



**SUBMISSIONS OF THE
ASSEMBLY OF FIRST NATIONS
TO THE
NATIONAL INQUIRY ON MISSING AND MURDERED
INDIGENOUS WOMEN AND GIRLS**

December 21, 2018

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PART I – OVERVIEW

1. In order to address the epidemic of missing and murdered Indigenous women and girls in Canada, the rights and dignity of First Nations women and girls must be respected particularly within institutions like police forces and the criminal justice system. But we know from the many expert and institutional witnesses who provided evidence during the National Inquiry’s “Truth Gathering Process” that there is no single root cause of this problem.

2. The problem is multi-faceted and far ranging. It includes systematic biases and discriminatory and racist practices, which date back to the very first encounters First Nations had with non-Indigenous societies. These systematic racist biases have their roots in land disposition and the denial of First Nations’ rights to their lands. It includes the legacies of Residential Schools, the *Indian Act*, the 60’s Scoop and their modern day incarnation - the child welfare system. It also spreads across all institutions whether it is governments, law enforcement, the courts systems, resource development, health care agencies and educational institutions.

3. The Assembly of First Nations (AFN) respectfully encourages the Commissioners to ensure that the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (“National Inquiry”) demands that governments and institutions take necessary action needed to guarantee that the rights to safety and security of all First Nations women, girls and LGBTQ2S in Canada are upheld.

A. The Assembly of First Nations

4. The AFN is the national representative body of 634 First Nations and First Nation Citizens across Canada, regardless of where they reside. First Nations have their own histories, languages, and relationships with Canada. These relationships are founded upon inherent self-governing authority, historic peace and friendship treaties, military alliance treaties; treaties relating to trade, pre-Confederation treaties, the numbered treaties, modern treaties, self-government agreements, and other arrangements.

5. The AFN is comprised of several main organs including the Women's Council. The AFN Women's Council works with the AFN Secretariat to ensure that the concerns and perspectives of First Nations women inform the work of the AFN.

6. The AFN Women's Council actively participates in the Executive Committee to provide the perspectives of First Nations women. The Women's Council provided leadership and engagement in the pre-inquiry activities and regional pre-inquiry meetings. The AFN leadership, in conjunction with the Women's Council, has provided for increased awareness and communication on many issues involving violence against Indigenous women and missing and murdered Indigenous women and girls.

7. For many years the AFN advocated for the establishment of a national inquiry and called on all levels of government to address the systematic causes of all forms of violence – including sexual violence – against Indigenous women and girls in Canada. The AFN's advocacy work on this issue was supported by several Chiefs-in-Assembly Resolutions. Resolution #61/2010 called on the AFN Executive to advocate for the establishment of an independent public inquiry into missing and murdered women and girls in Canada and to call on all levels of government to engage First Nations on the national, regional and local levels to develop action plans to support families and address the root causes of violence against Indigenous women.

8. In addition, Resolution #61/2010, directed the AFN Executive Committee to call upon governments to support community based initiatives to ensure proper resources for victims of crime and to advocate and lobby for the protection and safety of First Nations women and children across Canada in accordance with the United Nations Declaration on the Rights of Indigenous People. The AFN and the AFN Women's Council have made the issue of missing and murdered Indigenous women and girls a priority and have worked to address the issue of ending violence against Indigenous women and girls including the identification and examination of practices that have been effective in reducing violence and increasing safety.

9. The AFN firmly believes in, and has always advocated for, a "Families First Approach" to the issue of missing and murdered Indigenous women and girls. The families first approach which originated in Manitoba, was an initiative brought forward by the families of missing and murdered

Indigenous women and girls and supported by the Chiefs-in-Assembly, to ensure that any actions taken, was from the start, inclusive of the family members. Central to the families first approach is the acknowledgement that it is survivors and family members who must be at the forefront of any efforts to address the many systematic and root causes of missing and murdered Indigenous women and girls. This is evidenced by AFN Resolution 37/2014 “*Support for the Families First*” which mandated the AFN Executive to take a families first approach to ensuring that there is a respectful inclusion of voices and perspectives of the families in the discussions and development of action plans on the issue of missing and murdered Indigenous women and girls. In addition, the families first approach was emphasized in Resolution 57/2017 “*Support for the National Inquiry into Missing and Murdered Indigenous Women and Girls*” and Resolution 78/2017 “*Support for the Extension of the National Inquiry into Missing and Murdered Indigenous Women and Girls*”.

10. The AFN submits that in order for the National Inquiry’s final report to be effective in its recommendations, it must adhere to the families first approach. While survivors and family members have expressed differing views with respect to the National Inquiry’s process, they have all demonstrated incredible strength and determination in their journeys to seek justice for their loved ones. It is that love, strength and determination of the survivors and family members which must form the basis of the National Inquiry’s final report.

B. The United Nations Declaration of the Rights of Indigenous Peoples

11. The AFN and the AFN Women’s Council have also advocated strongly that this National Inquiry adopt a human rights approach to examining the root causes of the national epidemic of missing and murdered Indigenous women and girls. Articles 21(2) and 22(2) of *United Nations Declaration on the Rights of Indigenous Peoples* (“UN Declaration”) and Article 7 of the *American Declaration on the Rights of Indigenous Peoples* states that Indigenous women have the right to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free of all forms of discrimination and that States must recognize that violence against indigenous peoples and persons, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms.¹

¹ Article 22 of the *United Nations Declaration on the Rights of Indigenous Peoples* found online at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf; Article IIV American

12. The UN Declaration specifically recognizes the duty of States to take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy full protection and guarantees against all forms of violence and discrimination. In the international law context, States have obligations to demonstrate their due diligence to prevent human rights violations.² The AFN submits that these important principles must form the foundations for the Commissioner's recommendations in their final report.

C. Mandate of the National Inquiry into Missing and Murdered Indigenous Women and Girls

13. The creation of the National Inquiry in 2016 marked an unprecedented acknowledgement and cooperation by the federal and provincial governments, to take much needed action to address the issue of missing and murdered Indigenous women and girls. According to the *Terms of Reference* of the National Inquiry, the Commissioners are mandated to examine underlying historical, social, economic, institutional and cultural factors that contribute to violence experienced by Indigenous women and girls and to their greater vulnerability to these types of violence. The Commissioners are also mandated to examine and report on the systemic causes of all forms of violence against Indigenous women and girls in Canada by looking at patterns and underlying factors. The Commissioners' final report will include recommendations to eliminate systemic causes of violence and increase the safety of Indigenous women and girls in Canada. Also, it will include recommended ways to honour and commemorate missing and murdered Indigenous women and girls.³

14. Many have pointed out that the scope of the National Inquiry's *Terms of Reference* is quite broad; it is indeed a monumental task to examine underlying historical, social, economic, institutional and cultural factors that contribute to violence experienced by Indigenous women and

Declaration on the Rights of Indigenous Peoples, June 15, 2016 (AG/RE2867 (XLIV-0/14) found at: <https://www.oas.org/en/sare/documents/DecAmIND.pdf>.

² Inter-American Commission on Human Rights OEA/Ser.L/V/II. Doc. 30/14, 21 December 2014, *Report of Missing and Murdered Indigenous Women in British Columbia, Canada* at pages 72-80.

³ *Terms of Reference for the National Inquiry into Missing and Murdered Indigenous Women and Girls*, (2016) found at: <http://www.mmiwg-ffada.ca/wp-content/uploads/2018/10/terms-of-reference.pdf>.

girls as well as to report on and make recommendations on all of the systemic causes of all forms of violence against Indigenous women and girls in Canada. In order to accomplish this task, the Commissioners chose to undertake a “truth gathering process” which consisted of holding community hearings and statement gathering sessions with survivors and family members and separate expert and institutional hearings. In total the National Inquiry held 15 community hearings and 9 expert and institutional hearings. The AFN which received standing as a party to the National Inquiry in 2016, participated in 14 community hearings and all 9 of the expert and institutional hearings.

