

NWAC

POSITION PAPER

**THE SOCIAL UNION FRAMEWORK
AGREEMENT**

MARCH, 2002

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SUFA: IMPLICATIONS FOR ABORIGINAL WOMEN

I. Introduction

The Native Women's Association of Canada (NWAC) has prepared the following brief report on behalf of our member organizations regarding SUFA and the implications for Aboriginal women and children. This report was engaged in as part of a contract with the federal government. NWAC was contracted to complete the following statement of work:

Phase I: Review of documentation and consultations with constituencies. To research and review all available documentation related to SUFA and to pursue a consultation process with federal and provincial government officials and Aboriginal organizations.

Phase II: Submit a final report including recommendations on how the Social Union Framework could be improved.

The Native Women's Association of Canada, due to time constraints, was only able to complete a portion of the statement of work referred to above. NWAC prepared and distributed a questionnaire (Appendix A) to their member groups soliciting information from throughout Canada on SUFA and its implications for Aboriginal women; as well as recommendations on how SUFA could be improved. The member groups were also asked to rate the performance of SUFA as it relates to the delivery of services to Aboriginal women and children. The responses to the questionnaire, again due to time constraints, were limited. In summary the respondents gave SUFA a "poor" rating in response to query #27 regarding whether they had seen any improvement in the delivery of programs and services for Aboriginal women and children.

Following is a brief overview of SUFA as it relates to Aboriginal peoples and in particular Aboriginal women and children. Literature was reviewed and critically analyzed from an Aboriginal women's (NWACs) perspective.

II. SUFA

The Social Union Framework Agreement (SUFA) was entered into, in 1999, between the Federal/Provincial/Territorial governments. SUFA sets out some broad principles for the a new era of social policy and cooperation in the areas of health, children, post-secondary education and other social programs. In particular the agreement is aimed at enabling the Federal/Provincial/Territorial governments to work together:

... and with Canadians, to strengthen our health care system, eliminate barriers to mobility for Canadians, involve Canadians in the development of social programs, and strengthen partnership among governments.(1)

The general principles outlined in the agreement, to guide social programs for Canadians, were identified as:

- ❑ Equality of opportunity;
- ❑ Access to all Canadians to comparable programs;
- ❑ Medicare principles;
- ❑ Help for those in need.(2)

The government of Quebec did not sign the agreement. Most notably Aboriginal peoples governments or National representatives of Aboriginal organizations were not included as signatories to the agreement. SUFA does, however, include a provision which states that:

Governments will work with the Aboriginal peoples of Canada to find practical solutions to address their pressing needs.(3)

There was a broad consensus between the signatory governments that the first priorities should be children in poverty and persons with disabilities(4). Two areas which are of primary concern for NWAC and all Aboriginal peoples. Although there were only two responses to our questionnaire both regional groups advised that they felt the Federal/Provincial/Territorial governments had not worked effectively to address child poverty. Both respondents rated the efforts of the Federal/Provincial/Territorial governments as “Poor” in improving the social conditions for Aboriginal women and children.

1. *Highlights of the Social Union Framework Agreement.* (information sheet).

2. *Ibid.*

3. *Social Union Framework Agreement.*

4. “Social Union” <<http://socialunion.gc.ca>>

A. Exclusion of Aboriginal Signatories to SUFA

Aboriginal governments or National representatives of Aboriginal peoples were not included as signatories to the SUFA agreement. Although the SUFA agreement acknowledges Aboriginal peoples it does not, by implication, recognize them as contemporaries to the other signatories. One commentator has suggested that the exclusion of Aboriginal peoples as signatories would suggest:

... that they are analogous to municipal governments, which are also bystanders to the SUFA process. This could be seen as a further retreat from the 1992 high-water mark of Aboriginal influence, when the text of the Charlottetown Accord wove a significant Aboriginal presence into virtually every institutional warp and woof of the Canadian federal state.(5)

Former National Chief of the Assembly of First Nations, Chief Phil Fontaine, noted similar concerns in his correspondence to the Prime Minister prior to the signing of SUFA. He recommended the inclusion of First Nations as full and equal partners in the Social Union process(6) and the former National Chief of AFN urged the Prime Minister to “enfold the First Peoples of Canada in this historic process of nation-building”(7). This, despite recognition of Aboriginal peoples in the *Constitution Act, 1982*(8), did not occur.

Fontaine underscored the importance of Aboriginal involvement in light of the unique relationship of First Nations with the federal government and the fact that:

Social Union reform directly affects the jurisdictions of First Nations’ governments, the current and future relationships between First Nations and the federal and provincial/territorial governments and the nature and quality of social programs available to First Nations citizens.

However, as one commentator observed, despite the articulation of Aboriginal concerns, they were denied the opportunity to engage in SUFA as signatories:

For national Aboriginal organizations (NAOs) and their leaders and their leaders, the run-up to the agreement resulted in a frustrating experience of exclusion. The social

5. R. Gibbons, “Shifting Sands: Exploring the Political Foundations of SUFA”. Vol. 2, no. 3 (July 2000) Policy Matters 3 at 14.

6. Letter from former National Chief of the Assembly of First Nations, Phil Fontaine to the Prime Minister, dated February 2, 1999.

