

Federal Consultation Policy And Inuit Women

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Introduction

The purpose of this paper is to review and discuss policy issues regarding the federal government's policy and practice when consulting with Inuit, including Inuit women.

This paper provides some background information for Pauktuutit members to consider in considering possible elements for a Pauktuutit policy expressing Inuit women's expectations for federal policy and practice when Canada undertakes consultation - whether as a legal obligation or as a discretionary policy choice; whether on its own or in partnership with claims bodies

When Do Consultation Issues Arise?

Consultation issues typically arise in the context of resource management decisions from mining to fishing to environmental issues. It is this type of decision where legal duties to consult most often arise as a result of the provisions of the four Inuit claims agreements. It is important to remember that consultation on development decisions necessarily involves considering social and cultural impacts on Inuit in addition to potential economic benefits and environmental risks.

Specific duties to consult can also arise under federal legislation such as the federal Species At Risk Act (SARA). SARA establishes specific bodies for this purpose such as the National Aboriginal Council on Species at Risk (NACOSAR) and the Committee on the Status of Wildlife in Canada (COSEWIC).

In addition, there are social policy issues such as health or other services where the federal government chooses to consult but where there may not necessarily be a legal duty to consult at play or where it is not clear whether there is a legal duty to consult but the government considers it desirable to consult as a matter of policy.

Two Main Types of Federal Consultation Exercises

In summary, there are two main types of federal consultation exercises – those undertaken to fulfill a legal duty to consult - and those undertaken as a discretionary policy choice to inform federal decision-making.

This paper will review policy and legal issues respecting federal consultation policy and practice. This will include a look at international law principles such as the UN Declaration on the Rights of Indigenous Peoples and the 1992 Convention on Biological Diversity.

Background

Federal Action Plan on Aboriginal Consultation and Accommodation and Interim Federal Guidelines

As a result of several successful legal challenges by Aboriginal peoples regarding the Crown's legal duty to consult, the federal government has finally determined that it should have a public policy on how it will organize itself to meet its various legal duties to consult regarding Aboriginal and treaty rights.

In November 2007, the federal government announced it was developing an "Action Plan" to address these issues. Among the questions the federal government has been asking itself are:

- How to ensure that departments and agencies inform each other of their "real or constructive" knowledge of established and potential Aboriginal and Treaty rights?
- How to ensure that consultation activities are better coordinated when both a federal and provincial duty to consult are triggered?
- How to ensure that discharging the duty to consult facilitates Crown/Aboriginal reconciliation while not delaying investment in communities in need of employment opportunities?

In the late fall of 2007, the federal government also established a "Major Projects Management Office" in the Department of Natural Resources that is charged with coordinating and making more efficient the various federal regulatory processes that affect major projects south of 60. Included in this task are the Crown's consultation duties towards Aboriginal peoples.

In February 2008, the federal government released interim guidelines it has developed for federal officials to guide them in meeting the federal Crown's duty to consult (Government of Canada. 2008. Aboriginal Consultation and Accommodation: Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult).

In these interim federal guidelines, Canada acknowledges that legal duties to consult can arise in various ways from the specific requirements of comprehensive claims agreements to specific statutory provisions to court decisions interpreting the Crown's duty to consult generally under section 35 of the Constitution Act, 1982. In these interim guidelines, Canada explains that the guidelines will complement or add to existing consultation processes (such as those provided by claims agreements). At page 8 of the interim federal guidelines, Canada states:

"Guidelines will complement or supplement existing consultation processes that exist in different areas of the country. Industry may also establish consultation processes. All existing processes should be assessed to determine what further steps if any the Crown must take to fulfill its legal duty to consult in particular circumstances. An illustrative example is the legislated federal environmental assessment process that has

public consultation mechanisms and specific information requirements which may vary from the requirements for the legal duty to consult and will need to be reconciled by federal officials for a proposed project/activity that might have potential adverse effects on section 35 rights. Departments and agencies will need to review their on-going practices in light of the Interim Guidelines set out in this document and make appropriate adjustments or changes.”

The interim guidelines state that federal consultation practices will have to reflect the differences across regions by reflecting the different consultation requirements under different treaties and claims agreements.

The interim guidelines nevertheless suggest some general legal principles that apply in all contexts where there is a legal duty to consult:

Honour of the Crown – The honour of the Crown is at stake in all dealings between the Crown and Aboriginal peoples. The duty to consult and accommodate, where appropriate, stems from the Crown’s unique relationship with Aboriginal peoples and must be discharged in a manner that promotes reconciliation of Aboriginal and non-Aboriginal rights and interests.

Reconciliation – The duty to consult and where appropriate, accommodate is part of a process of fair dealing and reconciliation that begins with the assertion of sovereignty by the Crown and continues beyond formal claims resolution through to the application and implementation of treaties. Crown efforts to consult with, and accommodate the interests of Aboriginal groups whose rights may be adversely affected, should be consistent with the overarching objective of reconciliation with Aboriginal groups.

Reasonableness – Crown efforts to reconcile and balance other societal interests and established or potential Aboriginal and treaty rights must be reasonable. Consultation processes need to reflect reasonable and genuine efforts by all parties.

Meaningful Consultation – The duty to consult requires a genuine effort to address legitimate concerns and interests that relate to the impacts of contemplated Crown conduct on section 35 rights. To be meaningful, there must be a genuine willingness and ability to adjust the contemplated conduct, if such is appropriate.

Good Faith – Consultation must be guided by genuine efforts. Such efforts require the disclosure of relevant factors and information, no predetermined outcome, no oblique motive, and the absence of any appearance of any sharp dealing.

Responsiveness – Consultation is intended to respond to Aboriginal rights and interests, to minimize the potential adverse affects of a given activity, and to substantively address the concerns raised. To do so, it is necessary that the Crown be prepared to respond, have some degree of flexibility in relation to the planning and implementation of the proposed activity, and consider potential accommodation measures that may be appropriate in a given context.