PART II – AFN PARTICIPATION IN THE NATIONAL INQUIRY’S TRUTH GATHERING PROCESS

15. There have been several criticisms of the National Inquiry’s process, specifically the many delays, lack of organization, and the lack of funding and support services for survivors and family members. However, many families chose to participate in the process in the hope that their actions would lead to answers about their missing or murdered loved ones and also the hope that their contribution to the process would help ensure that no other families would have to face the same heartbreaking experience of losing a loved one in a similar way.

16. The AFN felt it was necessary to participate in the National Inquiry’s truth gathering process in order to support those survivors and family members who chose to participate in the process and also to ensure their needs remained paramount throughout the process. The AFN believes that survivors and family members who participated in the National Inquiry’s process, as well as those who chose not participate, must be lifted up and supported. The AFN strongly urges the Commissioners of the National Inquiry to consider the well-being of survivors and family members and that their recommendations include plans for mental health supports and funding for culturally appropriate and land based healing programs for survivors, families and First Nations.

A. The Community Hearings

17. Throughout the Community Hearings survivors and family members demonstrated incredible courage and strength and shared with Commissioners some of the most traumatic and painful experiences any families can ever face. Commissioners witnessed their strength and their undying dedication to their loved ones and their struggle to seek justice in the face of systematic

racism and prejudices.

18. The Commissioners also heard from First Nation leadership about the frustration, sadness, and powerlessness they feel when their citizens and in some cases their loved ones go missing or are found murdered and the lack of resources they receive.

19. The AFN does not intend to refer to any specific cases or testimony from family members in its submissions. It is an impossible task to highlight just some of the cases of missing and murdered Indigenous women, girls and LGBTQ2S which are emblematic of the many wrongs inflicted on survivors and family members, because all of these cases demonstrate in some way, the many failures on the part of governments and institutions to uphold First Nations women and girls' human rights to safety and security.

20. Furthermore, the AFN believes it is the voices of the survivors and the family members and First Nations that are the most effective in conveying the deep sense of loss, anger, despair, frustration and undying hope and love they have for their family members, friends and community members. It is their voices that must be uplifted and memorialized. The AFN submits that it is imperative that the Commissioners' recommendations ensure that the evidence provided by survivors and family members during the Community Hearings, is memorialized in a respectful way and that they be the primary consideration when drafting the final report.

21. What is apparent from the testimony provided during the Community Hearings is that there are certain common experiences which all survivors and family members have endured. Many survivors and family members describe how their complaints regarding their missing loved ones are ignored or dismissed by law enforcement officials, coroners, hospital officials, and lawyers, simply because the victim is Indigenous. As mentioned above it is the mandate of the National Inquiry to identify systematic causes of missing and murdered Indigenous women and girls and to be frank, there is no greater root cause of this epidemic than *racism*.

B. Expert Hearing on Racism

22. In 2017, the *United Nations International Convention on the Elimination of All Forms of Racial Discrimination*, *Committee on the Elimination of Racial Discrimination* (CERD) discussed in its periodic report of Canada the growing concern regarding the alarming rates of missing and

murdered Indigenous women and girls in Canada recommending that Canada establish an independent review mechanism for unsolved cases of missing and murdered indigenous women and girls where there is evidence of bias or error in the investigation.⁴ The history and legacy of colonialism in Canada permeates almost all aspects of Canadian law and the legal system. Many of the root causes of the epidemic of missing and murdered Indigenous women and girls in Canada can be traced back to the assimilationist objectives which were codified in Canada's law and policies. It is an undeniable truth that long standing systematic biases and racist views still held by Canadian society continue to deny First Nations women and girls fundamental rights to safety, security and equal protection under the law.

23. During the expert hearing on racism in Toronto, author Tanya Tagala spoke about her book the "Seven Fallen Feathers" which describes the circumstances surrounding the deaths of several Indigenous youth in Thunder Bay, and the lack of action taken by public officials to address the problem of racism in Thunder Bay. Ms. Tagala stated:

"So, that's when I began to write about the seven fallen feathers and about what was happening in Thunder Bay, and as part of that, you cannot help but look at racism, you cannot help but look at intergenerational trauma, the effects of colonialization and indigenous people and non-indigenous society in the city of Thunder Bay. Thunder Bay, to me, too, is a microcosm for the entire - - - you can look at Thunder Bay and see it, but its microcosm for the entire country or Canada...I see very many similarities with how the cases of the seven were handled with the cases of missing and murdered indigenous women and girls..."⁵

24. Ms. Tagala's evidence demonstrates how the racism experienced by First Nation youth is an extension of the racism faced by Indigenous women and girls. These forms of racism have dire consequences for the safety of First Nations people. Colonialism and racism have ingrained in Canadian society a belief that First Nations lives are not as valued as non-Indigenous people and that there are no consequences for harming First Nations women and girls.

⁴ *United Nations International Convention on the Elimination of All Forms of Racial Discrimination, Committee on the Elimination of Racial Discrimination (CERD)*, concluding observations on the combined twenty-first to twenty-third periodic reports of Canada, CERD/C/CAN/CO/21-23, 13 September 2017.

⁵ Transcript of Testimony of Tanya Tegala, *National Inquiry into Missing and Murdered Indigenous Women and Girls*, Truth Gathering Process Part III, Expert & Knowledge Keeper Panel: Racism, Toronto, Ontario, June 13, 2018 Part II, Vol. X, pg. 60-61 at lines 16-25 and 1-3.

25. Dr. Barry Lavallee also provided strong testimony on the many ways in which First Nations people receive substandard health care by virtue of their race.⁶ Dr. Lavallee provided evidence about how racism, prejudice and long held stereotypes about First Nations people, perpetuated by institutions work to deny First Nations their basic rights. To exemplify this he discussed the Brian Sinclair case, in which an Indigenous man was refused emergency medical treatment for a simple infection, which led to his death while awaiting treatment.⁷ Dr. Lavallee’s testimony stood in stark contrast to the many institutional witnesses who provided evidence of cultural awareness training and cultural competency training as an antidote to racism within these institutions. While cultural awareness training may be a good start, more needs to be done in terms of accountability for racist or discriminatory behaviour directed towards First Nations people. As Dr. Lavallee correctly points out it in his evidence it is not First Nations culture that is problematic – it is the racism and the white patriarchy of these institutions.

“I didn’t talk about cultural safety training because Indigenous culture is not the issue. The issue around accountability is that white patriarchy needs to be dismantled in institutions and white patriarchy is the epitome of what happens when they are not held to account.”⁸

26. Dr. Lavallee’s testimony was also highly compelling in that he linked the systematic racism First Nations people endure while attempting to access basic health services to the issue of land displacement and the denial of First Nation rights to their lands. Dr. Lavallee stated:

“We know that the Indigenous body is a proxy to our land and that the killing of our land is like the killing of the body of indigenous people...and, to reduce and to stop the targeting of indigenous women, we need our land back, and that were desperate to have our land and we need equal access to resources. And we, need accountability by institutions.”⁹

27. The AFN believes that accountability is integral to ensuring that systematic racism and bias against First Nations people no longer form part of our public institutions in Canada. It is not enough for institutions like governments, police forces, the courts, and hospitals to use cultural

⁶ Transcript of Testimony of Dr. Barry Lavallee, MD, University of Manitoba, *National Inquiry into Missing and Murdered Indigenous Women and Girls*, Truth Gathering Process Part III, Expert & Knowledge Keeper Panel: Racism, Toronto, Ontario, June 12, 2018 Part II, Vol. IX.

⁷ *Ibid*, at Pg. 66 at lines 1-17

⁸ *Ibid*, at pg. 263 at lines 17-22.

⁹ *Ibid*, at pg. 263 at lines 17-25.

awareness training as a cure all for the inherent racism imbedded within these institutions. If these institutions are built upon discriminatory or racist assumptions, laws, policies and practices; even the most culturally aware individuals will continue to perpetuate that racism.¹⁰ These institutions must undertake an honest review of their laws, policies and practices and uncover the built in systematic biases against First Nations people and commit to making real substantive changes.

C. Institutional Hearings on Policing and the Criminal Justice System

28. During the institutional hearings on policing and the criminal justice system witnesses provided evidence on the many types of institutional racism and prejudice First Nations people experience when they interact with law enforcement and the criminal justice system.