7. *Ibid.*

8. *Constitution Act, 1982 – Canada Act*, U.K. 1982, c. 11.

union talks were viewed as a historic process of nation-building that affects Aboriginal peoples, their governments and their place within the federation. Yet leaders from NAOs were not direct parties to the negotiations.(9)

Despite compelling reasons to have the National Aboriginal groups at the table the Federal/Provincial/Territorial governments opted for exclusion. In sum the inclusion of Aboriginal peoples would have been, as recommended by the Royal Commission on Aboriginal Peoples, one step towards realizing self-government:

The full realization of Aboriginal self-government requires significant revisions to intergovernmental relations, and the *Social Union Framework Agreement (SUFA)* is therefore one focus of this struggle for self-determination and recognition of Aboriginal peoples' unique constitutional status in Canadian federalism.(10)

The importance of Aboriginal inclusion is further underscored by observations made at the international level by the United Nations Committee on Economic, Social and Cultural Rights, which expressed great concern regarding the gross disparity between Aboriginal peoples and other Canadians. In particular social policy concerns were raised by the United Nations:

Para 392: The Committee is greatly concerned at the gross disparity between Aboriginal peoples and the majority of Canadians with respect to the enjoyment of Covenant Rights. There has been little or no progress in the alleviation of social and economic deprivation among aboriginal people. In particular the Committee is deeply concerned at the shortage of housing, the endemic mass unemployment and the high rate of suicide, especially among youth, in aboriginal communities. Another concern is the failure to provide safe and adequate drinking water to aboriginal communities on reserves. The delegation of the State party conceded that almost a quarter of aboriginal household dwellings require major repairs and lacked basic amenities.(11)

These concerns are shared by NWAC and illustrate the day to day struggles of our membership. They also highlight the importance of engaging National Aboriginal groups in the implementation or restructuring of SUFA. Denying our involvement because SUFA addresses only "administrative arrangements" ignores the reality that as observed by Day and Brodsky:

9. M. Prince, "Aboriginals are securing a role". (April, 2000) Policy Options 45 at 45.

10. *Ibid.* at 45.

11. United Nations Committee on Economic, Social and Cultural Rights, E/1999/22)E/C.12/1998/26)Supp 2, Report of the 18th and 19th Session.

...in light of the tight connection between social programs and services and women's equality, is that the drastic changes to social programs of the last 40 years have been presented as purely budgetary matters, unrelated to the rights of women.(12)

NWAC is, unfortunately, all too aware of the fact that because of jurisdictional issues, and other matters of pressing urgency, SUFA represents not merely the negotiation of "administrative arrangements" but engages discussions regarding matters that relate to our very survival – access to social programs to address the devastating impact of colonization. As cautioned by Brodsky and Day:

The biggest threat to women now is economic policy that, at best, ignores women, and at worst relies on and exploits women's inequality. The biggest threat is the seductiveness of the idea that economic policy is apolitical and unrelated to the rights of women.

The new challenge for women is to discredit this idea. In every forum women must insist on a social vision that connects social and economic policy to women's right to equality. There can be no equality for women without economic justice and economic autonomy.(13)

Unfortunately, the rationale for Aboriginal exclusion was as identified by Prince, a Professor at the University of Victoria, because the agreement dealt with "administrative matters":

The reasons given for the exclusion of Aboriginal national leaders were that the talks involved administrative arrangements, not constitutional proposals, and that the delivery of social programs continues to be a provincial responsibility.(14)

As Prince pointed out the exclusion of National Aboriginal Organizations (NAOs) was striking in light of the release of the Royal Commission Report on Aboriginal Peoples which highlighted the importance of NAO's working in partnership with their federal, provincial and territorial counterparts, based on:

...the principles of mutual recognition, mutual respect, and mutual responsibility. Aboriginal peoples see their NAO's as a central means of expression for building a renewed relationship.(15)

12. S. Day and G. Brodsky, *Women and Equality Deficit: The Impact of Restructuring Canada's Social Programs*. (March 1998) at 30. A report prepared for on behalf of Status of Women and Canada, Policy Research Fund.

13. *Ibid.* at 158.

14. *Supra* note 9 at 45.

15. *Supra* note 9 at 45.

Hopefully the Federal/Provincial/Territorial governments will heed NWAC's recommendations, presented later in this report, in the spirit of the recommendations made in the Royal Commission Report on Aboriginal Peoples.

B. Background to SUFA

A few feminist commentators have identified the history/demise of Canadian social policy prior to and after the signing of SUFA. This history is an important backdrop for any discussion of SUFA as it relates to Aboriginal women. In particular both authors Margot Young(16) and Shelagh Day with Gwen Brodsky(17) identified the demise of Canadian social policy pre-SUFA. In particular the authors note that the elimination of the Canada Assistance Plan (CAP) of 1966 has resulted in an abolition of the national standards which had been attached to CAP. SUFA does not contain standards, which leaves open a potential for disparate treatment of Canadian citizens in individual provinces. This concern was also observed at the international level by the United Nations Committee on Economic, Social and Cultural Rights:

Para. 394 The replacement of the Canada Assistance Plan by the Canadian Health and Social Transfer entails a range of adverse consequences for the enjoyment of Covenant Rights by disadvantaged groups in Canada... The committee reports that, by according virtually unfettered discretion to the provincial governments in relation to social rights, the Government of Canada has created a situation in which Covenant standards can be undermined and effective accountability has been radically reduced.(18)

The United Nations Committee as well as Day and Brodsky recommend the inclusion of standards in any new National agreements on social policy. The United Nations Committee recommendations were, apparently, not abided by, as SUFA does not contain any standards, leading to a very real perception that the federal governments historical commitment to social programs and services is in weakening:

For women, who are poorer than men, more vulnerable to domestic violence, and more likely to be caregivers for children and older people, the diminished commitment to social programs and services, and to national standards, has significant immediate and long-term consequences. For single mothers, elderly women, **Aboriginal women**, immigrant women, women of colour, and women with

16. M. Young, "The Social Union Framework Agreement: Hollowing Out the State". (1999) 10:4 Constitutional Forum 120.

17. *Supra* note 12.

