



**Native Women's
Association of Canada**

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**L'Association des  
femmes autochtones  
du Canada**

**Final Written Submissions of the Native  
Women's Association of Canada**

**National Inquiry into Missing and  
Murdered Indigenous Women and Girls**

**December 11, 2018**

**Table of Contents**

- I. Acknowledgement ..... 2
- II. About NWAC ..... 2
- III. Overview of Submissions ..... 2
- IV. RECOMMENDATIONS ..... 4
  - A. FAMILIES-FIRST APPROACH AND RECOMMENDATIONS ..... 4
  - B. CHILD WELFARE SERVICES ..... 6
  - C. MENTAL HEALTH AND ADDICTIONS SUPPORTS ..... 8
  - D. LEGISLATIVE AND INSTITUTIONAL CHANGES ..... 12
  - E. EDUCATION AND EDUCATIONAL SYSTEMS ..... 17
  - F. STABLE AND ADEQUATE FUNDING ..... 19
- VI. Applying an UNDRIP-Based Lens to Action on Recommendations ..... 22
  - B. How the UNDRIP, Indigenous law, and Canadian law create a legal imperative to follow these Recommendations ..... 25
  - C. Indigenous women, girls, and gender-diverse people have a right to participation in decision-making matters with their chosen ..... 30
- VII. Gaps in Knowledge: Recommendations Responding to 2SLGBTQ+ and Gender-Diverse People’s Safety..... 35
- VIII. Conclusion ..... 38
- SCHEDULE 1 – TABLE OF AUTHORITIES ..... 40
- SCHEDULE 2 – List of Recommendations ..... 43
  - i. Families-First Approach and Recommendations ..... 43
  - ii. The Child Welfare System ..... 43
  - iii. Mental Health and Addictions Support ..... 44
  - iv. Legislative and Institutional Changes..... 45
  - v. Education and Education Systems..... 48
  - vi. Stable and Adequate Funding..... 48
  - vii. Proper Implementation of the UNDRIP ..... 49
  - viii. Identified Gaps for 2SLGBTQ+ Safety ..... 50

## **I. Acknowledgement**

**The Native Women’s Association of Canada (“NWAC”) dedicates these submissions to our stolen sisters and to their families, both blood families and families of the heart.**

*You are loved, you are treasured, you are sacred, you matter, and you will not be forgotten.*

## **II. About NWAC**

1. NWAC is founded on the collective goal to enhance, promote, and foster the social, economic, cultural and political well-being of First Nations, Métis and Inuit women, girls and gender-diverse people within First Nations, Métis and Inuit Canadian societies. NWAC is an aggregate of Native women’s organizations from across Canada and was incorporated as a non-profit organization in 1974. Much like a “Grandmother’s Lodge”, we as aunts, mothers, sisters, brothers and relatives collectively recognize, respect, promote, defend and enhance our Native ancestral laws, spiritual beliefs, language and traditions given to us by the Creator.
2. NWAC’s foundational research initiative, “Sisters in Spirit”, was one of the first, if not the first, coordinated research effort to thoroughly and respectfully document cases of missing and murdered Indigenous women and girls. NWAC worked closely with families to gather the truths of our stolen sisters in order to support the call for action on the national epidemic of violence against Indigenous women and girls. NWAC recognizes the families, grassroots Indigenous activists and organizations, and allied activists and organizations who have also fought tirelessly for an end to the catastrophically high numbers of violence against Indigenous women, girls, and gender-diverse people. NWAC honours the spirits of our stolen sisters and the voices of their families, and their tireless fight for justice and action.

## **III. Overview of Submissions**

3. For the entire duration of the National Inquiry into Missing and Murdered Indigenous Women and Girls (“the National Inquiry”), NWAC has advocated for a *families-first*

approach in all aspects. In the same way that NWAC has called on the National Inquiry to take this position throughout the inquiry process, NWAC now calls on the National Inquiry to prioritize recommendations coming from the families who have testified before this inquiry.

4. NWAC further submits that Indigenous women, girls, gender-diverse people, and their families have a right to have their voices heard. These voices are not silent – they are loud and they are resilient. But they are not always heard. Indigenous women, girls, and gender-diverse people have a right to their own place at both Indigenous and non-Indigenous governance tables where decisions that directly impact their lives, safety, and well-being are made.
5. In Part I of these submissions, NWAC makes recommendations based on six key priorities: taking a families-first approach to the issue of missing and murdered Indigenous women, girls, and gender-diverse people, the child welfare system, mental health and addictions supports, legislative and institutional changes, education and education systems, and stable funding.
6. The National Inquiry has heard repeatedly from Indigenous women, girls, gender-diverse people and their families that have expressed concerns that the recommendations in the National Inquiry’s final report will not be enforceable.<sup>1</sup> For this reason, NWAC argues in Part II of these submissions that the Canadian state has a legal obligation to act on the recommendations of this National Inquiry based on the proper implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (the “UNDRIP”), the Canadian state’s adoption thereof, and the indivisibility of the rights contained in the UNDRIP from other imperative human rights.<sup>2</sup> Specifically, NWAC makes two arguments. The first is that the Canadian state has the obligation to respect Indigenous legal principles and Indigenous self-government in achieving a renewed relationship between Canada and Indigenous Nations. The second is that the Canadian state must follow the lead of Indigenous women, girls, and gender-diverse people when making legislative and institutional changes that impact the lives, safety, security, and well-being of Indigenous women, girls, and gender-

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<sup>1</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 78, Vancouver (4 April 2018) at 37 [Part I Transcript Volume 78].; National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 108, Vancouver (7 April 2018) at 52053 [Part I Transcript Volume 108]

<sup>2</sup> UN GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295, 46 ILM 1013 (2007) [UNDRIP].

diverse people. NWAC submits that an UNDRIP-based lens must be applied to all recommendations that the National Inquiry includes in its final report.

7. In Part III of these recommendations, NWAC makes specific recommendations to promote the safety and equality of Indigenous 2SLGBTQ+ and gender-diverse people.

## IV. RECOMMENDATIONS

### A. FAMILIES-FIRST APPROACH AND RECOMMENDATIONS

8. **Recommendation 1: Require the Canadian state to immediately establish a reparation fund for the families (“families” include but are not limited to parents, grandparents, aunts, uncles, siblings, cousins, and any customary or traditional kinship or adoption ties) of missing and murdered Indigenous women, girls, and gender-diverse people.** The Canadian state, as demonstrated through the extensive evidence provided to the National Inquiry, has played a direct role in the epidemic of violence against Indigenous women, girls, and gender-diverse people. Racist, colonial, and sexist legislation and institutions have the cumulative effect of exacerbating and condoning this violence, and so the Canadian state’s involvement in this violence may be traced through numerous institutions under its control. Based on both principles of Indigenous and Western legal systems, discussed later in these submissions, the Canadian state owes reparations to survivors and families. This is a step that must be taken immediately, and NWAC submits that this step cannot wait until the release of the National Inquiry’s final report. Survivors and families have waited much too long for reparation from the Canadian state.
9. **Recommendation 2: Require the National Inquiry and the Canadian state to continue to reimburse families and survivors who have participated in the National Inquiry process for all costs associated with their participation. This includes costs for transportation, accommodations and also the costs incurred by those who supported the families at the National Inquiry.** Indigenous women, girls, and gender-diverse people and their families have shared their truths and their lived experience with the National Inquiry at great personal cost, and the Canadian state in particular has a

responsibility to pay these costs in full to the participants as part of their obligation to pay reparations to those they have harmed through colonial, systemic, and institutional violence.

10. **Recommendation 3: Require the National Inquiry and the Canadian state to allocate easily accessible and quickly delivered funding for ongoing aftercare for Indigenous women, girls, gender-diverse people and their families who have participated in this process.** Many individuals who have shared their truths through trauma either did not receive after-care in a timely way, or if they did they struggled to obtain swift and continued funding.<sup>3</sup> Those who have given truth through trauma cannot be left without care for the trauma they have experienced. NWAC argues that since both the National Inquiry and the Canadian state have benefitted from the evidence gained through truth-telling that exposed families and survivors to trauma, they bare the obligation to make reparations to survivors and families.
11. **Recommendation 4: Require the National Inquiry to pay special attention to the recommendations that come from the lived experiences of Indigenous women, girls, gender-diverse people, and their families.** This is imperative when the National Inquiry makes its own recommendations. The impact that systemic and colonial violence has had on Indigenous women, girls, gender-diverse people, and their families cannot be understated. The National Inquiry has gathered extensive evidence describing how colonization and genocide have impacted sacred Indigenous lives daily. In order to properly address colonial violence, the colonial state must seek out and pay attention to the truths of the people who suffer that colonial violence. Families and survivors are not only the people who know first-hand of colonial violence, but they are also the people who the Canadian colonial state must make restitution to as a legal imperative.
12. **Recommendation 5: Require the Canadian state to pursue and fully implement the institutional, legislative and policy changes that Indigenous women, girls, gender-diverse people and their families have identified and require for their safety, well-being, and for the safety and well-being of generations to come.** Through the National Inquiry, the Canadian state has undertaken to learn about this colonial and

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<sup>3</sup> Native Women's Association of Canada, "NWAC Report Card May 2017-March 2018", NWAC.ca (March 2018), online: <https://www.nwac.ca/wp-content/uploads/2018/05/NWAC-MMIWG-Report-Card-3-May17-Mar18.pdf>.

systemic violence and to address it effectively. NWAC submits that one of the best ways to do this is by listening and acting upon recommendations that come from lived experience, and further argues that recommendations stemming from this lived experience with colonial violence creates duties and obligations that the Canadian state cannot turn its back on. The Canadian state cannot claim ignorance of what it now knows.

## B. CHILD WELFARE SERVICES

- 13. Recommendation 6: Require any and all changes to child welfare services and service delivery to favour strengthening families and keeping families together over child apprehension.** Indigenous women, girls, gender-diverse people and their families have identified the child welfare system as an institutional source of colonial violence partially responsible for the epidemic of violence against Indigenous women, girls, and gender diverse people. This system was commonly referred to as a replacement for the residential school system, and acts as another way to separate Indigenous children from their parents and destabilize Indigenous families for generations.<sup>4</sup> The child welfare system, which has a strong emphasis on apprehending Indigenous children, also exposes those children to multiple forms of violence inside of foster homes.<sup>5</sup> The impacts are devastating, and include low-confidence in children, increasing vulnerability to violence (including sexual violence), compounding the effects of crisis and trauma, increased likelihood of drug and alcohol abuse, increased likelihood of other mental illnesses, and further contributing to suicide crises on this land.<sup>6</sup> Experts, those in their fields and those in their experiences, overwhelmingly recommended keeping families together and

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<sup>4</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Parts II & III Volume XIII*, Institutional & Expert & Knowledge-Keeper Panel Child and Family Services, Winnipeg (4 October 2018) at 26 [Parts II & III Transcript Volume XIII].

<sup>5</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 56, Happy Valley Goose Bay (8 March 2018) at 4-5 [Part I Transcript Volume 56]; National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 18, Membertou (31 October 2018) at 101-102 [Part I Transcript Volume 18]; National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 19, Membertou (1 November 2018) at 151-152 [Part I Transcript Volume 19].