29. Institutional witnesses such as police forces admitted and even apologized for failing the families of missing and murdered Indigenous women, girls and LGBTQ2S people.¹¹ Several government officials testified about the types programs and services they provide to address the issue of violence against Indigenous women and girls as well as the initiatives they are now taking to be more inclusive of Indigenous peoples and cultures. They discussed their implementation of cultural awareness or cultural competency training and their initiatives to create partnerships and relationships with First Nations. And while informative, many of these institutional witnesses, with some notable exceptions, did not provide evidence on what exactly are the mechanisms of internalized or systemic prejudices and racism within their institutions that contribute to the problem of missing and murdered Indigenous women and girls in Canada. Some refused to acknowledge that racism or prejudice in their organizations exists at all.¹²

¹⁰ *Child and Family Caring Society and the Assembly of First Nations v. Attorney General of Canada*, 2016, CHRT, 2. See also Exhibit A16: Slide Presentation by Professor Naomi Metallic, *National Inquiry into Missing and Murdered Indigenous Women and Girls*, Truth Gathering Process Part III, Expert & Knowledge Keeper Panel: Human Rights Framework, Quebec City, Quebec.

¹¹ Transcript of Testimony of Brenda Lucki, Commissioner RCMP, *National Inquiry into Missing and Murdered Indigenous Women and Girls*, Truth Gathering Process – Part II Institutional Hearings “Police Policies and Practices”, Monday June 25, 2018, vol. VI, pg. 34, lines 10-20.

¹² Transcript of Testimony of Capitaine Paul Charbonneau, Directeur par iterim, Autorite disciplinaire et services juridiques, Surete du Quebec, *National Inquiry into Missing and Murdered Indigenous Women and Girls*, Truth Gathering Process – Part II Institutional Hearings

30. However it remains a fact that First Nations people are continually over policed, over charged, and over incarcerated in the justice system.¹³ It is a shameful fact that government officials have never, and in many cases still don't, provide the same level of funding to First Nations for services on reserves as they do other populations.¹⁴ Furthermore, during the Community Hearings, Commissioners heard directly from survivors and family members that when First Nation women and girls go missing; their families' complaints are not taken seriously, their cases are not investigated properly, their families are not updated on their loved ones investigations, their cases are prematurely deemed accidents, and the perpetrators are not apprehended or punished in the same manner as when the victims are non-Indigenous.

31. Many of the institutional witnesses however failed to acknowledge the historical and current acrimonious relationship First Nations have with law enforcement. There was virtually no acknowledgement by governments or police forces from across Canada of the role many police agencies played in the colonization of Canada and the violence which throughout history was perpetrated against First Nations women and girls. There was no acknowledgement of the law enforcement role in enforcing racist and discriminatory laws and policies such as: confining First Nation people to reserves; the permit system; or their role in taking First Nations children away from their families to attend Residential Schools. Nor did they discuss the many incidents across Canada where police have been called in to enforce Canada's laws when First Nations are forced to defend their land rights. Throughout history, law enforcement's relationship with First Nations has been tainted by violence, racism and mistrust.

32. In order overcome this; more will be needed than just cultural sensitivity training. What is needed is increased and equitable funding and resources for First Nations policing; acknowledgement of past mistakes; and, a demonstrated commitment to accountability such as independent third party oversight.

"Police Policies and Practices", Thursday June 28, 2018, vol. IX, pg. 182 at lines4-10.

¹³ Exhibit 25: *Annual Report 2016-2017*, Office of the Correctional Investigator, ISBN: 0383-4379 (105 pages), *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional & Expert / Knowledge Keeper Hearings "Criminal Justice Oversight and Accountability"*, September 16, 2018.

33. During the institutional hearing on Policing Practices, Chief Superintendent Mark Prichard of the Ontario Provincial Police (“OPP”) provided evidence regarding “Project Journey” which was based upon an American initiative called “Project Venture” which operates within Pikangikum First Nation in Ontario. The purpose of “Project Journey” is to help First Nation youth overcome challenges, but it is also an attempt to build a relationship of trust between the First Nation and the police. Chief Superintendent Mark Prichard stated:

“But I think the biggest lesson from Project Journey aside from the collaboration and the fact that it’s a partnership. We often hear in the media the stories of troubled communities and all the bad things. And, I think to make these initiatives succeed is to look for the strengths and use a strength-based approach. So, you have a committee [sic] that’s struggling, that has troubles, but you find the – you find their strengths because the strengths are there, you just have to look for them sometimes, and you capitalize on those strengths and you build a program around that. And those strengths very quickly start emerging out of the use that they are involved in the project. And, I think that’s been key to the success, is using this approach.”¹⁵

34. While a substantive change to remove systematic biases in police forces is paramount, as well as accountability and third party oversight, more is needed for police forces to overcome their role in the history of colonial violence and oppression perpetrated against First Nations. Programs such as “Project Journey” may serve as a model for other police forces in their attempts to build relationships and most importantly build trust with the First Nations and the citizens they are supposed to serve.

D. Expert Hearings on Colonial Violence and Human Rights Framework

35. During the expert hearings on Colonial Violence and the Human Rights Framework, several leading Indigenous academics provided testimony on how First Nations’ inherent rights, jurisdiction and legal traditions must be recognized and upheld in order for true reconciliation to occur in Canada. The history of colonialism and racism in this country plays a significant role in the violence experienced by First Nations women and girls. For example the evidence of T.J.

¹⁵ Transcript of Testimony of Chief Superintendent Mark Prichard, Ontario Provincial Police, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II Institutional Hearings “Police Policies and Practices”*, Monday June 25, 2018, vol. IX, pg. 260 at lines 10-21.

Lightfoot described the links between colonialism, violence, land disposition, resource extraction and the negative effects this has had on First Nations, women, girls and LGBTQ.¹⁶

36. The growing prevalence of “man camps” in the natural resource sector and their correlation with violence and human trafficking has its roots in colonial violence and the land disposition of First Nations. “Man camps” which are often located near remote First Nations, expose women and girls to greater risks to gender based violence, harassment, family and domestic violence, human trafficking, racism, and other violations of their human rights.

37. Natural resource projects often bring influxes of mostly non-Indigenous, transient men into remote areas. The nature of resource sector work is isolating, dangerous and unstable; and this, coupled with high paying jobs, creates circumstances where there is increased likelihood of the use of drugs and alcohol and the occurrence violence. Due to inequitable funding for health services, social services and policing, First Nations often lack the resources needed to handle these large increases of population, socio-economic problems and consequential violence which is perpetrated against First Nations women and girls. It is a domino effect which is based upon and perpetuated by racism and discrimination, the denial of human rights and the violation of First Nations’ relationships to their lands or the extinguishment of their rights.¹⁷

38. Jeffery McNeil-Seymour also drew a connection between violence against First Nations women, girls and LGBTQ and “man camps” he states:

“And thinking about violence on the land, violence on our body...I’m hoping that the recommendations from this inquiry and knowing that families are displaced, low income families are displaced because of rent increases or STI’s increasing, sexual violence and domestic violence all sky rocketing when man camps go in...”¹⁸

¹⁶ Transcripts of Testimony of T.J. Lightfoot, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Mixed Part II & Part III Institutional / Expert and Knowledge Keeper Hearings “Colonial Violence”*, Wednesday, September 12, 2018, vol. VIII, pg. 155 at lines 17-25.

¹⁷ *Ibid* pg. 156 at lines 1-19.

¹⁸ Transcripts of Testimony of Jeffery McNeil Seymour, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Mixed Part II & Part III Institutional / Expert and Knowledge Keeper Hearings “Colonial Violence”*, Wednesday, September 12, 2018, vol. VIII, pg. 215 at lines.