18. *Supra* note 11.

disabilities – who are among the very poorest Canadians –the impact is more drastic.(19) *emphasis added*

Professor Margot Young, in her analysis of SUFA, adds additional concerns and notes that threaded throughout SUFA are “elements of the more recent neo-liberal rejection of the welfare state”(20). She also argues that the text of SUFA seems to support a notion of formal rather than substantive equality. As she illustrates substantive equality takes into account individual or group differences in recognition of the fact that “same treatment is not always equal treatment”(21). This is of especial concern for Aboriginal women who are historically disadvantaged because of their gender, their race and often times their place of residence. As Young points out, the difference between models of substantive and formal equality can be very important:

Without consideration of individual’s real social and economic conditions and absent program design that addresses systemic inequalities, state action will do little to effect substantive amelioration of the pre-existing conditions of deprivation and disadvantage that currently deny social citizenship to large groups of Canadians.(22)

NWAC believes that it is important to include substantive equality provisions in SUFA, as Aboriginal women’s particular and unique circumstances need to be acknowledged in order to effect positive change for our member groups.

Finally, to reiterate the concerns of the United Nations, NWAC queries whether SUFA has ameliorated or contributed to the reduction of services and programs for Aboriginal women and children. We recommend that NWAC be provided with capacity to conduct a thorough analysis of the impact of SUFA and trends in social policy, in light of SUFA, that affect Aboriginal women and children:

Para 398: The Committee notes with grave concern that the repeal of CAP and cuts to social assistance rates, social services and programmes have had a particularly harsh impact on women, in particular single mothers, who are the majority of the poor, the majority of adults receiving social assistance and the majority among the users of social programmes.

19. *Supra* note 12 at 1.

20. *Supra* note 16 at 120.

21. *Supra* note 16 at 124.

22. *Supra* note 16 at 125-6.

III. ABORIGINAL PEOPLES

A. Introduction

...the wider context of racism, poverty, ill-health, and violence within which many First Nation women... are struggling to survive. More fundamentally it obscures the roots of these conditions in historical and continuing practices of colonialism and racial oppression, including land dispossession, destruction of traditional economies of First Nations and the transgenerational effects of residential schools, and child welfare...(23)

The Aboriginal peoples of Canada have a unique and sometimes difficult relationship with the federal government. As the First peoples of this country Aboriginal peoples have been recognised in the *Constitution Act, 1982*(24), pursuant to section 35, which reads as follows:

s. 35 (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognised and affirmed.

The First peoples of Canada have been recognized by the United Nations as living in deplorable third world conditions. True partnership in the Social Union Framework Agreement could have done much to begin repairing the relationship between the signatories of the SUFA and the First peoples. Aboriginal women, in particular, are deeply affected by government social policy decisions, as they are doubly disadvantaged in Canadian society because of their gender and their race.

Aboriginal peoples continue to live in abject poverty. The Assembly of First Nations (AFN) in their recent DRAFT pre-budget submission to the House of Commons, outlined the root causes of First Nation poverty:

- ❑ In some parts of the country treaties have not been implemented. Other treaties have not been completed. This means ongoing uncertainty and inadequate resources.
- ❑ For most communities the land base is hopelessly inadequate to sustain a viable economy and for those with good locations, the process to expand their lands is far too cumbersome.

23. M. Kline, "Complicating the Ideology of Motherhood: Child Welfare Law and First Nation Women". (1993) 18:2 Queens L.J. 306 at 321.

24. *Constitution Act, 1982 – Canada Act*, U.K. 1982, c. 11.

- ❑ First Nations sit on the sidelines as Canadians grow wealthy on the resources of First Nations lands and traditional territory.
- ❑ First Nations have not been involved in key policy making processes such as the Social Union Framework Agreement and other Federal/Provincial/Territorial forums designed to ameliorate the present state of dependency.
- ❑ Our children's educational and employment experiences are marred by inadequate housing, substandard water and sewer systems.
- ❑ The legacy of dependency, cultural and language impotence, dispossession and helplessness created by residential schools and poorly thought out federal policies continue to have a lasting effect.
- ❑ Clear jurisdictions are lacking. Repercussions include the inability to respond to opportunities in a timely fashion, ultimately raising the cost of doing business on First Nations lands by five times.
- ❑ The lack of respect for our jurisdiction creates uncertainty in the minds of investors and reduces our access to capital.
- ❑ There is a lack of legal authorities needed to evolve revenue jurisdictions that will prevent other governments siphoning off what little wealth is create on our land.
- ❑ Substandard infrastructure and services have been made worse by federal-provincial disagreements over responsibility.(25)

Unfortunately, accessing culturally appropriate and adequate services to ameliorate poverty always ends up in the continuing jurisdictional debate over which government is responsible for providing those services to Aboriginal peoples:

Compared with other jurisdictions, services and infrastructure provided on reserve are substandard by almost every measurable outcome. No government appears to want to be accountable for this. At present, reserves are so under-financed that virtually every dollar received must be used to meet pressing social needs.(26)

Any discussion of SUFA and the involvement of the Federal/Provincial/Territorial governments with Aboriginal peoples must first be set within the context of colonization. Following is a brief discussion of some of the primary agents of colonization: application of the *Indian Act* and the Residential School system.

25. Assembly of First Nations, *AFN – Pre Budget Submission* (October 2001).

26. *Ibid.* at 14.