<sup>6</sup> Part I Transcript Volume 19, *ibid*; Part I Transcript Volume 18, *ibid*; Part I Transcript Volume 56, *ibid*; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Parts II & III Volume XI*, Institutional & Expert & Knowledge-Keeper Panel Child and Family Services, Winnipeg (2 October 2018) at 107-117 [Parts II & III Transcript Volume XI].

strengthening families.<sup>7</sup> If a family needs support, this situation should be viewed holistically to identify the root of the need and address that need properly in a strength-based way. If children cannot stay in their home, then removal from the community must be the exception, not the rule.<sup>8</sup>

14. **Recommendation 7: Require any and all changes to child welfare legislation and services to recognize and embrace the role of extended family.**<sup>9</sup> This includes but is not necessarily limited to grandparents, aunts, uncles, siblings, cousins, and any customary or traditional kinship or adoption ties. If a child loses their parent or primary care-giver, all possible efforts must be made to keep that child with their family and in their community.
15. **Recommendation 8: Require the Canadian state to acknowledge and agree that Indigenous communities are the leaders in the revitalization and evolution of community- and culture- based family support programs for Indigenous families in their own territories.** Change to this system must not simply be to have provincially or federally operated child welfare services operating in Indigenous communities in a better way or to have the existing structures somehow altered for “cultural appropriateness.” This is the right guaranteed by self-government through numerous legal authorities, including UNDRIP and Bill C-262, *An Act to Ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples* (“Bill C-262”).
16. **Recommendation 9: Require the Canadian state to continuously and adequately fund community-led development of community-based child and family support programs.** Indigenous communities and families have first-hand experience with systemic violence within the Canadian state’s child welfare system, and how this system has caused severe harms to Indigenous families and communities and exacerbates the epidemic of violence against Indigenous women, children, and gender-diverse people.

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<sup>7</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Parts II & III Volume XII*, Institutional & Expert & Knowledge-Keeper Panel Child and Family Services, Winnipeg (3 October 2018) at 125-126 [Parts II & III Transcript Volume XII]; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part I Public Hearings Volume 46(a)*, Rankin Inlet (20 February 2018) at 37; 78 [Part I Transcript Volume 46(a)]; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part I Public Hearings Volume 48(a)*, Rankin Inlet (22 February 2018) at 16 [Part I Transcript Volume 48(a)].

<sup>8</sup> Part I Transcript Volume 46(a), *ibid*.

<sup>9</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part I Public Hearings Volume 50*, Happy Valley Goose Bay (7 March 2018) at 5; 13 [Part I Transcript Volume 50].



Lived expertise with both a dysfunctional system as well as with healing and appropriate family supports places communities in the position to lead, but this requires support. NWAC submits that the harms demonstrated through the evidence in this National Inquiry creates an obligation on the Canadian state to make reparations – reparations that may be accomplished both through drastic legislative, institutional, and funding structure changes that put an emphasis on community led, strength based family support programs. Essentially, the Canadian state must adequately and continuously fund community-led programs in a supporting role as a function of reparation for colonial violence.

17. **Recommendation 10: Require the Canadian state to support and fund families that are caregivers to children of missing and murdered indigenous women and girls.**
18. **Recommendation 11: Require that the Canadian state undertake a dedicated engagement on the experiences of Indigenous 2SLGBTQ+ and gender-diverse youth in the child welfare system, and invest in and clearly identify safe Two-Spirit and LGBTQ houses for children in the child welfare system, particularly in northern, remote, and rural areas.**
19. **Recommendation 12: Require that the Canadian state open or re-open investigations into the deaths of children and youth in the child welfare system, including Two-Spirit and LGTQ+ youth who died under suspicious circumstances.**

### C. MENTAL HEALTH AND ADDICTIONS SUPPORTS

20. **Recommendation 13: Require the Canadian state to recognize its obligation to support Indigenous led, gender-based, anti-racist, and anti-colonial mental health service and delivery.** NWAC recognizes and uplifts the call from the women of many Nations for improved health service delivery, and that this has been identified as particularly relevant for mental health and addictions support. It cannot be understated or ignored how colonialism and genocide on this land have had lasting impacts for generations of Indigenous women, girls, gender-diverse people, and their families. The Truth and Reconciliation Commission (the “TRC”) set out Call to Action 19, which called upon the federal government to close health gaps for Indigenous people in

consultation with Indigenous people.<sup>10</sup> The causes and impacts of intergenerational trauma on all forms of Indigenous health have been explored in detail by this Inquiry and others, and the reality of living with intergenerational trauma within a society. Yet, colonialism and racism continues to lead to poorer health outcomes for Indigenous people.<sup>11</sup> Improvement to the availability, quality, appropriateness, and accessibility of mental health support services is a crucial next step in addressing the epidemic of violence against Indigenous women, girls, and gender-diverse people. The ways in which mental health supports are required and how those supports interact with violence against Indigenous women are multi-faceted.

21. **Recommendation 14: Require the Canadian state to adequately and continuously fund community-led and community-developed visible, accessible, and affordable mental health and addictions services, both in urban centres and remote communities.** Examples have been given throughout the Inquiry of community led services available in some communities that have been very successful, and what is needed now is further support to consider these types of services essential services to have in every community, regardless of location.<sup>12</sup> The need for community led, accessible and affordable mental health services was a repeated issue for remote and northern communities.<sup>13</sup> The reason is not simply to support people within their own communities in their own way, but also to minimize the requirement to travel frequently to urban centres, where a lack of affordable travel and housing accommodations contributes to higher levels of violence against Indigenous women, girls, and gender-diverse people.<sup>14</sup>
22. **Recommendation 15: Require the Canadian state to provide services and funding to support culturally-appropriate healing for trauma that is community-led,**

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<sup>10</sup> Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: Truth and Reconciliation Commission of Canada, 2012) at 2-3 (Call to Action 19).

<sup>11</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part III Volume IX*, Expert & Knowledge-Keeper Panel Racism, Toronto (12 June 2017) at 191-192 [Part III Transcript Volume IX].

<sup>12</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 58, Happy Valley Goose Bay (8 March 2018) at 9 [Part I Transcript Volume 58] & National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 48(b), Rankin Inlet (22 February 2018) at 7-8 [Part I Transcript Volume 48(b)]; National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 47(c), Rankin Inlet (22 February 2018) at 18 [Part I Transcript Volume 47(c)].

<sup>13</sup> *Ibid.*

<sup>14</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part II Volume V*, Institutional Hearing Government Services, Calgary (1 June 2018) at 128 [Part II Transcript Volume V].

**developed, and delivered. This also includes grassroots Indigenous organizations that provide these services.** This includes intergenerational trauma, trauma from sexual violence, trauma from interaction with the Canadian legal system, and tailored mental health supports for family members dealing with trauma from the death or disappearance of a loved one. This also includes supports for survivors of the child welfare system and their families.

23. **Recommendation 16: Require the Canadian state to provide support services and funding for community-led, developed, and delivered services for battered women and their dependents. This also includes grassroots Indigenous organizations that provide these services.** NWAC notes that there is a particular need for supports for battered women in rural, remote, and northern communities that place an emphasis on community safety. This is especially true in small communities where daily interaction with abusers is a strong likelihood. These systems must have sophisticated, culturally and community relevant safety planning procedures and protocols for Indigenous women, girls, and gender-diverse people.
24. **Recommendation 17: Require the Canadian state to provide funding to community-led, developed, and delivered prevention and education programs for the prevention of violence against Indigenous women, girls and gender diverse people.**
25. **Recommendation 18: Require that provincial, territorial, and federal governments fund positions for traditional healers within public hospitals and clinics.**
26. **Recommendation 19: Require the Canadian state to provide support services and funding to Indigenous women and their communities to develop and establish Healing Centres from coast to coast to coast that take a holistic/wraparound approach to housing, mental health, physical health, addictions, and employment. These centres would offer service at all hours, and would include helping survivors find their gifts and focus on healing from intergenerational trauma. These centres and services should additionally be available within communities so that Indigenous women, girls, and gender-diverse people who need to access them need not be displaced from their community. Finally, these centres should include space for children, and have a spiritual component where Elders can work with clients on their overall health.** NWAC honours the importance and value of traditional and

culturally based healing, and recognizes the strength and value of the many ways that culture and traditional medicines bring healing to Indigenous women, girls, gender-diverse people and their families. These Healing Centres can focus on both traditional and western methods (and a mix thereof) at the choosing of the patient. They must include resources, services, and supports in the areas discussed above. The Canadian state can support these Healing Centres, but the development and operation of these centres must be led by Indigenous communities, with an emphasis on the importance of Indigenous women's voice and leadership in development and operation of the centres developed to support them and their families. NWAC further recommends that these Healing Centres house the strength-based, family support centred programming alternatives to the current child welfare system, with emphasis on support and education to strengthen Indigenous families, promote their overall health and well-being, and act as a community support hub to keep families and communities together and strong.

27. **Recommendation 20: Require the Canadian state to make health, life, safety, and security of Indigenous women, girls, gender-diverse people and their families a priority through the development, delivery and funding of Healing Centres. This includes redefining the Canadian state's role as one of support through funding.** The Canadian state knowingly engaged in this National Inquiry to learn the root causes of the epidemic of violence against Indigenous women, girls, and gender diverse people. Intergenerational trauma, racism, colonialism, and genocide are some of the most commonly cited root causes of this epidemic, and it is now the Canadian state's responsibility to recognize their role in this harm to Indigenous communities and Indigenous families and is obligated to take the necessary steps to promote all aspects of health and wellbeing for Indigenous communities and Indigenous families. Furthermore, the Canadian state must follow the lead of the Indigenous women, girls, and gender-diverse people who have shared their lived experience both within and outside of this National Inquiry. Continued colonial, patriarchal, and top-down approaches will only perpetuate and exacerbate violence. In order to promote the best health of Indigenous women, girls, and gender-diverse people, the Canadian state must assume a supporting rather than a leading role in restructuring mental health service delivery.

#### D. LEGISLATIVE AND INSTITUTIONAL CHANGES

28. **Recommendation 21: Require any and all legislative and institutional changes that are initiated to be compliant with the UNDRIP. And that the changes require the free, prior, and informed consent of Indigenous Peoples and their chosen representatives.**<sup>15</sup> These legislative changes cannot occur in the top-down manner the Canadian state is accustomed to using. This is not only because of the violation of the UNDRIP inherent in this process, but also because those with lived experience are in the best position to give recommendations to end violence and address systemic and colonial violence.
29. **Recommendation 22: Indigenous women, girls, gender-diverse people, and their chosen representatives shall have their voice heard, through meaningful, substantive, and continuous consultation. This includes all decisions impacting their daily lives, safety, security, and well-being.** NWAC argues that this includes the chosen representatives of Indigenous women, girls, and gender-diverse people, whose voice in governance must be equally present in order to adequately address violence. However, this should not be taken to mean that Indigenous women’s voices need only be engaged when discussing violence – rather, it is a perpetuation of colonial and patriarchal violence to disenfranchise Indigenous women’s voices on all issues that impact their lives, including but not limited to governance, health, child welfare and family services, labour and employment, justice reform, resource extraction, environmental and climate change initiatives, and education.<sup>16</sup>
30. **Recommendation 23: Require the Canadian state to apply a gender-based analysis to any and all existing or new legislation or policy.**
31. **Recommendation 24: Co-develop with Indigenous women, girls, gender-diverse people and their families external and civilian oversight of all policing institutions. This includes implementation of and adherence to their policies in order to ensure accountability.** By way of example, there have been numerous accounts of police officers from various jurisdictions telling families they had to wait 24 hours before

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<sup>15</sup> UNDRIP, *supra* note 2 at article 19.