39. Dr. Dalee Sambo-Dorough testified during the Human Rights hearing in Quebec City that the extinguishment of rights can also lead to heightened poverty and other vulnerabilities experienced by Indigenous women and she stated that in particular the unilateral extinguishment of the rights of Indigenous people has a serious adverse impact. Dr. Dalee Sambo-Dorough stated:

“As far as Indigenous women and girls and missing and murdered Indigenous women and girls, the diverse legal context in my view, range from the lack of law enforcement, to the judiciary, to penal institutions and the denial of quality, whether it is relative or substantive equality. And for Indigenous women and girls this has generated not only insecurity of person and immediate family, but also damaging impacts upon every dimension of their womanhood as Indigenous women and girls; their relations with all others and their relations with their own peoples, with their lands and territories and society overall”. All of these things, colonial violence, racism, the denial of human rights, the disposition of land and extinguishment of First Nation rights are inextricably linked to the prevalence of Missing and Murdered Indigenous Women and Girls.”¹⁹

40. The factors which contribute to missing and murdered Indigenous women and girls are interconnected and far ranging. There are obviously going to be many unanswered questions with respect to how to eliminate systematic causes of violence against First Nations women and girls. However, the AFN submits that the answers to any of these questions will always be found within our nations, within our people, within our land and within cultures. As Dr. Sambo-Dorough indicated in her evidence:

“...any type of national action plan in response to these issues must start with dialogue with the Indigenous peoples concerned and their exercise of the right to self-determination, because they are the “self” in self-determination and they need to identify the priorities and what specific problems are and what the potential solutions are.”²⁰

41. First Nations are most certainly the “self” in self-determination and First Nations must be the driving force behind any laws, policies, guidelines and recommendations affecting them.

¹⁹ Transcripts of Testimony of Dr. Dalee Sambo-Dorough, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part III Expert and Knowledge Keeper Hearings “Human Rights Framework”*, Wednesday, May 16, 2018, vol. VI, pg. 248 at lines 6-17.

²⁰ Transcripts of Testimony of Dr. Dalee Sambo-Dorough, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part III Expert and Knowledge Keeper Hearings “Human Rights Framework”*, Thursday, May 17, 2018, vol. VII, pg. 31 at lines 6-31.

Anything which is imposed upon First Nations without their input and consent is just another form of colonialism.

42. The Supreme Court of Canada continues to declare that it is impossible to get a complete appreciation of the situation of Indigenous peoples, without the historical context – this extends to First Nations missing and murdered Indigenous women and girls. Though the detailed historical evidence is at times unpleasant and horrific, it is imperative for the Inquiry to more fully understand the impacts of colonialism and federal aspirations and its contributions to missing and murdered Indigenous women and girls.

E. Institutional Hearings into Government Services and Child Welfare

43. The historical contextual evidence shows us patterns of conduct on the part of the Indian Affairs and Northern Development (now Crown-Indigenous Relations and/or Indigenous Services Canada), which contribute to the disempowerment of Indigenous women and continues to perpetuate historical disadvantage or racial discrimination. The most significant and harmful policies of the federal government relate to the continued removal of children from their families and communities. There are also patterns of overbearing departmental control over the lives of First Nations. Testimony was provided to the Inquiry that government has knowledge of the problems its policies create, the continued damage to Indigenous women and girls resulting from its policies, and continued neglect to stop harming Indigenous communities.

i. *Indian Act* Enfranchisement

44. The historic relationship between First Nations peoples' as the original inhabitants of Canada and the settlers who subsequently settled in this country is rooted by the ambitions of foreign colonial regimes. The colonial agenda perceived the presence of Indigenous peoples in Canada as an obstruction to the ultimate goal of imperial dominance. Indigenous people were seen as barbaric.

45. The Final Report of the Truth and Reconciliation Commission describes the colonizer's intentions in Canada through the accounts of one of its proponents, Herman Merivale, British permanent undersecretary of the Colonial Office. He noted in 1840 that there were four basic

approaches an imperial power could take in its relations with Indigenous people. It could: exterminate them, enslave them, separate them from colonial society, or assimilate them into colonial society.²¹ Federal policy took on a combination of these elements. First the federal government created small Indian reservations and segregated the population in these reserves. The federal government also began to attack the growth of the First Nations population by removing the legal status of First Nations women. Finally, the federal government undertook the large scale removal of First Nations children from their parents.

46. Until 1985, Indian status under the *Indian Act* was determined exclusively by the male line. An Indian was a male entitled to be registered as of the creation of the Register in 1951, or entitled to be on the band list (from 1876 to 1951). In addition, an Indian was the wife or child of an Indian man. Only two exceptions existed to this rule:

- i. if a child was born out of wedlock to an Indian woman and an unidentified father, the child was entitled to be registered unless the father could not be proven to be a non-Indian, but subject to the band's right to protest the child's status by alleging non-Indian paternity;²²
- ii. if a child was born out of wedlock to an Indian father and a non-Indian woman, as of 1951, the daughter was not entitled to be registered but the son was entitled.²³

As is well known, since status depended on the man, from 1876 till 1985, a male Indian who married a non-Indian woman gave her status, but an Indian woman who married a non-Indian man lost her status. Testimony was provided on the effects of enfranchisement. For instance, one witness stated: It's -- men control the private sphere and the public sphere, and the private sphere is the family unit where, you know, we have our Indian status because of the men in our lives. I have status because of my husband, and before that, I had status because of my father. And so, in our world, men hold all the cards and we hold none.²⁴

47. The enfranchisement of First Nations women created additional barriers to overcome. When a woman was enfranchised, she was separated from the protection and connection to her

²¹ The Final Report of the Truth and Reconciliation Commission of Canada, Canada's Residential Schools: The History, Part 1 Origins to 1939, at p. 14.

²² *Gehl v. Canada (Attorney General)*, 2017 ONCA 319, para. 8.

²³ *Martin v. Chapman*, [1983] 1 SCR 365; *Descheneaux c. Canada* (Procureur Général), 2015 QCCS 3555, para. 92.

²⁴ Transcripts of Testimony of Ms. Fay Blaney, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part III Expert and Knowledge Keeper Hearings “Human Rights Framework”*, Monday, May 13, 2018, vol. IV, pg. 135 at lines 8-13.

family, community and culture and she was not even guaranteed access to her home community. This resulted in additional burdens for her to retain her spiritually, language, and traditions. In addition, transmission of her First Nations language and culture to her children would also be impacted.

ii. Indian Residential Schools

48. The AFN believes that the current situation of missing and murdered Indigenous women and girls is related to the legacy of Indian Residential Schools. This Inquiry heard extensive evidence on the history of Indian Residential Schools, their intergenerational impacts and the connection to missing and murdered Indigenous women and girls. The historical facts regarding Indian Residential Schools are not in dispute. For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. The primary objectives of the Residential Schools system were to remove and isolate children from the influence of their families, traditions and cultures, and to assimilate them into the dominant culture. The Crown sponsored Indian Residential Schools program exploited the vulnerability of First Nations peoples. Combined with a lack of accountability and indifference by those who should have been overseeing federal officials charged with managing the system, Indian Residential Schools thrived.

“And so I will talk about violence for Indigenous women is a result of colonization, and the whole experience around colonization and the dispossession of our sacred ways, the dispossession of our grandmothers and the dispossession of our -- of our Elders. And it is manifested through oppressive policies such as the *Indian Act* for First Nations women, and it is manifested through the residential school by killing the Indian in the child and killing the spirit of the child.

And it is manifested in those abuses that we have suffered through, whether it's being placed in a dark room or being told that we're savages or being told that we cannot speak our language. It is manifested in all of those areas, and our vulnerabilities are then pushed into these unsafe environments and -- and in these domains where we are at further risk to the extent where we don't even realize anymore that we're in a violent situation or that we are at risk of violence.

So it is manifested through colonization and the mass destruction of our traditional

systems.”²⁵

49. The Indian Residential School system impeded the transmission of traditional, positive child-rearing practices. Instead institutionalized negative parental role models for children who attended residential schools were instilled into the First Nations population. The result is the provision of care of children and healthy families in subsequent generations for some families was less than adequate. In other words, Indian Residential Schools has impacted the traditional child rearing practices and broken down First Nations child-centered family models by effectively killing the Indian in the child.