1. The Indian Act

Without question, this legislation [the *Indian Act*] struck at the heart of what was most sacred to West Coast societies. In so doing, it put in question the very survival of these nations...(27)

The application of the federally legislated *Indian Act*, has had enormous implications for the First peoples. The *Act* was the cause of many significant losses to First Nations people including: the loss of land (made it illegal to fight land claims); loss of membership and Indian Status (marriage of a First Nations woman to a non-“Indian” man); loss of children (residential school); and loss of traditional government structures.

Aboriginal women have been particularly impacted by the application of the *Indian Act*. It has contributed to the erosion of their traditional roles as First Nations citizens/mothers and women. The membership provisions in the *Indian Act* have had, and continue to have, an enormous impact on Aboriginal women. The *Act* defined, and still defines, who is recognized as an “Indian. Prior to 1985, when an Aboriginal woman married a non-“Indian” man she lost her “Indian Status” and membership in her community. Many women suffered the loss of culture, loss of membership in community, loss of family, as well as the loss of living in their traditional territories. The 1985 amendments to the membership provisions of the *Indian Act* (Bill C-31) have remedied the situation for some women, but many women (and their children) continue to be denied status. Others, who may have been successfully reinstated, have not had their children recognized as “Indians” and have had difficulty returning to their home communities because of a lack of housing and discrimination against them as “Bill C-31 Indians”. Furthermore, Aboriginal women living on reserve continue to be treated differentially upon the dissolution of marriage, than women living off reserve. This was identified by the United Nations Committee on Economic, Social and Cultural Rights:

Para 404: The Committee notes that aboriginal women living on reserve do not enjoy the same rights as women living off reserve to an equal share of matrimonial property at the time of marriage breakdown.(28)

Clearly the application of the *Indian Act*, has had profound and devastating results for Aboriginal women and children.

27. G. Yabsley and Chief J. Mathias, “The Conspiracy of Legislation: The Suppression of Indian Rights in Canada” in Doreen Jenssen and Cheryl Brooks, eds., *In Celebration of Our Survival* (Vancouver: U.B.C. Press, 1991) at 35.

28. *Supra* at note 11.

2. Residential School

The loss of successive generations of children to residential schools, the destruction of Aboriginal economic bases, the decimation of their populations through diseases and the increasing dependence on government welfare have led to social chaos. This manifests itself in Aboriginal communities through staggering poverty rates, high unemployment rates, high suicide rates, lower education levels, high rates of alcoholism and high rates of crime. In individuals the legacy of residential schools has been lowered self-esteem, confusion, self-identity and cultural identity, and a distrust of, and antagonism toward, authority.(29)

Another clear example of the impact of colonization was the residential school system which required Aboriginal children to attend at schools, often far from their home communities. Many children were subjected to physical, sexual, emotional and spiritual abuse. The effects of the residential school experience, on children, families and communities, are described poignantly by Judges Hamilton and Sinclair (above).

B. Aboriginal Women & Children

Aboriginal women and their children suffer tremendously as victims in contemporary Canadian society. They are the victims of racism, sexism and an unconscionable level of domestic violence.(30)

Aboriginal peoples have suffered from the effects of colonization and arguably Aboriginal women and children continue to suffer the most. The impact of colonization has resulted in disturbing levels of violence perpetrated against Aboriginal women, disturbingly high levels of child apprehensions/removals, poverty, racism, sexism, loss of culture and identity.

The statistics presented in a recent report prepared by Statistics Canada reflect the deplorable living conditions of Aboriginal women. The Statistics Canada report identified the high incidence of poverty in Aboriginal communities, especially amongst single mothers:

A large percentage of Aboriginal women have low incomes. In 1996, 43% of Aboriginal women aged 15 and over had incomes below Statistics Canada's Low Income Cutoffs... The low-income situation for Aboriginal lone-mothers is even more

29. Manitoba, Public Inquiry into the Administration of Justice and Aboriginal Peoples, *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal Peoples*. Vol. 2 (Winnipeg: Queens Printer, 1991) at 515.

30. *Ibid.* at 475.

serious. Among this group, 73% lived below the low-income cut-offs in 1996. This was substantially worse than the 45% figure for families headed by non-Aboriginal female lone parents.(31)

The prevalence of family violence in Aboriginal communities has been identified by many authors (32) who cite an Ontario Native Women's Association report which found that 8 out of 10 Aboriginal women have been the abused(33). Some authors have gone so far as to describe the prevalence of violence against women and children as being in "epidemic" proportions(34).

Finally, Aboriginal children are represented in increasingly tragic statistics:

- ❑ The incidence of SIDS deaths among Aboriginal infants is approximately 6 times the non-Aboriginal population.
- ❑ The youth suicide rate for Aboriginal male youth aged 10-19 is over 8 times as high as that of their non-Aboriginal counterparts and for Aboriginal female youth the rate is 20 times greater than for non-Aboriginal female youth;
- ❑ The death rate for Aboriginal children for all other causes of death is more than 3 times the death rate for children in the general population.(35)

C. Summary

The preceding discussion has outlined, briefly, some of the conditions in which Aboriginal people and in particular Aboriginal women and children must live in Canadian society. A situation recognised by the United Nations as deplorable and one which must be addressed as a pressing national social concern. Most importantly, poverty and dependency, especially for the disproportionate numbers of single mothers must be addressed in the implementation of, or restructuring of SUFA.

31. Canada, Statistics Canada, *Women in Canada: 2000 A Gender-Based Statistical Report* (Ministry of Industry: 2000) at 259.

32. For example: J. Hare, *Building Healthy Communities: An Aboriginal Family Violence Resource Guide* (September, 1997) A report prepared for FRENDA; Manitoba, *Public Inquiry, supra* note 29; Royal Commission on Aboriginal Peoples, *Gathering Strength*, Vol. 3 (Ottawa: Supply and Services, 1996).

