by the participation of Indigenous women whose traditional knowledge promotes sustainable development practices. This must be done in a manner that is consistent with the UN *Declaration on the Rights of Indigenous Peoples* and other pertinent laws, norms and standards. This includes ensuring that development activities do not violate Indigenous women's right to free, prior and informed consent.

---

<sup>33</sup> Statistics Canada, Aboriginal Peoples Survey.

Advance the intellectual property rights of Indigenous women at the national and international levels, particularly where protections against bioprospectors, biotechnologies, pharmaceutical and health care industries are needed. This should be done by instituting laws to protect the intellectual property of Indigenous peoples' traditional knowledge from piracy. Such laws should be developed in partnership with Indigenous peoples. At the international level, efforts should be made to ensure that trade agreements and other relevant protocols and agreements recognize Indigenous peoples' rights.

Promote equal matrimonial property rights regimes that remedy existing discriminatory practices in land-holding systems against women and/or Indigenous peoples.

Promote the realization of all economic, social and cultural rights, including the rights to adequate housing and an adequate standard of living and the right to live free from violence, which are necessary to improve the housing conditions of Indigenous women.