



Culturally Relevant Gender Based Analysis

A Policy Paper

**Prepared for The Second National Aboriginal Women's Summit II
Native Women's Association of Canada
Yellowknife, NT
July 29 – 31, 2008**

July 2008

© Native Women's Association of Canada

Table of Contents

Introduction	Page 1
Background	Page 1
Current Conditions	Page 3
Best Practice	Page 5
Lessons Learned	Page 6
Recommendations From NAWS 1	Page 7
Conclusions	Page 9

Introduction

This policy paper provides background information for the Second National Aboriginal Women's Summit (NAWS II) to be held from July 29th to 31st in Yellowknife, Northwest Territories, on the topic of Culturally Relevant Gender Based Analysis (CRGBA) - the focus of the plenary session and one of the related breakout sessions under the theme Strength, Balance and Honour. This paper builds on the CRGBA Issue Paper prepared by the Native Women's Association of Canada (NWAC) for the first National Aboriginal Women's Summit (NAWS I) held in Corner Brook, Newfoundland and Labrador.

Background

Due to successful policy dialogues, such as NAWS I, there is a growing recognition of the need for a CRGBA to be applied to all legislative and policy initiatives relevant to Aboriginal women in Canada. This recognition is apparent in government and organizational advancements in this area – including NWAC's recently developed CRGBA tool, the government of Newfoundland and Labrador's development of a culturally appropriate component to enhance its gender based analysis process and Status of Women Canada's recent workshop on CRGBA with National Aboriginal Organizations (NAOs), to name just a few examples.

Due to the work completed by the international women's movement, the need for a gender based analysis (a GBA) gained international acceptance in 1995 following the World Conference on Women's Five Year Review (Beijing +5), which was adopted by Canada along with many other states. Prior to, and since this time, the international Indigenous women's movement has been calling for recognition of a CRGBA, meaning a GBA that bridges the persistent analytical gaps between the global women's movement and the international Indigenous movement by putting forward Indigenous conceptualizations of gender-based analysis, to rights such as the right of self-determination.¹

A CRGBA ensures that the interconnectedness of individual and collective rights of Indigenous women is adequately recognized at all policy, program and legislative levels, which is related to understanding what the principle of universality of human rights means to Indigenous women:

“...FIMI [the International Indigenous Women's Forum] understands the universality of human rights to mean, for example, that every woman in the world is entitled to exercise the full range of her rights, without exceptions based on culture, tradition, or religion. In addition, FIMI understands the indivisibility of rights to mean that Indigenous women can only enjoy their right to a life free of

¹ International Indigenous Women's Forum (FIMI), *Mairin Iwanka Raya: Indigenous Women Stand Against Violence: A Companion Report to the United Nations Secretary-General's Study on Violence Against Women* (New York, FIMI, 2006) [FIMI] at 11.

violence when the collective rights of their Peoples are upheld.

Like many other groups who have endured discrimination and exclusion, Indigenous Peoples have found in the human rights paradigm a cohesive global language, a moral framework, and a legal structure through which to pursue their claims. Yet, conventional approaches to human rights have failed to adequately protect Indigenous women. The problem goes beyond the discriminatory application of human rights law to the nature of how rights themselves are conceived: namely as an entitlement of individuals rather than collectives.”²

FIMI assesses how an approach that is both culturally appropriate and gender sensitive, utilized by Indigenous women, informs an integrated analysis of violence against Indigenous women:

“Based on [a] historical perspective, FIMI is able to link strategies against gender violence with strategies to restore Indigenous rights.

Thus, FIMI prioritizes the rights of survivors and the accountability of abusers, and looks beyond the criminal dichotomy of victim and perpetrator to inquire about the reasons that battering occurs, including the conditions that shape abusers’ psychological, moral, and spiritual dysfunction. For Indigenous men, that dysfunction is rooted in the violation of their collective rights, including the loss of territories, traditions, livelihoods, food supplies, sources of medicine, social networks, and other elements that support emotional health and a positive masculine identity....

While FIMI works to address the ways that gender-based violence has permeated Indigenous communities, we reject the notion that violence committed by Indigenous men is simply a negative consequence of colonization. Rather, such violence is an enforcement mechanism used to shape relations of power within Indigenous families and communities.

FIMI’s integrated analysis takes into account the impact of historical wrongs against Aboriginal peoples and, at the same time, calls on all individuals to be accountable for their actions against others, consistent with worldviews of Aboriginal peoples and the body of international instruments and national laws won through the efforts of women’s rights advocates.”³

² FIMI at 15.

³ FIMI at 33.

What this analysis draws out is the benefit of applying CRGBA to the complex, systemic forms of violence facing Indigenous women – the need for integrated solutions that address the root causes related to historic *and* contemporary forms of oppression.

NWAC has been actively involved in advancing the need for such a CRGBA at the local, national and international level. The recommendations from NAWS I, identified below, provide a framework for achieving this goal. Below, current conditions are set out briefly. Some examples of best practices and lessons learned will be outlined as a way to further the dialogue on implementing a CRGBA. This will be followed by an examination of the action items required to implement the NAWS I recommendations.

Current Conditions

The current socio-economic, political and legal status has been set out in NWAC's policy papers for NAWS II and in NAWS I Issue Papers.⁴ Suffice it to say that the need for a CRGBA remains high in Canada today. It ensures that the "diversity and different circumstances of Aboriginal women based on their distinctive cultures and cultural practices within the First Nations, Métis and Inuit peoples" is fully captured.⁵ As noted above, this growing recognition is a necessary first step, to achieving true equality for all Aboriginal women in Canada.

Concretely, the application of NWAC's CRGBA will result in measuring the effectiveness of policies, programs and laws in meeting the needs of all Aboriginal women.⁶ This is because it is structured to include a "report card" evaluation template – a unique feature in the models that currently exist.

More generally, some objectives of a CRGBA include the following:

- Assessment of performance measures at all stages of policy, program and legislative initiatives (from development, to implementation, to monitoring

⁴ For example, in NWAC, "Culturally Relevant Gender Based Analysis: An Issue Paper" (Ottawa: NWAC, 2007) at 4 it states,

In Canada, Aboriginal women and girls experience extreme marginalization and suffer from inequalities related to their social, economic, cultural, political and civil rights that breed violence, such as post-colonial structural inequalities, family violence, racialized and sexualized violence, gendered violence, poverty, lack of access to adequate housing, including the lack of access to matrimonial property rights, lack of access to justice, low education and employment rates, low health status and little or no political participation.

⁵ NWAC, "Culturally Relevant Gender Based Analysis and Assessment Tool For Health Canada: Aboriginal Health Transition Fund 2007-2008" (Ottawa: NWAC, 2008) at 12.

⁶ The NWAC Board of Directors emphasized the need for an application of a CRGBA into Canada's legislative framework, at all levels, particularly where Aboriginal populations are impacted. NWAC Board of Directors, June 7, 2008, Ottawa, ON.

and evaluation;

- A Culturally Relevant Gender Based Analysis works in collaboration with national and international women's organizations, governments and NAOs and other organizations to further define the needs and develop a CRGBA;
- A Culturally Relevant Gender Based Analysis challenges the assumption that all people are affected in the same way;⁷
- A Culturally Relevant Gender Based Analysis is supported by factual evidence;
- A Culturally Relevant Gender Based Analysis engages with the people it affects;
- A Culturally Relevant Gender Based Analysis is applied at each phase of policy/program development/implementation and monitoring at each phase/step/stage;
- A Culturally Relevant Gender Based Analysis is incorporated into the core of policy/program and legal development before the first drafting, ie: in consultation with NWAC;
- A Culturally Relevant Gender Based Analysis provides a checklist with suggested "upgrades" to assist in created a Culturally Relevant Gender Based Analysis.⁸

Core elements of a CRGBA identified by Status of Women Canada, based on discussions with Aboriginal women, include:

- Acknowledging and linking the roots of oppression, such as the effects of racism and sexism;
- Honouring a holistic approach that includes respect for self, others, and the values of roles played by men and women in society as well as respecting traditions and a relationship to the land;
- Valuing traditional teachings including those that offer a greater degree of equality between men's and women's roles [as compared to non-Aboriginal values];

⁷ For example Health Canada uses a "determinants approach" with 12 determinants of health, gender being one. NWAC should advocate for an Aboriginal women's approach

⁸ *Supra* note 1 at 12.