33. Ontario Native Women's Association, *Breaking Free: A Proposal for Change to Aboriginal Family Violence* (Thunder Bay, December 1989) at 19.

34. Manitoba, *Public Inquiry, supra* note 29.

35. British Columbia, Children's Commission, *1999 Annual Report*. (Victoria: Queens Printer, 2000) at 28.

IV. SUFA Goals?

Para 427: The Committee, as in its review of the second periodic report of Canada, reiterates that economic and social rights should not be down graded to “principles and objectives” in the ongoing discussion between the federal governments and the provinces and territories regarding social programmes.(36)

As enunciated by the United Nations, Canada’s social policy framework should not be merely as set of principles and objectives, and arguably that is exactly what SUFA contains. NWAC provides the following suggestions/recommendations for SUFA in light of the 3 year review of the agreement.

A. Federal Reduction in Services to Aboriginal Peoples

Over the past four years real per capita federal First Nation program spending has dropped 4 per cent. DIAND, which accounted for 70 percent of federal spending on First Nations programs in 1999, dropped its spending on a real per capita basis by 6 percent for the period between 1996-1999.(37)

The AFN, in their pre-budget submission to the House of Commons, highlighted the concerns that the Federal government has reduced their funding and services to Aboriginal peoples. This observation is disturbing, especially when taking into account the observations of not only the Royal Commission on Aboriginal Peoples but those mentioned earlier in this report of the United Nations Committee on Economic, Social and Cultural Rights - that Aboriginal peoples are living in deplorable conditions. Surely rather than seeing a reduction in expenditures we should be seeing an increase in Federal expenditures targeted to remedy/address the impact of colonization. NWAC is concerned that SUFA does not, as stipulated earlier in this report contain any standards for service delivery, which could effectively ameliorate the funding reductions.

A report prepared by the Provincial and Territorial governments enunciated the following:

Provincial and Territorial governments and Aboriginal organizations have expressed concerns about the federal government’s reduction of services and supports to Aboriginal peoples. In particular they are concerned about the growing needs and

36. *Supra* note 11.

37. AFN, *supra* note 25 at 10.

social problems being created by the federal government as it continues to avoid its responsibilities for Aboriginal peoples.(38)

The Provincial and Territorial governments are clearly concerned about the Federal off-loading of responsibility for Aboriginal peoples, they expressed the following position:

...that the federal government has a constitutional, historical, fiduciary and Treaty responsibility for/and to Aboriginal peoples, both on reserve and off.(39)

What is abundantly clear is that, despite SUFA, and because of the lines drawn in the sand by the respective Federal/Territorial/Provincial governments, Aboriginal peoples continue to fall between the cracks or receive less than adequate services. This conundrum was identified over 35 years ago by Hawthorne, on behalf of the Federal government:

... special status of Indian people has been used as a justification for providing them with services inferior to those available to the Whites who established residence in this country, which was once theirs.(40)

Years later the debate continues, as articulated in a Provincial/Territorial options paper:

- Aboriginal peoples and the provincial and territorial governments regard the federal government as responsible.
- Aboriginal peoples suffer from the lack of clear and consistent federal responsibility and accountability.
- The federal government's practice of withdrawing funding has meant reductions in services for Aboriginal peoples and increasing costs for provincial and territorial governments.(41)

The Provincial/Territorial governments put forward a number of options to attempt to address this problem. One of the approaches enunciated, in a 1997 paper, was described as the "comprehensive approach" which would be a cross-sectoral action plan to identify strategic ways of improving the social, economic and environmental conditions for Aboriginal peoples. This approach could have been launched with National Aboriginal

38. Provincial/Territorial Council on Social Renewal, *Federal Reductions in Services and Support to Aboriginal Peoples: An Options Paper*. (July 1997) Prepared for the 1997 Annual Premiers Conference by the Provincial/Territorial Council on Social Policy Renewal.

39. *Ibid.* at 4.

40. H.B. Hawthorne, ed., *A Survey of the Contemporary Indians of Canada: A Report of the Economic, Political, Education Needs and Policies* [hereinafter the Hawthorne Report], vol. 1 and 2 (Ottawa: Canadian Department of Indian Affairs and Northern Development, 1966) at 253.

41. *Supra* note 38 at 2.

representatives, including NWAC, as signatories to SUFA. In particular, the Provinces and Territories noted that this approach:

...is consistent with the recommendations of the *Royal Commission Report on Aboriginal Peoples Report* which stress the importance of focusing on long-term benefits by developing a variety of preventative and intervention programs.(42)

NWAC recommends that the SUFA be amended to add Aboriginal peoples as signatories with the goal of once and for all addressing the jurisdictional debate. Ultimately:

Arguments over the constitutional division of powers between the Federal and Provincial governments result only in a question of which level of government has the right to regulate aboriginal life. This question does not address the basic issue of justice, which would recognize the rights of our people to take responsibility of our own lives. That answer can only be framed in the inherent right of our people to govern themselves.(43)

In the *Progress Report to Premiers No. 6(44)* a number of recommendations which NWAC whole-heartedly agrees with are set out, including:

- ❑ Premiers called on the federal government to recognize its treaty, fiduciary, and constitutional responsibilities for the health, education, and well-being of Aboriginal Canadians and to work with provinces, territories and Aboriginal peoples on more effective delivery and financing of health, education and social services for Aboriginal peoples;
- ❑ Premiers stressed the importance of continued Aboriginal involvement to ensure that the needs of Aboriginal children are a priority as work on the National Children's Agenda proceeds.
- ❑ Premiers encouraged continued cooperation between governments and Aboriginal organizations toward addressing the education, skills development and labour market needs of Aboriginal people.