<sup>16</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part III Volume V*, Expert & Knowledge-Keeper Panel Human Rights Framework, Quebec City (15 May 2018) at 212-215 [Part III Transcript Volume V].

reporting a loved one missing.<sup>17</sup> This is contrary to policing policy, and in fact one police officer testified that a police officer would have to be “on an extended vacation on Mars” to not realize the importance of such a policy.<sup>18</sup> Yet, this policy was not applied to the cases of many Indigenous women, girls and their families, demonstrating that what appears in a written policy is not necessarily the lived reality for Indigenous people.<sup>19</sup> The seriousness of this breach of policy cannot be understated, as time is precious when beginning the search for a missing person.

32. Although many policing institutions testified that they had policies in place to deal with many of the issues that came up in the course of the National Inquiry, including but not limited to violence, sexual abuse and exploitation, and failure to adhere to investigation protocols, there were admissions that accountability for breaking these policies is lacking.<sup>20</sup> With the “brotherhood” mentality common in many policing institutions, it is easy for accountability to disintegrate, whether accountability is actually absent or at the least perceived to be absent.<sup>21</sup> These review mechanisms must be co-developed with Indigenous women, girls, gender-diverse people and their families. Without accountability, there is no incentive to follow policies aimed at improving justice outcomes for Indigenous women, girls, gender-diverse people, and their families.

**33. Recommendation 25: Require policing institutions to undergo a dramatic shift in their recruitment and training practices to reflect community-minded policing.**

Many police forces claim to be looking for the “best of the best” and emphasize athletic

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<sup>17</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 20, Edmonton (7 November 2017) at 14 [Part I Transcript Volume 20]; National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 24, Edmonton (9 November 2017) at 27 [Part I Transcript Volume 24]; National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 35(a), Thunder Bay (4 December 2018) at 27 [Part I Transcript Volume 35(a)]; National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 31, Saskatoon (23 November 2018) at 16 [Part I Transcript Volume 31]; National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 37, Thunder Bay (4 December 2018) at 50-51 [Part I Transcript Volume 37]; National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part I Public Hearings Volume 11, Winnipeg (18 October 2018) at 72-74 [Part I Transcript Volume 11].

<sup>18</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part II Volume X*, Institutional Hearings Policing, Regina (29 June 2018) at 10 [Part II Transcript Volume X].

<sup>19</sup> *Supra* note 17.

<sup>20</sup> Part II Transcript Volume X, *supra* note 18 at 11, 26; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part II Volume VI*, Institutional Hearings Policing, Regina (25 June 2018) at 33-35 [Part II Transcript Volume VI]; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part II Volume VIII*, Institutional Hearings Policing, Regina (27 June 2018) at 322 [Part II Transcript Volume VIII].

<sup>21</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part II & III Volume XV*, Institutional & Expert/Knowledge-Keeper Hearings Sexual Exploitation, Human Trafficking & Sexual Assault, St. John's (15 October 2018) at 375-76 [Part II&III Transcript Volume XV].

qualifications and competition in their recruitment strategies.<sup>22</sup> A shift to recruiting empathetic, community-minded police officers must occur in Canada in order to assist a cultural shift in policing services, as the culture of the institution must change before policies.<sup>23</sup> Otherwise, their accountability measures will never be successful.

34. **Recommendation 26: Require that the Canadian state undertake to re-open “cold cases” and investigations related to missing and murdered Indigenous women, girls, gender-diverse, and 2SLGBTQ+ people.** The review shall identify any deficiencies in the investigation and where deficiencies are identified, reinvestigate the cold case through a families-first, trauma-informed approach in order to give families closure and find justice
35. **Recommendation 27: Require that the Canadian state accede to the International Convention for the Protection of All Persons from Enforced Disappearance.**
36. **Recommendation 28: Require Coroners’ reports to identify ethnicity of victims in their reports in order to document cases of missing and murdered Indigenous women, girls, and gender-diverse people in order to give families closure and find justice.**
37. **Recommendation 29: Require Coroners’ reports to cross-reference their files with reports of missing and murdered Indigenous women, girls, and gender-diverse people in order to give families closure and find justice.**
38. **Recommendation 30: Require police institutions to gather disaggregated data (race, ethnicity, gender, etc.) when recording crime and to use disaggregated data when analysing and producing crime prevention statistics and reports.** It is difficult to assess unique needs and realities when data does not take into account the very different lived experiences between different identifiable groups, namely First Nations, Metis, and Inuit people as well as 2SLGBTQ+ people. It is difficult to assess the value of data that does not account for important differences in lived experiences, or what that data offers in the way of prevention and safety planning for specific, identifiable groups. The RCMP has identified this as an important gap in their knowledge as a policing institution, and NWAC recommends that future data collection ensure that data is

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<sup>22</sup> Part II&III Transcript Volume XV, *ibid.*

disaggregated.<sup>24</sup> NWAC further extends this recommendation to other government institutions.

39. **Recommendation 31: Require the *Victims Bill of Rights* undergo review and strengthening, in order to provide reliable, enforceable rights to victims of violence and their families.** In its present form, the *Victim's Bill of Rights* is not enforceable. Although it contains many important “rights” for victims of violence and their family, including but not limited to information about the progression of the case, security, and privacy, these rights are ultimately administrative decisions with a thin right of appeal and no cause of action for damages to the family arising from administrative decisions made under the Bill.<sup>25</sup> The *Victim's Bill of Rights* must be updated to include funding and mental health supports for victims and their families, as well as enforceable remedies if families experience trauma when engaging with the Canadian state’s legal system.
40. **Recommendation 32: Require public and news media outlets and institutions offering programs in journalism, public relations, and communications to adopt anti-racist, anti-sexist, anti-homophobic and anti-transphobic ethical reporting standards. This includes meaningful changes to reporting on cases of missing and murdered Indigenous women, girls, and gender-diverse people, as well as cases of death, disappearance, and violence against two-spirit, LGBTQ+ individuals.** Racist, sexist, and discriminatory reporting methods have caused a great deal of harm to Indigenous women, girls, gender-diverse people and their families. It has been common practice in Canada to refer to Indigenous women, girls, and gender-diverse people in dehumanizing ways in media accounts of deaths and disappearances, referring (often incorrectly) to Indigenous women, girls, and gender-diverse people simply as “prostitutes” or “drug-addicts” without any regard for the humanity of the individual or the trauma inflicted on their families. These practices in public media feed into racist narratives that underwrite public perception of Indigenous women, girls, and gender-

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<sup>24</sup> Part II&III Transcript Volume XV, *ibid* at 293-94.

<sup>25</sup> Part II Transcript Volume X, *supra* note 18 at 11, 26; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part II Volume II*, Institutional Hearings Government Services, Calgary (29 May 2018) at 136-143 [Part II Transcript Volume II].



diverse people on from coast to coast to coast.<sup>26</sup> Journalistic ethical standards must be clearer and place an emphasis on trauma-informed, strength-based reporting and denounce dehumanizing journalistic practices.<sup>27</sup>

41. **Recommendation 33: That the National Inquiry support the formation of an Indigenous Women’s secretariat that operates at the federal, provincial and territorial levels. This secretariat would have cross-ministerial opportunity to influence policy and legislation reform, as well as provide advice on the allocation of funds on matters that have a direct input on Indigenous women, girls, Two-Spirit and LGBTQ+ individuals.**
42. **Recommendation 34: Require that the Canadian state immediately end the practice of forced and coerced sterilisation of Indigenous women and girls, thoroughly investigate instances of forced and coerced sterilization against Indigenous women and girls nationally, and make reparations to victims and their families.**
43. **Recommendation 35: Require that Corrections Services Canada immediately cease use of administrative segregation, solitary confinement, and routine strip searches in women’s prisons.** For the purposes of these submissions, “segregation” in federal prisons for women includes solitary confinement, maximum security units also called “secure units,” mental health monitoring, and all other forms of isolation and separation from the general prison population that carry similar effects.
44. **Recommendation 36: Require that the Canadian state fund Indigenous-led solutions and community autonomy over use of s. 81 agreements in the *Corrections and Conditional Release Act* to allow Indigenous communities to non-institutionally manage corrections and criminal justice responses in a manner that respects the rights set out in the UNDRIP.**
45. **Recommendation 37: Require that the Canadian state provide stable and adequate funding to Indigenous women’s organizations in order to provide Indigenous- and community- led specific and individualized resources for reintegration for Indigenous women, girls, and gender-diverse people released from prisons.**

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<sup>26</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part III Volume X*, Expert Witness Hearings Racism, Toronto (13 June 2018) at 103 [Part III Transcript Volume X];

<sup>27</sup> *Ibid.*

## E. EDUCATION AND EDUCATIONAL SYSTEMS

46. **Recommendation 38: Require the Federal and Provincial governments to ensure that schools, universities, colleges, and training institutions develop, design and implement, in equal partnership with Indigenous women, girls, and gender-diverse people and their communities, curriculum that is accurate, ongoing, and meaningful.** Throughout the course of the National Inquiry, government institutions (including policing institutions) testified that they received training and education on colonization and the history of Indigenous people on this land.<sup>28</sup> However, NWAC identified that in many cases this training was one-time training, and could not properly continuously educate institutional players on the complicated realities facing Indigenous women, girls, gender-diverse people and their families.<sup>29</sup>
47. **Recommendation 39: Require universities, colleges and training institutions to make Indigenous history courses, courses on Canada’s history of colonialism and genocide, and courses on understanding intergenerational trauma mandatory courses for all programs.** Every function in society impacts the daily lives of Indigenous women, girls, and gender-diverse people, and all institutional players have the capacity to make uninformed or unintentionally racist or sexist decisions in their roles that could negatively impact Indigenous women, girls, and gender-diverse people. The Canadian state has a long history of ignoring the colonial violence committed against Indigenous women, girls, and gender-diverse people. Improving education across all fields is an important step to take in combatting racial and gender biases in the wider public. Further to this, the Canadian state has often sought the input of Indigenous women, girls, and gender-diverse people only in conversations discussing violence and victimization. It is time for all institutions, including educational institutions, to recognize the importance of and seek out the voices and guidance of Indigenous women, girls, and gender-diverse people in all aspects that impact their daily lives, not just violence and victimization. It is for this reason that NWAC recommends mandatory courses on the history of colonization and the realities of intergenerational trauma not

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<sup>28</sup> Part II Transcript Volume X, *supra* note 18 at 7; Part II Transcript Volume II, *supra* note 25 at 77-80.

<sup>29</sup> Part II Transcript Volume X, *supra* note 18 at 7.

just for social science, law, education, or history programs, but for all university programs, including but not limited to science, technology, engineering, and mathematics fields.