50. The Indian Residential Schools resulted in a loss of cultural knowledge, languages and traditions for some of its students. The undermining of individual and collective identity and esteem, as well as damage to the relationship with larger society had a significant impact on those children attending an Indian Residential School.

51. The conditions of Indian Residential School were horrific to many students. The buildings were inadequate for the student population. Children were malnourished and their health issues were not addressed. Overcrowding enabled the spread of disease such as tuberculosis. Dr. Bryce’s reported the impact on children:

“It contained a brief history of the origin of the Indian Schools, of the sanitary condition of the schools and statistics of the health of the pupils, during the 15 years of their existence. Regarding the health of the pupils, the report states that 24 per cent. of all the pupils which had been in the schools were known to be dead, while of one school on the File Hills reserve, which gave a complete return to date, 75 per cent. were dead at the end of the 16 years since the school opened.”²⁶

²⁵ Transcript of Testimony of Ms. Josie Nepinak, *National Inquiry into Missing and Murdered Indigenous Women and Girls*, Truth Gathering Process Part II, Expert & Knowledge Keeper Panel: Government Services, Calgary, Alberta, May 31, 2018 Part II, Vol. IV, p. 175 lines 4 - 23.

²⁶ *The Story of a National Crime*, Exhibit 51 of Part III Expert & Knowledge-Keeper Hearings – Racism at p. 4.

52. Physical abuse and human rights violations were common in Indian Residential Schools. The extent of abuse has been acknowledged by courts administering the Indian Residential Schools Settlement Agreement. Justice Perell, the eastern supervising judge noted that:

“The School Narrative for St. Anne’s does not state that children were forced to eat vomit, nor does it indicate or categorize the source documents that relate to the convictions for administering a noxious substance.

Applicants’ counsel’s review of the documents revealed that they contain, in graphic and horrific detail, descriptions of numerous incidents in which students were forced by Sister Anna Wesley to eat their own vomit.

The School Narrative for St. Anne’s IRS does not mention the use of a whip, strap, or cat of nine tails on children at the school. Applicants’ counsel’s review of the documents revealed that they contain in graphic and horrific detail descriptions of numerous incidents in which students were whipped by Sister Wesley and Father Leguerrier.

The Narrative mentions the allegation at the Keykaywin Conference in 1992, that some participants spoke of being forced to sit in an electric chair for punishment. The Narrative, however, does not indicate or compile the source documents that relate to that allegation. The POI Reports for Anna Wesley, Father Jules Leguerrier and Father Lavoie do not mention the use of this electric chair or the source documents that would relate to that allegation.”²⁷

53. Sexual abuse of First Nations students was prevalent in the Indian Residential Schools system. It was a common practice by employees to take advantage of the children, and when the sexual interference was discovered, the sexual assaulter would often be re-located or transferred.²⁸ The whole situation goes back to the government’s initial decision to remove the children from the love and protection of their parents and communities and into the schools. It was reasonably predictable that the children were being placed in a dangerous place. The prevalence and degree of sexual abuse in the schools is shocking and extremely sad, and the impact on the children and on their communities is perhaps the worst of all the school impacts.²⁹

²⁷ *Fontaine v. Canada (Attorney General)*, 2015 ONSC 4061, at paras 44, 46-48.

²⁸ A Bombay et al., *Origins of Lateral Violence in Aboriginal Communities*, 2014 Aboriginal Healing Foundation, Exhibit 20 of Part III Expert & Knowledge-Keeper Hearings – Families at p. 41.

²⁹ A Bombay et al., *Origins of Lateral Violence in Aboriginal Communities*, 2014 Aboriginal Healing Foundation, Exhibit 20 of Part III Expert & Knowledge-Keeper Hearings – Families at p. 53-54.

54. The victimization of the children created a “spillover effect” into a number of the students’ lives as adults. The sexual abuse in the schools created a pathway flowing into the First Nations communities in terms of the sexual practices that occurred in the schools by adult employees. A number of organizations commented as to the pervasiveness of this problem and the connection to the residential school system. The Aboriginal Healing Foundation noted the following:

“Other service providers touch on issues relating to why and how the abuse that occurred at residential school continues within many communities. As presented earlier, participants attribute much of this to the normalization of abuse and violence. Acknowledging that the prevalence and consequences of student-to-student abuse is unknown, one counsellor says that “I think what is important to ask is how many abusers being students went home into community thinking because they were allowed to at residential school, that they could continue abusing their loved ones at home, and how this cycle of hurting one another has been passed on for generations.”³⁰

55. The Northwest Territories Research Project on Intimate Partner Violence described the spillover effects as follows:

“Findings in this research identify an influential history of colonization and the intergenerational impact of residential schooling that contributes to violence; the impact of which cannot be underestimated. The causal conditions of IPV have grown out of this context and are revealed as trauma, unhealthy relationships, poorly resourced communities, and lack of safety and support. In response, violence continues to be normalized as a way of life. There continues to be shame and blame attached to violence that is most often directed at women who are the survivors of violence not the perpetrators of the act.”³¹

56. It is important to acknowledge the resiliency and strength of those students who attended Indian Residential Schools, as many of them would later raise children in homes free of violence. Nevertheless, Indian Residential schools opened a pathway of abuse into First Nation communities that continues to increase the risk of First Nation women and girls to become victimized.

³⁰ A Bombay et al., *Origins of Lateral Violence in Aboriginal Communities*, 2014 Aboriginal Healing Foundation, Exhibit 20 of Part III Expert & Knowledge-Keeper Hearings – Families at p. 111.

³¹ Moffitt, P (2017). Northwest Territories Research Project Report for Territorial Stakeholders: *Hearing about the Realities of Intimate Partner Violence in the Northwest Territories from Frontline Service Providers*: Final Report, Exhibit B26 of Part III Expert & Knowledge-Keeper Hearings – Human Rights, at p. 5.

iii. 60's Scoop

57. As the Indian Residential Schools system was coming to a close, the federal government began to shift its focus to child protection issues. In the 1960s, the child welfare system did not require social workers to have specific knowledge or training in dealing with First Nations children and families. Many of these social workers were completely ignorant of First Nations cultures, child rearing practices and/or the history of First Nations peoples.

58. Social workers measured parental conduct and what constituted proper care from a middle-class Euro-Canadian paradigm. Thus, hunting wild game, cultivation of berries and vegetation and the traditional diets of First Nations were viewed as forms of neglect, as social workers did not find a full cupboard and fridge full of food. The practice of having the oldest child reside with their grandparents was also seen as a form of abandonment and neglect. In addition, poverty and the social problems in First Nations resulting from Indian residential schools left social workers with a desire to apprehend children.

59. In most cases, First Nations parents were providing loving and caring homes for their children. The influx of social workers in First Nations communities resulted in the mass removal of First Nations children from their families into the child welfare system. Many of these children were placed for adoption in non-native families across Canada, in the United States and Europe. In the vast majority of cases, children taken from their parents with little or no warning and adoption took place without the consent of a child's parents or their First Nations. In fact, it was common practice in the sixties to 'scoop' up all newly born children in a First Nations community.

60. By the 1970s, roughly one third of all children in care were First Nations.³² Approximately 70 percent of the children apprehended were placed into non-Aboriginal homes many of them homes in which their heritage was denied.³³ Physical and sexual abuse, and forced labour was not

³² Sinclair, 66; Fournier and Crey; Johnston, Patrick. *Native Children and the Child Welfare System*. Toronto: James Lorimer and the Canadian Council on Social Development, 1983.23.

³³ Raven Sinclair, *Identity lost and found: Lessons from the sixties scoop*, First Peoples Child & Family Review, Vol. 3, No. 1, 2007. https://fncaringsociety.com/sites/default/files/online-journal/vol3num1/Sinclair_pp65.pdf

uncommon.³⁴ These allegations of abuse were usually covered up by social service agencies. In some cases, the foster or adoptive parents would not disclose to the child that they were of First Nations descent. Government policy at the time did not allow birth records to be opened unless both the child and parent consented. This meant that many children suspected their heritage but were unable to have it confirmed.

61. Children growing up in conditions of suppressed identity and abuse tend eventually to experience psychological and emotional problems. For many 60's Scoop children, the roots of these problems did not emerge until later in life when they learned about their birth family or their heritage. Feelings of not belonging in either mainstream Euro-Canadian society or in First Nation society can also create barriers to reaching socio-economic equity. One witness noted:

“Well, just the fact that, you know, because of the '60s scoop, because of the way that non-Indigenous people bring up Indigenous children, a lot of times it's more harmful than it's good. And I think with the way the media has in the past portrayed Indigenous people, that's all they're getting their knowledge from. So they're not learning about Indigenous people from the history books, the only thing they see is what's on TV or what you see in a sociology book, which is usually super, super negative.”³⁵

62. The impact on one's identity was supported by Dr. Bombay. In replying to a question about children who were removed during the 60s scoop and, more currently, the child welfare system, Dr. Bombay stated:

“A lot of sixties scoop survivors do describe have similar experiences of children of residential schools. And, certainly, for those who experienced a lot of those same adverse early life experience, we would expect the same similar or negative health outcomes.”³⁶

³⁴ Government of Alberta, Sixties Scoop Apology, May 28, 2018.

<https://www.alberta.ca/assets/documents/sixties-scoop-apology-transcript.pdf>

³⁵ Transcript of Testimony of Nakuset, Montreal Native Women's Shelter, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II* Institutional Hearings “Government Services”, Thursday May 31, 2018, vol. IV, pg. 151, lines 1-10.

³⁶ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III* Institutional Hearings “Child and Family Welfare”, Monday October 1, 2018, vol. X, pg. 179, lines 7-11.

63. The 60's scoop had an impact on a number of individuals and created risks of additional adversity in the lives of those who were removed from their communities. Despite the 60's scoop's objective to remove First Nation children from their culture, the survivors of the 60 scoop have demonstrated resiliency as many have returned to their home First Nations. In fact, a number of witnesses to the inquiry disclosed that they were caught up in the 60's scoop. They now hold influential positions in First Nation communities, tribal councils and other organizations.

iv. Child Welfare

64. Child Welfare on-reserve is a shared arrangement between the federal and provincial governments. While the federal government asserts it has jurisdiction over First Nations children, section 88 of the *Indian Act* enables the application of provincial child welfare laws to be applied on reserve. The federal government regulates First Nation child welfare through policy, namely the *First Nations Child and Family Services Program*. This program creates a perverse incentive that encourages the removal of First Nations children from their families and communities and their placement in non-indigenous foster homes.³⁷

65. The goal of the federal government's First Nation Child and Family Services Program is to provide services comparable to those offered by provincial agencies to other Canadian children and to provide culturally-appropriate services to First Nations children and families. The program requires First Nation child welfare agencies to provide the services in accordance with provincial legislation. However, the federal government refused to fund these services appropriately. Canada's flawed and inadequate funding results in First Nations children and families living on reserve and in the Yukon receiving fewer and poorer child welfare services than other Canadians in ways that are not culturally-appropriate.

66. Furthermore, child welfare services are not designed to address the historic wrongs committed upon First Nations people. First Nations children living on a reserve continue to face historical prejudice or disadvantage. Dr. Bombay testified as to how the historic disadvantage of

³⁷ *First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at paras 168, 344, 349, 384, 458.

residential schools continues to affect First Nations communities and manifests itself in the form of mental health issues, as well as issues related to cultural identity, in addition to how First Nations people feel about being aboriginal.³⁸

67. The Canadian Human Rights Tribunal found that the federal government's *First Nation Child and Family Services Program* discriminated against First Nations children in four essential ways: (i) First Nations children are not receiving comparable child welfare services with all other Canadian children; (ii) in providing services to First Nations children Canada has failed to take into account the historic disadvantages suffered by First Nations peoples; (iii) Canada has failed to provide culturally-appropriate services; and (iv) Canada has failed to fully implement Jordan's Principle.³⁹

68. Today, First Nations children are disproportionately represented within the child welfare process. It is estimated that there are three times as many First Nations children placed in out-of-home care today than were placed in Indian Residential Schools at the height of the residential school movement. The overrepresentation of First Nations children within the child welfare system has been described as an extension of the historic pattern of removal of First Nations children from their homes which is grounded in colonial history.

69. Under child welfare legislation, children may be removed from their families as a result of neglect or abuse. Most First Nation children are presently apprehended as a result of neglect. Poverty, poor housing, and substance misuse are identified as key drivers for neglect.⁴⁰ Dr. Cindy Blackstock advises the following:

³⁸ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 174, lines 1-12.

³⁹ *First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at paras 403 and 458-459.

⁴⁰ Wen:de Report, 2005, Exhibit 55(b) of Part III Expert & Knowledge-Keeper Hearings – Racism, at p. 8.

“There are two sub-forms of neglect. One is failure to supervise... the other is physical neglect, so that is the inability of families to meet basic needs of their children. So things like housing and water.”⁴¹

70. The removal of children as a result of neglect is troublesome. In these cases, children typically have caring and loving parents who are looking out for their best interests and offering protection and guidance. The Wen:de Report of 2005 highlight the following:

“It is important to note that two of these three factors are arguably outside of the domain of parental influence – poverty and poor housing. As they are outside of the locus of control of parents is unlikely that parents will be able to redress these risks in the absence of social investments targeted to poverty reduction and housing improvement. The limited ability for parents to influence the risk factors can mean that their children are more likely to stay in care for prolonged periods of time. This is particularly a concern in regions where statutory limits on the length of time a child is being put in care are being introduced. If parents alone cannot influence the risk and there are inadequate social investments to reduce the risk – children can be removed permanently.”⁴²

71. The removal of children from their home as a result of neglect may place a child in a worse off situation. Separated from parental protection, a child is alone and becomes more vulnerable to abuse, human trafficking and sexualized violence. The BC Representative for Children and Youth reported that between 2011 and 2014 over 121 youth in state care faced sexualized violence.⁴³ The psychological impacts of sexualized violence on children and youth can be life-long. Child and youth victims of sexualized violence are approximately four times more likely than the general child and youth population to suffer from depression or an internalizing disorder, or report suicidal ideation and attempts at suicide. Children also become more vulnerable to future sex abuse.⁴⁴

⁴¹ Transcript of Testimony of Dr. Cindy Blackstock, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Wednesday October 3, 2018, vol. XII, pg. 46-47, lines 20-25 and 1-3 .

⁴² Wen:de Report, 2005, Exhibit 55(b) of Part III Expert & Knowledge-Keeper Hearings – Racism, at p.13.

⁴³ Report of the Representative of Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care*, 2006. Exhibit 39 of Part III Expert & Knowledge-Keeper Hearings – Families at p. 4.

⁴⁴ Report of the Representative of Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care*, 2006. Exhibit 39 of Part III Expert & Knowledge-Keeper Hearings – Families at p. 7.

72. The AFN is particularly concerned with the placement of children put in foster homes or group homes as a result of neglect (poverty, housing shortages, or medical related) and later are abused in state care. Had these children remained with their families, it is likely that they would not be sexually abused at all. Furthermore, children and youth who are apprehended lose their cultural bonds and resilience to abuse. Dr. Turpel-Lafond agreed that removing children from loving homes places them in a system that unnecessarily raises a risk of sex abuse.

“Let’s say there is actual violence, serious violence toward the child, there is still the fact that they are placed into a system where they are at elevated risk of sexual violence -- sexualized violence, particularly girls, and boys, but girls, and creating that additional trauma.

So, the answer of removal is something that has caused a lot of harm in and of itself, and continues to cause concern around not only victimization up to the age 19

....

So not only are they experiencing it, but we’re not stopping that experience. So in a way you can say they’re being harmed. So they’re harmed, apparently, in some way here and then they’re being re-harmed. So the system needs a very significant change.”⁴⁵

73. Despite the fact that the federal and each provincial and territorial government are aware of the adverse impacts resulting from their child welfare programs on First Nation children and families, the delivery of child welfare services has not significantly changed since the 60’s scoop. Notwithstanding numerous reports and recommendations to address the adverse impacts to First Nations children, all levels of government have sparingly implemented the findings of their own reports. While efforts have been made to improve the child welfare program, including the inclusion of culturally relevant programming, those improvements still fall short of addressing the service gaps, adverse impacts, and providing culturally appropriate child and family services to First Nations children.

74. The child welfare system and continued apprehension of children unnecessarily puts First Nation women and girls at risk of harm. There is more than a causal relationship between the plight

⁴⁵ Transcript of Testimony of Dr. Mary Ellen Turpel-Lafond, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. XIII, pg. 246-247, lines 13-25 and 1-8.

of missing and murdered Indigenous women and the child welfare system. Children in the child welfare system have unique needs and the child welfare agency has no ability to address their needs. Manitoba's First Nations family advocate, Cora Morgan, testified that of the 9,700 who were missing in 2016, 87 percent of them were kids in care, with 70 percent being girls.⁴⁶

v. Intergenerational Effects

75. Indian Residential schools affected not only individuals but also whole communities, referred to as *collective effects*, which are greater than the sum of the effects on those individually affected. Current data available that speaks to the proportion of individuals who either attended Indian Residential Schools themselves or have been intergenerationally affected by Indian Residential Schools.⁴⁷ Some of this data was published in the 2008/10 National Report of the Regional Health Survey. In her research, Dr. Amy Bombay found that 19.5% of adults living on-reserve attended an Indian Residential School. Amongst survivors, 58.1% of them attended between the ages of 5 and 10, which are the ages when childhood adversities would have had significant effects.⁴⁸

76. Ms. Sarah Clark acknowledged that intergenerational effects of Indian Residential Schools continue to plague First Nation communities and is a factor in relation to missing and murdered Indigenous women and girls. She described intergenerational Trauma as follows:

“So historical trauma is cumulative and intergenerational in its impacts, meaning its cumulative effects are passed on. These various source of trauma that originated from outside indigenous communities that I just discussed generated a wide range of dysfunction and hurtful behaviors, such as physical and sexual abuse, which is recycled generation after generation within the community. As a result, we see negative behavior, such as alcohol abuse, sexual, physical and emotional abuse,

⁴⁶ Transcripts of Testimony of Ms. Cora Moragn, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Parts II and III Expert and Knowledge Keeper Hearings “Child and Family Welfare”*, Monday, September 21, vol. X, pg. 63 at lines 17-19.

⁴⁷ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 175, lines 1- 25..

⁴⁸ First Nations Information Governance Centre (FNIGC) (2012). *First Nations Regional Health Survey (RHS) 2008/10: National report on adults, youth and children living in First Nations communities*. Ottawa: FNIGC, p. 203.

child neglect and violent crime. The link between past event like these and adverse outcomes in the present have been well documented.”⁴⁹

77. Having a parent who attended Indian Residential Schools was associated with twice the risk of having a lifetime history of abuse.⁵⁰ Also, children of residential school survivors perceive significantly higher levels of perceived discrimination compared to those whose parents did not attend.⁵¹ In addition, having a parent who went to residential school was associated with higher levels of adverse childhood experiences, which is in turn associated with higher levels of adult traumas.⁵² Similarly, having a parent who went to residential school was associated with higher levels of adverse childhood experiences which accounts for the higher levels of perceived discrimination reported by children of survivors.⁵³

78. Adulthood stressors mediated the effect between adverse childhood experiences and depressive symptoms, meaning that higher levels of childhood adversity in residential school offspring was associated with higher levels of adult traumas which accounted for their depressive symptoms, as did their higher levels of perceived discrimination as these were also associated with higher levels of depressive symptoms.⁵⁴

⁴⁹ Transcript of Testimony of Ms. Sarah Clark, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 106, lines 13-24.

⁵⁰ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 179.

⁵¹ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 151.

⁵² Transcript of Testimony of Ms. Sarah Clark, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pgs. 106-107.

⁵³ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 141

⁵⁴ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 171.-

79. Dr. Bombay described the correlation between the number of generations who attended Indian Residential Schools with greater levels of adversity:

“...we used the regional health survey and compared those, again, who were not affected by residential school, so they did not attend or did not have a parent or grandparent who attended; we compared them to those with a parent or a grandparent, so one previous generation who attended; and to a third group who reported that their parent and their grandparent attended, so they had two previous generations in their family that attended. And, we found that those who had more generations in their family who attended residential school were more likely to report psychological distress. Next slide.

We found those same cumulative patterns again in relation to suicidal ideation and attempts. Such that the more generations who attended, the greater the risk. Next slide.

Again, speaking to the proportion of the population that has been affected. When we looked at the proportion of First Nations children, youth and adults who either attended residential school or had a parent or grandparent attended, we found that in the most recent survey was about three-quarters of the First Nations population on-reserve who had been intergenerationally or directly affected, and that this has not changed very much over the past 20 years, again emphasizing the need for continued resources for healing and wellness.”⁵⁵

80. Research by psychologists support the argument that resilience to adversity may fall into three categories: (i) good developmental outcomes despite high risk status; (ii) sustained competence under stress; and (iii) recovery from trauma. In essence, one’s resilience enables one to rise above challenges and life circumstances. For example, one may grow up successfully despite being born and raised in disadvantaged household. In this sense resilience speaks to competence in dealing with threats to their well-being.

81. Intergenerational trauma strips First Nations individuals of their resilience, making one more vulnerable to abuse, riskier lifestyles and addictions. Intergenerational trauma at the family and community levels in turn modify the social dynamics of a community or group by modifying the processes, structures and functioning within the group. Ms. Cora Morgan described this phenomena as follows:

⁵⁵ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 168-169, lines 4-25 and 1-4.

“When we look at those intergenerational effects, and you have those generations, that each generation, more and more of our identity is stripped from us and our family, and then to have that in your family background and then to lose your own children, you know, the resilience, I think, is further lessened along the way. And so, those are the things that, you know, where women can easily lose value for life and, you know, they’re put in situations where it’s hard to recover from that. You know, when your children are apprehended, you lose your home. Then you’re in a rooming house or on the street and, you know, there’s not always adequate supports for someone to be able to climb out of that. There’s a lot of despair.”⁵⁶

82. Dr. Bombay was qualified by the Inquiry as a psychological expert on the effects and transmission of stress and trauma on well-being, including inter-generational transmission of trauma among offspring of Indian Residential School survivors, and the application of the concepts of collective and historical trauma. Much of her interdisciplinary research looks at the long-term effects of Indian Residential Schools, with a particular focus on the inter-generational effects.

83. Early life adversity can be particularly damaging that has long-term health consequences.⁵⁷ These consequences can manifest themselves in negative health and social outcomes. An important finding in Dr. Bombay’s research is that these childhood adversities tend to be inter-related and tend to be experienced on a chronic basis. Those who were exposed to any adverse childhood experience had an increased risk of being exposed to other negative experiences, meaning these negative experiences tend to cluster together.⁵⁸ Additionally, they tend to show cumulative effects such as the more adversity the individual is exposed to the greater the effects.⁵⁹ As an example, greater childhood adversity is associated with impaired worker performance, which in turn affects

⁵⁶ Transcript of Testimony of Ms. Cara Morgan, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Tuesday October 2, 2018, vol. XI, pg. 69-70, lines 22-25 and 1-9.

⁵⁷ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 149.

⁵⁸ A. Bombay, *The intergenerational effects of Indian Residential Schools: Implications for the concept of historical trauma*, 2014, *Transcultural Psychiatry*, Exhibit 21 of Part III Expert & Knowledge-Keeper Hearings – Families, at p. 325

⁵⁹ A. Bombay, *The impact of stressors on second generation Indian residential school survivors*, 2011, *Transcultural Psychiatry*, Exhibit 23 of Part III Expert & Knowledge-Keeper Hearings – Families, at p. 381

socio-economic status, and is associated with adolescent and unintended pregnancy, smoking as well as sexual activity.⁶⁰

84. According to Dr. Bombay, Indian Residential School survivors and those impacted by intergenerational trauma were subjected to high levels of early life adversity, and the research shows similar negative outcomes to those in the non-Aboriginal population affected by early life adversity.⁶¹ Although there is no research looking at the brains of IRS survivors, it could be hypothesized that the impacts on their physiological development would be at least the same and probably even greater because they were exposed to even greater adversity. What researchers have captured is that Indian Residential School survivors are more likely to suffer from various physical and mental health problems compared to Aboriginal adults who did not attend.⁶²

85. The implications of Dr. Bombay's research suggest that past government policies, namely the residential school system, is linked with current-day health and social disparities relative to the non-Aboriginal population in Canada. Residential schools are associated with increased risk and therefore increased need for support on-reserve due to the association with the number of generations affected such as those who had a parent or grandparent attend residential school.

86. Dr. Bombay's research into intergenerational trauma highlights the linkages between adversity and pathways to possible future risks of abuse. It is important to note that not all individuals who had a poor upbringing or early life adversity will have poor outcomes or fail to succeed later in life. However, those individuals who attended an Indian Residential School or are in state care were unnecessarily exposed to early life adversity. As a result, they face an elevated

⁶⁰ A. Bombay, *The intergenerational effects of Indian Residential Schools: Implications for the concept of historical trauma*, 2014, Transcultural Psychiatry, Exhibit 21 of Part III Expert & Knowledge-Keeper Hearings – Families, at p. 327.

⁶¹ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings “Child and Family Welfare”*, Monday October 1, 2018, vol. X, pg. 151.

⁶² A. Bombay, *Suicide Ideation and Attempts among First Nations Peoples Living On-Reserve in Canada: The Intergenerational and Cumulative Effects of Indian Residential Schools*, 2017, *The Canadian Journal of Psychiatry*, Exhibit 22 of Part III Expert & Knowledge-Keeper Hearings – Families, at p. 2.

risk for a wide range of physical and mental health issues across their life span. These elevated risks are also factors that contribute to missing and murdered Indigenous women and girls. This points to the need to intervene in these cycles and provide supports that First Nation girls in state care require.⁶³

PART III – CONCLUSION

36. The ultimate judge of the legacy of this National Inquiry will be time. Time will tell if this process was meaningful for survivors and family members, whether they felt supported or whether they felt their voices were heard. Time will tell if the Commissioners' recommendations will receive the attention they deserve by those with the power to make real systematic changes. We know from other inquiries, including the Manitoba Justice Inquiry, the Royal Commission on Aboriginal Peoples, and the Truth and Reconciliation Commission, that change is difficult and institutional change is seemingly impossible. For real change to occur, concrete, long-term, systematic and most importantly implementable recommendations are needed.

38. Finally ultimately time will tell if First Nations women and girls are safe. If they no longer go missing or are found murdered. If they are no longer targets for violence just because they are First Nation. If First Nations women no longer fear letting their daughters play outside or walk down the street. If First Nations families can trust that when their children move away to an urban area to attend school, they won't disappear or be targets for sexual violence or human trafficking. If they, the next generation of First Nations women and girls and the generations to come, can walk on their lands and territories and feel as free, and as safe and secure as any other, that will indeed be the ultimate test of the legacy of this inquiry.

⁶³ Transcript of Testimony of Dr. Amy Bombay, *National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth Gathering Process – Part II & III Institutional Hearings* “Child and Family Welfare”, Monday October 1, 2018, vol. X, pg. 184.

PART IV - LIST OF RECOMMENDATIONS

38. Opportunities to respond to violence against First Nations women and girls exist at every level of governments and public institutions. There are also opportunities to work with First Nations and First Nation organizations to undertaking many of these actions. First and foremost however, the AFN recommends that the federal and provincial governments fully implement the United Nations Declaration on the Rights of Indigenous People.

1. Recommendations Regarding Survivors and Family Members

- a) The Assembly of First Nations (AFN) recommends to the Commissioners of the National Inquiry into Missing and Murdered Indigenous Women and Girls that the recommendations included in their final report ensure that the evidence provided by survivors and family members during the Community Hearings, is memorialized in a respectful way and that survivors and family members be the primary consideration throughout the final report's recommendations.
- b) The AFN recommends that the Federal and Provincial governments provide adequate funding to First Nations to develop their own culturally appropriate and land based healing programs for the benefit of survivors and family members of missing and murdered Indigenous women and girls as well as all First Nations citizens affected by trauma.

2. Recommendations Regarding Institutional Racism

- a) The AFN recommends that all governments and publically funded institutions be required to undertake a review of their laws, policies, practices and guidelines to identify the ways in which these institutions perpetuate racism or discriminatory biases against First Nations and First Nations citizens and implement ways to remedy the systematic racism or biases.
- b) The AFN recommends that the federal government establish ombudsmen or independent complaints body specifically for Indigenous people to investigate complaints of institutional racism against First Nations people.
- c) The AFN recommends that governments promote public awareness to address racism and discrimination to counter the devaluing of First Nations women, girls and LGBTQ2S.

- d) The AFN recommends that the federal government support to First Nations for mobilization and capacity building to enhance community safety and awareness.

3. Recommendations Regarding Policing and Criminal Justice System

- a) The AFN recommends that police forces across the country be required to stop using “mug shots” of Indigenous women on missing posters.
- b) The AFN recommends that supporting crime prevention which address risks and protective measures.
- c) The AFN recommends that the *Criminal Code of Canada* be amended to make “Indigenous identity” an aggravating factor when charging or sentencing accused.
- d) The AFN recommends that the federal government provide increased funding for First Nations justice initiatives and restorative justice and culturally appropriate victim offender treatment programs.
- e) The AFN recommends that governments provide funding for independent and culturally appropriate First Nations victims services.
- f) The AFN recommends that the federal, provincial, and maniple governments create independent, third party oversight bodies for all police forces across the country, which are accountable to the First Nations and First Nations citizens they serve.
- g) The AFN recommends that the federal government review and strengthen its human trafficking law and support law enforcement in counter acting the rise international human trafficking rings and provide targeted funding for prevention and healing programs for survivors of human trafficking.
- h) The AFN recommends that Police Forces in Canada acknowledge the colonial violence they have inflicted against First Nations and commit to accountability measures.
- i) The AFN recommends that Police Forces in Canada develop with First Nations and implement programs which will promote positive working relationships and trust with First Nations and First Nations citizens.

4. Recommendations Regarding the effects of Colonial Violence and Human Rights

- a) The AFN recommends that natural resource companies which enter First Nations territories be required to provide a social affects planning reports and be required to counter affect the negative social impacts they have on First Nations and First Nations women and girls.
- b) The AFN recommends that the federal government provide targeted funding for First Nations to develop prevention and support programs to counter act the social problems which arise near resource development projects.
- c) The AFN recommends that the Federal government equitably fund First Nations police forces across Canada and that federal government legislate First Nations Police Forces as an essential service.

5. Recommendations Regarding Government Services and Child Welfare

- a) The AFN recommends that the federal and provincial governments cease the mass removal of First Nations children from their families and local First Nations.
- b) The AFN recommends that the federal government recognize First Nation jurisdiction over child welfare and family services and support First Nation law making and institutional development in the area.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Date: December 21, 2018



Julie McGregor & Stuart Wuttke
Assembly of First Nations

PART V – TABLE OF AUTHORITIES

Source	Paragraphs
Article IIV American Declaration on the Rights of Indigenous Peoples, June 15, 2016 (AG/RE2867 (XLIV-0/14) found at: https://www.oas.org/en/sare/documents/DecAmIND.pdf .	
Article 22, <i>United Nations Declaration of the Rights of Indigenous Peoples</i> (A/RES/61/296), found online at: http://www.un.org	
Canada’s Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples (November 12, 2010), online: http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142 .	
Inter-American Commission on Human Rights OEA/Ser.L/V/II. Doc. 30/14, 21 December 2014, <i>Report of Missing and Murdered Indigenous Women in British Columbia, Canada at pages 72-80</i>	
United Nations International Convention on the Elimination of All Forms of Racial Discrimination, Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada, CERD/C/CAN/CO/21-23, 13 September 2017.	