NWAC endorses these recommendations and adds that the perspective of NWAC, on behalf of their members, must always be included when discussing matters of national importance to Aboriginal peoples. This, in light of the unique lived circumstances and experiences of Aboriginal women because of their race and gender.

42. *Supra* note 38 at 8.

43. British Columbia, Report of the Aboriginal Committee Community Panel Family and Children's Services, Legislation Review in British Columbia, *Liberating Our Children: Liberating Our Nations*, [hereinafter LOCLON] by Lavina White and Eva Jacobs (Victoria, B.C.: Queens Printer, 1992) at 29.

44. Provincial/Territorial Council on Social Policy Renewal, *Progress Report to Premiers No. 6*. (August 1-3, 2001).

B. Funding Predictability

One of the areas highlighted in the SUFA agreement is “Funding Predictability”. This section is meant to provide direction for the funding relationship between the Federal/Provincial/Territorial governments but has obvious far reaching implications for Aboriginal peoples. The jurisdictional wrangling, referred to above, has yet to be reconciled and clearly affects “funding predictability”. Aboriginal peoples survive, in many cases, on piece-meal or inadequate funding for necessary social services. SUFA does nothing to address this far-reaching problem. NWAC reiterates our recommendation, from the previous section, and add that one of the goals of SUFA should be funding predictability for Aboriginal peoples, Aboriginal Nations, governments, and National Aboriginal representative groups.

C. National Children’s Agenda

The federal and provincial governments and bands do not yet share a clear vision of how best to meet the needs of aboriginal children on and off reserve. Treaty negotiations offer one means of resolving these long-standing and often neglected discussions about children, but in the meantime funding formulas and lack of clarity about roles and responsibilities, continue to place aboriginal children at risk on reserves. Only when communities are given adequate resources for health, education and child welfare supports will we see healthier and safer aboriginal children... This must be top priority of all governments and child serving agencies in the years to come.(45)

The vision document *A National Children’s Agenda: Developing a Shared Vision* sets out four goals for a National Children’s Agenda:

- ❑ Healthy physically and emotionally,
- ❑ Safe and secure,
- ❑ Successful at learning, and
- ❑ Socially engaged and responsible.

Aboriginal children fair poorly in meeting any of the goals presented in the National Children’s Agenda. As outlined above and reiterated in a report on *The National Child Benefit*(46) many Aboriginal children live in poverty and suffer because of the lack of clarity

45. British Columbia, Children’s Commission, *1998 Annual Report* (Victoria: Queens Printer, 1999) at 7.

46. Canada, *National Child Benefit: Progress Report: 2000*.

around jurisdictional roles and responsibilities of the Federal/Provincial/Territorial governments.

According to the *National Child Benefit* report “three out of five Aboriginal children under the age of six were in low-income families, compared with the national average of one in five(47). In 1999, the First Ministers agreed that:

Ministers reaffirmed their commitment to make the needs of Aboriginal children a priority as work on the National Children’s Agenda continues. Ministers agreed with Aboriginal Leaders on the importance of Aboriginal involvement in this work and asked officials to explore ways to continue this involvement as work on the NCA proceeds.

Although NWAC was involved to some degree on this issue, the situation for Aboriginal women and children continues to be an urgent and pressing social concern. Much, much more needs to be done. As one of the respondents to our questionnaire pointed out:

By and large, the social and economic indicators continue to demonstrate that Aboriginal women and children continue to bear the burden of complex and systemic set of oppression, including racism and sexism.

RECOMMENDATION: That NWAC be provided with resources to participate in any further work on the National Children’s Agenda.

RECOMMENDATION: That NWAC be provided with financial resources to conduct research on the issues, concerns and needs of Aboriginal women and children to ameliorate poverty in their lives.

D. Aboriginal Peoples and Disabilities

On March 30, 2001 the Social Services Ministers released *In Unison 2000: Persons with Disabilities in Canada*(48). This paper included input from Aboriginal peoples and provided a profile of Aboriginal Canadians with Disabilities. One of the main concerns raised regarding Aboriginal peoples is the jurisdictional debate/conundrum that was articulated above and enters almost any discussion of Aboriginal peoples and social policy:

- The lack of disability-related services available on reserve often forces Aboriginal peoples to abandon their communities in such of these supports;

47, *Ibid.* at 27.

48. Canada, *In Unison: A Canadian Approach to Disability Issues A Vision Paper*. <http://socialunion.gc.ca>

- However, once off-reserve, Aboriginal peoples with disabilities face jurisdictional barriers in accessing these supports and services.

The report outlined actions to be taken which included the establishment of an Aboriginal Technical Committee on Social Policy.

RECOMMENDATION: That NWAC be provided capacity to fully and meaningfully participate on the Aboriginal Technical Committee on Social Policy as recommended in *In Unison 2000*.

E. Employment

Five National Aboriginal leaders met in Winnipeg on May 11, 2001 with Provincial and Territorial Aboriginal Affairs Ministers and Federal Ministers responsible for Aboriginal peoples. At that meeting the Leaders reviewed and endorsed a working group report entitled, *Strengthening Aboriginal Participation in the Economy*. The report's recommendations were adopted and, in particular, it was agreed that there must be a special focus on youth and women.

RECOMMENDATION: NWAC underscores the importance of creating employment opportunities and initiatives for Aboriginal women. Aboriginal women live in poverty and every effort must be made by the signatories to SUFA, in partnership with NWAC, to address this problem.