48. **Recommendation 40: Require the Canadian state to fund Indigenous-led educational facilities, including universities, colleges, training institution and teaching lodges, for Indigenous communities not only in urban centres but also in remote communities.** Canada is the only circumpolar country with no university serving northern residents.<sup>30</sup> NWAC recommends that the development of northern universities serving northern learners immediately partner with Indigenous women, girls, gender-diverse people and their families and communities to follow the voices of these people and what the educational needs are in their communities. These universities must also adopt zero-tolerance policies for sexual violence on campus with documentable accountability measures, as well as mandatory courses in all programs teaching the history of colonization on this land and its lasting impacts. Courses should also be dedicated to learning Indigenous cultures, particularly those of the territory on which the university exists. NWAC also strongly recommends funding for universities dedicated to Indigenous knowledge, ways of knowing, histories, traditions, and legal systems, the planning, development, and administration of which must be Indigenous-led.
49. **Recommendation 41: Require Federal, Provincial and Municipal public servants and employees receive mandatory, rigorous, and continuous training about Indigenous culture, anti-racist and anti-sexist communication and behaviour, gender diversity, and pronoun use.**
50. **Recommendation 42: Require universities, colleges and training institutions to engage and consult with Indigenous students and communities in initiatives to combat sexual violence on campus.** NWAC recommends that this include toolkits for both prevention and reaction to sexual assault on campuses, the development of which must be led by Indigenous women, girls, and gender-diverse people. These toolkits must be trauma-informed and must not resort to victim-blaming models of prevention. Rather, prevention must be aimed at the systemic level. Further, NWAC recommends that all

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<sup>30</sup> Bob Weber, “Canadian territories plan to open country’s first northern universities” *The Toronto Star* (17 June 2018), online: <https://www.thestar.com/news/canada/2018/06/17/canadian-territories-plan-to-open-countrys-first-northern-universities.html>.

universities adopt truly zero-tolerance policies for sexual assault and sexual violence on campus. Campuses must be safe places to report sexual violence and sexual assault, and all university staff must be trained to believe victims and to not engage in victim-blaming practices. University staff must also be trained to understand the different factors in the broader society that encourage and condone violence against Indigenous women, girls, and gender-diverse people, increasing their likelihood of targeting for violence, and to recognize these realities as they arise in the context of reporting sexual assault and sexual violence.

51. **Recommendation 43: Require that funding be allocated for education campaigns that are developed and led by survivors of trafficking and exploitation on how to identify exploitation. In order to be effective and accessible, these education campaigns must occur face-to-face as well as online.**

#### F. STABLE AND ADEQUATE FUNDING

52. **Recommendation 44: Require the Canadian state to acknowledge and agree that its primary role in many initiatives is a supporting role – one that provides funding to Indigenous women, girls, gender-diverse people, their families, their communities, and their organizations so that the legislative and institutional changes are Indigenous-led.** NWAC sees this as a crucial step forward in reconciliation and in the proper implementation of the UNDRIP on this land. It is well known that the Canadian state has benefited from assuming control over resources on this land, despite enduring treaty rights and much of the territory remaining unceded. The Canadian state's continued benefit from the resources on this land is a legacy of colonialism. In order to decolonize the Canadian state must repatriate the benefit of these resources. NWAC recommends that this is done in a way that supports true Indigenous self-governance as outlined in the UNDRIP. The Canadian state must re-examine its funding structures, which presently follow a colonial, patriarchal, top-down model that paternalizes funding and forces Indigenous women, girls, gender-diverse people, their communities, and their organizations into a position that constitutes a colonial state-ward relationship rather than a true nation-to-nation relationship.

53. **Recommendation 45: Require the Canadian state to restructure its funding decision process to allow Indigenous communities and organizations to design, develop and implement their own programs and services with the ultimate goal of empowering Indigenous self-governance.** The need for stable funding has been articulated throughout the National Inquiry process by families, communities, front-line service providers, and organizations on numerous occasions.<sup>31</sup> The Canadian state has committed itself to reconciliation and to proper and full implementation of the UNDRIP, and the Canadian state must be held accountable to this commitment.
54. **Recommendation 46: Require the Canadian state to adopt a similar funding structure for Indigenous communities and organizations that presently exists between the federal and provincial governments. Meaning, the federal government will make transfer payments to Indigenous communities and organizations to achieve Indigenous self-governance.**
55. **Recommendation 47: Require the Canadian state to provide stable funding to Indigenous communities and organizations through a restructured process that does not perpetuate structural violence against Indigenous communities and organizations.** NWAC has identified that the present funding model employed by the Canadian state is one that requires Indigenous women, girls, gender-diverse people, their communities, and their organizations to demonstrate repeatedly to the Canadian state that their lives and communities are worth funding and research.<sup>32</sup> Expert witness Dr. Robyn Bourgeois identified this practice as a form of state and colonial violence against Indigenous women, girls, and gender-diverse people.<sup>33</sup> What exacerbates this violence is the requirement to repeatedly prove this value for funding and research repeatedly, even multiple times within the same month or year.<sup>34</sup> The requirement to fit the value Indigenous women's, girls' and gender-diverse peoples' lives into quantifiable colonial

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<sup>31</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Parts II Volume II*, Institutional Hearings Government Services, Calgary (1 June 2018) at 127-138 [Parts II Transcript Volume II]; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Parts II&III Volume XIV*, Institutional & Expert/Knowledge-Keeper Hearings Child & Family Welfare, Winnipeg (1 June 2018) at 139-143 [Parts II&III Transcript Volume XIV].

<sup>32</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Parts II & III Volume XVII*, Expert & Knowledge-Keeper Panel Human Rights Framework, St. John's (17 October 2018) at 155 [Parts II & III Transcript Volume XVII].

<sup>33</sup> Parts II & III Transcript Volume XVII, *ibid.*

<sup>34</sup> Parts II & III Transcript Volume XVII, *ibid.*

metrics exacerbates violence against Indigenous women, girls, and gender-diverse people. Dr. Bourgeois identified that one way to mitigate this harm is to provide stabilized, reliable core funding to communities and organizations, which NWAC argues would further bolster self-determination and self-government since it would absolve, at least in part, the requirement on communities and organizations to spend money in accordance with colonial and state designs and standards.<sup>35</sup>

56. **Recommendation 48: Require the Canadian state to develop a funding model in partnership with Indigenous women, girls, gender-diverse people, their communities and their organizations which does not require Indigenous communities and organizations to compete with one another for the same allotted funds.** A further form of violence is requiring Indigenous communities and organizations to compete with one another for one limited pot of funding. Dr. Bourgeois identified this as a colonial state tactic to exercise control over communities and organizations, and one that is “intentional” and part of a “divide and conquer” strategy that pits Indigenous women, girls, gender-diverse people, their communities and their organizations against one another, giving the colonial state stronger control and dominance over them all.<sup>36</sup> NWAC denounces this practice by the Canadian state and calls for restructuring of funding policies and regimes to finally eliminate colonial practices and move towards supportive funding that NWAC argues Indigenous communities are entitled to in the process of reconciliation.
57. **Recommendation 49: Require the Canadian state to follow the lead of Indigenous women, girls, gender-diverse people, their communities and their organizations on projects and services as opposed to the current process where the Canadian state seeks input after deciding what course the state will take.** If the present government is serious about self-governance and reconciliation, as they have made clear in their statements unequivocally supporting the UNDRIP, then now is the time for the Canadian state to take action through renewed funding measures that specifically recognize exactly how the Canadian state has come to benefit financially on this land, and how that has come at a dire cost to Indigenous women, girls, and gender-diverse people.

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<sup>35</sup> Parts II & III Transcript Volume XVII, *ibid*.

<sup>36</sup> Parts II & III Transcript Volume XVII, *ibid* at 152.

## VI. Applying an UNDRIP-Based Lens to Action on Recommendations

### A. *The UNDRIP: A Framework for the Legal Imperative to Act on the National Inquiry's Final Report*

58. The UNDRIP is a critical document that sets out the inherent rights of Indigenous peoples. The UNDRIP is “grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity.”<sup>37</sup> It is important to keep in mind that the UNDRIP does not somehow grant rights to Indigenous people. These are fundamental rights that are inherent to all Indigenous people, and it is not for the Canadian state to grant these rights. In this way, Indigenous people’s rights as stated in the UNDRIP unsettle settler law, and future implementation of the UNDRIP must continue to criticize and transform the status quo.
59. The UNDRIP recognizes the right to self-determination, self-government, and indigenous legal authority, among many other things. The UNDRIP is Indigenous peoples’ vision of human rights, and the right for Nations to use their own knowledge and laws to determine and govern their daily lives in their own way.<sup>38</sup> Taking a human-rights-based approach to the recommendations of the National Inquiry, including those customary and inherent rights stemming from legally binding obligations that the Canadian state has voluntarily undertaken, provides a solid foundation for the enforceability of those recommendations.<sup>39</sup>
60. Arguments that the UNDRIP does not have domestic application in Canada do not view the UNDRIP and the Canadian state’s commitment to the UNDRIP in its totality. As expert witness Brenda Gunn argues, this interpretation of UNDRIP is not correct for a

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<sup>37</sup> General Assembly, *Situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, U.N. Doc. A/65/264 (9 August 2010) at 62.

<sup>38</sup> James (Sa’ke’j) Youngblood Henderson, “The Art of Braiding Indigenous Peoples’ Inherent Human Rights into the Law of Nation-States” in Centre for International Governance Innovation, *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws (Special Report)* (Waterloo: Centre for International Governance Innovation, 2017) at 12 [Youngblood Henderson].

<sup>39</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part III Volume VI, Expert & Knowledge-Keeper Panel: Human Rights Framework*, Quebec City (16 May 2018) at 19 [Part III Transcript Volume VI].

number of reasons, including that Canada has expressed its “unconditional support” to “begin the process of implementing UNDRIP in Canada.”<sup>40</sup>

61. The Canadian state has demonstrated its intent to be bound by the UNDRIP through a number of actions and statements. The Honourable Minister of Crown-Indigenous Relations and Northern Affairs Carolyn Bennett, on behalf of the Canadian state, has committed to full implementation of the UNDRIP.

“We intend nothing less than to adopt and implement the Declaration in accordance with the Canadian Constitution... By adopting and implementing the Declaration, we are breathing life into section 35 and recognizing it as a full box of rights for Indigenous peoples. Canada believes that our constitutional obligations serve to fulfill all the principles of the Declaration, including ‘free, prior and informed consent.’”<sup>41</sup>

62. Further, Canada has drafted Bill C-262, which was passed by the House of Commons on May 30<sup>th</sup>, 2018. The Bill is now in its second reading in the Senate. In the preamble of Bill C-262, Canada recognizes the need to fully adopt and implement UNDRIP, and states its commitment to:

“...taking appropriate measures — including legislative, policy and administrative measures — at the national and international level, in consultation and cooperation with indigenous peoples, to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples and to follow up on its effectiveness”.<sup>42</sup>

63. Bill C-262 affirms that the UNDRIP has application in Canadian law, that Canadian law must be consistent with the UNDRIP, and that a national action plan to bring Canadian

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<sup>40</sup> Brenda L. Gunn, “Beyond *Van der Peet*: Bringing Together International, Indigenous and Constitutional Law” in Centre for International Governance Innovation, *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws (Special Report)* (Waterloo: Centre for International Governance Innovation, 2017) at 32 [Gunn].

<sup>41</sup> Minister of Indigenous and Northern Affairs Carolyn Bennett, “Announcement of Canada’s Support for the United Nations Declaration on the Rights of Indigenous Peoples” (Statement delivered at the 15th session of the United Nations Permanent Forum on Indigenous Issues, 10 May 2016), online: Northern Public Affairs [www.northernpublicaffairs.ca/index/fully-adopting-undrip-minister-bennetts-speech/](http://www.northernpublicaffairs.ca/index/fully-adopting-undrip-minister-bennetts-speech/) [Hon. Minister Bennett].

<sup>42</sup> Canada Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*, 1<sup>st</sup> Sess, 42<sup>nd</sup> Parl, 2015 (as passed by the House of Commons 30 May 2018) [Bill C-262].



law into consistency with the UNDRIP (including reporting and accountability mechanisms) must be developed in partnership with Indigenous peoples.<sup>43</sup> The full text of the UNDRIP is a schedule to Bill C-262. This move by the Canadian state demonstrates commitment to every part of the UNDRIP, but it does not automatically mean that the Canadian state will immediately know how to meaningfully and unequivocally implement the UNDRIP. Therefore, the Canadian state is required to ensure that every aspect of implementing the UNDRIP involves and engages Indigenous peoples as full and equal partners rather than as commentators, stakeholders or critics. Only through involving and engaging Indigenous Nations will there be a proper application of an UNDRIP-based lens to all aspects of future legislation and policies.

64. Further, the federal government is also bound by the “honour of the Crown” in its dealings with Indigenous peoples. The honour of the Crown is also evoked by the Canadian state’s stated commitment to implementing the UNDRIP. Since the Canadian state has publicly committed to this implementation, it must be diligent in fulfilling this commitment in order to uphold its honour in good faith.<sup>44</sup>

65. The Supreme Court of Canada (the “SCC”) has stated that Canada’s laws need to be interpreted along with Canada’s international human rights obligations<sup>45</sup> The SCC also implicitly said that “...Indigenous legal traditions can give rise to enforceable obligations in Canada.”<sup>46</sup> The SCC also highlighted the importance of international human rights law in guiding and developing domestic human rights law.<sup>47</sup> The Canadian state has further committed to the substantive rights contained in the UNDRIP. It is not up to the Canadian state or the courts to bestow rights on Indigenous peoples, as the UNDRIP contains inherent rights of Indigenous peoples. However, these advances in domestic law demonstrate the Canadian state’s voluntary undertaking to apply conventional international law on the inherent rights of Indigenous peoples.

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<sup>43</sup> *Ibid.*

<sup>44</sup> John Borrows, “Revitalizing Canada’s Indigenous Constitution: Two Challenges” in Centre for International Governance Innovation, *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws (Special Report)* (Waterloo: Centre for International Governance Innovation, 2017) at 22-23 [Borrows, Special Report]; *R v Badger*, [1996] 1 SCR 771, [1996] CarswellAlta 365F at para 41.

<sup>45</sup> Part III Transcript Volume VI *supra* note 39 at 14.

<sup>46</sup> John Borrows, “Aboriginal Title and Private Property” (2015) 71 SCLR 91 at 110 [Borrows, Aboriginal Title].

<sup>47</sup> *Baker v Canada*, 1999 SCC 699, [1999] 2 SCR 817 at para 70 [Baker].

66. Through this legal framework, including judicial, legislative, and executive actions, NWAC argues that the UNDRIP has grounded application in Canada, particularly where the honour of the crown is at stake.

### **B. How the UNDRIP, Indigenous law, and Canadian law create a legal imperative to follow these Recommendations**

67. The UNDRIP, Bill C-262, and the Canadian state's commitment to the full and meaningful implementation of the UNDRIP in all aspects creates a legal obligation for the Canadian state to work towards a renewed relationship with Indigenous peoples in a way that respects the pluralism of legal authorities on this land that govern that renewed relationship. This must be a renewed relationship that respects the important legal principles of reciprocity and restitution. Indigenous legal systems thrived on this land before colonization undermined them.<sup>48</sup> The UNDRIP provides an opportunity to move past limited protections in colonial settler law to respect Indigenous legal systems through a pluralistic system that recognizes multiple authorities of law on this land.<sup>49</sup>

68. Article 5 of the UNDRIP reads:

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

69. Article 27 of the UNDRIP reads:

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

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<sup>48</sup> Gunn, *supra* note 40 at 29.

<sup>49</sup> *Ibid.*

70. A system of legal order that respects, follows, and properly implements the UNDRIP is one that is a pluralistic legal order. This pluralistic legal order is one that not only recognizes the legitimacy of Indigenous legal systems existing on Turtle Island, but is also one that will respect and incorporate principles of Indigenous legal systems in its interactions with Indigenous nations. In the context of these submissions, part of respecting Indigenous legal systems is recognizing the importance of reciprocal relationships defined by the actions of equal partners, as opposed to a state-ward, top-down relationship. Reconciliation and the full, meaningful implementation of the UNDRIP on this land requires no less than respect for and adherence to Indigenous ways of knowing and Indigenous social order and governance.
71. Vital to reconciliation is recognizing the sophistication of Indigenous legal systems – not simply reducing them to traditions or things of the past, but understanding that they grow and evolve with time like any other legal system.<sup>50</sup> Indigenous legal systems are not just about resolving disputes, but also about maintaining social order. In fact, principles of Indigenous law should be influential not only to Indigenous Nations and their legal orders, but also to the Canadian state and how it evolves its own legal system.<sup>51</sup>
72. NWAC points to reciprocity as an important legal principle common to many Indigenous legal systems as one that should influence any discussion of a renewed relationship between the Canadian state and Indigenous Nations. Laws are relationships and relationships influence laws. When speaking in the context of relationships, the type of relationship and the protocols thereof must be contextualized and considered in their full scope of influence. Therefore, if the Canadian state is to declare their pursuit of a “renewed relationship” with Indigenous peoples, then the burden is on the Canadian state to pursue, renew, and further develop that relationship with an UNDRIP-based lens, in full respect of Indigenous legal systems and their governance of international relationships.<sup>52</sup> Otherwise, any resulting relationship that does not recognize the binding quality of reciprocal relationships in many Indigenous legal systems as law will simply mirror and perpetuate the past hundreds of years

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<sup>50</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part III Volume I*, Expert & Knowledge-Keeper Panel n Indigenous Laws & Decolonizing Perspectives, Winnipeg (22 August 2017) at 90 [Part III Transcript Volume I].

<sup>51</sup> Sarah Morales, “Braiding the Incommensurable: Indigenous Legal Traditions and the Duty to Consult” in Centre for International Governance Innovation, *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws (Special Report)* (Waterloo: Centre for International Governance Innovation, 2017) at 75 [Morales].

<sup>52</sup> John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 38-40 [Borrows, Indigenous Constitution].

of colonial, settler relationship between the Canadian state and Indigenous peoples, and reconciliation will never be realized.

73. NWAC is not attempting to make a pan-Indigenous argument for the uniformity of Indigenous legal systems. NWAC recognizes that there are many different Nations on this land with very different, sophisticated legal systems. However, NWAC does respect that reciprocal relationships are featured in many Indigenous legal systems, and highlights the existence of these principles in Gitksan law, Mi'kmaq law, and Anishinabek law, among others.<sup>53</sup> Further, NWAC notes that these submissions have neither the scope or length to engage in complex analyses of multiple Indigenous legal systems. Rather, this conversation briefly highlights reciprocal relationships and reparations as examples of legal protocols that must be respected in the renewed relationship with Indigenous peoples that the Canadian state seeks.
74. Gitksan law, for example, views reciprocity as an important aspect of maintaining social order.<sup>54</sup> The importance of reciprocal relationships extends to people, animals and land, and there is a positive obligation on individuals to ensure that they follow through on their reciprocal obligations to others.<sup>55</sup> This could mean, for example, never taking more than is required or by always giving something back in return when one takes anything.
75. Another example comes from Mi'kmaq law, which places a strong emphasis on reciprocity. Mi'kmaq legal order is one that respects all life and the reciprocal relationship between all things. Since everything is connected and everything deserves respect, reciprocity in all relationships is a key feature of governing social order. It is therefore Mi'kmaq law to ensure that one does not take without asking or without giving back. The Royal Commission on Aboriginal Peoples gives the following example (emphasis added):

Since all objects possess the sparks of life, every life form has to be given respect. Just as a human being has intelligence, so too does a plant, a river or an animal. Therefore, the people were taught that everything they see, touch or are aware of

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<sup>53</sup> Borrows, Indigenous Constitution, *ibid*; Leslie Jane McMillan, *Koqgwaja 'ltimk: Mi'kmaq Legal Consciousness* (Ph.D Phil Thesis, University of British Columbia Department of Anthropology, 2002) [McMillan]; Youngblood Henderson, *supra* note 38; Valerie Ruth Napoleon, *Ayook: Gitksan Legal Order, Law and Legal Theory* (Ph.D Phil Thesis, University of Victoria Faculty of Law, 2001) [Napoleon].

<sup>54</sup> Napoleon, *ibid* at 9-10.

<sup>55</sup> Richard Overstall, "Encountering the Spirit in the Land: 'Property' in a Kinship-Based Legal Order" in John McLaren, Andrew R. Buck & Nancy E. Wright, eds., *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: UBC Press, 2005) 22 at 44 [Overstall]; Napoleon, *supra* note 53 at 93-94.

must be respected, and this respect requires a special consciousness that discourages carelessness about things. **Thus, when people gather roots or leaves for medicines, they propitiate the soul of each plant by placing a small offering of tobacco at its base, believing that without the co-operation of the mntu, the mere form of the plant cannot work cures.**<sup>56</sup>

76. “In an Anishinabek legal context, rights and responsibilities are intertwined.”<sup>57</sup> Reciprocal obligations and respect are important aspects of Anishinabek law, and govern all relationships, including international relationships.<sup>58</sup> It is unlawful to take without permission, and it would be inappropriate to use anything without permission, and the relationship between all things may be respected through reciprocal obligations.<sup>59</sup> This legal order helps to create conservation through respect, reciprocal obligations, and ceremony. In this sense, consent is also an important aspect of Anishinabek law.

77. It is not just Indigenous law that respects this form of social order. Principles of reparation and restitution in Western law arguably mirror this principle in numerous areas of law, including but not limited to tort, contract, administrative, and criminal law. It is trite law to say that someone who has caused harm to another party must put that person back in the position they were in before the harm was caused, to the greatest extent possible.<sup>60</sup> In this way, it is also not lawful to take without permission or without giving back in Western law.

78. Ultimately, reciprocity (which often leads to reparations) is a respected principle of a pluralistic legal society and demonstrates that laws not only govern relationships - laws are relationships. The Canadian state needs to show its commitment to reconciliation through renewed relationships, including renewed perspectives of law and legal order, with Indigenous Nations.

79. NWAC has established that reciprocity and restitution must be respected in relation to the renewed relationship between Indigenous peoples, and the Canadian state, and must now consider how that reality under the UNDRIP framework impacts the recommendations of this

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<sup>56</sup> Canada, Royal Commission on Aboriginal Peoples, *Looking Forward, Looking Back*, vol 1 (Ottawa: Canada Communication Group, 1996) at 50.

<sup>57</sup> Borrows Indigenous Constitution, *supra* note 52 at 40.

<sup>58</sup> *Ibid*

<sup>59</sup> *Ibid* at 38.

<sup>60</sup> *Livingstone v. Rawyards Coal Co. (1880)*, 5 App. Cas. 25 at 39 (H.L.); *Andrews v. Grand & Toy Alberta Ltd (1978)*, [1978] 2 SCR 299, [1978] SCJ no 6 at para 25.

National Inquiry. Following the call from grassroots Indigenous women, girls, gender-diverse people, Indigenous communities, and Indigenous organizations, the Canadian state engaged the National Inquiry in a fact- and truth- finding initiative to address the root causes of the epidemic of violence against Indigenous women, girls, and gender-diverse people. In so doing, the Canadian state sought out truth-telling from Indigenous families and communities. Many people testified, and through their testimonies gave truth through trauma in hopes that their truths would make impactful changes for future generations. This has two important outcomes. The first is that the Canadian state has learned from those with lived-experience in its systems that the Canadian state and its institutions are in part responsible for the epidemic of violence against Indigenous women, girls, and gender-diverse people. The second is that the truths given to the Canadian state were not given lightly, and the Canadian state now taking these truths creates a reciprocal relationship with Indigenous families and communities that it cannot ignore. The Canadian state cannot unknow what it now knows. The knowledge and the truth the Canadian state has received obligates it to act on what it has learned. This is especially true since the Canadian state has committed to the full and meaningful implementation of the UNDRIP and to a renewed relationship with Indigenous peoples. That renewed relationship must be a reciprocal one that does not take without giving back, that acts on promises, and that respects the gifts it is given. That renewed reciprocal relationship must also be one that makes reparations for harms caused.

80. In the context of the Truth and Reconciliation Commission and its Calls to Action, former UN Secretary-General Ban Ki-Moon said: “[t]ruth-telling is important but not sufficient for reconciliation. I encourage all involved in this effort to follow up on the report’s recommendations, using the UN Declaration on the Rights of Indigenous Peoples as a roadmap.”<sup>61</sup>

81. NWAC argues that the UNDRIP, and the Canadian state’s commitment thereto, must act as a roadmap for the Canadian state’s treatment of the recommendations coming out of the National Inquiry’s final report. The Canadian state must consider that the renewed relationship it seeks with Indigenous peoples must be one that respects Indigenous legal protocol for governing relationships, including relationships between Nations, and that the

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<sup>61</sup> UN Secretary-General (Ban Ki-moon), “Secretary-General Praises Canada’s Truth, Reconciliation Commission for Setting Example by Addressing Systemic Rights Violations against Indigenous Peoples”, SG/SM/16812, 1 June 2015.

Canadian state cannot alone define what this renewed relationship looks like between the Canadian state and Indigenous Nations. The Canadian state must consider how it has bound itself to the full and meaningful implementation of the UNDRIP and what it means in the context of this National Inquiry. The Canadian state must consider the full gravity of its own involvement in and perpetuation of systemic violence against Indigenous women, girls, and gender-diverse people, brought to its attention by Indigenous women, girls, gender-diverse people and their families through this process. The Canadian state must consider that it cannot neglect to act on the information that it committed to obtain, act on, and has now become aware of, and that this further implicates the honour of the Crown and the Canadian state's further obligation to act diligently and respectfully to fulfill its duty.

82. Viewed together, these legal orders, commitments, and obligations create a legal imperative on the Canadian state to act on the recommendations received by the National Inquiry, and that failure to do so has real legal consequences, including but not limited to judicial review, domestic legal action, and international legal action. Just as Canadian law requires procedural fairness through, for example, fair hearings and full disclosure, so too are Indigenous Nations entitled to procedural fairness through an UNDRIP-based lens.
83. **Recommendation 50: the National Inquiry draft their final report and the recommendations therein using the above cited legal framework regarding renewed, reciprocal relationships and respect for both Indigenous and international laws and obligations to frame the recommendations as legal imperatives to which the Canadian state has bound itself.**

### **C. Indigenous women, girls, and gender-diverse people have a right to participation in decision-making matters with their chosen**

84. Reconciliation can no longer "...be conceived of as a feel-good objective..." and the imperative is now on the Canadian state to make good on its commitments to the UNDRIP.<sup>62</sup> In the context of this National Inquiry, that requires a thoughtful and respectful view of the rights contained in the UNDRIP that does not isolate those rights from other human rights.

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<sup>62</sup> Karey Brooks, "Reconciliation – A Lawyering Imperative" (2017) 75 Advocate (Vancouver) 21 at 22; Bill C-262, *supra* note 42, Hon. Minister Bennett, *supra* note 41.

Of particular importance in this context are the rights contained in Articles 18 and 19 of the UNDRIP, which read as follows (emphasis added):

Article 18: Indigenous peoples have the right to **participate in decision-making in matters which would affect their rights, through representatives chosen by themselves** in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned **through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.**<sup>63</sup>

85. Articles 18 and 19 of the UNDRIP cannot be read in isolation from other imperative and inherent human rights. These rights are “interrelated, independent, and indivisible” from other rights in both domestic and international human rights law.<sup>64</sup> Expert witness Brenda Gunn testified that “...there is a recognition that the prohibition of gender-based violence against women has evolved into a principle of customary international law.”<sup>65</sup> Not only has the SCC “...held that customary international law applies directly in Canada as law”, but also this principle is recognized within domestic Canadian human rights law as well.<sup>66</sup> A fully intersectional perspective of the UNDRIP recognizes that these are interconnected with, for example, with the *Convention on the Elimination of All Forms of Discrimination against Women* Article 7 which protects (Indigenous) women’s role in political and public life, the *American Declaration on the Rights of Indigenous Peoples* Section Two Article VII which declares the right of Indigenous women to be free from gender discrimination, and the *Indigenous and Tribal Peoples Convention, 1989 (no. 169)* number 169 Article 7.<sup>67</sup>

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<sup>63</sup> UNDRIP 18 and 19

<sup>64</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Truth-Gathering Process Part III Volume VII*, Expert & Knowledge-Keeper Panel Human Rights Framework, Quebec City (17 May 2017) at 99 [Part III Transcript Volume VII].

<sup>65</sup> Part III Transcript Volume VI at 26.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*; OAS, General Assembly, American Declaration on the Rights of Indigenous Peoples, OR OEA/Ser.L/V/II.90/Doc.14, rev 1 (1995) at 5; UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, at Article 7 [CEDAW]; International Labour Organization, C-169 – Indigenous and Tribal Peoples Convention, 1989 (no. 169), Convention concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, 76<sup>th</sup> ILC Session (27 June 1989) at Article 7 [ILO].



Domestically, these rights are further intertwined with the *Charter* s. 7 and s. 15, which protect women from sex and race based discrimination and their right to life, liberty, and security of the person, as well as the complex rights in s. 35, which are guaranteed equally to men and women in s. 35(4).<sup>68</sup>

86. The rights in the UNDRIP applies equally to men and women because of the human rights requirements of both domestic and international law. This means that the Canadian state is bound to the implementation of the UNDRIP through a gendered lens. Indigenous women, girls, and gender-diverse people must have their voice heard in decision-making on matters that may affect them, in keeping with a holistic and fully intersectional perspective of the indivisibility of inherent human rights.<sup>69</sup> NWAC argues that this cannot be limited to issues of victimization and violence. In order to properly address many of the systemic issues addressed throughout this Inquiry the Canadian state must hear and learn from Indigenous women, girls, gender-diverse people and their chosen representatives as well.<sup>70</sup>
87. Expert evidence before the National Inquiry has demonstrated that Indigenous women, girls, and gender-diverse people have suffered violence as a result of their loss of power and governance within their communities and Nations.<sup>71</sup> This is the result of the Canadian state assuming sovereignty through colonialism, and the patriarchal systems of governance that resulted through colonialism that have had direct impacts on disenfranchisement and violence experienced by Indigenous women and girls.<sup>72</sup> Prior to contact, Indigenous women had enjoyed power and respect within many Nations and communities, but much of that power and respect “...evaporated with the patriarchal *Indian Act*.”<sup>73</sup> The present reality for Indigenous women, girls, and gender-diverse people does not reflect many pre-contact social norms. Indigenous women, girls, gender-diverse people and their chosen representatives are routinely left out of conversations and decision-making processes that have direct and even violent impacts on their daily lives.

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<sup>68</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s. 7 & s. 15 [The *Charter*]; *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c11, s. 35(4).

<sup>69</sup> UNDRIP article 19, *supra* note 67

<sup>70</sup> Part III Transcript Volume V *supra* note 16 at 212-215; Part III Transcript Volume VII, *supra* note 64 at 100-101.

<sup>71</sup> Part III Transcript Volume V, *ibid* at 213.

<sup>72</sup> Part III Transcript Volume V, *ibid*.

<sup>73</sup> Part III Transcript Volume V, *supra* note 16 at 105.

88. NWAC argues that the safety and security of Indigenous women, girls, and gender-diverse people also creates a legal imperative for the Canadian state to implement the National Inquiry’s recommendations, through Article 7 of the UNDRIP which guarantees nearly the same rights as the *Charter* s. 7.
89. Article 7 of the UNDRIP reads:
1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
  2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.
90. This language is similarly reflected in s. 7 of the *Charter*, which declares that everyone has the right to life, liberty, and security of the person domestically in Canada.<sup>74</sup> Yet, evidence before this National Inquiry has demonstrated that particularly the lives and security of Indigenous women, girls, and gender-diverse people are often at risk due in part to actions, legislations, systems, and institutions of the Canadian state.
91. As one example, Indigenous women, girls, and gender-diverse people have historically been denied their political voice in issues of resource extraction on this land. However, multiple experts before the National Inquiry testified to the issue of “man camps” on Indigenous territories, camps full of predominantly consisting of transient male resource workers, which have directly impacted the safety and security of Indigenous women, girls, and gender-diverse people and have directly contributed to the epidemic of violence against Indigenous women, girls, and gender-diverse people.<sup>75</sup> This is just one of many examples where the life, liberty and security of the person of Indigenous women, girls, and gender-diverse people have been harmed by systemic violence and systemic pushing of Indigenous women, girls, and gender-diverse people out of governance conversations that directly impact their safety.
92. Other examples, discussed in more detail above, include the actions of policing institutions that demonstrate a discrepancy between policies regarding best practices of missing persons investigations and how those policies were applied to the cases of missing Indigenous

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<sup>74</sup> *The Charter*, *supra* note 68.

<sup>75</sup> Part III Transcript Volume VI, *supra* note 39 at 58; Part III Transcript Volume V, *supra* note 16 at 87-89; Part III Transcript Volume VII, *supra* note 64 at 102.

women, girls, and gender-diverse people.<sup>76</sup> The child welfare system is another example, where Indigenous families are separated at the will of the Canadian state without regard for the important perspectives of Indigenous women, girls, and gender diverse people or their rights to safety, liberty, and security.<sup>77</sup> The displacement of Indigenous women, girls, gender-diverse people, and their chosen representatives from decision-making on this land, an enduring impact of colonization, patriarchy, and genocide, has innumerable impacts on the daily lives of Indigenous women, girls, and gender-diverse people, which accounts for a major source of systemic violence against them. It is a function of discrimination, sexism, and racism that Indigenous women, girls, and gender-diverse people are less safe than non-Indigenous people, and this necessitates the immediate action on the part of the Canadian state to address violence existing in their systems of governance, social programs and services. Further, Indigenous women, girls, and gender-diverse people have the right to choose their representatives and to have those representatives' voices heard as equal partners in decision-making processes and institutions. This does not mean that the Canadian state may pick and choose which representatives it chooses to hear from in the process of implementing the UNDRIP. Such action would amount to a violation of Indigenous women's, girls' and gender-diverse persons' complex and interrelated rights under the UNDRIP and other international and domestic human rights frameworks. In order to address the violence perpetuated by the Canadian state, the state must listen to the voices of Indigenous women, girls, and gender-diverse people in the manner that reflects their inherent rights.

93. An intersectional human rights framework that follows the UNDRIP, as well as domestic and international human rights laws and mechanisms, further creates a legal imperative for the Canadian state to follow the lead of Indigenous women, girls, gender-diverse people and their chosen representatives. Following a properly intersectional, gender-based, human rights-based reading of the UNDRIP, it is imperative that the Canadian state actively obtain free, prior and informed consent from Indigenous women, girls, gender-diverse people, their families, their communities, and their chosen representatives before enacting legislation or taking administrative measures that will affect them. This means that it is not simply enough

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<sup>76</sup> *Supra* notes 18; *supra* note 19.