- Honouring a holistic approach to respecting relationships, including those between and among individuals, communities and Nations; and
- Taking a rights-based approach with a strong emphasis on teaching the youth about these inter-relationships.⁹

It is essential to recognize that effectively implementing a CRGBA means recognizing the unique needs, perspectives and rights of all Aboriginal women, including Aboriginal women with disabilities and two-spirited Aboriginal women, for example. Below, an example of a best practice in the application of a CRGBA as well as an example of a lesson learned on the results of not effectively applying a CRGBA is set out.

Best Practice

NAWS I

At the First Ministers Meeting held in 2005, President Jacobs voiced her disappointment that the key concerns of Aboriginal women in Canada, such as addressing violence, were not part of the meeting agenda. Based on this, Premier Danny Williams, Newfoundland and Labrador, announced his decision to host the first National Aboriginal Women's Summit held in Corner Brook, NL in June 2007. This provided the first opportunity for Aboriginal leaders, Aboriginal women and all levels of government to work in partnership to stop violence against Aboriginal women through a holistic approach that included an examination of the following themes: health, safety and wellness; equality and empowerment and strength, balance and honour. This historic event resulted in 137 recommendations made by First Nations, Inuit and Métis women, 59 of which were identified as priorities and 29 of which were highlighted as requiring immediate action.

This is an example of a best practice in the application of a CRGBA. The obvious next step is to ensure the implementation of these recommendations through continued collaborative efforts between all partners. It is apparent from the "National Aboriginal Women's Summit Summary Report on Progress since NAWS I" that some of this work has already been initiated. NAWS II will provide an opportunity to ensure that the best practices employed at NAWS I continue to be expanded to ensure that the necessary changes identified become a reality in the short, medium and long term. The prominence of CRGBA, as the opening plenary session and as a separate breakout session, setting the stage for all discussions at NAWS II, is a positive step in this direction.

⁹ Status of Women Canada, "Moving Toward Culturally-Relevant Gender-Based Analysis: Report of a Status of Women Canada Workshop with National Aboriginal Organizations" (Ottawa: SWC, 2008) at 7.

Lessons Learned

As is detailed in the NWAC Policy Paper on “Domestic and International Law and Policies Affecting Aboriginal Women’s Rights” for NAWS II, the government of Canada recognized the need to collaborate with NWAC and the Assembly of First Nations (AFN) in its law reform efforts on matrimonial real property, with the goal of reaching consensus on a solution to Matrimonial Real Property for First Nations individuals living on reserve who currently do not have equitable protections to resolving MRP disputes.

This was an excellent process of collaboration and partnership – however the government of Canada put forth legislation in March 2008 without the approval of NWAC and AFN. NWAC’s concerns with the proposed legislation is that it does not appropriately recognize Aboriginal and Treaty rights and, related to this, does not adequately balance the collective and individual rights of Aboriginal women. Further, NWAC called for an implementation plan to be mutually developed between the federal government, NWAC and AFN, based on adequate input from the local community level. This implementation plan would outline the non-legislative solutions aimed at addressing critical systemic issues of violence, poverty, lack of housing, limited access to justice and unequal power that must be implemented *at the same time* as legislative reforms are made. This approach is essential in order to prevent the failure of the legislative aim of MRP – to improve the equality rights of Aboriginal women and communities.

NWAC firmly believes that the current approach by the federal government will lead to a repeat in the historical experience of Bill C-31 in 1985. This legislative reform of amendments to the membership and status provisions of the *Indian Act* designed to remedy equality rights violations had the effect of making matters worse for First Nations women and their families. This failure was due to the lack of concomitant non-legislative measures as well as flawed provisions in the legislation that contained residual sexual discrimination *and* provisions that eroded collective rights over First Nations land.