The interim federal guidelines also suggest several **guiding principles** that it says arise from consultation practice rather than the law. These are:

Mutual Respect – Consultation must be based on mutual respect for all participants, taking into account different interests, perspectives, cultures, understandings and concerns.

Accessibility and Inclusiveness – It is important to ensure the participation of Aboriginal groups who have an interest in or who may be affected by the decision. For consultation based on a legal duty to consult, participation would have to include specific Aboriginal groups whose established or potential rights could be negatively affected. Appropriate measures should be taken to ensure access of Aboriginal groups to the process, taking into account community capacities, geographic location and/or their linguistic, socio-economic background or physical capabilities.

Openness and Transparency – Consultation needs to be a procedurally fair and clear process. Consultation should be carried out with consideration of:

- early engagement;
 - the provision of clear, accurate and relevant information;
 - informing participants on how their concerns were considered in the decision-making process and reasons why their views were not reflected;
- and,
- documenting results of the process.

Efficiency – The consultation process ought to be designed to make the most efficient use of existing and proposed processes and resources while maximizing the contribution of all participants.

Timeliness – Consultation is most effective if initiated as early as possible before decisions are made. Clear and reasonable timelines should be established for input and comments and these timelines need to be communicated clearly.

There are several things to note regarding the Interim Federal Guidelines for Federal Officials. There is no Inuktitut version. Secondly, there is no gender-based analysis at all of the topic of the legal duty to consult and there is not even a mention of the guarantee in section 35(4) of the Constitution Act, 1982 that aboriginal and treaty rights protected by s. 35 are guaranteed equally to male and female persons. Third, there is no analysis or description of the Crown's consultation obligations and activities in the context of claims agreement implementation.

Duty to Consult Arising from the Constitutional Relationship between Inuit and the Crown including Inuit Final Agreements

Constitution Act, 1982

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
- (4) 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.

There is a special constitutional relationship between Inuit and the Crown (federal and provincial) that predates the creation of Canada. This special relationship is now evidenced by s. 91(24) of Constitution Act, 1867, s. 35 of Constitution Act, 1982 and by the final claims agreements in each Inuit region. This special relationship and specific provisions in the Inuit claims agreements can give rise to various legal duties to consult in certain circumstances.

The Mikisew case confirmed that a section 35 treaty can establish procedural rights of consultation. The Crown is deemed to know the treaties including claims agreements and their provisions. Each Inuit claims agreement is a "treaty" for the purposes of the protection provided for aboriginal and treaty rights under section 35 of the Constitution Act, 1982.

Legal Duties to Consult with Inuit

Legal duties to consult with Inuit can arise in two different contexts:

- 1) duties to consult with Inuit, typically through designated Inuit organizations or through participation in various joint management boards pursuant to claims agreements;
- 2) common law duties to consult and accommodate that may arise outside of the provisions of the claims agreements, including any aboriginal rights not extinguished by the respective Inuit claims agreements.

A legal duty to consult and accommodate on the part of the Crown may arise:

1. where the Crown has knowledge of the existence, or potential existence, of an Aboriginal or Treaty right (including Aboriginal Title) protected by s. 35 of the Constitution Act, 1982
2. Whether or not that right or title has been legally established (e.g. by court decision, agreement or treaty)
3. and where the Crown contemplates conduct (e.g. an action or decision) that may adversely affect such a right.

It is clear that a duty to consult can arise as a result of treaty obligations of the Crown (Mikisew case, Supreme Court of Canada, 2005).

In a 2008 decision, the Yukon Court of Appeal decided that a duty to consult and accommodate Aboriginal peoples' concerns and interests can apply in the context of a modern comprehensive land claims agreement (Little Salmon Carmacks case) even when the duty is not specifically provided by the claims agreement. In this case, the court concluded that:

- "the honour of the Crown and a duty to consult and accommodate applies in the interpretation of treaties and exists independent of treaties."
- The "modern nature" of more recent treaties would be relevant to the determination of the extent of consultation required.
- Governments making decisions on behalf of the Crown must be aware of potential negative impacts on Aboriginal peoples' treaty rights pursuant to claims agreement and when treaty rights may be affected, the government in question must seek consultation the Aboriginal peoples affected.
- The degree of consultation will be determined in part by the potential impact on the rights in question.
- The Crown's duty to consult is to consult with the Aboriginal treaty party, and not individual members/beneficiaries of the Aboriginal treaty partner.

In the Little Salmon Carmacks case, the court found that in the claims agreement with the First Nation, there was no language in the Final Agreement to preclude the duty to consult from applying to the decision in question and the Court held that the duty applied as a result of the honour of the Crown.

In Little Salmon Carmacks, the First Nation and a trapper (and beneficiary) objected to the proposed transfer of Crown land to become privately owned land because of First Nations subsistence rights throughout the settlement area. The court decided in this case that a consultation process provided by a committee with First Nations representation was sufficient to meet the legal duty to consult with the First Nation that existed independent of the specific consultation duties set out in the Yukon Final Agreement. The committee had been established outside of the agreement provisions.

In *Makivik Corp. v Canada*, the Federal Court of Canada found the Crown had a legal duty to consult with Inuit in Nunavik regarding a proposal to establish a park in an area in Labrador where aboriginal title was claimed. This duty to consult existed independent of the claims agreement entered into in 1974 regarding Inuit title in Nunavik. (*Makivik Corp. v Canada* [1999] 1 F.C. 38).

Both the *Mikisew* case, the *Makivik Corp* case and *Little Salmon Carmacks* case make clear that Final Claims Agreements do not represent the end of the process of reconciliation between Crown sovereignty and the rights of Aboriginal peoples that is required by section 35.

The consultation processes available through the four claims agreements are part of the complex regulatory and administrative structures created under each agreement to deal with the management of land, water, the environment throughout the settlement lands described in each agreement.

Inuit have experienced radical social and economic change over the past 50 years as a result of increasing interest in the lands and resources in the Inuit homeland.

In the face of dramatic economic change and other outside forces, the four Inuit comprehensive claims agreements are intended to ensure Inuit participate in decision-making regarding their traditional lands and resources. For this purpose, these agreements set up numerous joint-decision making bodies dealing with land, wildlife, environmental and development issues as well as recognizing Inuit representative organizations at the regional and community level.

Inuit claims agreements are also intended to ensure the social, cultural and economic welfare and objectives of Inuit are properly considered in resource decision-making by any government or decision-making body. Inuit men and women may have different needs in terms of social and cultural well-being.

The various Inuit organizations recognized by the claims agreements as well as Inuit organizations and joint decision-making bodies created by the claims agreements provide various mechanisms for Inuit communities, and Inuit citizens, men and women, to be consulted and heard in decision-making processes that can affect the welfare of Inuit in each region. These agreements and the rights and obligations under them have constitutional protected status as treaties under section 35(3) of the Constitution Act, 1982. The Crown has assumed numerous duties to consult as a claims implementation partner.

The four Inuit Final Agreements are intended to ensure that Inuit, women and men, participate in decision-making affecting Inuit settlement areas. Through numerous organizations, boards, and joint-decision making bodies the federal government is a partner in claims implementation and has consultation duties in regard to Inuit communities, Inuit women and men.

Apart from the claims agreement context, there are also areas of sole federal decision-making such as federal laws and policies and important federal programs like the Federal Food Mail Program that can affect the fundamental rights and well-being of Inuit women and men. In short, in all of its decision-making the federal government has obligations to consider and protect the land and the people.

NTI has expressed a viewpoint on the overall relationship between the Crown's duty to consult and the rights of Inuit throughout the settlement territory in Nunavut: "...as a general rule it is safe to assume that where Inuit have traditionally hunted and traveled they must be consulted about the use of the land. As Inuit have hunted and traveled everywhere in Nunavut, therefore they must always be consulted." (Paul Kaludjak. 2008. Presentation to Aboriginal Consultation for Industry North of 60. The Canadian Institute, October 1, 2008.)

Inuit Women, Consultation and Constitutionally Protected Aboriginal and Treaty Rights

The rights protected under the Inuit claims agreements and any aboriginal rights of Inuit existing outside of claims agreements are guaranteed equally to male and female persons pursuant to section 35(4) of the Constitution Act, 1982.

This constitutional guarantee of gender equality has implications for the discharge of the Crown's consultation duties pursuant to the Inuit claims agreements. Section 35(4) means that Inuit women - as Inuit beneficiaries and as Inuit citizens of their respective regions under these agreements - are entitled to equally benefit from the rights and obligations arising from the various claims agreements.

While it is true that the Crown's legal duty to consult is owed to the Inuit people as a whole and not to each individual beneficiary, all this means is that the Crown must engage with the appropriate representative organization for the Inuit claims agreement and the topic in question. It is well established that Aboriginal and treaty rights are exercisable by individuals who are members, citizens or beneficiaries of the Aboriginal peoples concerned.

Given that aboriginal and treaty rights are guaranteed equally to male and female persons, the Crown is obligated as part of its consultation duties to conduct gender-based analysis to plan and to ensure that implementation of claims agreements is benefiting male and female beneficiaries equally.

As a recent evaluation of INAC's Gender-based Analysis Equality Policy observed, the requirements of this policy mean that gender-based analysis must be integrated into all of INAC's work including "Consultations and negotiations (including but not limited to self-government and land claims, treaty land entitlement and devolution)". (Evaluation of the Implementation of INAC's Gender-based Analysis Policy, Audit and Evaluation Sector, Evaluation, Performance Measurement and Review, Indian and Northern Affairs Canada, CIDM #1420188, June 27, 2008). The same report found that there was a limited integration of gender-based analysis at INAC.

In the Arctic, Inuit are the people most likely to be directly and significantly affected by proposals and decisions to exploit natural resources. Inuit have unique sets of rights pursuant to each claims agreement and have a distinct perspective as a people to bring to resource development decisions.

Inuit women are an integral part of the cultural perspective and knowledge traditions that inform Inuit responses to the diverse consultation and regulatory initiatives taking place under claims agreements and those that take place independent of claims agreements.

Each agreement has detailed provisions establishing various consultation and joint-decision making processes. As Paul Kaludjak has pointed out in the context of the Nunavut Final Agreement, a duty to consult pursuant to a claims agreement may be worded in various ways such as “consultation”, “close consultation”, “Inuit involvement is desirable” or “providing Inuit opportunities to participate”. (Paul Kaludjak. 2008. Presentation to Aboriginal Consultation for Industry North of 60. The Canadian Institute, October 1, 2008.)

We do not need to discuss these provisions in any great detail here. The specialists who work for the various bodies, Inuit organizations and the federal government itself are supposed to open the doors for Inuit women to be included and have their opinions considered. It is also the obligation of the specialists charged with implementing the various agreements to ensure that men and women benefit equally. In other words, many of the consultation obligations in regard to Inuit women, as Inuit beneficiaries and Inuit citizens of their respective regions under these agreements are shared obligations by the claims agreement parties (which includes the Crown) and the bodies created under the claims agreements.

Ensuring Inuit women realize equal benefits and rights under the claims agreements will necessarily require coordination and collaboration by the claims agreements parties (including the Crown) as they pursue implementation of the agreements.

For example, consultation process for Inuit are often provided through environmental assessment processes established under the various claims agreements and under federal, territorial and provincial laws. Environmental assessment processes typically involve an assessment of socio-economic impacts on Inuit communities. As Barbara Saunders observes, gender-based analysis is an essential element of socio-economic analysis (quoting the Canadian International Development Agency). Saunders says in the context of environmental assessments, gender-based analysis helps to:

- Identify gender-based differences in process and participation
- Identify how different members of household groups and societies relate to each other and how a planned development might change this relationship
- Reveal how development impacts women and men differently socially and economically
- Can reveal gender differentials in benefits
- Permit planners to achieve the goals of effectiveness, efficiency, equity and empowerment through designing policies and inclusive program strategies. (Barbara Saunders, Ensuring Gender Equity in Socio-Economic Impact Assessments, A Presentation for “Raising the Bar for Socio-Economic Impact Assessment (SEIA)”, Environmental Assessment Practitioners Workshop, Yellowknife, NWT, March 15-16, 2006.)