<sup>77</sup> *Supra* note 6; *supra* note 7; *supra* note 8.

to listen to the recommendations made from the National Inquiry and implement them as the Canadian state sees fit. Rather implementation, whether through legislative or administrative action, must be done by following the lead of Indigenous women, girls, gender-diverse people, their families, their communities, and their chosen representatives. The Canadian state cannot leave Indigenous women, girls, and gender-diverse people in their wake as it continues to unilaterally impose its own views of governance on Indigenous peoples. This is further the reason that NWAC's many recommendations require the Canadian state to play a supporting role through funding and following the lead of Indigenous women, girls, gender-diverse people and their chosen representatives. A truly nation-to-nation approach to legislative and administrative action aimed at fixing Canadian structural violence does not ignore the voices of the women, girls, and gender-diverse people of many Nations and their chosen representatives.

94. **Recommendation 51: The National Inquiry draft the final report with a mind to the legal imperative on the Canadian state to act on the recommendations of the final report as created through an intersectional, gender-based, inherent human rights framework which includes the full and meaningful implementation of the UNDRIP.**
95. **Recommendation 52: Require the Canadian state to immediately include the voices of Indigenous women, girls, gender-diverse people and their chosen representatives in all decision-making mechanisms on matters that impact their lives.**
96. **Recommendation 53: Require the Canadian state to recognize the recommendations of the National Inquiry as a legal imperative and act immediately on implementing these recommendations based on the knowledge and recommendations received from Indigenous women, girls, gender-diverse people, their families and their chosen representatives.**

## **VII. Gaps in Knowledge: Recommendations Responding to 2SLGBTQ+ and Gender-Diverse People's Safety**

97. As an organization that applies a gender-based, culturally-relevant, and intersectional lens to its research, policy development, and advocacy, NWAC recognizes that Indigenous Two-Spirit and LGBTQ+ people are distinctly impacted by systemic discrimination. While this

discrimination is rooted in colonialism and racism, it is further compounded and upheld by patriarchy and heteronormativity.

98. These structures of oppression have made mainstream society particularly toxic to individuals whose gender identity, expression, and or sexuality falls outside of what is considered normal. These additional layers of marginalization produce specific barriers to accessing essential services such as housing, employment, and health care.
99. As a result, these individuals are often more at risk to various forms of violence, and are not able or invited to participate in decision-making conversations that directly impact their lives. Due to the internalization of this prejudice at the community level, many Indigenous Two-Spirit and LGBTQ+ peoples may also face discrimination within their communities. NWAC recognizes that by not responding to the gender diversity within its community, there is a risk replicating the oppression of that community and becoming complicit in this erasure, enabling the marginalization of multi-barriered Indigenous people.
100. The ways in which settler colonialism imported hierarchical binaries of gender, sexuality, and sex have been well documented and theorized.<sup>78</sup> Within each of these binaries is the notion that normal means heterosexual, male, and cisgendered, while all other identities are other. These understandings, which define which gender identities are normal and which are not, are imports of colonialism. For much of mainstream culture, it is still a radical idea that sex and gender are not only distinct from one another (ie. a biological male can identify and present as a woman) but are also not binaries, as individuals within the trans, queer, Two-Spirit, and intersex communities can and have attested. Sexuality is an additional dimension to this, and can similarly be expressed independent of gender identity and biological sex. The idea that sex, gender, and sexual orientation are not always dependent on one another is not widely accepted or understood as a product of colonialism, but has been increasingly visible thanks to the efforts of activists, academics, and communities.
101. Discussing violence and how to create safety for Indigenous LGBTQ+ and Two-Spirited women and non-binary people means applying an intersectional lens to identity and

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<sup>78</sup> Kim Anderson, *A Recognition of Being: Reconstructing Native Womanhood* (Toronto: Second Story Press, 2000); Joanne Barker (ed), *Critically Sovereign: Indigenous Gender, Sexuality, and Feminist Studies* (London: Duke University Press, 2017); Robert Alexander Innes (ed), *Indigenous Men and Masculinities: Legacies, Identities, Regeneration* (Winnipeg: University of Manitoba Press, 2015); Scott Lauria Morgensen, *Spaces Between Us: Queer Settler Colonialism and Indigenous Decolonization* (Minneapolis: University of Minnesota Press, 2011); Joyce Green (ed), *Making Space for Indigenous Feminism* (Black Point: Fernwood Publishing, 2007).

oppression. This lens is integral to decolonizing, creating safety, and finding meaningful solutions to the epidemic of violence faced by our women, girls, Two-Spirit, and LGBTQ+ people. Applying this lens to the evidence gathered throughout the course of the National Inquiry, NWAC has identified significant gaps in services to promote the safety and well-being of Indigenous women, girls, and gender-diverse people who identify as 2SLGBTQ+.

102. **Recommendation 54: Require that funding be allocated for gender diversity education both within communities, and as part of public school curriculum, on Two-Spirit, LGBTQ+ identities people and issues, led and developed by Indigenous Two-Spirit and LGBTQ+ people.**
103. **Recommendation 55: Require that funding be allocated for Two-Spirit and LGBTQ+ inclusive programs and interventions to combat isolation.** Lack of understanding within communities plays a huge part in displacing Two-Spirit and LGBTQ+ from their communities and into urban centres without preparation, supports, or resources, making them vulnerable to poverty, violence, addictions, and predatory individuals looking to force people into trafficking. Several knowledge-keepers attested to the exclusion of Two-Spirit and LGBTQ+ individuals from ceremony, the resulting isolation, and the need to restore balance to our circles. Removing the stigma associated with non-normative gender identities can save lives and remove barriers to all Indigenous people accessing culture and ceremony.
104. **Recommendation 56: Require that, in order for the RCMP to develop effective strategies to combat violence against and trafficking of Indigenous Two-Spirit and LGBTQ+ women, girls, and gender-diverse people, they disaggregate their data by gender identity as well as by First Nations, Métis, Inuit, and urban and rural both on and off reserve.** Police witnesses before this National Inquiry testified that there were few to no services to address violence against 2SLGBTQ+ people, and that there were no specific trainings or supports that they were aware of to educate officers on gender diversity or strategies for connecting with Two-Spirit and LGBTQ+ communities, at national, provincial, and territorial levels.<sup>79</sup> Accordingly, the RCMP confirmed that its data on trafficking is not disaggregated, neither by First Nations, Métis and Inuit, but also not by two-spirit, LGBTQ+,

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<sup>79</sup> Part III Transcript Volume V, *supra* note 16 at 221, 223

gender-diversity.<sup>80</sup> Disaggregated data is important to identifying the precise and distinction-based realities and needs of First Nations, Métis, and Inuit 2SLGBTQ+ people in order to properly inform programs, policies, and practices that enhance their safety.

105. **Recommendation 57: Require that provincial, territorial, and federal governments further subsidize/cover the cost of sex reassignment, or gender-affirming surgery.**

Without this surgery, the safety of trans Indigenous people is compromised by mental health risks and the risk of being denied medical services due to sex.

106. **Recommendation 58: Require that funding be allocated for safe, affordable, and accessible community housing and shelters for Two-Spirit and LGBTQ+ people, including dedicated retirement community housing for aging parts of this population, and for those involved in the sex trade.**

107. **Recommendation 59: Require that research be conducted to study and unpack the specific impacts of the Indian Residential School System on Two-Spirit identities.**

108. **Recommendation 60: Require that the Canadian state mandate a coroner's inquest into the deaths of trans, Two-Spirit and gender diverse peoples in order to better understand the relationship between gender identity, expression, and violence.**

109. **Recommendation 61: Require the Canadian state to legislate that service providers to use correct pronouns and provide respectful service to Two-Spirit and LGBTQ+ Indigenous individuals, regardless of gender identity / expression.**

## VIII. Conclusion

110. NWAC has provided a total of 61 recommendations to the National Inquiry, and all of these recommendations must be both drafted and implemented through the UNDRIP legal framework. An UNDRIP-based lens must be applied to all existing legislation and policies, as well as all relationships with Indigenous Nations moving forward, in order to address the root of violence against Indigenous women, girls and gender-diverse people. NWAC submits that colonial, systemic, and institutional violence are at the root of the epidemic of violence against Indigenous women, girls, and gender-diverse people. NWAC submits that there are many solutions to this violence, but that all solutions must be born from a place that empowers

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<sup>80</sup> Part II&III Transcript Volume XV, *supra* note 24.

Indigenous women, girls, gender-diverse people, their communities, their organizations, and their Nations. Perhaps the most difficult but the most urgent solution required is that all parties to the healing process, including the Canadian state, must approach this issue as equal partners. This requires restoring Indigenous women, girls, and gender-diverse people to the positions of power and respect that they had prior to contact. The Canadian state cannot expect to address colonial violence through more colonial measures. In this way, the path forward for this National Inquiry is one that empowers Indigenous women, girls, and gender-diverse people by applying a gender-lens to the inherent rights of Indigenous peoples contained in the UNDRIP. NWAC calls on the National Inquiry to draft actionable recommendations through a gender- and UNDRIP-based lens that promotes not only self-government of Indigenous Nations, but also empowering Indigenous women, girls and gender-diverse people in an equal role in that self-government.



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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
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|                                                                                                                                                                                                                                        |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
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| <i>Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c11</i>                                                                                                                                                                        |                       |
| s. 35(4)                                                                                                                                                                                                                                                      | 85                    |
| <i>Canadian Charter of Rights and Freedoms, <a href="#">Part I</a> of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11:</i>                                                                                               |                       |
| s. 7                                                                                                                                                                                                                                                          | 85, 88, 90            |
| s. 15                                                                                                                                                                                                                                                         | 85                    |
| <b><i>Federal Legislation</i></b>                                                                                                                                                                                                                             |                       |
| Canada Bill C-262, <i>An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples</i> , 1 <sup>st</sup> Sess, 42 <sup>nd</sup> Parl, 2015 (as passed by the House of Commons 30 May 2018) | 15, 62, 63, 67, 84    |

## **SCHEDULE 2 – List of Recommendations**

### **i. Families-First Approach and Recommendations**

**Recommendation 1:** Require the Canadian state to immediately establish a reparation fund for the families (“families” in these recommendations include but are not limited to parents, grandparents, aunts, uncles, siblings, cousins, and any customary or traditional kinship or adoption ties) of missing and murdered Indigenous women, girls, and gender-diverse people.

**Recommendation 2:** Require the National Inquiry and the Canadian state to continue to reimburse families and survivors who have participated in the National Inquiry process for all costs associated with their participation. This includes costs for transportation, accommodations and also the costs incurred by those who supported the families at the National Inquiry.

**Recommendation 3:** Require the National Inquiry and the Canadian state to allocate easily accessible and quickly delivered funding for ongoing aftercare for Indigenous women, girls, gender-diverse people and their families who have participated in this process.

**Recommendation 4:** Require the National Inquiry to pay special attention to the recommendations that come from the lived experiences of Indigenous women, girls, gender-diverse people, and their families. This is imperative when the National Inquiry makes its own recommendations.

**Recommendation 5:** Require the Canadian state to pursue and fully implement the institutional, legislative and policy changes that Indigenous women, girls, gender-diverse people and their families have identified and require for their safety, well-being, and for the safety and well-being of generations to come.

### **ii. The Child Welfare System**

**Recommendation 6:** Require any and all changes to Child Welfare Services and service delivery to favour strengthening families and keeping families together over child apprehension.

**Recommendation 7:** Require any and all changes to Child Welfare legislation and services to recognize and embrace the role of extended family.

**Recommendation 8:** Require the Canadian state to acknowledge and agree that Indigenous communities are the leaders in the revitalization and evolution of community- and culture- based family support programs for Indigenous families in their own territories.

**Recommendation 9:** Require the Canadian state to continuously and adequately fund community-led development of community-based child and family support programs.