The lesson to be learned in the MRP process to date is that participation of Aboriginal women in discussions is not sufficient. First, participation by representative Aboriginal women’s groups must be based on adequate resources. Second, participation in decision-making processes, such as legislative reforms, must lead to not only the voices of Aboriginal women being heard, but these opinions adequately reflect in the end product – in this case, legislation and the underlying policy and program environment. If this is not done, the duties of the Crown’s consultation required under constitutional law remain unmet.

The lesson learned in this process is that for CRGBA to be meaningful, the perspectives of Aboriginal women must be implemented and not simply discussed.

Recommendations from NAWS I and Related Action Items

The goal of the breakout session on CRGBA is to focus on identifying strategic action items aimed at implementing four recommendations from NAWS I (2007), which are set out below, followed by strategic action items identified by NWAC.

Recommendation #19:

NAO's, Federal, Provincial, Territorial, and all governments ensure that "culturally-based" GBA processes are established, and that Aboriginal women be resourced to define for themselves the impact of any proposed legislation, policy, programs and services.

Protection of intellectual property and indigenous knowledge transmission must be included and respected through GBA.

Action Items:

This recommendation requires greater resourcing of Aboriginal women's representative organizations, including NWAC as well as Aboriginal governments and representative organizations. This would indicate a higher level of recognition of the leadership role that Aboriginal women's representative organizations, including NWAC, play in furthering the application of a CRGBA as experts in the area. Further, it requires federal, provincial and territorial governments to live up to their constitutional and international obligations to engage in meaningful consultation and consent when dealing with Treaty and Aboriginal rights. A rights-based approach, discussed above, must be taken when evaluating the impact of any proposed legislation, policy, programs and services.

Recommendation #20:

Implementing a culturally relevant gender based analysis (CRGBA) framework in all legislative, policy and programming at all government levels will provide critical insight into the current situation forcing outcomes to be more holistic and inclusive.

Action Items:

In addition to the action items mentioned above, this requires the integration of the objectives listed by NWAC and the core elements identified by Status of Women Canada above.

Recommendation #21:

Full participation of Aboriginal women at all decision making tables is needed so they are well served in all legislative, policy and programming initiatives affecting Aboriginal people.

Action Items:

Representative Aboriginal women's organizations, such as NWAC, must be given the necessary resources to play a central role in the application of a CRGBA. In particular, leading organizations such as NWAC who have shaped the discourse on the need for a CRGBA at the local, national and international levels are well placed to play the role of evaluators as holders of expertise in this area. As demonstrated by the examples of lessons learned and best practices, existing power imbalances must be equalized if Aboriginal women are going to regain their rightful place and leaders and decision-makers with the long term effect of creating meaningful change in the socio-economic, political and legal status of Aboriginal women in Canada.

Recommendation #14:

Gender equity is a right and must guide all policies and legislation while taking into account the distinctiveness of First Nations, Métis and Inuit women.

Action Items:

This recommendation should be revised to read, "Gender **equality** is a right **for all Aboriginal women** and must guide all policies and legislation while taking into account the distinctiveness of First Nations, Métis and Inuit women **as well as Aboriginal women with disabilities, sexual minorities, the youth and the elderly.**"

This revised wording is a more holistic approach to achieving equality and is consistent with section 35(4) of the Canadian Constitution and section 15 of the Canadian Charter of Rights and Freedoms.

Revised recommendation #14 requires that the application of a CRGBA take into account the multiplicities of identities of Aboriginal women. The action items that are required to make this a reality include creating *and supporting* a national strategic action plan that identifies short, medium and long term action items aimed at addressing systemic discrimination and inequalities facing all Aboriginal women in Canada. This strategic action plan must be consistent with the principles of a CRGBA and constitutional, domestic and international rights and obligations.

Conclusion

The recommendations and action items set out above on applying a culturally relevant gender based analysis to the policies, programs and laws related to Aboriginal women and their families in Canada provide a strong framework for a comprehensive approach to improving the lives of Aboriginal women and their families. In making the next steps forward to implementation of a CRGBA it will be imperative that we learn from our past experiences, and ensure that future efforts are in conformity with the objectives, core elements, and principled, rights-based approach discussed in this policy paper.