F. SUFA: Transparency?

In preparing this report it became abundantly clear that there was a real lack of information on SUFA; people knew little about the implications of SUFA; and there was a general lack of knowledge that SUFA even existed. One commentator succinctly summed up this observation:

SUFA has almost no public visibility and therefore no public constituency that would come to it's defense should the support of political actors wane; little has been done to convince Canadians that SUFA matters to their lives and aspirations⁽⁴⁹⁾

We are thankful to have this opportunity to comment and make recommendations on SUFA. We wonder, however, about the efficacy of SUFA and it's commitment to citizen participation if so few people know of its existence.

49. R. Gibbons, *supra* note 5 at 4.

G. NWAC

The SUFA process includes literally dozens of working groups, tables and ministerial committees(50).

As the commentator, above, suggests the SUFA process is somewhat unwieldy. NWAC requires further capacity, both fiscal and human, for meaningful involvement in the process. We recommend that NWAC be provided with capacity to conduct a thorough analysis of the impact of SUFA and trends in social policy in light of SUFA that affect Aboriginal women and children:

RECOMMENDATION: NWAC must be provided further funding for participation on working groups related to the work of SUFA.

H. National Standards

Day and Brodsky(51), as well as the United Nations Committee on Economic, Social and Cultural Rights(52) highlighted the necessity for National Standards. In light of our, Aboriginal women's, unique relationship to the Federal government and in light of the impact of colonization on our communities, families and children (discussed earlier), consideration must be given to the development of National Standards which incorporate Canada's commitment to Aboriginal peoples and once and for all address jurisdictional issues which continue to too often deny Aboriginal women and children access to adequate and culturally appropriate services because of their race and residency.

Day and Brodsky stress the importance of National Standards and underscore why especially these are so important to women:

Because women are so directly affected by social programs and social services, and by cuts to them, women need coherence, certainty, and adequacy. These cannot be provided without standards that provide parameters and guarantees for all women.(53)

50. R. Gibbons, *supra* note 5 at 15.

51. Day *supra* note 12.

52. *Supra* note 11.

53. S. Day, *supra* note 12 at 24.

Obviously standards incorporated into CAP did little to alleviate the jurisdictional issues that serve to plague Aboriginal women and children's access to services, so NWAC recommends that standards be incorporated into SUFA which specifically address our unique issues and concerns.

I. Substantive Equality

As recommended at the beginning of this report, and in light of Professor Margot Young's observations, the SUFA should clearly set out substantive rather than formal equality provisions. This is especially important for NWAC because of the fact that Aboriginal women are "doubly disadvantaged" in Canadian society and this consideration must be recognized in the SUFA.

V. Recommendations

Aboriginal organizations are unlikely to approach the SUFA review with anything other than extreme wariness.(54)

Following is a summary of NWAC's recommendations for SUFA. In consideration of Professor Gibbons comments (above) NWAC hopes that these recommendations will be heard and that the recommendations will be heeded in the spirit of mutual respect, mutual recognition and partnership:

RECOMMENDATION: That NWAC be involved in the development of performance indicators and setting priorities for national Aboriginal specific goals.

RECOMMENDATION: That NWAC be provided fiscal capacity to engage fully in any and all tripartite work related to the SUFA.

RECOMMENDATION: That NWAC be provided with resources to participate in any further work on the National Children's Agenda.

RECOMMENDATION: That NWAC be provided with financial resources to conduct research on the issues, concerns, and needs of Aboriginal women and children to ameliorate poverty in their lives.

RECOMMENDATION: That NWAC be provided capacity to fully and meaningfully participate on the Aboriginal Technical Committee on Social Policy as recommended in *In Unison 2000*.

RECOMMENDATION: That NWAC be provided with capacity to conduct a thorough analysis of the impact of SUFA and trends in social policy, in light of SUFA, that affect Aboriginal women and children.

RECOMMENDATION: That SUFA be amended to add Aboriginal peoples as signatories with the goal of, once and for all, addressing the Federal/Provincial/Territorial jurisdictional debate over responsibility for funding and services for Aboriginal peoples.

RECOMMENDATION: That one of the goals of SUFA should be funding predictability for Aboriginal peoples, Nations, Aboriginal governments, and National Aboriginal representative groups, including NWAC.

RECOMMENDATION: That National Standards be incorporated into SUFA which specifically address Aboriginal women's unique issues and concerns.

54. R. Gibbons, *supra* note 5 at 17.

RECOMMENDATION: That the recommendation of the United Nations Committee on Economic, Social and Cultural Rights be observed:

Para 415: The Committee recommends that the State party consider re-establishing a national programme with specific cash transfers for social assistance and social services that... universal entitlements and national standards and lays down a legally enforceable right to adequate assistance.(55)

RECOMMENDATION: That the following recommendations of the Provincial/Territorial governments be followed:

- ❑ Premiers called on the federal government to recognize its treaty, fiduciary, and constitutional responsibilities for the health, education, and well-being of Aboriginal Canadians and to work with provinces, territories and Aboriginal peoples on more effective delivery and financing of health, education and social services for Aboriginal peoples;
- ❑ Premiers stressed the importance of continued Aboriginal involvement to ensure that the needs of Aboriginal children are a priority as work on the National Children's Agenda proceeds.
- ❑ Premiers encouraged continued cooperation between governments and Aboriginal organizations toward addressing the education, skills development and labour market needs of Aboriginal people.(56)

RECOMMENDATION: NWAC underscores the importance of creating employment opportunities and initiatives for Aboriginal women. Aboriginal women live in poverty and every effort must be made by the signatories to SUFA in partnership with Aboriginal peoples to address this problem.

RECOMMENDATION: SUFA should clearly set out substantive rather than formal equality provisions. This is especially important for NWAC because of the fact that Aboriginal women are "doubly disadvantaged" in Canadian society and this consideration must be recognized in the SUFA

55. *Supra* note 11.