**Recommendation 10:** Require the Canadian state to support and fund families that are caregivers to children of missing and murdered indigenous women and girls.

**Recommendation 11:** Require that the Canadian state undertake a dedicated engagement on the experiences of Indigenous 2SLGBTQ+ and gender-diverse youth in the child welfare system, and invest in and clearly identify safe Two-Spirit and LGBTQ houses for children in the child welfare system, particularly in northern, remote, and rural areas.

**Recommendation 12:** Require that the Canadian state open or re-open investigations into the deaths of children and youth in the child welfare system, including Two-Spirit and LGTQ+ youth who died under suspicious circumstances.

### iii. Mental Health and Addictions Support

**Recommendation 13:** Require the Canadian state to recognize its obligation to support Indigenous led, gender-based, anti-racist, and anti-colonial mental health service and delivery.

**Recommendation 14:** Require the Canadian state to adequately and continuously fund community-led and community-developed visible, accessible, and affordable mental health and addictions services, both in urban centres and remote communities.

**Recommendation 15:** Require the Canadian state to provide services and funding to support culturally-appropriate healing for trauma that is community-led,

developed, and delivered. This also includes grassroots Indigenous organizations that provide these services.

**Recommendation 16:** Require the Canadian state to provide support services and funding for community-led, developed, and delivered services for battered women and their dependents. This also includes grassroots Indigenous organizations that provide these services.

**Recommendation 17:** Require the Canadian state to provide funding to community-led, developed, and delivered prevention and education programs for the prevention of violence against Indigenous women, girls and gender diverse people.

**Recommendation 18:** Require that provincial, territorial, and federal governments fund positions for traditional healers within public hospitals and clinics

**Recommendation 19:** Require the Canadian state to provide support services and funding to Indigenous women and their communities to develop and establish Healing Centres from coast to coast to coast that take a wholistic/wraparound approach to housing, mental health, physical health, addictions, and employment. These centres would offer service at all hours, and would include helping survivors find their gifts and focus on healing from intergenerational trauma. These centres and services should additionally be available within communities so that Indigenous women, girls, and gender-diverse people who need to access them need not be displaced from their community. Finally, these centres should include space for children, and have a spiritual component where Elders can work with clients on their overall health.

**Recommendation 20:** Require the Canadian state to make health, life, safety, and security of Indigenous women, girls, gender-diverse people and their families a priority through the development, delivery and funding of Healing Centres. This includes redefining the Canadian state's role as one of support through funding.

#### iv. Legislative and Institutional Changes

**Recommendation 21:** Require any and all legislative and institutional changes that are initiated to be compliant with the United Nations Declaration on the Rights of Indigenous Peoples (referred to as “the UNDRIP”). And that the changes require

the free, prior, and informed consent of Indigenous Peoples and their chosen representatives.<sup>i</sup>

**Recommendation 22:** Indigenous women, girls, gender-diverse people, and their chosen representatives shall have their voice heard, through meaningful, substantive, and continuous consultation. This includes all decisions impacting their daily lives, safety, security, and well-being.

**Recommendation 23:** Require the Canadian state to apply a gender-based analysis to any and all existing or new legislation or policy.

**Recommendation 24:** Co-develop with Indigenous women, girls, gender-diverse people and their families external and civilian oversight of all policing institutions. This includes implementation of and adherence to their policies in order to ensure accountability.

**Recommendation 25:** Require policing institutions to undergo a dramatic shift in their recruitment and training practices to reflect community-minded policing.

**Recommendation 26:** Require that the Canadian state undertake to re-open “cold cases” and investigations related to missing and murdered Indigenous women, girls, gender-diverse, and 2SLGBTQ+ people.

**Recommendation 27:** Require that the Canadian state accede to the International Convention for the Protection of All Persons from Enforced Disappearance.

**Recommendation 28:** Require Coroners’ reports to identify ethnicity of victims in their reports in order to document cases of missing and murdered Indigenous women, girls, and gender-diverse people in an attempt to give families closure and find justice.

**Recommendation 29:** Require Coroners’ reports to cross-reference their files with reports of missing and murdered Indigenous women, girls, and gender-diverse people in order to give families closure and find justice.

**Recommendation 30:** Require police institutions to gather disaggregated data (race, ethnicity, gender, on and off reserve etc.) when recording crime and to use disaggregated data when analysing and producing crime prevention statistics and reports.

**Recommendation 31:** Require the *Victims Bill of Rights* undergo review and strengthening, in order to provide reliable, enforceable rights to victims of violence and their families.

**Recommendation 32:** Require public and news media outlets and institutions offering programs in journalism, public relations, and communications to adopt anti-racist, anti-sexist, anti-homophobic and anti-transphobic ethical reporting standards. This includes meaningful changes to reporting on cases of missing and murdered Indigenous women, girls, and gender-diverse people, as well as cases of death, disappearance, and violence against two-spirit, LGBTQ+ individuals.

**Recommendation 33:** That the National Inquiry support the formation of an Indigenous Women’s secretariat that operates at the federal, provincial and territorial levels. This secretariat would have cross-ministerial opportunity to influence policy and legislation reform, as well as provide advice on the allocation of funds on matters that have a direct input on Indigenous women, girls, Two-Spirit and LGBTQ+ individuals

**Recommendation 34:** Require that the Canadian state immediately end the practice of forced and coerced sterilisation of Indigenous women and girls, thoroughly investigate instances of forced and coerced sterilization against Indigenous women and girls nationally, and make reparations to victims and their families.

**Recommendation 35:** Require that Corrections Services Canada immediately cease use of administrative segregation, solitary confinement, and routine strip searches in women’s prisons. For the purposes of these submissions, “segregation” in federal prisons for women includes solitary confinement, maximum security units also called “secure units,” mental health monitoring, and all other forms of isolation and separation from the general prison population that carry similar effects.

**Recommendation 36:** Require that the Canadian state fund Indigenous-led solutions and community autonomy over use of s. 81 agreements in the *Corrections and Conditional Release Act* to allow Indigenous communities to non-institutionally manage corrections and criminal justice responses in a manner that respects the rights set out in the UNDRIP.

**Recommendation 37:** Require that the Canadian state provide stable and adequate funding to Indigenous women’s organizations in order to provide Indigenous- and



community- led specific and individualized resources for reintegration for Indigenous women, girls, and gender-diverse people released from prisons.

#### v. Education and Education Systems

**Recommendation 38:** Require the Federal and Provincial governments to ensure that schools, universities, colleges, and training institutions develop, design and implement, in equal partnership with Indigenous women, girls, and gender-diverse people and their communities, curriculum that is accurate, ongoing, and meaningful.

**Recommendation 39:** Require universities, colleges and training institutions to make Indigenous history courses, courses on Canada’s history of colonialism and genocide, and courses on understanding intergenerational trauma mandatory courses for all programs.

**Recommendation 40:** Require the Canadian state to develop Indigenous-led educational facilities, including universities, colleges, training institution and teaching lodges, for Indigenous communities not only in urban centres but also in remote communities.

**Recommendation 41:** Require Federal, Provincial and Municipal public servants and employees receive mandatory, rigorous, and continuous training about Indigenous culture, anti-racist and anti-sexist communication and behaviour, gender diversity, and pronoun use.

**Recommendation 42:** Require universities, colleges and training institutions to engage and consult with Indigenous students and communities in initiatives to combat sexual violence on campus.

**Recommendation 43:** Require that funding be allocated for education campaigns that are developed and led by survivors of trafficking and exploitation on how to identify exploitation. In order to be effective and accessible, these education campaigns must occur face-to-face as well as online.

#### vi. Stable and Adequate Funding

**Recommendation 44:** Require the Canadian state to acknowledge and agree that its primary role in many initiatives is a supporting role – one that provides funding

to Indigenous women, girls, gender-diverse people, their families, their communities, and their organizations so that the legislative and institutional changes are Indigenous-led.

**Recommendation 45:** Require the Canadian state to restructure its funding decision process to allow Indigenous communities and organizations to design, develop and implement their own programs and services with the ultimate goal of empowering Indigenous self-governance.

**Recommendation 46:** Require the Canadian state to adopt a similar funding structure for Indigenous communities and organizations that presently exists between the federal and provincial governments. Meaning, the federal government will make transfer payments to Indigenous communities and organizations to achieve Indigenous self-governance.

**Recommendation 47:** Require the Canadian state to provide stable funding to Indigenous communities and organizations through a restructured process that does not perpetuate structural violence against Indigenous communities and organizations.

**Recommendation 48:** Require the Canadian state to develop a funding model in partnership with Indigenous women, girls, gender-diverse people, their communities and their organizations which does not require Indigenous communities and organizations to compete with one another for the same allotted funds.

**Recommendation 49:** Require the Canadian state to follow the lead of Indigenous women, girls, gender-diverse people, their communities and their organizations on projects and services as opposed to the current process where the Canadian state seeks input after deciding what course the state will take.

#### vii. Proper Implementation of the UNDRIP

**Recommendation 50:** the National Inquiry draft their final report and the recommendations therein using the above cited legal framework regarding renewed, reciprocal relationships and respect for both Indigenous and international laws and obligations to frame the recommendations as legal imperatives to which the Canadian state has bound itself.

**Recommendation 51:** The National Inquiry draft the final report with a mind to the legal imperative on the Canadian state to act on the recommendations of the final report as created through an intersectional, gender-based, inherent human rights framework which includes the full and meaningful implementation of the UNDRIP.

**Recommendation 52:** Require the Canadian state to immediately include the voices of Indigenous women, girls, gender-diverse people and their chosen representatives in all decision-making mechanisms on matters that impact their lives.

**Recommendation 53:** Require the Canadian state to recognize the recommendations of the National Inquiry as a legal imperative and act immediately on implementing these recommendations based on the knowledge and recommendations received from Indigenous women, girls, gender-diverse people, their families and their chosen representatives.

#### viii. Identified Gaps for 2SLGBTQ+ Safety

**Recommendation 54:** Require that funding be allocated for gender diversity education both within communities, and as part of public school curriculum, on Two-Spirit, LGBTQ+ identities people and issues, led and developed by Indigenous Two-Spirit and LGBTQ+ people.

**Recommendation 55:** Require that funding be allocated for Two-Spirit and LGBTQ+ inclusive programs and interventions to combat isolation.

**Recommendation 56:** Require that, in order for the RCMP to develop effective strategies to combat violence against and trafficking of Indigenous Two-Spirit and LGBTQ+ women, girls, and gender-diverse people, they disaggregate their data by gender identity as well as by First Nations, Métis, Inuit, and urban and rural.

**Recommendation 57:** Require that provincial, territorial, and federal governments further subsidize/cover the cost of sex reassignment, or gender-affirming surgery. Without this surgery, the safety of trans Indigenous people is compromised by mental health risks and the risk of being denied medical services due to sex.

**Recommendation 58:** Require that funding be allocated for safe, affordable, and accessible community housing and shelters for Two-Spirit and LGBTQ+ people,

including dedicated retirement community housing for aging parts of this population, and for those involved in the sex trade.

**Recommendation 59:** Require that research be conducted to study and unpack the specific impacts of the Indian Residential School System on Two-Spirit identities.

**Recommendation 60:** Require that the Canadian state mandate a coroner's inquest into the deaths of trans, Two-Spirit and gender diverse peoples in order to better understand the relationship between gender identity, expression, and violence.

**Recommendation 61:** That the Canadian state legislate the necessity of service providers to use correct pronouns and provide respectful service to Two-Spirit and LGBTQ+ Indigenous individuals, regardless of gender identity / expression