These objectives can be more broadly applied to the various consultation activities that the federal Crown may engage in as a partner with Inuit organizations under claims agreements processes and in coordinating the various federal departments in meeting the federal Crown’s duties to consult under claims agreements or duties existing outside of claims agreements.

In the context of environmental assessment processes, Saunders suggests a number of questions and guiding principles that could assist in developing a gender-based analysis. A few of these are listed below:

- What specific measures can be taken to encourage and enable women to participate?
- What are the barriers to women's participation? (social, economic, legal, political, cultural)?
- Recognize the way that women and men work and contribute to the local economy, their family and society
- Consider how the quality of life for women may be different than for men
- What cumulative social impacts need to be considered? And how might these be different for men and women?
- What do women think is important to the quality of life? How might this change with development?
- What are the attitudes and perceptions of women and men about the development and how do they think it will change the community?

The leading study of gender issues and claims negotiation processes by Linda Archibald and Mary Crnovich identified the need to apply a gender lens to the process of claims negotiation in all areas and made a number of observations and recommendations. These also could be relevant to Crown consultation processes in implementing federal obligations under claims agreements. (Linda Archibald and Mary Crnkovich. 1999. *If Gender Mattered: A Case Study of Inuit Women, Land Claims and the Voisey's Bay Nickel Project*. Ottawa: Status of Women Canada.)

Given the low levels of participation of women in negotiating the Inuit claims agreements relative to men, it could be argued that it is all the more important to ensure that claims agreement implementation, including the implementation of Crown consultation duties, incorporates gender-based analysis and culturally relevant gender-based analysis as a part of the policy decisions and reconciliation that flows from claims agreement implementation.

In addition, given current trends of Inuit male wage employment rates compared to Inuit female wage employment rates, gender-based analysis is equally important to address gender imbalances in accessing of employment benefits by Inuit men through claims agreement implementation. However, the types of employment that Inuit women gain access to, compared to men must also be examined.

International Law and Government Duties to Consult

Inuit as an indigenous people also have various rights under international law that relate to consultation. Some of these rights are expressed in the 2007 United Nations Declaration on the Rights of Indigenous Peoples.

The UN Declaration sets out minimum standards for governments regarding their obligations and dealings with indigenous peoples. These include provisions regarding government consultation with indigenous peoples and which frequently refer to the principle of "free, prior and informed consent" as a standard for government consultation.

The meaning of free, prior and informed consent under the UN Declaration on the Rights of Indigenous Peoples will evolve over time as people use it and refer to it. At a 2005 UN workshop the following suggestions were made about the meaning of “free, prior and informed consent”:

“Free should imply no coercion, intimidation or manipulation.
Prior should imply that consent has been sought sufficiently in advance of any authorization or commencement of activities and that respect is shown for time requirements of Indigenous consultation/consensus processes.
Informed should imply that information is provided that covers (at least) the following aspects:

- a. The nature, size, pace, reversibility and scope of any proposed project or activity;
- b. The reason(s) for or purpose(s) of the project and/or activity;
- c. The duration of the above;
- d. The locality of areas that will be affected;
- e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle;
- f. Personnel likely to be involved in the execution of the proposed project (including Indigenous peoples, private sector staff, research institutions, government employees and others);
- g. Procedures that the project may entail.”

(United Nations Permanent Forum on Indigenous Issues, Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples, United Nations doc. E/C.19/2005/3, New York, 17-19 January 2005.)

Consultation and Inuit Women

In 1989, Ovilu Goo Doyle identified several issues respecting the participation of Inuit women in claims agreements bodies. These equally should be considered by the federal government in developing a federal consultation policy and guidelines for federal officials concerning consultation practice. Doyle points out the valuable information that Inuit women have concerning their communities and culture and she identifies common barriers to Inuit women’s participation:

“Generally, Inuit women hold less than 20 per cent of board and executive positions in such organizations. There is only one woman out of 12 voting members on the board of directors of the national Inuit organization-Inuit Tapirisat of Canada. This, of course, is far from acceptable, but linked to the fact that leadership was, first and foremost, introduced to the men, a precedent which is difficult to break through, despite the fact that many women are fully capable of assuming leadership positions.

It also relates to the disadvantages that women are, or have been, facing in the communities; for example, lack of child care and educational facilities, and pre-employment and employment opportunities. An increasing number of women cope with these obstacles by taking initiatives to minimize their number and effect in the

communities, or by moving to centres where they are partly eliminated through greater access to service.

Inuit women have an intimate knowledge of the conditions in their communities. They have always been the doers and shapers of Inuit social affairs and the keepers of cultural values. This is clearly reflected in the tendency for women to be most closely involved in the educational, social, and health sectors. These are, in fact, areas with very large budgets and many responsibilities.

Women should become more visible participants in areas such as the negotiation of land claims and constitutional rights. These responsibilities, as well as the ability to speak and teach our children in Inuktitut are part of the preservation and enhancement of our distinct cultural identity, and they affect our lives directly." (Ovilu Goo Doyle. 1989. "The Role of Inuit Women in Politics", Northern Perspectives, vol. 17(3) at p. 3.

The preamble of the 1992 United Nations Convention on Biological Diversity recognizes "the vital role of women in the conservation and sustainable use of biological diversity" and affirms "the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation".

Article 8(j) of the Convention on Biological Diversity requires governments to respect, preserve and maintain the knowledge, innovations and practices of indigenous communities that embody traditional sustainable use of biological diversity and to involve the holders of traditional knowledge and ensure they benefit from the use of their knowledge, innovations and practices.

Pauktuutit has status as a Non-Governmental Organization (NGO) with the Intergovernmental Committee on Intellectual Property and Genetic Resources established in 2000 to discuss intellectual property issues relating to traditional knowledge, genetic resources, and traditional cultural expressions. A case study was undertaken through this international process of intellectual property issues concerning the protection of Inuit women's traditional knowledge in the design and manufacture of the Amauti. The effort made to include Inuit women led to some very valuable work being carried out by Pauktuutit to study and document Inuit customary laws respecting the transmission and use of the traditional knowledge of Inuit women in the production of various Amauti designs in the various Inuit regions. (See Pauktuutit Inuit Women of Canada, Inuit Women's Traditional Knowledge Workshop on the Amauti and Intellectual Property Rights Final Report, May 24-27, 2001.) This study is a very valuable contribution to the understanding of Inuit customary law and intellectual property issues respecting a unique cultural product of Inuit women.

Since Doyle's 1989 comments, Inuit organizations of all kinds have included more women in leadership positions. In addition to Pauktuutit leadership, there have been and are many admired Inuit women leaders of organizations such as ITK, ICC and IRC (Mary Simon, Rosemarie Kuptana, Sheila Watt-Cloutier, Nellie Cournoyea). There is currently a female Premier of the Nunavut Territory (Eva Aariak) in addition to the Honourable Leona Aglukak, Federal Minister of Health. Nancy Karetak-Lindell was the Member of Parliament for Nunavut from June 1997 to October 2008. In many ways the Inuit record for women in leadership positions appears to be superior to that of southern governments.

At the regional and local level, the picture is less clear. For example, Joanna Kafarowski has concluded that Inuit women are not very visible in environmental decision and policymaking processes in Nunavut as it pertains to wildlife management and that this can be traced to gender imbalance in representation on community hunters and trappers boards.

However, we do not have a national picture of women's participation in such bodies and we do not know which claims implementation bodies incorporate gender-based analysis in their work and which do not. **Collecting and analyzing statistics and policies of this kind is a critical part of gender-based analysis.**

Nationally across the Inuit claims regions, we do not have an overall picture or assessment of how the knowledge and advice of women at the community level is being sought and used in the work of Inuit organizations and governments on resource decisions as well as social and economic policy issues.

What needs to be done in Canada is what has already been identified as needed work across the circumpolar world, (Arctic Council Sustainable Development Working Group 2004-2006. 2006. Women and Natural Resource Management in the Rural North. Forlaget Nora Kvinneuniversitetet Nord at page 9.), namely:

- “To describe, systematise and compare the roles of women in natural resource management in Arctic areas, with particular attention to decision-making positions.
- To develop tools and strategies that can be used to promote participatory values and practices.
- To promote international cooperation on gender equality in natural resource management.”

This will require developing systems to collect Inuit-specific gender-disaggregated statistics in order to assess the benefits and impacts for Inuit women in regard to employment, income and traditional pursuits as result of decision-making by all parties involved in making resource decisions in the North.

Currently, figures in many key areas do not allow national gender-based analysis of Inuit in many key indicators of socio-economic wellness.

A report prepared by Inuit Tapiriit Kanatami and INAC's Research and Analysis Directorate demonstrates the limitations of current capacities to collect key statistical indicators (Employment, Industry and Occupations of Inuit in Canada, 1981-2001). On page nine, the data in the report is qualified with the following caution indicating that the data presented include non-Inuit and that the geographical areas for which data was collected deviated in a few notable ways from the land claims settlement boundaries:

“It is important to note that with the exception of Nunavut, the Inuit regions discussed in this report are different from those shown above. The data are not specifically for the Inuvialuit region, but for the Northwest Territories as a whole. The Labrador data are for Labrador in its entirety and not just for the land claim area. Similarly, the Nunavik boundaries are somewhat different from those for the whole of northern Québec. The boundaries used in the report are not based on land claim boundaries, but on census

delineations. These census delineations are used as proxies for those of the actual land claim regions.”

Subject to these qualifications, this report suggests that unemployment rates are higher for Inuit men than for Inuit women overall, that unemployment rates have been decreasing more quickly for Inuit women compared to Inuit men, the gap between Inuit women and men in employment is widening and that both male and female Inuit youth have high rates of unemployment. In 2001, 28% of Inuit men aged 15-24 and 25% of Inuit women the same age were unemployed.

Such findings underline the importance of gender-based analysis and Inuit-specific gender-based analysis to monitor the impacts of development and government policies promoting development for both men and women.

In other words, it is not only women who can benefit from improved decision-making by using gender-based analysis.

In view of the fact that there are many factors affecting employment for northern Inuit that are often very different from those in the south, the task of assessing social impacts from economic development in the Arctic requires gender-based analysis that is Inuit-specific – this means Inuit specific in terms of people, geography and culturally relevant indicators. Predicting and assessing the social and economic impacts of development must involve an assessment of gender impacts. Assessing these properly should be an integral part of the various claims agreement-based decision-making processes.

Gender-based analysis must also be carried out in a way that is relevant to the society in question.

Traditionally, survival in the Arctic environment required a gendered division of labour, with men traveling to hunt large animals and women having charge of the home and the camp. In Inuit society however, men’s work was not valued more than women’s work. The roles of Inuit men and women were interdependent and equally valued.

As Inuit society changes and relies more on wage economies and is exposed more and more to outside values and biases, we must monitor and correct any emerging gender imbalances affecting women or men unfairly.

Pauktuutit has advocated the position that investing in Inuit women as agents of change in the north is sound economic policy. (Pauktuutit Inuit Women of Canada, Presentation to the Government of Canada Standing Committee on the Status of Women, Thursday April 26, 2007.) Pauktuutit’s study of the Amauti is an example of how important it is to include women and a women’s perspective in the development of economic policies and laws affecting economic policy. This also means conducting gender-based analysis of the potential impacts of resource decisions in the North including assessments of opportunities for women under Impact Benefit Agreements.

As Pauktuutit has observed before, the success of Canada’s businesses, environmental activities and investments in the North rests upon the social and economic well being of the inhabitants of Canada’s northern communities. The full participation of Inuit women in the northern economy is crucial, and this participation both depends on and results in healthy and viable communities. Commitment to engagement of and with Inuit women in

all business and policy strategies is the strongest possible assurance for success. This necessarily requires inclusive and effective strategies ensure the participation of Inuit women.

Given the small Arctic population and the natural limitations on population that this environment imposes, assertion of Canadian sovereignty in the North through economic development and other activities cannot afford to overlook the important role Inuit women can play along with Inuit men. An Arctic Council Working Group report observed that while women's role has tended to be analyzed in term of family or local society, "women's participation in resource-based industries should be analyzed in their regional, national and geopolitical contexts, taking into account the security dimension".

Inuit philosophies respecting rights and duties of humans to one another and the environment have contributions to make to the development of strategies to maintain peace and security in the Arctic. Experience in maintaining cooperation in the face of scarce resources or in situations where human survival is threatened lies at the core of Inuit cultural values and is the key to Inuit survival as a people.

As Gunhild Hoogensen has suggested "a gender-based human security approach also recognizes the importance of ensuring not just security from military threat but 'positive security' – the ability individuals and communities have to produce and maintain their own security". (Arctic Council Sustainable Development Working Group 2004-2006. 2006. Women and Natural Resource Management in the Rural North. Forlaget Nora Kvinneuniversitetet Nord at page 10.) This includes the need to consider the gendered impact of climate change in the Arctic. Inuit women are being impacted by the trend of global warming. In an interview conducted during an IISD research project with the Hunters and Trappers Committee of Sachs Harbour in the Western Arctic it was made clear that, "Inuvialuit women have always had a deep understanding of the weather, as they were responsible for assessing conditions and preparing the hunters accordingly." (Inuit Observations on Climate Change Final Report, June 2001, available at <http://www.iisd.org/pdf/inuittriprpt4.pdf>).

The connection between human security in the North and government consultation is another area the federal government should factor in Northern policy development. This is shown by the following definition of 'human security':

"human security is achieved when individuals and communities have the freedom to identify risks and threats to their well being and the capacity to determine ways to end, mitigate or adapt to those risks and threats (Bazely, Christensen and Hoogensen, 2006). In order for the interests of Inuit women to be included in assessments of risks and threats to human security in the North, the relevant decision-makers including the federal government will need to perform better than they have in carrying out gender-based analysis, including in federal consultation activities. A recent INAC evaluation of the department's performance regarding gender-based analysis has identified a number of systemic problems. (INAC Audit and Evaluation Sector. 2008. Evaluation of the Implementation of INAC's Gender-Based Analysis Policy.)

Engagement Session between Pauktuutit and INAC on Canada's Action Plan on Consultation and Accommodation

At a workshop held March 25, 2009 in Iqaluit, Nunavut, on federal consultation policy and Inuit women, Wendy Cornet made a presentation to the workshop delegates that consisted of a summary version of the first part of this paper.

Marie Saikaley, Senior Policy Advisor, Consultation and Accommodation Unit, made a presentation on behalf of Indian and Northern Affairs Canada to explain Canada's Action on Plan on Consultation and Accommodation.

Ms. Saikaley referred to significant court decisions that have addressed the Crown's duty to consult and mentioned that legal duties stem from the Crown's unique relationship with Inuit. Legal duties to consult with Inuit must be discharged in a manner that upholds the honour of the Crown and promotes reconciliation between Aboriginal and non-Aboriginal interests.

Ms. Saikaley noted that approximately 70 per cent of the Inuit population is composed of Inuit women and children (see Appendix One). As result, the views of Inuit women are very important regarding what is required to create meaningful consultation. Ms. Saikaley noted there can be many negative impacts from development so consultation and implementation follow-up are important.

The federal Action Plan is intended to be proactive rather than reactive. It is also intended to exceed the minimum legal requirements for the Crown's duty to consult. Other federal goals include efficiency and following up on implementation.

An important part of the Action Plan is to engage with Inuit on how to develop consultation policy and practice. Ms. Saikaley indicated that the federal government is concerned about consultation beyond legal duties to consult. This includes consultation practices undertaken as a good governance practice.

A key part of the Action Plan is the engagement sessions between Aboriginal peoples and the federal government that will be used to inform the development of options for a federal policy on consultation and accommodation.

Ms. Saikaley referred to several guiding principles that the federal government has developed as part of a set of Interim Guidelines for federal officials on how to discharge the Crown's duties to consult and accommodate. These Interim Guidelines are expected to change and she noted earlier comments that section 35(4) had not been referenced and this should be considered in considering impacts on Inuit women and men.

Ms. Saikaley mentioned that NTI had said that there wasn't enough in the Interim Guidelines about consultation in the context of claims agreements. Ms. Saikaley posed a number of questions on which the federal government was interested in hearing Inuit views. These include:

- How do consultations need to be informed in order to understand potential impacts?

- How do Inuit want to be consulted?
- What information do you need?
- How do you wish to be contacted?
- How much time would you need to consider a matter?
- What support would you need?

Ms. Saikaley described other elements of the Action Plan such as the development of an 'inventory' of rights that may trigger duties to consult and efforts being made to coordinate federal consultation and regulatory activities across federal departments. This engagement process represents the beginning of dialogue and a report will be developed and sent to Pauktuutit and then brought to Ministers for further development.

Small group and plenary discussions took place throughout the day and these resulted in a decision that Pauktuutit should develop a policy statement on Inuit women's expectations for federal policy and practice relating to consultation. Delegates to the workshop included the Board of Directors of Pauktuutit and the delegates agreed that a draft policy statement should be developed by staff for review at a future Pauktuutit meeting.

Small group and plenary discussions considered several questions including how successful (or not) current consultation processes have been in reaching Inuit women (whether the federal government acting alone or as a partner in claims implementation). In this regard, several serious issues and concerns were expressed:

Participants in the workshop were very pleased to be consulted and identified many gender impacts of development, which Inuit women believe should have been anticipated and addressed through consultation prior to development in Inuit territories taking place.

See Appendix 2 for comments made during the workshop regarding the gender impacts development causes. Some of these gender impacts mentioned highlighted the personal stress on the families who may gain employment because of development but then experience a myriad of other problems such as (limited or non-existent) accessible and adequate childcare, families being separated (the wage earner has to leave the home to work on-site) and issues due to management of the new financial situation.

Many of the women expressed concern that development often occurs without consultation with Inuit women as most of the Inuit negotiators are men and it seems information is not disseminated properly about the consultation or the implementation process. Women are not asked how they believe the development will impact their lives and what their definition of "quality of life" is. It was felt that men often are more concerned with finances than quality of life.

Frustration was voiced about how women seemed to be always relegated to menial jobs (cooking, cleaning) whereas training for the high paying jobs always seems to go to men.

Women are greatly affected by the influx of transient workers (more access to alcohol and drugs, abuse, sexually transmitted infection rates increase, increased birth rate combined with lack of involvement by the transient biological fathers). If women were

specifically consulted contingency plans would be drafted to address social issues which may arise as a result of development.

In assessing the success of consultation processes to date to reach Inuit women at the community level, there was general agreement there had been little success or none.

Many issues came to the fore during the discussion whether consultation processes to date had been successful in reaching Inuit women at the community level including the fact that women may not speak due to fear of intimidation, lack of material provided at the community level and because of the age old problem that: *men have dominated the decision-making and sometimes misunderstand women, "What we say goes over their heads."* See Appendix Three for more detailed comments made during the Workshop.

The participants were adamant that Inuit women need to be consulted in their own right. A common theme emerged during the workshop that Inuit women were excluded from the decision making process which is detrimental to development since Inuit women have a lot of wisdom to share. Appendix Four contains the statements voiced by the participants when discussing how Inuit women wish to be included in consultation.

The following two statements are indicative of the overall tone of this segment of the workshop:

- *Include women in planning from the very beginning; Inuit women can be very beneficial to projects and can identify some weaknesses that can be helpful*
- *Inuit women would like to be involved ahead of time and be involved and consulted when meetings are held in the communities*

Throughout the workshop there were serious themes which the participants kept coming back to (apart from inadequate consultation with Inuit women). When discussing development Inuit women consistently worry about lack of pro-active community consultation, negative social impacts on the community, family separations, lack of childcare, noise pollution, physical contamination of the land and site remediation. See Appendix Five for some of the comments gathered during the workshop on these serious concerns.

In conclusion, the workshop participants recommended that the federal government inform Pauktuutit immediately of decisions that can potentially affect Inuit rights and well-being so that Pauktuutit, working with Board members from each region, can determine what needs to be done. The importance of coming to communities to conduct consultations was emphasized.

The provision of material in Inuktitut when conducting consultations was also a primary concern.

The workshop participants supported collecting life experiences from people in regards to their experiences with resource development with the aim of using this information to gain a better perspective on how to improve the consultation process.

Two days following the workshop the newly elected Board of Pauktuutit unanimously carried a motion to approve resolution 2009-01 (see Appendix Six) which called upon the federal government to:

“work in active partnership with Pauktuutit Inuit women of Canada as the national representative organization of Inuit women in Canada to develop appropriate consultation models and processes to ensure the free, prior and informed consent of Inuit women to provide input to the federal government’s initiative on consultation and accommodation with Aboriginal peoples in Canada;

All federal governmental departments provide the resources necessary for Pauktuutit to coordinate and conduct consultations to collect the stories and experiences of Inuit women about their experiences with development, and other federal policy initiatives, and to record and share their personal experiences:

The federal government recognizes, respect and appropriately accommodate the unique perspectives, circumstances, priorities and aspirations of Inuit women in Canada.

APPENDIX ONE

As verified by Heather Tait of Statistics Canada in an e-mail received by Susan Scullion on April 20, 2009:

Inuit identity population by age group and sex, 2006 Census

	Total - Sex	Male	Female
Total - Age groups	50480	25020	25455
0 - 14	17705	9060	8645
15 - 19	6005	3065	2935
20 - 24	4550	2275	2275
25 to 64	20375	9730	10650
65 years and over	1840	895	945
Subtotal age 15 and over	32770	15965	16805

% of Inuit population that is made up of children (aged 0-14): 35

% of Inuit population that is made up of women aged 15 and over: 33

% of Inuit population that is made of women aged 15 and over
and children under the age of 15: **68**

APPENDIX TWO

FAMILY STRESSORS

- The lack of childcare facilities leading to grandchildren having to look after the children of employed parents. There is stress for Elders who were not prepared for this and who often feel overwhelmed.
- The impacts of one parent leaving to work for a week or more at a mine site, leaving the other as a temporary single parent
- The need for facilities at mine sites for Inuit workers to have their families close by

FINANCIAL STRESS

- Inuit women are often responsible for money management in the family and new wage income has created a need for training on money management matters

ONLY MENIAL OPPORTUNITIES FOR WOMEN

- There are concerns about the lack of training for women while men receive heavy equipment and other training; and that Inuit women have been restricted to menial jobs such as cooking and cleaning
- There are educated women, smart Inuit women and Inuit women have knowledge; companies should be hiring women as more than cleaners
- Inuit women are very good at organizing things

HEALTH AND SOCIAL CONSEQUENCES

- Health issues that affect women and the community such as an increase in STIs as a consequence of transient workers coming to Inuit territory
- Inuit women are bearing children from men “who are not even looking at their new children”
- Sensitive issues need to be talked about like abuse and that sons will not communicate with you as much as they used to because of drugs coming in; our young people are dying and getting treatment is a priority
- In Labrador, there were similar attitudes towards Aboriginal people and peoples’ lives are being destroyed and we are lacking so many services
- Social issues should be planned ahead and contingency plans made

- Daycare programs should be established by the legislature or the company

INUIT WOMEN FEEL EXCLUDED FROM DECISION MAKING PROCESS

- The need for decision-makers to consider what do women think is important to quality of life and what we believe will impact our lives
- Inuit specific statistics are not available and Inuit women do not have access to the agreements made between developers and Inuit organizations
- Inuit women respect the new economy but it must be done in an inclusive manner
- While women expressed their appreciation of men, we feel that the men making the decisions on behalf of Inuit are too influenced by quick money; not enough is being done to include our family needs
- When Executives come to meet with leaders, they usually ignore the women. They should start working with Inuit women and considering Inuit women first.
- Inuit women feel as if there is no way to refuse development and that others go ahead with their plans and that white persons' opinions are more observed than those of Inuit
- Some women are afraid to speak out for various reasons – fear of intimidation, sexism, repercussions, machismo, lack of gender equality
- Some women are scared or unaccustomed to being consulted and fear they will not be listened to

INUIT WOMEN FEEL PAUKTUUTIT APPROPRIATE VOICE

- The need to ensure that decision-makers have the information they need, when most of the Inuit representatives in the consultation and implementation processes are men. (Pauktuutit could do it).
- The leaders on gender equality issues are here at Pauktuutit.

APPENDIX THREE

(ESSENTIAL) ROLE FOR PAUKTUUTIT

- Should consult with Inuit women and Inuit women organizations directly
- Pauktuutit should be informed first when there are consultations
- There are no resources for women or information for them. Women are not informed enough and this issue needs to be integrated into the decision-making of Inuit organizations so Inuit women are included whether working or secluded at home as mothers or grandmothers
- Women have different concerns and issues.
- Consultations should take place before policies and laws are in put in place and both men and women have contributions to make – there has to be equality.
- Our lives are changing and there are many impacts. To improve this situation, it was recommended that women be included right away and that information would flow better to the community level.

ISSUES AT COMMUNITY LEVEL

- There is no information provided at a community level and women are not involved in development plans at the community level, nor at the board level or the legislative process
- All the decisions being made exclude women and decision-makers don't seem to include local opinions.
- Decisions seem to be made from the top rather than the community level and local schedules are not considered.
- Consultation should take place on a face-to-face basis in people's homes
- Whenever there is a good cooperative flow of information, things go better.
- For youth, we need to teach them their responsibilities so they can be consulted on what is emerging. If this was done, we could understand a lot better.
- People doing consulting should clarify and follow rules and should inform communities before doing consultation
- Websites for women should be developed and for women who go to meetings.

- Door prizes for meetings should reflect women's and not just men's interests.

-

- Local radio and newspaper should be used

APPENDIX FOUR

- Women could be involved in community consulting and should be included more; there should be an effort to believe in equality
- Whenever there are meetings, women should be part of the process
- There should be more women consultants
- When DIAND is giving meetings in communities, women should be included and even be a majority
- In consultations, Inuit tend to be lumped in with First Nations and First Nations issues and concerns tend to dominate.
- Be more inclusive
- Information that is more family oriented
- More information, more training
- Include Elders
- Have Inuit women meet with MLAs, government and become board members
- Would be good to include women in the exploration process, to be informed of exploration and if there are oil spills, to be involved so we have better information and contingency plans
- Value our traditional values and prepare to ensure our values are included
- Need to keep hamlets informed, and be informed of community meetings when mining companies are consulting

APPENDIX FIVE

- There is a lot of exploration in Inuit territories but the communities have not really been involved until development occurs.
- We only benefit by money; but with it comes alcohol and drug abuse and other negative social impacts. Communities near mining sites are excluded and it is very stressful.
- An influx of drugs, drug trafficking and increased alcohol abuse has accompanied development in all regions and is destroying our youth, destroying our families and causing much pain to parents. There does not appear to have been any planning to address the need for police services.
- Many workers quit because of difficulties getting babysitters and homecare workers for dependents.
- The greatly increased traffic from barges to helicopters and other forms of transportation has destroyed the quiet. There is a need to look at long-term impacts on health.
- There is a need for a special school or family dwelling at the mine site for families to be together.
- They are taking over our tradition and our land and because we are close to the mining sites, we should really be involved.
- Development projects should use Inuit clothing instead of southern clothing.
- Several delegates spoke of discrimination against Inuit of various kinds and that this was a longstanding problem; such as charter planes only being available to non-Inuit workers and mining executives bringing their families while Inuit cannot; Inuit being told they cannot speak Inuktitut at the mine site which is wrong, among many other examples.
- Mining companies are not selective enough in their hiring.
- The experience at Arctic Bay with a mining development was repeatedly cited as an especially negative example of communities and women not benefiting from mining development and that lessons from this need to be learned for other communities. Even when the mine was being closed down, Inuit were told they could not recycle materials from the infrastructure for their use. They were told the materials were not safe yet they had been in use for years.

- When mining companies abandon sites, they are not like before they touched it. Because this will impact our children and grandchildren we should be compensated somehow.

APPENDIX SIX

2009 Pauktuutit Annual General Meeting Resolutions

Resolution 2009 – 01

Federal Consultation with Inuit Women

WHEREAS Inuit women enjoy rights under the Canadian Constitution and the Charter of Rights and Freedoms; and

WHEREAS Inuit women's priorities and concerns are unique from any other group in Canada; and

WHEREAS there are numerous federal policy and program initiatives that have specific and unique impacts on Inuit women such as proposed revisions to the food mail program; and

WHEREAS to date there has not been a formal and recognized federal policy on consultation with Inuit women developed, implemented and respected by the federal government and other parties; and

WHEREAS there are current urgent issues such as mining and oil and gas exploration in Inuit communities across the Arctic that have already had significant and negative impacts on Inuit women and their families; and

WHEREAS there is a need to assess the broad range of impacts of these types of policies and initiative on Inuit women, families and communities from the perspective of Inuit women;

THEREFORE BE IT RESOLVED THAT:

The federal government work in active partnership with Pauktuutit Inuit Women of Canada as the national representative organization of Inuit women in Canada to develop appropriate consultation models and processes to ensure the free, prior and informed consent of Inuit women to provide input to the federal government's initiative on consultation and accommodation with Aboriginal peoples in Canada;

All federal governmental departments provide the resources necessary for Pauktuutit to coordinate and conduct consultations to collect the stories and experiences of Inuit women about their experiences with development, and other federal policy initiatives, and to record and share their personal experiences:

The federal government recognizes, respect and appropriately accommodate the unique perspectives, circumstances, priorities and aspirations of Inuit women in Canada.