56. *Supra* note 38.

VI. Conclusion

Past social policy, based on false assumptions about Aboriginal people and aimed at their colonisation and assimilation, has left a heritage of dependency, powerlessness and distrust. Establishing a new relationship based on mutual recognition, mutual respect, sharing and mutual responsibility in the area of self-government is the challenge of the twenty-first century. Aboriginal peoples are anxious to put the past behind them and work with governments in Canada to meet that challenge. They are gathering strength for the task ahead.(57)

There is much work to be done in the area of Canadian social policy to assist in ameliorating the deplorable conditions that Aboriginal women and children live in. Recommendations of the United Nations Committee on Economic, Social and Cultural Rights must be observed and complying with the recommendations of the Royal Commission Report on Aboriginal Peoples would do much to assist Aboriginal women and children in moving forward.

It is imperative that NWAC be fully engaged in SUFA and that we, strive together with the Federal/Provincial/Territorial governments in creating a better world for our children. We are hopeful that we will be given an opportunity for more meaningful participation and are shored up by the Prime Ministers expressed commitments in his speech to the throne:

The Government is committed to strengthening its relationship with Aboriginal people....it (the Government) will work to ensure the basic needs are met for jobs, health, education, housing and infrastructure. This commitment will be reflected in all the Government's priorities. (2001 Throne Speech)

57. RCAP, *supra* note 32 at 7.

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VIII. Appendix A

QUESTIONNAIRE SUFA & HOW IT HAS IMPACTED ABORIGINAL WOMEN

1. We you aware that the Federal/Provincial/Territorial governments had signed a Social Union Framework Agreement (SUFA) in 1999?

YES NO
2. We you aware of the contents of SUFA?

YES NO
3. Generally, in light of SUFA, do you feel that programs and services for Aboriginal women and children, delivered by the Federal government, have increased or improved during the past 3 years, EXPLAIN?
4. Generally, in light of SUFA, do you feel that programs and services for Aboriginal women and children, delivered by **your** Territorial governments, have increased or improved during the past 3 years, EXPLAIN?
5. Generally, in light of SUFA, do you feel that programs and services for Aboriginal women and children, delivered by **your** Provincial government have increased or improved during the past 3 years, EXPLAIN?
6. Are you aware of any new initiatives, on the part of the Federal/Provincial/Territorial governments, for improving or addressing Aboriginal women's health issues, please provide examples:
7. If you were aware of new initiatives, in the area of Aboriginal women's health, do you know if they were developed in consultation with Aboriginal women?

YES NO
8. During the past 3 years do you feel that the Federal/Provincial/Territorial

governments have adequately addressed Aboriginal women's health issues, please explain:

9. Are you aware of any new initiatives, on the part of the Federal/Provincial/Territorial governments, in the area of Aboriginal women's employment, please provide examples:

10. If you were aware of new initiatives, in the area of Aboriginal women's employment, do you know if they were developed in consultation with Aboriginal women?

YES

NO

11. During the past 3 years do you feel that the Federal/Provincial/Territorial governments have adequately addressed Aboriginal women's health issues, please explain:

12. Are you aware of any new initiatives, on the part of the Federal/Provincial/Territorial governments, for improving or addressing services for Aboriginal children's early childhood development, please provide examples:

13. If you were aware of new initiatives, in the area of Aboriginal children's early childhood development, do you know if they were developed in consultation with Aboriginal women?

YES

NO

14. During the past 3 years do you feel that the Federal/Provincial/Territorial governments have adequately addressed Aboriginal children's need for early childhood development services, please explain:

15. Do you feel that during the last 3 years that the Federal/Provincial/Territorial governments have worked effectively to address Aboriginal child poverty, explain:

16. Are you aware of any work by either the Federal/Provincial/ or Territorial governments to decrease the numbers of Aboriginal children in care, explain:

17. Do you feel that single mothers are provided adequate services and programs by either the Federal/Provincial/ or Territorial governments?

18. If you don't feel that single mothers are provided adequate services and programs, how do you feel that these could be improved?
19. Are you aware of any new initiatives, on the part of the Federal/Provincial/Territorial governments, in the area of Aboriginal women's homelessness, please provide examples:
20. If you were aware of new initiatives, in the area of Aboriginal women's homelessness, do you know if they were developed in consultation with Aboriginal women?

YES NO
21. During the past 3 years do you feel that the Federal/Provincial/Territorial governments have adequately addressed Aboriginal women's homelessness, please explain:
22. Are you aware of any new initiatives, on the part of the Federal/Provincial/Territorial governments, in the area of Aboriginal women's education, please provide examples:
23. If you were aware of new initiatives, in the area of Aboriginal women's education, do you know if they were developed in consultation with Aboriginal women?
24. During the past 3 years do you feel that the Federal/Provincial/Territorial governments have adequately addressed Aboriginal women's education, please explain:
25. Are you aware of any new programs and services provided by either the Federal/Provincial/Territorial governments, for Aboriginal children, please provide examples:
26. Do you feel that the Federal/Provincial/Territorial governments have adequately addressed Aboriginal children's issues, please explain:

27. Overall have you noticed any improvement or increase in the delivery of programs and services to Aboriginal women and children over the past 3 years, explain?

28. How would you rate the Federal/Provincial/Territorial governments efforts to improve social conditions for Aboriginal women and children (circle)?

Fair

Good

Very Good

Excellent

29. Do you have any further comments regarding the Federal/Provincial/Territorial governments Social Union Framework Agreement and How it Impacts Aboriginal women: