



Native Women's  
Association of Canada

L'Association des  
femmes autochtones  
du Canada

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*INTERIM REPORT:*

*GENDER-BASED REVIEW ON THE IMPLEMENTATION OF THE UNDRIP ACT*

NATIVE WOMEN ASSOCIATION OF CANADA

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## About NWAC

The Native Women's Association of Canada (NWAC) is a national Indigenous organization representing political voices of Indigenous women, girls, and 2SLGBTQQIA+ people in Canada. In the following report, when NWAC refers to "Indigenous women", it includes girls and 2SLGBTQQIA+ peoples. NWAC is inclusive of First Nations — on and off-reserve, status, non-status, and disenfranchised — Inuit, and Métis. An aggregate of Indigenous women's organizations from across the country, NWAC was founded on a collective goal to enhance, promote, and foster social, economic, cultural, and political well-being of Indigenous women in their respective communities and Canadian societies.<sup>1</sup> Since 1974, NWAC has established strong and lasting governance structures, decision-making processes, financial policies and procedures, and networks, to achieve its overall mission, vision, and goals. Today, NWAC engages in national and international advocacy aimed at legislative and policy reforms to promote equality for Indigenous women. Through advocacy, policy, and legislative analysis, NWAC works to preserve Indigenous culture and advance the wellbeing of all Indigenous women, as well as their families and communities (click [here](#) for more information about NWAC).<sup>2</sup>

## Summary

The *United Nations Declarations on the Rights of Indigenous Peoples Act* (UNDRIP Act) was put into effect by Canada in June 2021. Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) assigned NWAC to present the perspectives of Indigenous women to inform the Canadian government's draft Action Plan to implement the *UNDRIP Act*. NWAC was expressly tasked with elaborating gender-based priorities for the implementation of the *UNDRIP Act* and developing any recommendations it determined were necessary and suitable.

NWAC identified 12 gender-based priorities. These priorities were created through a review of Canadian law, jurisprudence, significant Canadian reports published on Indigenous affairs, and major speeches provided by the government throughout the study of Bill C-15. Regarding Canadian laws, NWAC has compiled a list of those that need to be examined and amended in order to be compliant with the *UNDRIP Act*.

The following report is broken down into three sections:

- (1) the barriers and issues that Indigenous women face in exercising their rights guaranteed by the UNDRIP;
- (2) the strategies for implementing the *UNDRIP Act*; and
- (3) the already existing recommendations and NWAC's recommendations.

The barriers and issues for Indigenous women include the lack of clarity surrounding s. 35 rights under the *Constitution Act, 1982*, the Canadian government's historic disregard for the treaties signed with Indigenous People, the absence of consultation with Indigenous women, provincial and federal

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<sup>1</sup> Native Women's Association of Canada, 'About Us', (2022), online: <<https://nwac.ca/about-us>>.

<sup>2</sup> *Ibid.*

divisions that obstruct Indigenous People's right to self-determination, sex-based discrimination within Indigenous governing bodies, and colonial harms.

NWAC's suggested approaches to implementing the *UNDRIP Act* include repealing the *Indian Act*, working alongside Indigenous Legal Orders, launching pilot projects, prioritizing treaty respect, forming a Women's Council, enforcing an accountability system, amending existing legislation, considering constitutional amendments, and referring to other international human rights treaty bodies.

Finally, NWAC cites previous reports, such as the Truth and Reconciliation Commission's Executive Summary report, the National Inquiry into Missing and Murdered Indigenous Women's Final Report, the Canadian Feminist Alliance for International Actions (FAFIA) Briefs, and Mary Ellen Turpel-Lafond's report on Indigenous people's experiences with discrimination accessing health services.

NWAC's recommendations are provided at the end of this report. They cover a wide range of topics and are strongly tied to the list of gender-based priorities.

### Methodologies

With project funding from CIRNAC, NWAC's primary objective for this project was to work to bring the perspective of Indigenous Women to inform the Government of Canada's Draft Action Plan to implement the *United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIP Act)*.

To achieve these objectives, NWAC undertook a range of activities, including research and analysis, and engagement sessions with experts and grassroots individuals.

### Research and Analysis

Prior to hosting the nation-wide online engagement sessions, NWAC conducted a preliminary literature review to identify laws, treaties, legislation, jurisprudence, government policies, government and civil society reports, academic sources, and international instruments relevant to understanding the complexities concerning the UNDRIP, and the creation of an Action Plan to implement the *UNDRIP Act* domestically in Canada.

The literature review was conducted to assess the issues related to the implementation of the *UNDRIP Act* and the consultation and inclusion of Indigenous Women in the drafting of an Action Plan. Indigenous women's rights must be specifically and deliberately addressed within Indigenous rights frameworks to avoid the violence they experience when their rights are denied, and not protected.<sup>3</sup> Through the extensive review of materials, NWAC was able to begin a culturally relevant gender-based analysis (GBA+) that both informed and was informed by the engagement sessions.

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<sup>3</sup> *Reclaiming Power and Place: Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a (Ottawa: 2019) at 118 [NIMMIWG].

Women, girls, and gender-diverse people play distinct roles in their Indigenous societies with distinct responsibilities as leaders.<sup>4</sup> Traditionally, their thoughts and opinions were sought before making decisions that affected the community and they were highly respected.<sup>5</sup> Women were responsible for fostering their peoples' land-based identities, passing knowledge down to their descendants.<sup>6</sup>

Colonization undermined these traditions and roles Indigenous women held while breaking down Indigenous social orders, traditions and governance systems.<sup>7</sup> Women today continue to hold different gendered roles within their communities; they hold knowledge of their lands and resources, though settler politics and governance structures do not value these knowledge systems.<sup>8</sup> Ignoring Indigenous women's knowledge in the conservation, use, management and processing, and controlling of their natural resources will lead to the loss of this knowledge and create devastating consequences for the lands across Turtle Island and Inuit Nunangat.<sup>9</sup>

Canada's Draft UNDRIP Action Plan presents an opportunity to apply this rights framework to improve Canada's reconciliation with Indigenous People, including Indigenous women as distinct rights holders. Applying a gender-based analysis (GBA) to the UNDRIP rights framework supports Indigenous healing and fosters reconciliation between Indigenous People and non-Indigenous people sharing these lands. Stronger and self-governing Indigenous communities rely on efforts to empower Indigenous women to lead and actively contribute to their communities.<sup>10</sup>

When it comes to issues of Indigenous health, socio-economic welfare, lands, natural resources, safety, education, culture, language, membership, self-government, and other rights guaranteed by the Declaration, Indigenous women should be at the forefront of all discussions. Their input should be received and valued not just as an act of reconciliation with a marginalized group who are victims of colonial harms, but as a group whose knowledge is essential to the growth and development of Indigenous and Canadian societies.

In amplifying Indigenous women's voices in implementing UNDRIP, it is important to acknowledge and address the various ways that Indigenous women encounter human rights violations under the current legal, political, social, and economic frameworks, including intersectional discrimination based on race, gender, ability, and sexuality. These intersections affect their individual and collective rights when implementing the Declaration.<sup>11</sup> For example, environmental pollution brought on by large resource extraction projects violate Indigenous women's rights because pollution restricts access to and control over traditional lands, and "compromise women's ability to take care of

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<sup>4</sup> Indigenous Bar Association, *Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples* (Winnipeg: 2011). [Indigenous Bar Association]

<sup>5</sup> Royal Commission on Aboriginal Peoples (RCAP), *Report of the Royal Commission on Aboriginal Peoples: Volume 4, Perspectives and Realities* (Ottawa: Supply and Services, 1996) at 7 [Royal Commission on Aboriginal Peoples].

<sup>6</sup> Indigenous Bar Association, *supra* note 4 at 34.

<sup>7</sup> Royal Commission on Aboriginal Peoples, *supra* note 5 at 7.

<sup>8</sup> Indigenous Bar Association, *supra* note 4 at 34.

<sup>9</sup> *Ibid.*

<sup>10</sup> Royal Commission on Aboriginal Peoples, *supra* note 5 at 7.

<sup>11</sup> Indigenous Bar Association, *supra* note 4 at 36; Mairin Iwanka Raya, "Indigenous Women Stand Against Violence" (New York:2006) at 8.

their children and families due to health issues, pollution, displacement, and increased violence."<sup>12</sup> A gendered approach to implementing the UN Declaration will ensure the government engages equally with Indigenous men, women, and gender-diverse people.

It is NWAC's hope that the Draft Action Plan will contain specific, measurable actions that responsible authorities can immediately commit to fulfilling. NWAC believes in consultations that produce specific actions, with concrete timelines and resource allocation. Precise and planned action items mean more accountability measures will ultimately be built into the final Action Plan.

### Roundtable Engagements

NWAC organized and hosted two expert roundtables and one grassroots roundtable during the month of October 2022 to provide feedback to Canada to inform their draft Action Plan to implement the *UNDRIP Act*. To ensure a national reach and to mitigate the risks related to the COVID pandemic, NWAC conducted all the engagement sessions online.

NWAC developed two different background documents for the expert and the grassroots roundtables that were centered around our research and analysis of the implementation of the *UNDRIP Act* and the related issues up to the date of the engagement. Each session was facilitated by experienced Indigenous women leaders and supported by Elders. The background documents were distributed to the participants for their review in advance of each session, along with guided discussion questions.

The aim of the engagement sessions was to cover various priority areas such as decision-making, health, economic development, education, lands, resources, self-government, violence, discrimination, Indigenous culture, and infrastructure related to the *UNDRIP*.

The expert roundtables were composed of individuals from a range of backgrounds including lawyers, academics, Indigenous leaders, and advocates. The expert roundtable discussions focused on legal and policy matters, consultations, and challenges associated with the Action Plan.

To identify and invite participants to the grassroots roundtable, NWAC reached out to the organization's grassroots representatives. NWAC's grassroots engagement sessions addressed how *UNDRIP*'s rights impact Indigenous women and how these groups can effectively contribute their unique knowledge to developing *UNDRIP*-consistent federal laws, regulations, and policies.

The individuals who participated in both the expert and the grassroots roundtables provided NWAC with invaluable information, perspectives, and experiences for our analysis and this interim report would not have been possible without their time and knowledge. NWAC is thankful to those who participated in such challenging discussions and is hopeful Canada will take the recommendations to follow and apply them in their draft Action Plan.

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<sup>12</sup> Emily Snyder, "Indigenous Feminist Legal Theory" (2014) 26:2 *CJWL* 365 at 367.

After receiving Canada's Draft Action Plan in February 2023, NWAC will engage the next steps of the project, which include hosting one additional expert roundtable and three additional grassroots roundtables. The aim of the second set of roundtables is to obtain substantive feedback on Canada's Draft Action Plan for consideration before the drafting of the final Action Plan occurs.

### Elder Guidance

Elders participated in each roundtable session by providing ceremonial openings, sharing their invaluable knowledge and experiences, and providing emotional and spiritual support to participants. The guidance, knowledge, support, and leadership provided by the Elders throughout this project to date has been integral both to the process and to the substantive information provided in this interim report.

### History of the *UNDRIP* and the *UNDRIP Act*

#### What is the *United Nations Declaration of the Rights of Indigenous People (UNDRIP)*?

The UNDRIP is the most comprehensive international instrument establishing a universal framework of minimum standards for the survival, dignity, and well-being on the rights of Indigenous people worldwide. Additionally, the UNDRIP expands on existing human rights standards and fundamental freedoms as they apply specifically to Indigenous people.<sup>13</sup> The UNDRIP is an invaluable human rights instrument that specifically identifies the rights and socioeconomic prosperity of Indigenous women as key to the survival and wellbeing of Indigenous people worldwide.<sup>14</sup>

The UNDRIP was adopted by the United Nations in 2007 with 144 states in favour, 11 abstentions, and 4 votes against. These nation-states included Canada, New Zealand, Australia and the United States of America.<sup>15</sup> Canada failed to endorse the UNDRIP as an international convention until 2010.<sup>16</sup> Even after the endorsement, the UNDRIP was not a treaty and therefore was not treated as legally binding on Canada or its Courts.<sup>17</sup>

#### What is the *United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIP Act)*?

In 2021, Canada adopted the *UNDRIP Act* domestically. The *UNDRIP Act* will operate to implement UNDRIP in three ways: First, by establishing UNDRIP as an interpretive tool in judicial processes by elevating, in Canada, the non-binding international declaration to a universal international

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<sup>13</sup> United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* (2022), online: Department of Economic and Social Affairs Indigenous Peoples <<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>>.

<sup>14</sup> Native Women's Association of Canada, *NWAC Statement of Support – Bill C-262*, (5 December 2017), online: <<https://nwac.ca/media/2017/12/nwac-statement-of-support-bill-c-262>>.

<sup>15</sup> NIMMIWG, *supra* note 3.

<sup>16</sup> Department of Justice Canada, *Government of Canada introduces legislation respecting the United Nations Declaration on the Rights of Indigenous Peoples*, (Ottawa: 2020), online: <<https://www.canada.ca/en/departement-justice/news/2020/12/government-of-canada-introduces-legislation-respecting-the-united-nations-declaration-on-the-rights-of-indigenous-peoples.html>>.

<sup>17</sup> Truth and Reconciliation Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: 2015) at 325.

human rights instrument with application in Canadian law.<sup>18</sup> Second, by imposing on the Government of Canada a statutory duty to consult and cooperate with Indigenous people in taking all measures necessary to make the laws of Canada consistent with UNDRIP.<sup>19</sup> Third, the *UNDRIP Act* will work to implement UNDRIP in Canada by creating a statutory duty that the responsible Minister must consult and cooperate with Indigenous people in the development and implementation of an Action Plan to achieve the objectives of the Declaration.<sup>20</sup>

Canada's move to recognize UNDRIP as a binding international human rights instrument demonstrates a willingness to strengthen its domestic and international commitment to the Declaration. The Bill's lengthy Hansard record (this was Parliament's third attempt to pass an UNDRIP statute) reflects reconciliation goals, advocacy concerns from various national Indigenous organizations and international criticisms in Indigenous gender-based discrimination cases. Canada now acknowledges that UNDRIP is a tool courts can use to interpret Canadian law; lawyers can cite it in pleadings and in court with a higher persuasive value than when UNDRIP was just an international commitment.<sup>21</sup>

### What Does the *UNDRIP Act* Say and What is its Purpose?

The *UNDRIP Act* consists of a guiding preamble, seven numbered sections defining its purpose, Canada's responsibilities and accountability measures, and the 46 Articles which are the substantive rights of Indigenous people themselves (click [here](#) for the Act itself<sup>22</sup> and [here](#) for a more thorough Handbook to Understanding the UNDRIP<sup>23</sup>).

The Preamble provides the introductory foundation for purpose of the *UNDRIP Act* and focuses on the following summarized principles to guide the readers when analyzing the 46 Articles:

- The Articles are the minimum standards for the survival, dignity, and well-being of Indigenous people, and must be implemented in Canada;
- Reconciliation, healing and peace with harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith;
- Implementing the 94 Truth and Reconciliation Commissions (TRC) *Calls to Action* and the 231 National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIW) *Calls for Justice*;
- First Nations, Inuit and the Métis Nation have, since the beginning of time and to date, lived in the lands with their distinct identities, cultures and ways of life and have suffered injustices as a result of colonization;

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<sup>18</sup> Canada, House of Commons, Bill C-15 An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, 43<sup>rd</sup> Parl, 2<sup>nd</sup> Sess (First reading: 3 December 2020) at cl 4(a) [Bill C-15]

<sup>19</sup> *Ibid* at cl 5.

<sup>20</sup> Bill C-15, *supra* note 18 at cl 6(1).

<sup>21</sup> Department of Justice Canada, *Fact Sheet- United Nations Declaration on the Rights of Indigenous Peoples Act* (2022), online: <<https://www.justice.gc.ca/eng/declaration/fact-fiche.html>>.

<sup>22</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act* (S.C. 2021, c 14).

<sup>23</sup> Indigenous Bar Association, *supra* note 4.

- Policies and practices based on the superiority of individuals on the basis of national origin or racial, religious, ethnic or cultural differences, including the doctrines of discovery and *terra nullius*, are racist, scientifically false, legally invalid, immoral and socially unjust;
- Rejection of all forms of colonialism;
- Concrete actions to address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous people and Indigenous Elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons;
- All relations with Indigenous people must be based on the recognition and implementation of the inherent right to self-determination and right of self-government around their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies and legal systems, especially their rights to their lands, territories and resources;
- Legislative, policy and administrative measures, at the national and international level, are to be done in consultation and cooperation with Indigenous people;
- Supporting sustainable development and responding to growing concerns relating to climate change and its impacts on Indigenous people;
- The provincial, territorial, and municipal governments each have the ability to establish their own approaches to contributing to the implementation within their jurisdiction;
- Affirmation that the *UNDRIP Act* can be used while interpreting Canadian law;
- Protection of Aboriginal and treaty rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982*, are capable of continuing evolution and growth, and are to be respected and promoted; and,
- Accounting for the diversity of Indigenous people's identities, cultures, languages, customs, practices, rights and legal traditions of First Nations, Inuit, and the Métis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge.

The 46 Articles in the Act are the rights themselves and are to be read and understood as if they were all working together. University of Manitoba Professor Brenda Gunn's handbook illustrates that the content of the Articles can be categorized as the following groupings of rights:<sup>24</sup>

1. Right to Enjoyment of Human Rights and Equality
  - Article Numbers 1, 2, 43 and 44.
  - Indigenous people have the right to substantive equality.

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<sup>24</sup> Indigenous Bar Association, *supra* note 4.

- Indigenous people's cultures are to be celebrated and not to be used to deny basic human or other rights.<sup>25</sup>
2. Right to Self-Determination and Indigenous Institutions.
- Article numbers 3, 4, 5, 34, 35, 36.
  - Understanding that each Indigenous community may have a different understanding of how to apply self-determination rights.
  - Indigenous communities have the right to negotiate with the Canadian Government, including entering treaties and participating in Canadian politics and federal elections.
  - Indigenous communities have the right to operate their own institutions including but not limited to the areas of justice, education health and economic development.<sup>26</sup>
3. Right to Life, Integrity, and Security
- Article Numbers 6, 7, 10 and 33.
  - Indigenous people have the right to live and be secure with their identities without the Canadian Government interfering or attempting to take individuals away from their cultures.
  - Indigenous people have the right to not be discriminated against based on their race.
  - Indigenous communities have the right to not have their children removed from their communities and if a child is removed, they should have access to their culture.
  - Indigenous communities have the right to make their own rules about membership, if the rules do not discriminate.<sup>27</sup>
4. Right to Cultural, Religious, and Linguistic Identity
- Article Numbers 8, 9, 11 and 12.
  - Indigenous people have the right to the performance of their ceremonies or religious activities, their stories, artwork, songs, and all other items of cultural significance.
  - Indigenous people have the right to speak their own languages and the Government of Canada is to work with communities to create programming to assist individuals to learn their languages.
  - Indigenous people have the right to their traditional knowledge and traditional medicines.<sup>28</sup>

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<sup>25</sup> Indigenous Bar Association, *supra* note 4 at 8.

<sup>26</sup> *Ibid* at 10.

<sup>27</sup> *Ibid* at 12.

<sup>28</sup> Indigenous Bar Association, *supra* note 4 at 14.

## 5. Right to Education, Public Information, and Employment

- Article Numbers 13, 14, 15, 16, 17, 39, 40 and 41.
- Indigenous people have the right to an education that respects and promotes their own cultures including teaching children their traditional ways of life.
- The Government of Canada must ensure schools and the media are using accurate information that is not racist.
- The Government of Canada is to ensure that Indigenous communities have enough money to support Indigenous people's efforts towards education.
- Indigenous people have the right to have their own media including television, radio and news, including media in their own languages.<sup>29</sup>

## 6. Right to Participate in Decision Making and Free, Prior, and Informed Consent

- Article Numbers 18, 19 and 38.
- Indigenous communities must be able to participate in any decisions that affect their lives in ways that are consistent with their own decision-making processes.
- The Government of Canada must give Indigenous people all the information that they need to make an informed decision and that they are given enough time to review the information and discuss the contents among the community.
- Consultations should not try to pressure an Indigenous community and the consultations should only be considered over when the Indigenous community and the Government come to a final agreement.<sup>30</sup>

## 7. Economic and Social Rights

- Article Numbers 20, 21, 22, 23, 31, 32.
- Indigenous people have the right to improve, develop and run social and other programs relating to health, education, employment, housing, vocation training and retraining, sanitation, and social security.
- Indigenous people have the right to continue hunting, fishing and traditionally earning an income, and protections over economic development is not limited to only traditional activities. Indigenous people have the right to engage in and make decisions about new forms of economic development.<sup>31</sup>

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<sup>29</sup> Indigenous Bar Association, *supra* note 4 at 16.

<sup>30</sup> *Ibid* at 18.

<sup>31</sup> Indigenous Bar Association, *supra* note 4 at 20.

## 8. Right to Lands, Territories, and Resources

- Article Numbers 24, 25, 26, 27, 28, 29, 30 and 32.
- Indigenous people have the right to own, live and use their lands, territories, and natural resources that they traditionally and currently live on and use, including those acquired by treaties. The Government of Canada is required to establish a process that identifies and protects these lands under Canadian law.
- The Government of Canada must consult with Indigenous people before the use of their land, territories, and resources.<sup>32</sup>

## 9. Treaties, Agreements, and Other Constructive Arrangements

- Article Numbers 37, 42, 45 and 46.
- Treaties and other agreements between Indigenous people and the Government of Canada historically and presently can assist in the continued development of relationships.
- Nothing in the UNDRIP can take away or minimize any Treaty rights.<sup>33</sup>

## 10. Indigenous Women's Rights

- Article Numbers 21, 22 and 44.
- Indigenous women are equally entitled to all the rights in the Articles.
- When implementing and policy or programs, Indigenous women's needs must be addressed.
- The Government of Canada must work with Indigenous people to end violence against Indigenous women.<sup>34</sup>

### NWAC's Gender-based Priorities

NWAC's preliminary research into the *UNDRIP Act* resulted in the identification of 12 Indigenous gender-based priorities.

Priority #1: To ensure Canada promotes opportunities for Indigenous women, girls, and gender-diverse people to make political and economic decisions that address the issues of poverty, homelessness, food insecurity and other socio-economic issues that affect them.

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<sup>32</sup> Indigenous Bar Association, *supra* note 4 at 22.

<sup>33</sup> *Ibid* at 24.

<sup>34</sup> *Ibid* at 26.

Priority #2: To ensure Canada gives Indigenous communities, particularly Indigenous women, girls, and gender-diverse people, the autonomous right to determine their own membership.

Priority #3: To ensure Canada addresses Indigenous women, girls, and gender-diverse people's health care issues, needs and priorities, including by addressing Indigenous People's health inequities and poorer health outcomes, as compared to non-Indigenous population of Canada.

Priority #4: To ensure Canada investigates the MMIWG final report's findings, end systemic violence against Indigenous women, girls and gender-diverse people, and provide options to escape abusive environments.

Priority #5: To ensure Canada investigates allegations of forced sterilization, criminalize it, and establish a reparation fund to compensate victims and their families.

Priority #6: To ensure Canada amends other sex-based discrimination issues not addressed by Bill S-3, depriving Indigenous People the right to belong to an Indigenous community.

Priority #7: To ensure Canada preserves and revitalizes Indigenous languages and culture, and empower Indigenous women, girls, and gender-diverse people by educating families and communities on the benefits of early age language development.

Priority #8: To ensure Canada implements human right recommendations from international human rights treaty bodies with the goal to promote and foster the socio-economic and cultural wellbeing of Indigenous women, girls and gender-diverse people.

Priority #9: To ensure Canada consult with and include Indigenous women, girls, and gender-diverse people on matters and policies affecting their rights.

Priority #10: Ensure government increase water infrastructure, water distribution and community water treatment facilities, prioritizing Indigenous People's concerns of pollution and toxic substances in Canada that affect their communities.

Priority #11: Ensure government provide Indigenous women, girls, and gender-diverse people and their communities with self-determination over their right to health, including where they access and who provides their healthcare.

Priority #12: Ensure government includes Indigenous women, girls, and gender-diverse people in decision making relating to their natural environment such as measures to combat climate change and conserve the environment.

NWAC used these gender-based priorities as topic guidelines during engagement sessions with experts and grassroots. Participants provided valuable feedback to NWAC on these priorities. The analysis section contains detailed information on the feedback NWAC received from participants during the expert and grassroots engagement sessions.

## Analysis of the Roundtables

### Barriers and Issues

Indigenous women play a variety of leadership and gendered roles in their communities. Indigenous women should be at the forefront of discussions about Indigenous health, social well-being, economic and financial success, housing, lands, natural resources, safety, education, culture, language, membership, self-government, and other rights guaranteed by the *UNDRIP Act*.

Indigenous women's roles or expertise have not always been valued by Canadian settler governments. Their opinions should be respected and treasured not only as a gesture of atonement for the wrongs caused by colonialism, but also as a group whose expertise is crucial to the advancement of Indigenous and Canadian societies.

Canada now has a responsibility to consult with Indigenous People and engage with them to alter federal laws so that they adhere to the *UNDRIP Act*'s guiding principles and to create a national action plan outlining how Canada will carry out the Act's objectives.

The challenges and problems that Indigenous women encounter daily are discussed in the parts that follows. These obstacles and problems also prevent Indigenous women from taking part in the continuing *UNDRIP Act* talks and the overall decision-making processes in Canada that affect them.

### Barriers identified by UNDRIP

Participants in the roundtable discussions stated that to define the barriers that Indigenous women confront, substantive definitions and topics in the Declaration need to be examined more deeply. In other words, the UNDRIP reflects existing restrictions on rights. The areas where we need to recognize and prioritize Indigenous rights are highlighted by UNDRIP.

### Section 35 of the *Constitution Act, 1982*

Since the Constitution is Canada's most authoritative legislation, there are questions concerning whether the *UNDRIP Act* and s. 35 of the *Constitution Act, 1982* are consistent. Participants drew attention to the restrictions placed on s.35 rights, particularly in light of the 'existing' rights framework and Supreme Court of Canada (SCC) decisions that have given the federal and provincial governments more authority over Indigenous people's lives, communities, lands, and resources than the treaties' original intent.

The SCC's rulings clarify that restrictions on Indigenous rights are not always an infringement.<sup>35</sup> To decide if there has been an infringement of an Aboriginal or treaty right, the courts must consider elements like: Is the restriction imposed by the law unreasonable? Is the law too onerous? Does the law

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<sup>35</sup> *R. c. Nikal*, [1996] 1 R.C.S. 1013, par. 92 et 102; *R. c. Côté*, [1996] 3 R.C.S. 139, par. 77-80; *R. c. Badger*, [1996] 1 R.C.S. 771, par. 89; *R. c. Morris*, [2006] 2 R.C.S. 915, par. 14; *Première Nation de Grassy Narrows c. Ontario (Ressources naturelles)*, [2014] 2 R.C.S. 447, par. 52; *R. c. Marshall*, [1999] 3 R.C.S. 456, par. 61.

prevent the right holders from using their preferred method of exercising their rights?<sup>36</sup> A simple hindrance to the exercise of a right does not amount to an infringement.<sup>37</sup> It must include a significant diminution or limitation of that right to be considered an infringement.<sup>38</sup> This needs to be carefully thought out on a case-by-case basis. Therefore, a contradiction between an Indigenous law and provincial legislation may not always be construed as an infringement of Aboriginal rights.

A provincial statute that infringes on an Aboriginal right must also be justified for it to be constitutionally valid. There is currently legal debate over whether the need to consult Indigenous People should be imposed in the justification analysis. Some provincial governments argue that the execution of the duty to consult Indigenous People would seriously conflict with the concepts of separation of powers and legislative sovereignty, as demonstrated in the 2018 *Mikisew Cree First Nation* decision.<sup>39</sup> According to provincial governments, it may not always be possible to consult with all Canadian Aboriginal groups.

### Self-determination

Self-determination was one of the key topics of NWAC's roundtable engagements. The participants agreed those who gain from the status quo maintain power and authority, making it particularly difficult to obtain recognition of the right to self-determination.

Another barrier is the lack of a precise definition of self-determination, or the inherent right to self-government, which is purportedly recognised in s. 35 of the *Constitution Act, 1982* and Articles 3 and 4 of the UNDRIP. Self-determination should be understood as both a collective and individual right.

Self-determination will be a challenging right to fully exercise since Canada continues to define who is "Indian" as well as how Indigenous governments are organised and run. To ensure that Indigenous communities, particularly Indigenous women, have the autonomous right to determine their own membership, Canada must reform its laws in accordance with NWAC's gender-based Priority #2. This priority is in line with Article 33 of the UNDRIP, which states that "Indigenous Peoples have the right to define their own identity or membership in accordance with their customs and traditions" as well as Article 3 of the UNDRIP, which deals with the right to self-determination. In sharp contrast, the *Indian Act* empowers the Indian Registrar to decide who qualifies for Indian Status, which confers formal Band membership.

Self-determination includes Indigenous People having the tools and support to bring their own gender laws, values, and teachings to light. This entails making sure the government grants Indigenous women and their communities the right to self-determination over their right to health, including where they can obtain and who delivers their healthcare (NWAC's gender-based Priority #11). The right to self-determination over health matters is consistent with Article 24 of the UNDRIP, which ensures

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<sup>36</sup> *R. c. Sparrow*, [1990] 1 R.C.S. 1075; *R. c. Gladstone*, [1996] 2 R.C.S. 723, par. 39 et 43; *Nation Tsilhqot'in c. Colombie-Britannique*, 2014 CSC 44, par. 122.

<sup>37</sup> *R. c. Nikal*, [1996] 1 R.C.S. 1013 par. 100.

<sup>38</sup> *R. c. Gladstone*, [1996] 2 R.C.S. 723, par. 43; *Nation Tsilhqot'in c. Colombie-Britannique*, 2014 CSC 44, par. 122-123.

<sup>39</sup> *Mikisew Cree First Nation c. Canada (Gouverneur général en conseil)*, 2018 CSC 40.

"Indigenous peoples' right to maintain traditional health practises, including the use of traditional medicines, in order to attain and enjoy the highest quality of health." This also implies that the Canadian government must include and consult Indigenous women when making decisions affecting their natural environment, such as how to battle climate change and preserve the ecosystem (NWAC's gender-based priority 12). Article 26 of the UNDRIP states that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." This article is consistent with self-determination over environmental decision-making capacity. Participants agreed that NWAC's gender-based priorities #11 and #12 need to be seriously considered since they would guarantee Indigenous women's full inclusion in society and daily life.

### Treaties

Treaties must be respected and upheld for "as long as the rivers flow, the sun shines and the grass grows"<sup>40</sup>. The importance of examining the treaty relationships between governments, Indigenous nations, and other stakeholders was stressed by the participants. The spirit and goals of these agreements must be respected by Canada.

The Canadian government must consider how Indigenous women were involved in the creation process of these treaties and implement measures to ensure that Indigenous women's voices are heard today. The *Indian Act* and other colonial legislation routinely and systemically removed Indigenous women from their communities of origin, including by removing them from treaties, as many First Nations and Métis Peoples in Canada have experienced. This history must be acknowledged and addressed for the *UNDRIP Act* to be implemented honestly and fairly.

As there is a great deal of uncertainty over how the *UNDRIP Act* will affect treaty rights, there are concerns that s. 35 of the *Constitution Act, 1982* will be dictated to Indigenous People, and not developed in partnership. Participants inquired: Are treaty rights defined by the UNDRIP? Will the *UNDRIP Act* supplant treaty rights? Treaties were cited as the participants' strongest hope, but they also felt that their inherent rights were in danger. This is in line with UNDRIP's article 37, paragraph 2, which states that "Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements."

Additionally, Canada must be aware of the variety of rights and viewpoints that Indigenous groups possess. For example, several of the nations in British Columbia relate to Canada I agreement distinct from the numbered treaties. Indigenous People belong to distinct cultural nations, hence many of them have distinct needs and priorities. It is important to recognize this diversity. Since Indigenous People do not have a unified voice, consultations with each nation must be priority.

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<sup>40</sup> Treaty 8 First Nations of Alberta.

### Consultation with Indigenous Women

On issues and policies affecting Indigenous women, Canada must prioritize broad consultation and inclusion (NWAC's gender-based Priority #9). Concerns were raised by many participants over the exclusion of Indigenous women from consultations regarding the *UNDRIP Act*. As a result of centuries of colonization, the *Indian Act*, and patriarchy, the voices of Indigenous women and others are not given enough weight.

Participants are particularly troubled by how conversations about Indigenous rights are frequently restricted to the Assembly of First Nations (AFN) or to gatherings of chiefs. A paucity of grassroots outreach is present. Participants indicated a need to consult people from many walks of life, including Elders, children, title and rights holders, people without "Indian" status, people who live in metropolitan areas or outside of reserves, and people from all educational backgrounds.

Participants suggested that broad invitations to participate be issued, with sessions made available to everybody. They believe that the consultation should not be limited to 'traditional' female responsibilities. It should instead involve consultations on economic, political, and legal issues. It is also critical for procedural justice that this applies to all Indigenous women's groups, not only band-based ones. Indigenous women must lead the processes.

Financial constraints may also prohibit Indigenous women and others from participating. There is no assistance available to overcome this hurdle. More resources are required to bring together a diverse range of views during the *UNDRIP Act* consultation process. This is in line with Article 39 of UNDRIP, which states that "Indigenous people have the right to have access to financial and technical assistance from States [...] for the enjoyment of the rights contained in this Declaration."

### Provincial and Federal Divisions

One of the major obstacles to Indigenous women exercising their rights guaranteed by UNDRIP may be provincial governments' resistance to supporting the *UNDRIP Act* and their failure to propose their own equivalent statute.

British Columbia is currently working to align its provincial law with the UNDRIP. The *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) is British Columbia's equivalent to the *UNDRIP Act*. While this is a positive step, it is troubling that other Canadian provinces with sizable Indigenous populations have not proposed equivalent statutes. It is critical that the federal government encourages all provinces to enact corresponding legislation and to consult and include Indigenous women in decision-making processes.

Even though 'Indians' and the lands reserved for the 'Indians' fall under federal jurisdiction, many of the rights guaranteed by the UNDRIP lie under the purview of provincial competency. Below is a list of categories of rights guaranteed by UNDRIP that fundamentally seem to fall under provincial jurisdiction:<sup>41</sup>

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<sup>41</sup> *The Constitution Act, 1867*, 30 & 31 Vict, c 3, s. 92, 92A and 93.

- Language and education (articles 13 & 14 UNDRIP)
- Land, territories, and resources (articles 8 (2)(b), 26, 28, 29 & 32 UNDRIP)
- Laws, juridical systems and fair and just procedures (articles 27, 34 & 40 UNDRIP)
- Access to health care and self determination over health (articles 21 & 23 UNDRIP)

Several UNDRIP provisions, notably those pertaining to lands, resources, education, and language, could be undermined by provinces.

In accordance with Article 32 of the UNDRIP, for instance, Indigenous People have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. Similarly, paragraph (1) of Article 92A of the *Constitution Act, 1867* stipulates that in each province, the legislature may exclusively make laws in relation to exploration for non-renewable natural resources in the province and the development, conservation and management of non-renewable natural resources and forestry resources.

If provincial governments are not on board with the implementation of the *UNDRIP Act*, how can the government assure that Article 32 of the UNDRIP will be followed?

According to the UNGA Resolution on environmental rights, Indigenous women are among those who are most affected by the environment harm. It specifically states "that, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by women and girls and those segments of the population that are already in vulnerable situations, including Indigenous peoples [and] children"<sup>42</sup>.

Environmental protection and the management of nonrenewable natural resources, which falls under provincial jurisdiction, work hand in hand with Indigenous women's rights. This underlines the need of provincial governments consulting Indigenous People, particularly women, when making decisions concerning natural resource management. The support of provincial governments is essential for the *UNDRIP Act* to effectively improve the plight of Indigenous women.

### Indigenous Governing Bodies

The AFN, Inuit Tapiriit Kanatami, the Métis National Council, the Congress of Aboriginal Peoples and NWAC are Canada's five primary National Indigenous Organizations. The *Indian Act* band councils and chiefs are largely represented by the AFN.

The 1876 *Indian Act* gave rise to band councils, which were intended to undermine and replace Canada's centuries-old traditional governments. Under international law, band councils are not sovereign, and under Canadian law, band councils have no real control over anything outside of their respective reserves. Band councils served the federal government by supplanting the Indigenous entities that formerly exercised jurisdiction across Canada. These entities were imposed on Indigenous People and are colonial by nature.

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<sup>42</sup> United Nations, Resolution Adopted by the General Assembly on July 28<sup>th</sup>, 2022.

Band councils are totally dependent on representatives of the federal government, with very limited authority. Their governing laws are constrained by provincial statutes and federal regulations. The *Indian Act* makes no requirement that Band Councils follow traditional laws and teachings.

Indigenous governing bodies' diminished authority in Canada currently obstructs Indigenous People's right to self-determination, as guaranteed by UNDRIP Articles 3 and 4. Due to specific legal frameworks, such as those governing child and family services, which require Indigenous governing bodies to first obtain federal consents or enter into agreements before they can pass laws in certain spheres, Indigenous people do not have the right to autonomy or self-government in matters relating to their internal and local affairs. Furthermore, Indigenous people lack the means to fund their autonomous functions; they are entirely reliant on money from the federal government and the provinces.

## Colonial harms

### *Missing and Murdered Indigenous Women and Girls*

The persistent problem of systemic violence against Indigenous women and gender-diverse people is one of the main challenges undermining their rights to life and security. In 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) made clear the shockingly high prevalence of violence against Indigenous women, girls, and 2SLGBTQQIA people is the result of ongoing violations of human and Indigenous rights.

As they battle the effects of intergenerational physical, sexual, and family violence, many Indigenous communities today still exhibit patriarchal influences, hierarchies, and hegemonic masculinity. According to the Department of Justice Canada, Indigenous women self-report sexual assault at a rate that is more than three times higher than that of non-Indigenous women.<sup>43</sup> Additionally, they are more prone than non-Indigenous women to be victims of severe assault and homicide.<sup>44</sup>

One of the key causes of the systemic violence that Indigenous women experience is the lack of state protection. Many participants in the roundtable discussions expressed doubt in the system that was designed to assist Indigenous women seeking protection. Racist police conduct across the country is largely to blame for their mistrust. Indigenous women assert that the police dehumanize and disdain them, and that this is obvious from their behaviors. One of the participants said that Indigenous women are aware of past incidents of sexual assault perpetrated by RCMP police against Indigenous women.

During a roundtable discussion, it was also stated that murders were significantly underreported due to a lack of trust and safety within the system. Indigenous women need to be at the forefront and playing active roles in the system for them to feel safe and receive assistance. If there was a system

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<sup>43</sup> Statistics Canada, *Intimate partner violence: Experiences of First Nations, Metis and Inuit women in Canada, 2018* (Ottawa: Statistics Canada, (19 May 2021) online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00007-eng.htm>> [Intimate Partner Violence]).

<sup>44</sup> NIMMIWG, *supra* note 3.

managed by Indigenous women, victims of physical and sexual assault would feel more comfortable denouncing the events and the perpetrators.

Indigenous communities today lack adequate education regarding topics such as sexual and physical abuse. They also lack the necessary resources for them to gather evidence. Indigenous nurses with forensic training are needed and they require additional tools and supplies, such as rape kits. This would make it possible for Indigenous women to gather data effectively while preventing obstacles linked to transportation that could cause victims of sexual and physical abuse to skip appointments.

Women trying to leave abusive homes do not have many options. It is extremely troublesome that there is a lack of housing options – including shelters and transition homes – for women trying to leave abusive environments. It is also necessary to fully finance treatment facilities and/or programs for victims of sexual and physical abuse that let Indigenous mothers bring their children.

Additional funding from Canada is essential. Integrating the UNDRIP into Canadian law requires taking proactive measures to end the genocide against Indigenous women.

With respect to Canada's duty to consult Indigenous women, participants during the roundtables stated that the absence of protection from assault has made it difficult for Indigenous women to join in debates about the *UNDRIP Act* and to advocate for its passage.

Therefore, Canada must act right away to end systematic violence against Indigenous women by looking into the conclusions of the MMIWG final report in further detail and by putting policies in place with deadlines and accountability procedures to make sure that real progress is being made.

### *Poverty and Housing*

Many participants stated during the roundtables that poverty and a lack of housing are among the most urgent and pressing issues affecting Indigenous women today. Indigenous women have been compelled to live off-reserve and assimilate into urban neighborhoods due to housing shortages and poverty in their communities. The Downtown East Side of Vancouver is a prime example of a concentration of Indigenous people living off-reserve due to housing issues in Indigenous communities. Regrettably, there are still few resources for Indigenous women who live off-reserve. The truth is that many Indigenous women live in poverty, and every day is an uphill battle to survive.

Article 23 of UNDRIP states that Indigenous People have the right to be actively involved in developing and determining housing and social programs and to have these administered through their own institutions. However, the effective participation of Indigenous women in the *UNDRIP Act* implementation process is hampered by poverty and housing concerns. Many Indigenous women simply lack the capacity to participate in discussions about UNDRIP because they are too busy coping with poverty.

Indigenous People's debts to Canada Mortgage and Housing Corporation (CMHC) are debilitating. Indigenous communities are compelled to accept economic development that affects their

lands to obtain mortgages for housing. A participant at one of the roundtable discussions also suggested that CMHC programs on-reserve should be a part of treaty rights.

In addition to mortgages, it is challenging to obtain contractors to travel to remote regions and to provide materials. For those who can obtain the necessary supplies and contractors, it remains very expensive.

Canada must be more proactive in fulfilling its commitment to provide housing for Indigenous women and actively integrating them in this process. There is some new Canadian legislation regarding housing issues, such as the *National Housing Strategy Act*, but these strategies are not adequately implemented in practice and do not explicitly address the critical situations that affect Indigenous women.

It is vital to provide urgent assistance to Indigenous women for housing and security that is independent of band council decision-making. This assistance should not be conditional on the person's status and/or living on-reserve. It should also consider the fluid nature of Indigenous family structures, departing from a default assumption of heteronormative two-parent households.

### Education

The lack of education received by Indigenous women, girls, and gender-diverse people leads to complex problems. Not having a good education makes it hard to overcome other concerns and challenges including drug addiction, poverty, unemployment, and health problems. Indigenous women lack access to both western and Indigenous schooling.

In Canadian universities, Indigenous People face discrimination. One participant, for instance, stated that she found issues with her university and that her professors did not want to support her because she was being too outspoken. She was afraid of experiencing discrimination in an institution that had no policies in place to protect her. Discriminatory decisions are made in universities as well. Universities do not demonstrate interest in recruiting permanent Indigenous language professors and have abandoned native language programs in favour of non-Indigenous student-focused courses.

The educational gap, which inhibits many Indigenous People from learning and understanding their treaty and UNDRIP rights, is another significant obstacle. Community education is necessary so that everyone, not only the well-educated, can access their rights. Indigenous People should receive legal education so they may effectively advocate for themselves and recognize important factors when they are consulted on issues like the *UNDRIP Act*.

Other obstacles that prevent them from being able to actively interact and participate in decision-making include overly legal language. These challenges are related to UNDRIP's Article 13, which says that States must take adequate steps to ensure that Indigenous People can comprehend and be understood in political, judicial, and administrative procedures, if required through the provision of interpretation or by other appropriate means.

For Indigenous adolescents to maintain their culture and language while also receiving the traditional western education required for them to not be socially marginalized, immersion programs are a good alternative. Another suggestion that needs to be considered is a government-funded Indigenous university.

It is crucial that young people learn about cultural practices connected to their traditional territory. This calls for secure access to the land, dependable and safe transportation, and the proper compensation of Indigenous educators. Land-based education can be extremely beneficial for Indigenous youth who are dealing with identity issues and struggling with drug addiction.

There is also a demand for more tools and materials to help Indigenous youngsters learn and preserve their language. There are not many Indigenous books available for young children's language acquisition. This relates to NWAC's gender-based Priority #7 and UNDRIP's Article 14, which states that governments must take effective measures, in collaboration with Indigenous People, to ensure that Indigenous People, particularly children, including those living outside their communities, have access, whenever possible, to an education in their own culture and in their own language.

One of the best methods to encourage Indigenous women to participate in political and economic decisions that affect their socioeconomic conditions is to raise the level of education of Indigenous women through programs and funding (NWAC'S gender-based Priority #1).

### *Unemployment*

Access to employment and unequal work conditions are hurdles to Indigenous women's socioeconomic advancement. Both the Canadian government and the communities themselves fall short in their support of Indigenous women.

Due to the *Indian Act* and the lasting effects of colonialism, Indigenous women are excluded within their own communities. One participant shared during the roundtable talks that educated Indigenous women had problems getting recruited by the band council. Indigenous women want to be taken seriously and think that the band councils should recruit more women. They want to resume playing the roles they did before colonization. Indigenous women have been compelled to leave their communities due to a lack of accessible and fulfilling employment.

The mining industry is now Canada's top employer of Indigenous People in the private sector. Although this appears to be a positive development, there are underlying issues in the employer-employee relationship between mining companies and Indigenous People. One of the most problematic aspects of this employer-employee relationship is that Indigenous communities' well-being and health are inextricably related to the integrity of their land. While the mining firms may offer employment to Indigenous People, they also exploit their land and negatively impact their culture and identity. According to one participant, Indigenous People who had previously stated their disagreement to mining companies about issues impacting their territories had lost their jobs as a result.

Canada must intervene and take action to assist Indigenous women in finding employment. Increased work opportunities for Indigenous women are directly related to NWAC's gender-based Priority #1 and UNDRIP's Article 21, which indicates that Indigenous People have the right, without discrimination, to an improvement in their economic and social conditions, including employment.

### *Mental health and addiction*

Substance abuse is one of the main problems directly connected to Indigenous women's struggle with mental health. The residential school system in Canada, which operated from the 17th century until the late 1990s, has a significant and lasting impact, including drug addiction and substance misuse. Indeed, survivors and their descendants attest that substance misuse is closely linked to intergenerational trauma.

Through the National Native Alcohol and Drug Abuse Program (NNADAP), which is supported by the Medical Programs Branch of Health Canada, the federal government funds treatment and rehabilitation services for First Nations and Inuit persons who live on-reserve. However, severe problems with mental health and addictions continue to be an issue. This demonstrates how inadequate support is offered to Indigenous People dealing with addiction and mental health issues.

During the roundtable discussions, it was expressed that there is a need for community-based education programs, particularly for dispossessed youth who are at risk of drug addiction. The goal is to keep Indigenous youth engaged in cultural learning. The prevention of drug addiction may be possible if positive activities are used to divert Indigenous youth. Another alternative that was suggested was to sponsor the training of Indigenous counsellors who can offer addiction counselling within their communities.

Indigenous People's lives would be greatly impacted by efforts to prevent and treat drug addiction. The reduction of substance misuse and abuse within Indigenous communities would ameliorate social and economic conditions (UNDRIP's Article 21).

### *Environment*

#### *Industry and Water & Land Defenders*

The barriers Indigenous women and gender-diverse people face in participating in traditional economic activities (Article 20) directly intersect with environmental issues and align with NWAC's gender-based Priority #1. The discounting of Indigenous women's knowledge and priorities in natural resource related to harvesting, water and land protection, lead to decisions that impede their ability to access and care for Mother Earth. This includes a lack of recognition of how environmental pollution affects traditionally accessed resources.

For instance, one primary risk involved in the sustainability of and access to traditional medicines is over-harvesting. Coupled with climate change, over-harvesting encourages Knowledge Keepers to limit knowledge distribution in an effort to conserve the resource. This limitation, while protecting medicines, also serves to limit who can access and utilize the resource. When forms of gender

discrimination are considered, this severely limits Indigenous women and gender diverse people's access.

Indigenous women are also prevented from safely asserting their rights when opposing state sanctioned practices that undermine access to territory either by destroying that territory or otherwise degrading it. One participant shared the case of the Wet'suwet'en people as an example, whereby Indigenous women and others were putting their lives at risk daily to prevent the occupation and exploitation of their lands. This violates the 2018 Framework Principles on Human Rights and the Environment.<sup>45</sup> The Framework Principles draw explicit attention to the need for environmental human rights defenders to have a safe space to "operate free from threats, harassment, intimidation and violence."<sup>46</sup>

Additionally, the Framework Principles call upon states to "respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters."<sup>47</sup> This is complemented by the federal and provincial governments' fiduciary obligations to Indigenous People. The government sets the terms under which business practices occur. Those practices need to change, and merely consulting on the existing approach has proven inadequate.

The Framework Principles also include the importance of business enterprises conducting human rights impact assessments in relation to environmental matters.<sup>48</sup> Environmental impact reports are typically processed without the resources to hire consultants in time. Community members are often not informed about what these agreements entail. Hence, the impacts of these resource projects are all encompassing – they affect the environment and the overall well-being of Indigenous communities impacted by industry.

This suggests that rather than seeing the business responsibility to respect human rights as purely a matter for Canadian businesses operating outside of Canada (as suggested by Canada's strategy on responsible business conduct abroad), it must be understood as equally applicable within Canada, with human rights understood as including UNDRIP and the right to a clean, healthy, and sustainable environment.

This points to the importance of ensuring that Indigenous women who use their knowledge and culture to protect the environment (e.g., water defenders, land defenders) are supported rather than criminalized. This requires amendments to the prosecution and policing protocols, and for deference to be paid when protection activities are grounded in Indigenous knowledge and territory interests. Participants proposed revising the approach to impact assessments to include evaluating the impact on human rights, gendered human rights and the right to a safe, clean, and sustainable environment.

Participants also raised concerns about the possible impacts this issue may have on treaty rights. Many believe that agreements with corporations have silenced their treaty rights. There have long been issues regarding consultation on resource development. Canada's Free, Prior, and Informed Consent

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<sup>45</sup> United Nations General Assembly (UNGA) Framework Principles on Human Rights and the Environment (2018) UN Doc A/HRC/37/59.

<sup>46</sup> *Ibid*, principle 4.

<sup>47</sup> *Ibid*, principle 5.

<sup>48</sup> *Ibid*, principal 4.

(FPIC) policy only requires consultation with elected authorities. Many participants believe that this is to “speed things up.” Communities are underfunded, with no increases from government, so they are pushed towards resource developers who give very little to communities in return. This is a very serious concern.

There are new attempts by industry and the government to change consultation to an interest-based approach from a rights-based framework. This will mean rights holders at the grassroots level are sidelined. A major concern, especially regarding resource development on Indigenous territories, is that people will not be informed about new projects until they feel the “hard impact.” Some participants believe that UNDRIP could provide an answer to some of these problems.

## Water

Article 32 of the UNDRIP guarantees rights related to territorial, water, and other resource use and development. NWAC’s gender-based Priority #10 is to ensure government increase water infrastructure, water distribution and community water treatment facilities, prioritizing Indigenous People’s concerns of pollution and toxic substances in Canada that affect their communities. The guarantee of safe drinking water and sanitation is a recognized right at the United Nations. This must be applied to Indigenous People living in Canada. Participants proposed both short term and long-term solutions.

In the short term, the operation and maintenance of water treatment systems should be fully funded. This includes paying employees operating the plants a living wage equivalent to non-Indigenous communities, to prevent turnover. Distribution systems need to be spread throughout and across communities equally and without bias. The government must revise their federal goals with respect to water infrastructure to end all long term and medium-term water advisories within 2 years. They must also fund pilot programs for Indigenous women to identify strategies that address adaptation upfront, instead of mitigation plans that assume business practices will continue as usual. Procedural rights must be respected.

In the long term, laws and policies must be amended to prevent pollution and toxic substances that affect communities, instead of looking for mitigation and remediation plans. Communities who have rights which must be protected must not just be defined in terms of First Nation reserve communities. It must also include communities of Indigenous People who reside in urban and rural settings, including the lands and waters which they access. This requires supporting Indigenous women in leadership and decision-making over environmental matters to reduce harm. These measures are already required under international law, as the United Nations General Assembly resolution on environmental rights recognizes “[t]he obligation of states to take measures to protect the human rights of those who are particularly vulnerable to environmental degradation is reaffirmed.”<sup>49</sup>

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<sup>49</sup> United Nations General Assembly (UNGA) The Human Right to a Clean, Healthy and Sustainable Environment (2022) UN Doc A/RES/76/300.

## Climate Crisis

Article 29 of the UNDRIP guarantees rights concerning the protection and conservation of the environment. NWAC's gender-based Priority #12 is to ensure government includes Indigenous women in decision making relating to their natural environment, such as measures to combat climate change and conserve the environment. Human rights require not just offsetting the effects of climate change by purchasing environmental degradation in one location through the preservation of another. What is required is a wholesale shift to ceasing the activities that advance climate change. This perspective is echoed in the constitutionalized Aboriginal and treaty rights of Indigenous People, which create a responsibility to ensure natural resource extraction projects do not harm the environment or interfere with Indigenous women's exercise of Aboriginal and Treaty rights.

Participants raised several potential solutions. Government needs to invest heavily in renewable energy sources that do not require the damming of rivers or construction of nuclear energy plants. Creating the ability to generate their own power will aid Indigenous communities in achieving energy sovereignty through the elimination of reliance on imported oil and gas to power generators to create electricity. Some forms of alternative generation include solar, wind, drawing heat from the earth to generate power, and the creation of gas through composting to run generators. Greater investment or subsidizing the purchase of electric or hybrid means of transportation is needed. Banning gas power vehicles to save the environment is a big-city-southern-Canada effort that will negatively impact many Indigenous communities. The lack of appropriate means of long-distance travel will prevent women and gender-diverse people from leaving abusive situations to seek safety.

Participants also raised the importance of access to justice in the event of climate harms, which include harms to culture. This issue was recently reported by the UN Human Rights Committee with regards to the Torres Straits Islanders and climate adaptation. It was based on the *International Covenant on the Rights of Civil and Political Rights* (ICCPR), which Canada has ratified. The Committee found that Australia's practices – allowing activities which perpetuate climate change to continue largely unabated and without taking actions to mitigate – violated the rights of the Torres Strait Islanders.<sup>50</sup> It required Australia to report on the steps they were taking to uphold its international legal obligations.

## Overincarceration

The overincarceration of Indigenous women and youth was one issue that was raised by participants during the roundtables. The rising rates of overincarceration among Indigenous women today are a result of colonial harms.<sup>51</sup> These colonial harms include the intergenerational legacy of the residential school system, the 60s scoop, the discriminatory funding of child and family services, the *Indian Act*, and sexual and physical violence culminating in genocide.

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<sup>50</sup> United Nations Human Rights Commission, "Australia violated Torres Strait Islanders' rights to enjoy culture and family unit, UN Committee finds" (23 September 2022) online: <<https://www.ohchr.org/en/press-releases/2022/09/australia-violated-torres-strait-islanders-rights-enjoy-culture-and-family>>

<sup>51</sup> Darren Major, "Indigenous women make up almost half the female prison population, ombudsman says" (18 December 2021) online: <Indigenous women make up almost half the female prison population, ombudsman says | CBC News>. [Darren Major]

Among other issue-specific reports, the TRC, National Inquiry into MMIWG, and Royal Congress on Aboriginal People (RCAP) identify colonial harms that contribute to the overincarceration of Indigenous women in Canada. According to the National Inquiry, different colonial practises silenced Indigenous women, contributing to their lack of safety and justice today<sup>52</sup>. Their experiences of being female and Indigenous are exacerbated by the absence of safety and justice, making them targets of racial and gendered violence. Due to their widespread experiences with violence in governmental institutions that informs their criminal behaviour, Indigenous women are especially susceptible to overincarceration<sup>53</sup>.

In addition to the devastating and destructive processes of victimization, dehumanization, stigmatization, systemic racism, sexualization, and criminalization that Indigenous women in Canada experience, they face a higher risk of being imprisoned in Canadian prisons than any other population group.<sup>54</sup> Approximately 50% of the female inmates in federally controlled prisons are Indigenous women, according to a recent study by Canada's Office of the Correctional Investigator.<sup>55</sup> Indigenous prisoners are more likely to serve lengthier portions of their sentences and are also less likely to be granted parole or conditional release.<sup>56</sup>

Many pathways lead Indigenous women to the criminal justice system. These include poverty, violence, sex trade, mental illness, addiction, homelessness, poor health and housing, unemployment, low levels of education, and the lack of appropriate social support systems.<sup>57</sup> Indigenous youth who are placed in foster care are also more likely to become involved in the juvenile criminal justice system, a process referred to as the 'child-welfare-to-prison pipeline'.<sup>58</sup> These pathways are inherently linked to the primary structures of colonialism, racism, and sexism.<sup>59</sup> This is why, as per NWAC's gender-based Priority #1, Canada must promote opportunities for Indigenous women, girls, and gender-diverse people to make political and economic decisions that address the issues of poverty, homelessness, food insecurity and other socio-economic issues that affect them.

The high incarceration rates for Indigenous women, men, and youth are being addressed through legal and justice reform projects across the country, but the process is inefficient and slow. Incarceration perpetuates colonialism by placing blame and responsibility on Indigenous women and their choices while ignoring the systemic inequities that lead them down the path to criminal behaviour. According to one participant, more Indigenous people should be involved in the justice system to lessen the overrepresentation of Indigenous men and women in the criminal system.

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<sup>52</sup> NIMMIWG, *supra* note 3.

<sup>53</sup> *Ibid* at 635.

<sup>54</sup> Office of the Correctional Investigator, *Annual Report 2021-2022* (Ottawa: 2021) [Office Correctional Investigator]

<sup>55</sup> Office Correctional Investigator, *supra* note 52.

<sup>56</sup> Darren Major, *supra* note 49.

<sup>57</sup> Jessica Rumboldt, "An Analysis of the Over-Representation of Aboriginal Offenders in the Canadian Correctional System" (2015) 8 University of Guelph's Undergraduate Feminist Journal.

<sup>58</sup> Ontario Human Rights Commission, *Interrupted Childhoods: Over-representation of Indigenous and Black children in Ontario child welfare* (2018) at p 27-28.

<sup>59</sup> NIMMIWG, *supra* note 3.

### *Child and family services*

One area of concern that participants discussed is child and family services. Prior to colonization, Indigenous communities and families had well-established systems of childcare and education that focused on the well-being of Indigenous children and youth. In 1951, revisions to the *Indian Act* granted provincial child welfare agencies authority on reserves.<sup>60</sup>

Many Indigenous children were separated from their families, sent to residential schools, and not returned to their communities until they were in their teens (if they survived). Today, genocidal tactics continue, with Indigenous children being removed from their homes and placed in non-Indigenous foster and adoptive homes.<sup>61</sup> Despite recent government apologies and commitments to do better, the number of Indigenous children in the child welfare system now outnumbers the residential school system at its peak.<sup>62</sup>

Since Article 7(2) of the UNDRIP states that "Indigenous people have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide of any other act of violence, including forcibly removing children of the group to another group", improving the welfare of Indigenous children is crucial to the implementation of the *UNDRIP Act*.

### *Stereotyping, Prejudice, and Racism*

In the context of colonialism, the 'savage' trope was created to strip Indigenous communities of their rights, status and ultimately their land through the Doctrine of Discovery.<sup>63</sup> By creating the illusion of the savage, colonizers justified treating Indigenous People as unworthy and incapable of land ownership, thus undeserving of cultural autonomy and self-determination rights. This historical stereotype continues to play a pivotal role in rationalizing systemic prejudice, biased attitudes and behaviors towards Indigenous women in Canada. Indigenous women face intersectional prejudice on both the basis of their gender and race, which puts a double burden on them. Their lives are negatively impacted in many ways. Racism must be addressed in all government institutions.

As previously stated, Canada must work to eliminate racism in all police forces. Moreover, it has been convincingly demonstrated that racism exists in the healthcare system. In fact, the discrepancies in health outcomes between Indigenous and non-Indigenous Canadians are a result of racism in the healthcare system. An in-depth examination of racism in British Columbia's healthcare system was recently published in a study by lawyer and former judge Mary Ellen Turpel-Lafond. According to the paper, there are numerous and pervasive stereotypes of Indigenous People in the health care system: Indigenous patients frequently encounter discriminatory stereotypes that originated with colonial ideas: less "worthy" of care, alcoholics, drug-seekers, irresponsible/non-compliers, and unfairly advantaged are the stereotypes most frequently mentioned by the report.<sup>64</sup> Over 80 per cent of Indigenous respondents to the survey performed as part of the 2020 study reported experiencing discrimination in access to

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<sup>60</sup> Native Women's Association of Canada, 'Child Welfare', (2022), online: < Child Welfare | Native Women's Association of Canada (NWAC)>.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> Sarah Runyon, "Correctional Afterthought: Offences Against the Administration of Justice and Canada's Persistent Savage Anxieties" (2020) 43:5 Manitoba Law Journal 1 [Runyon].

<sup>64</sup> Mary Ellen Turpel-Lafond, "In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Healthcare (2020) at 21. [In Plain Sight]

health care, a problem that disproportionately affected Indigenous women and girls.<sup>65</sup> Consequently, Indigenous People in British Columbia are receiving services that are skewed toward secondary or tertiary care and treatment, rather than primary, preventative care<sup>66</sup>.

Several participants during the roundtable discussions offered some suggestions for enhancing the general health and wellbeing of Indigenous women. One of the proposals was to provide funding for the inquiries regarding the racist and sexist treatment of Indigenous People in the healthcare system that are already underway. The report by Ms. Turpel-Lafond, which includes insightful recommendations, is an illustration of previous inquiries. It was also proposed to address health care racism by mandating cultural humility training for health care providers. The ultimate objective is to prevent the continuation of stereotypes and discriminatory experiences that lead Indigenous women to not seek medical attention.

When it comes to empowering Indigenous women's self-determination regarding their right to health, one of the best ways to address this question is to fund Indigenous women's training as doctors, nurses, midwives, and other positions within the health care system. Also, Indigenous communities need funding for additional infrastructure, particularly for reproductive health clinics.

### *Forced and Coerced Sterilization*

Participants expressed deep concern about the issue of forced and coerced sterilization in Canada. Forced and coerced sterilization is the practice of tubal ligation without free, informed, and prior consent. It compromises the bodily autonomy and decision-making power of Indigenous women in matters pertaining to their personal lives. Historically, within the North American context, forced and coerced sterilization resulted from colonization, assimilation, and the eugenics movement.<sup>67</sup> Various eugenics policies allowed the government to determine which women were suitable to reproduce.

Based on eugenics beliefs and policies, Sexual Sterilization acts were passed in Alberta (1928) and British Columbia (1933), which disproportionately, if not exclusively, targeted Indigenous women.<sup>68</sup> The laws allowing for the sterilization of Indigenous women were officially abolished in Alberta and British Columbia in 1972 and 1973, respectively. Although they were the only two provinces legislating this heinous practice, there is evidence that forced and coerced sterilization happened in other parts of Canada as well.<sup>69</sup>

In her book, *An Act of Genocide*, Karen Stote documents 580 sterilizations that took place in Indian Hospitals between 1970 and 1975 across Canada.<sup>70</sup> Records also indicate that, between 1966 and 1976, about 1200 Indigenous women were sterilized, and more than 70 sterilizations were performed

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<sup>65</sup> Northern Health Indigenous Health, "Mary Ellen Turpel-Lafond provides update to In Plain Sign report (4 February 2021), online: <Mary Ellen Turpel-Lafond provides update to In Plain Sight report | Indigenous Health (indigenoushealthnh.ca)>

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

<sup>67</sup> Jennifer Learson, "Forced and coerced sterilization of Indigenous women: Strengths to build upon" (2021) 67:7 National Library of Medicine.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> Jennifer Learson, "Forced and coerced sterilization of Indigenous women: Strengths to build upon" (2021) 67:7 National Library of Medicine.

on women in Nunavut.<sup>71</sup> Data shows the Indigenous birth rate fell from 47 per 1000 people in the 1960s to 28 per 1000 people in 1980.<sup>72</sup>

There is also evidence that forced and coerced sterilizations are still ongoing today. Between 2015 and 2019, more than 100 Indigenous women from Alberta, British Columbia, Manitoba, the Northwest Territories, Nova Scotia, Nunavut, Ontario, and Quebec reported being forced or coerced to undergo a sterilization procedure in Canada.<sup>73</sup> There are currently several proposed class action lawsuits representing these women.

According to participants, Canada has not done enough to investigate and criminalize parties involved in acts of forced or coerced sterilization. In fact, the complete opposite was conveyed. One participant expressed that Canada has instead worked harder to prevent and minimize the amount of information about forced sterilization from becoming public knowledge. Participants proposed that at the very least, this issue requires a public investigation that will compel witnesses to testify and punish those responsible for the practise of forced and coerced sterilization with criminal charges. Article 7 of the UNDRIP, which protects a person's "right to life, physical and mental integrity, liberty and security of a person, including the right not to be subjected to any act of genocide or any other act of violence", and NWAC's gender-based Priority 5 are both in line with this recommendation.

Some participants proposed that Indigenous People should have easy and unimpeded access to ultrasounds to determine whether they have been forcibly sterilized without their knowledge and consent, whereby that access takes place in an appropriately supported context (as determined by the individuals themselves). Another recommendation that was brought forward is for the establishment of an independent and arms-length body to investigate and make recommendations that are driven by voices from within the affected community.

### *Status and Membership*

Indigenous women are still subjected to sexism and gender inequality stemming from colonialism. Participants frequently emphasized the effects the *Indian Act* had, and continue to have, on the status and membership rights of Indigenous women. The bureaucratic loss of identity through the *Indian Act* undermined the important roles Indigenous women played in their communities, severely impacting women's power and agency.<sup>74</sup> Throughout the history of Canadian law, Indigenous women have been disproportionately impacted by patriarchal *Indian Act* restrictions governing who can claim Indian status.

Certain provisions in the *Indian Act* amounted to federally imposed banishment: Indigenous women lost their legal status as Indians when they married non-status men.<sup>75</sup> Losing status often led them to unsafe circumstances feeling alienated, dislocated, and isolated from their families,

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<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> Standing Senate Committee Human Rights, *Forced and Coerced Sterilization of Persons in Canada* (Ottawa: 2021).

<sup>74</sup> Native Women's Association of Canada, "Indigenous Gender-Based Analysis of Bill S-3 and the Registration Provisions of the Indian Act" (2022) online: <Bill\_S-3\_Project-NWAC-FINAL\_REPORT\_May2022.pdf> [NWAC Bill S-3 report]

<sup>75</sup> NWAC Bill S-3 report, *supra* note 74.

communities, and cultures. The *Indian Act* imposed identity provisions that disempowered generations of Indigenous women leading to identity issues, shame, and cultural losses.<sup>76</sup> These harms exacerbated their already precarious position within Canadian society.

Ongoing Indian Affairs control of status, as well as Anti-Bill C-31 attitudes, marry-out sentiments, and blood quantum thinking in Indigenous communities, among other things, are negatively impacting rights to self-determination and political status. One participant voiced their concern about band membership codes. It is possible that, as they evolve into 'citizenship' codes, band membership codes will not follow Indigenous teachings, the *Canadian Human Rights Code*, the *Charter of Rights and Freedoms*, nor human and Indigenous rights. Some membership codes already discriminate against women and their descendants. There seems to be a reluctance to challenge these discriminatory laws by people and the state to offer concrete enforcement of human rights.

The federal government must cease dictating the identity of Indigenous People. For Indigenous sovereignty over membership and citizenship laws to be exercised justly considering historic and ongoing colonial harms, participants proposed numerous solutions. As an immediate step, sufficient funding to support any increase in community membership responsibilities, both on and off reserve, must be granted. Distinctions based on whether parents were married must also be revoked. In the long term, funding for nation-based or regional-based gatherings (not led by bands) of Indigenous women must be provided to work through citizenship. Funding and support must also be given to people who do not live in reserve communities and who may not be connected to their home community because of the discriminatory status provisions of the *Indian Act*.

NWAC recently hosted many roundtable discussions to consult experts and grassroots individuals with lived experiences on the effectiveness of Bill S-3. NWAC produced a [final report](#) to Indigenous Services Canada highlighting the findings and recommendations based on these engagements.<sup>77</sup> To successfully bring the status provisions of the *Indian Act* into alignment with the UNDRIP, the government is strongly encouraged to implement NWAC's recommendations.

As per NWAC's gender-based Priorities #2 and #6, Canada must give Indigenous communities, particularly Indigenous women, girls, and gender-diverse people, the autonomous right to determine their own membership and must amend sex-based discrimination issues not addressed by Bill S-3, depriving Indigenous People the right to belong to an Indigenous community. Both Article 3 and Article 33 of the UNDRIP guarantee the right to self-determination over political status, identity, and membership. There have been sound calls for the absolute dismantling and replacement of the *Indian Act* and its status apparatus, as it poses a significant barrier to many Indigenous rights, including Indigenous People's ability to exercise their self-determination and the determination of their political status.

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<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

### *Insufficient Resources and Lack of Core Funding*

The examination of the colonial harms stated above reveals that there is a general scarcity of financial resources. Having said that, it is not sufficient to merely recognize the problems confronting Indigenous women. Canada must establish a detailed plan for allocating resources to assist Indigenous women in prominent areas where they require assistance. Giving Indigenous women the tools they need to exercise their right to self-determination is a key component of ensuring that right.

Canada already has funding programs that are expressly targeted for Indigenous women and gender equality. However, many of these funding initiatives aim to support organizations. There should be more initiatives that provide resources to individuals in need of assistance. Using the Women's Program as an example, its goal is to ensure that women fully participate in Canada's social, economic, and democratic life. Only organizations with projects that have a defined start and end date are eligible for funding; funding is not given for ongoing activities like an organization's administration and operations. A program that provides practical and ongoing assistance to Indigenous women would likely be more beneficial to the cause.

Additionally, it is important to keep in mind that every community has unique requirements. Some Indigenous communities may not have enough food or water, while others may lack sufficient housing and infrastructure. The same holds true for Indigenous people living in cities. These distinctions call for the implementation of programs and resources aimed specifically at assisting Indigenous women who live in certain places.

Another major issue is how difficult it is for Indigenous women to secure resources, even when they are made available by the Canadian government. The federal government must make it simpler to receive the allocated resources. It is critical to remember that Indigenous women live in poverty, so having access to the internet, a phone line, or transportation creates barriers to receiving allocated assistance.

The UNDRIP guarantees fundamental human rights, and the best way to defend them is to make investments in them.

### *Implementing the UNDRIP Act*

The analysis section highlights the need for Canada's Action Plan to be based on the experiences of Indigenous women who have survived genocide, intergenerational trauma, and colonization.

The strategies for implementing the *UNDRIP Act* that were proposed by the roundtable participants, in combination with NWAC's research, are included in the sections that follow.

### *The Seven Grandfather Teachings*

The Seven Grandfather Teachings, stemming from the Anishinabek legal tradition, are an appropriate way to approach the implementation of the *UNDRIP Act*. The Seven Grandfather Teachings

are not laws, but rather principles that can be used to improve and reinforce Indigenous laws and their application.

The Seven Grandfather Teachings, according to Anishinaabe Elder and author Eddie Benton-Banai, are the foundation of an Indigenous way of life. There are other versions of the Seven Grandfather Teachings, but Indigenous law academics frequently rely on Benton-Banai's because he wrote them in book form, making them accessible to individuals who are not Anishinaabe oral tradition learners. The teachings as described by Benton-Banai in 1988 are condensed into the following:

“Creator gave the seven grandfathers the responsibility to watch over the people. In this recounting of the story, the seven grandfathers, seeing that the people were living a hard life, sent a messenger down to the earth to find someone who could tell what Ojibway life should be and bring him back. The messenger searched all directions – North, South, West and East – but could not find anyone. Finally, on the seventh try, the messenger found a baby and brought him back to where the grandfathers were sitting in a circle. The grandfathers, happy with the messenger’s choice, instructed him to take him all around the earth so the baby could learn how the Ojibway should lead their lives. They were gone for seven years. Upon his return, as a young man, the grandfathers, recognizing the boy’s honesty, gave him seven teachings that he could take with him. They are as follows: Nibwaakaawin—Wisdom; Zaagi’idiwin—Love; Minaadendamowin —Respect; Aakode’ewin —Bravery; Gwayakwaadiziwin —Honesty; Dabaadendiziwin —Humility; and Debwewin —Truth.”<sup>78</sup>

The Seven Grandfather Teachings can serve to improve how issues are addressed and discussed, which can help to reduce the risk of getting caught in a neoliberal framework while the *UNDRIP Act* is being implemented. When attempting to apply the Seven Grandfather Teachings, University of Victoria Professor John Borrows advises, “We must be careful not to essentialize the seven practices...They are not presented in any particular order in this work, nor should they be theorized or applied in isolation. They take their power from how they interact with one another, and with other laws, gifts, and teachings.”<sup>79</sup>

Canada may rely on the Seven Grandfather Teachings to guide their approach in implementing UNDRIP, using them as guiding, interpretive principles directly in their work and relationship with Indigenous People.

### Revoking the Doctrine of Discovery and Repealing the *Indian Act*

The Discovery Doctrine is a concept of public international law, rooted in a series of Papal statements dating back to the 15<sup>th</sup> century, that justified European imperial ventures around the world, including the colonization of North America.<sup>80</sup> Largely endorsed by religious and ethnocentric ideas of European superiority over other cultures, religions, and races, the Doctrine supported and formally legalized European claims to sovereignty, property and commercial rights, as well as political and administrative control over the Indigenous inhabitants and their territories.<sup>81</sup> By virtue of divine will and

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<sup>78</sup> The Seven Grandfather Teachings, online: <Open Library Publishing Platform – Pressbooks for Ontario's Postsecondary Educators>

<sup>79</sup> John Borrows, *Law's Indigenous Ethics* (Toronto: University of Toronto Press, 2019) [Borrows II] p 238.

<sup>80</sup> Robert J. Miller and al., “Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies” (2010).

<sup>81</sup> Robert J. Miller and al., “Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies” (2010).

natural law, it essentially stated that these territories rightfully belonged to the Christian powers that “discovered” them, which ultimately authorized the dispossession of Indigenous populations, the exploitation of their natural resources, and the settlement of their lands.<sup>82</sup>

The related concept of *terra nullius* was simultaneously invoked as a further justification for the conquest and colonization of lands, territories, and peoples. This frequently applied to areas that were inhabited by non-Europeans who made use of the land in ways that were not recognized within European legal frameworks. Despite the ambiguity around *terra nullius*’ exact meaning, what is clear is that it originates from the Roman legal concept of *res nullius* which came to mean ‘lands belonging to no one, emptied of sovereignty, ownership, or long-term possession rights’.<sup>83</sup> In other words, because Indigenous People were classed by their colonizers as being too low on the development scale to cultivate, develop, and own land, it was used to denote that the land was regarded vacant, waste, and ‘legally unoccupied until the arrival of a colonial presence’.<sup>84</sup>

By renouncing Indigenous histories, legal systems, and property rights and by giving such rights to the arriving settlers, the Discovery Doctrine and, by extension, *terra nullius*, are now considered as one of the most effective and notorious hallmarks of the racial colonial period.<sup>85</sup>

However, it is important to note that the *terra nullius* and discovery doctrines are not currently and never have been legally recognized in Canada. The Supreme Court of Canada ruled in 1996 that the *terra nullius* maxim does not apply in Canada<sup>86</sup>. Furthermore, the *UNDRIP Act* makes the following preliminary statement: “all doctrines, policies, and practices based on or advocating the superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic, or cultural differences, including the doctrines of discovery and *terra nullius*, are racist, scientifically false, legally invalid, morally condemnable, and socially unjust.”

Furthermore, several legal instruments were utilised to carry out genocide against Canada's Indigenous people both before and after confederation, not the least of which was the *Indian Act* and its legislative precursors<sup>87</sup>. While colonial governments recognised Indigenous People's inherent rights to possession and occupancy of unceded territories, colonial legislators took the initial steps toward the gradual genocide of Indigenous People. The legislatures accomplished this by asserting *de facto* jurisdiction over all aspects of Indigenous rights holding groups and implementing legal mechanisms to subjugate First Nations and encourage their populations to surrender their rights.

Today, *Indian Act* limits the rights guaranteed by the UNDRIP. For instance, Indigenous women have a right to determine how spokespeople are chosen but are denied that right under the *Indian Act*. Article 23 of the *Indian Act* has created barriers to Indigenous women’s ability to participate in decision-

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<sup>82</sup> *Ibid.*

<sup>83</sup> Alexandre Kedar, Ahmad Amara, and Oren Yiftachel, “Emptied Lands - A Legal Geography of Bedouin Rights in the Negev” (2018) at 9.

<sup>84</sup> *Ibid* at 32.

<sup>85</sup> Alexandre Kedar, Ahmad Amara, and Oren Yiftachel, “Emptied Lands - A Legal Geography of Bedouin Rights in the Negev” (2018) at 9.

<sup>86</sup> R. v. Van der Peet, 1996 CanLII 216 (SCC), [1996] 2 SCR 507 para. 270.

<sup>87</sup> Members of Parliament unanimously approved a motion in October 2022 calling on the federal government to declare Canada's residential schools' genocide. Richard Raycraft, “MPs back motion calling on government to recognize residential schools program as genocide”, (27 October 2022) online: <MPs back motion calling on government to recognize residential schools program as genocide | CBC News>

making,<sup>88</sup> and Article 24 has alienated Indigenous women from their lands and traditional territories and confined them to reserves.<sup>89</sup> These *Indian Act* provisions have had a significant impact on the sustainability of traditional medicines. Article 20 of the *Indian Act* also creates barriers to traditional economic activities for Indigenous women.<sup>90</sup>

As a result, the Discovery Doctrine and the *Indian Act* continue to have an impact on many aspects today, including Crown rights, courts, legislation, the reserve system, and discrimination based on membership status and rights. It has the consequence of disconnecting Indigenous women from the land and eroding Indigenous People's knowledge systems.

Indigenous People call for the ongoing repudiation of the Discovery Doctrine and the dismantling and replacement of the *Indian Act* and its status apparatus, for Indigenous rights to be fully recognized and upheld.<sup>91</sup>

### Legal Pluralism and Indigenous Legal Orders

According to Professor Borrows, Canada must be built on a broader foundation, with Indigenous legal traditions recognised as giving rise to jurisdictional rights and obligations. In his book, *Canada's Indigenous Constitution*, he contends that Indigenous legal traditions continue to exist.<sup>92</sup> While they have been changed and constrained, they have not been extinguished. Indigenous legal traditions are inextricably linked to contemporary Aboriginal customs, practices, and traditions, which are officially recognized and affirmed in s. 35(1) of the *Constitution Act, 1982*. In this respect, they are also a part of Canadian law.<sup>93</sup>

The SCC recognized that Indigenous People possessed legal traditions and continue to possess them. While the implications of this recognition have been largely ignored, a foundation for expanding their reach is in place. There are sound arguments that Indigenous rights, obligations, and conflict resolution procedure are compatible with the Crown's assertion of sovereignty.<sup>94</sup> If reconciliation is the lens through which the courts interpret the parties' relationships, Indigenous People argue that many of their rights were not surrendered by treaties and were not terminated by clear and explicit government legislation.<sup>95</sup> They believe that their laws coexist with common law and civil law traditions, and that they are a strong part of Canada's constitutional inheritance.

When discussing rights, Indigenous and state laws are sometimes mixed when conceptualizing what those rights are. Participants have stated that more clarity is needed when discussing rights under Canadian law. Participants have called on more opportunities to research obligations, rights and

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<sup>88</sup> *Indian Act*, RSC 1985, c 1-5.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> Sheena Goodyear, "Pope faces calls to renounce the Doctrine of Discovery at the heart of colonialism" (2022) online: <Pope faces calls to renounce the Doctrine of Discovery at the heart of colonialism | CBC Radio>

<sup>92</sup> John Borrows, *"Canada's Indigenous Constitution"* (2010) Toronto: University of Toronto Press. [Canada's Indigenous Constitution]

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> Canada's Indigenous Constitution, *supra* note 85.

responsibilities within Indigenous legal orders. This includes looking for methods to strengthen them objectively Indigenous and state laws can interact, but they should not be seen and merged as a totality.

### Pilot Projects

Working with pilot projects is an approach to implementing the *UNDRIP Act* in a concrete way. A pilot mission, often referred to as pilot research, is essentially a scaled-down version of a mission that tests the feasibility of carrying out the operation at full scale.

Pilot studies can help assess whether a mission is likely to succeed before launching into a brand-new, untested mission concept. Additionally, pilot tasks help control risk and flag serious shortcomings or defects in the plan before significant resources are committed to the operation. Pilot projects can also be useful for determining whether the mission can be completed on schedule and within budget. Alternatively, moving forward with broad national proposals right away carries the risk of being difficult to manage.

Canada may consider pilot projects in a variety of potential areas of focus, such as health, housing, or women's shelters, to test out various tactics and learn from them to create longer-term plans. It is preferable to be specific and concrete to effect real change in the lives of Indigenous women. It is essential that Indigenous women lead these pilot programs.

Participants identified a few prospective areas of focus where they would want to see a pilot project. They are:

- Pilot programs to address poverty and other social determinants of health
- Pilot studies that show how promoting environmental health benefits Indigenous women (and from these studies identify action items)
- Pilot studies that address the climate crisis and that include Indigenous women as environmental activists (and from these studies identify action items)
- Pilot programs related to water infrastructure, water distribution, and community water treatment facilities (while giving Indigenous women the opportunity to develop strategies for addressing their concerns about pollution and toxic substances)
- Provide seed funding to grassroots groups like Indigenous Friendship Centres for pilot projects to implement aspects of MMIWG's Calls for Justice
- Pilot projects that are based on the foundations of Indigenous law

The eligibility for these pilot initiatives should not be based on colonial standards like status or band council approval. It is vital to hold discussions across federal, provincial/territorial, and Indigenous government tables in order to achieve the greatest effectiveness.

### Treaty-based Approach

Treaty rights must be central when implementing the *UNDRIP Act*. Article 37 of the UNDRIP states that "Indigenous peoples have the right to the recognition, observance and enforcement of

treaties, agreements and other constructive agreements concluded with states or their successors" and s. 35 of the *Constitution Act, 1982* recognizes and affirms treaty rights.

A treaty-based approach to implementing the *UNDRIP Act* should start by looking at the treaties that have already been signed. Canada needs to prioritize these treaties and respect the spirit and intent of these agreements. In the case of Treaty 8 for example, one of its promises was to provide canvas for tents, and a modern-day interpretation of this is a commitment to providing housing. As mentioned earlier, the debts of First Nations to CMHC programs are debilitating and issues such as taxation on Indigenous People are a barrier to Indigenous women who are obliged to pay tax on and off reserve. One participant suggested that the CMHC programs on reserve should also be part of treaty rights and free. This would allow Canada to fulfill its commitment to providing housing, as part of Treaty 8. Amending policies on social service programs to raise the standard of living is also a way to respect the intent of the treaties that were signed with Indigenous People.

The provincial governments are also guilty of not always respecting the treaties. They say that the treaty rights are respected, but then take actions that do not protect the land. Indigenous People's traditions and culture are so tightly connected the land. If their lands are being protected, they cannot fully enjoy their treaty rights or their rights guaranteed by UNDRIP. This relates to Article 29 of UNDRIP that stipulates that Indigenous People have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. Therefore, referring to treaties is an effective approach to implementing UNDRIP because in the treaty relationships, there was no cede, release, and surrender of land.

Indigenous People's natural laws and sacred laws are part of their customs and traditions. However, because of patriarchy, they have not been able to exercise their right to self-determination and determine their political status consistently. Participants expressed that Indigenous communities do not want to become municipalities, as Indigenous People already have their own systems of governance which have survived colonization. A treaty-based approach would allow Indigenous People to connect back with their sacred and natural laws.

A treaty-based approach also relates to Article 33 of UNDRIP and Indigenous People's right to determine their own identity or membership in accordance with their customs and tradition. Indigenous People want to end t Canada's involvement in determining who belongs to their communities.

If we look at the treaty-based approach with a gender-based lens, it is important for Indigenous women to be involved in the discussions and negotiations of the modern treaties and to enable Indigenous women to occupy leadership roles. In terms of the treaty rights themselves, these are often focused on traditional male rights like hunting, fishing, and trade. The reality is that many women in Indigenous communities are hunters and trappers. However, the people in the leadership position often do not recognize that Indigenous women have these rights, too. Further, substantive equality principles require Indigenous women's voices be amplified in Indigenous governance structures that typically favour male-led decision-making frameworks

### Forming a Women's Council

Colonialism has made the system heteropatriarchal and geared toward band councils. Although some band councils include women, they are mostly male dominated, making it difficult for Indigenous women's voices to be heard. Moreover, now that the hereditary chief system has been replaced by an election system, a person's chances of becoming chief mostly depend on his connections and ties. Due to this heteropatriarchal system, decisions made by the band council frequently do not consider the needs of the community's women and children. Indigenous women's rights, which are protected by UNDRIP, are hindered by the heteropatriarchal system aimed towards the band councils.

Before adopting and putting into effect any legislative or administrative measures that may have an impact on Indigenous People, states are required by Article 19 of the UNDRIP to consult and work in good faith with them through their own representative institutions. This is done to obtain their free, prior, and informed consent. If we apply a gender-based lens to Article 19 of UNDRIP, it is concerning that conversations frequently only take place with groupings of chiefs or at the level of the Assembly of First Nations. We must make sure that the consultation process reaches the most vulnerable Indigenous women and girls because we can see that they are subjected to gender discrimination within their own Indigenous governing organizations.

Participants felt that creating a women's council is a suitable strategy for carrying out the *UNDRIP Act*. More precisely, a women's council that acts as a liaison between the Canadian government and Indigenous governing bodies was recommended to guarantee that Indigenous women are consulted during the UNDRIP process. By forming a women's council, Indigenous women would be able to exercise their right to consult on issues that concern them, as stated in Article 19 of the UNDRIP.

The establishment of a women's council would have many advantages, including serving as a reminder to Indigenous governing bodies that Indigenous women held leadership positions within their communities prior to colonization. This initiative would also be in accordance with s 35(4) of the *Constitution Act, 1982*, which states that both men and women have equal rights.

### Accountability System

Putting in place strong accountability measures, such as timetables measuring progress, is an effective strategy to implement the *UNDRIP Act*. An independent accountability body that is cross-jurisdictional and chaired by Indigenous women should review the measures and timetables through an annual assessment.

An anti-racism training program in the healthcare system should be developed with accountability mechanisms in mind. Certainly, such programs should be administered through education, but people must be held accountable when they exhibit racist or discriminatory behavior toward Indigenous women. Those who are found guilty of discriminatory conduct against Indigenous women should face serious consequences, including the loss of their license to practice as a health care practitioner. This implies the inclusion of professional orders in the accountability systems.

Bands must also answer for their treatment of Indigenous women in a discriminatory manner. To handle instances where rights are not being respected, it is crucial to implement accountability mechanisms within Indigenous communities, such as clan systems, tribal courts, or administrative tribunals.

Furthermore, participants all agreed that Canada has not done enough to investigate the MMIWG final report findings, which is NWAC's Priority #4. This priority calls for Canada to end systemic violence against indigenous women, girls, and gender-diverse people. As a result, the 231 Calls for Justice must be implemented under the supervision of an impartial monitor who has the power to hold the federal and provincial governments accountable for their failure to do so.

Resource extraction and the abuse of Indigenous women from corporations are intricately linked. This calls on businesses and corporations to enact regulations that include preventive measures and a penal system for those who assault Indigenous women.

All parties, including governments, Indigenous governing bodies, Indigenous organisations, businesses, and professional orders, must collaborate for the *UNDRIP Act* to be implemented successfully. All parties need to be brought together, and the Canadian government must serve as a mobilizer. Working in silos is ineffective if we want to bring about lasting change for Indigenous women across Canada.

### Amending Existing Legislation

The adoption of the Declaration as a universal international human rights instrument with application in Canada will have an impact on the interpretation of current legislation. It will not, however, automatically impact the force and effect of existing legislation. In accordance with the obligation stated in Article 5 of the *UNDRIP Act*, NWAC has identified a long list of legislation that has UNDRIP-related concerns likely requiring significant consultations with Indigenous People for amendments.

NWAC's recent projects engaging the *Indian Act* post Bill S-3 identify several UNDRIP-related concerns related to membership rights (Articles 2, 33, 35), land use rights (Article 9, 25, 26, 27), and self-determination and economic/social improvement rights (Articles 20, 21, 23, 24).

The *Criminal Code*, *Prisons and Reformatories Act*, *Youth Criminal Justices Act*, *Corrections and Conditional Release Act*, *Royal Canadian Mounted Police Act* and *Canadian Victims Bill of Rights* all need to be amended to conform with Articles 7 and 8 of the UNDRIP.

To more accurately reflect the language rights protected by Article 13 of the UNDRIP, the Indigenous *Languages Act* may require amendments.

The *First Nations Elections Act*, *First Nations Financial Transparency Act*, *First Nations Fiscal Management Act*, *Safe Drinking Water for First Nations Acts* also need to reflect the nation-to-nation relationship, not a top-down approach to financial oversight and accountability, under Article 4 of the UNDRIP.

*Canada Health Act* should align its laws, clause by clause, with Articles 21, 23, 24, and 29(3) of the UNDRIP.

The *Civil Marriage Act* and all other Canadian federal and provincial marriage statutes should reflect the legal reality of Indigenous customary unions/marriages in conformity with Article 11 of the UNDRIP.

The *Privacy Act* and *Museums Act* can align its laws with Article 12 of the UNDRIP by ensuring they protect and uphold the value of Indigenous artifacts, objects and remains and ensure they are returned to Indigenous control and ownership.

More broadly, the federal *Interpretation Act* could be amended to include a non-derogation clause that includes UNDRIP, so that it would apply to the interpretation of all federal legislation.

The articles of the UNDRIP highlight specific areas where Indigenous people's rights must be recognized. To date, there is failure to do so, both by state governments and Indigenous governing bodies. UNDRIP cannot be seen merely as an interpretive aid, and the Action Plan must be specific and 'have teeth.' Future proposals need to incorporate the language of UNDRIP into domestic legislation.

As part of Canada's commitment to bringing Canadian legislation into compliance with UNDRIP, we must carefully examine legislative acts and delve further to uncover less evident aspects that may conflict with UNDRIP. To bring these laws into compliance with UNDRIP, we must examine them clause by clause.

In some cases, it will also be required to include clauses in laws or policies that specifically address the vulnerability of Indigenous People. Provisions written in generic terms are often insufficient. Indigenous women, girls, and gender-diverse people must be explicitly included because they are among the most vulnerable members of our society.

### Constitutional Amendments

The *Constitution Act, 1982* is Canada's supreme law. According to Article 5 of the *UNDRIP Act*, Canada must take all necessary steps, in consultation and cooperation with Indigenous People, to ensure that Canadian laws are consistent with the Declaration. This means that the *Constitution Act, 1982* must also be compatible with the *UNDRIP Act*. Constitutional amendments can serve to restrict the subjectivity of parliament and the judiciary.

One participant suggested that the Canadian constitution be amended to address the 'existing' rights concept. When it comes to determining an 'existing' right, the state has a lot of leeway due to the generally undefined or limited definition of 'existing'. Furthermore, the SCC ruled that 'new' or 'modern' rights do not automatically fall under the 'existing' framework.<sup>96</sup> This essentially means that 'existing'

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<sup>96</sup> Under the *Van der Peet* analysis, courts must characterize the right claimed in light of the pleadings and evidence; determine whether the claimant has proven that a relevant pre-contact practice, tradition or custom existed and was integral to the distinctive culture of the pre-contact society; and determine whether the claimed modern right is demonstrably connected to, and reasonably regarded as a continuation of, the pre-contact practice: *R. v. Desautel*, 2021 SCC 17 (CanLII).

rights are frozen in a time before or at the time of contact with colonialism (if the state/settlers did not abolish those rights at any point before the creation of the Constitution Act). An amendment is the only way to fix this interpretation.

One participant also expressed concern about how the *UNDRIP Act* will work with s. 35 and the SCC decisions that have given the federal and provincial governments more control over the lives, communities, lands, and resources of Indigenous People than the treaties intended. Effective reform inside the legislative and judicial systems cannot be achieved with a merely "enabling" legislative approach. Instead, a series of constitutional amendments may be required in the future to alter the legal norms and ensure that the *UNDRIP Act* is implemented correctly. This is important because legislation is subject to Parliament as well as previous and new court rulings, while constitutional amendments can serve to limit Parliament and court subjectivity.

It is important to emphasize that obtaining the consent of the provinces for constitutional amendments might be a difficult task. It is possible that Canada should instead commit to acknowledge that the *UNDRIP Act* has an impact on the interpretation of Section 35 and refrain from engaging in litigation that seeks to confine Section 35 interpretation in the pre-Bill C-15 framework.

The notwithstanding clause in s. 33 of the *Constitution Act, 1982* gives legislators the authority to expressly declare that an Act or a provision shall operate notwithstanding a provision included in ss. 2 or 7 to 15 of the *Charter*. However, s. 28 of the *Constitution Act, 1982* ensures that both men and women have the same rights and freedoms. Therefore, gender rights cannot be compromised using s. 33. Both the federal and provincial/territorial governments are unable to contract out of these gender-based rights. When drafting or interpreting a law, Parliament and assemblies, as well as federal and provincial courts, must always keep this in mind.

#### Other International Human Rights Treaty Bodies

One of UNDRIP's preliminary statements encourages "States to comply with and effectively implement all their obligations as they apply to Indigenous Peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned." Another UNDRIP preliminary statement also recognizes and reaffirms that "indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples." In particular, Article 1 of the UNDRIP guarantees Indigenous People "the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law".

NWAC's gender-based Priority #8 for the implementation of UNDRIP is to ensure that Canada implements human rights recommendations from international human rights treaty bodies to promote and foster the socio-economic and cultural wellbeing of Indigenous women, girls, and gender diverse people. This includes the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), the

ICCPR, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the United Nations General Assembly resolution on environmental rights<sup>97</sup>. For this report, the CEDAW, the ICCPR, the ICESCR, and the UNGA resolution on environmental rights will be emphasized here.

#### *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*

The United Nations adopted the CEDAW in 1979 and took effect in 1981. The CEDAW consists of a preamble and 30 articles, which defines what constitutes discrimination against women, and a committee was established to follow up on the observations and recommendations of the CEDAW procedures. As of 2016, 189 countries have ratified the CEDAW, including Canada, in 1981. Article 22(2) of the UNDRIP calls on States to “take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.” To fulfil its commitment to protect Indigenous women from violence, Canada must uphold the rights guaranteed in the CEDAW in addition to the UNDRIP.

#### *International Covenant on Civil and Political Rights (ICCPR)*

The ICCPR is an international human rights treaty which commits its States Parties to respect the civil and political rights of individuals, including but not limited to the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.<sup>98</sup> This Covenant and its two optional protocols, along with the ICESCR and the UDHR, together make up what is referred to as the International Bill of Rights.<sup>99</sup> Adopted by General Assembly Resolution 2200 (XXI) in 1966<sup>100</sup>, and entered into force in 1976, there are currently 74 signatories and 178 States Parties to the ICCPR.<sup>101</sup> Ratified by Canada in 1976<sup>102</sup>, States Parties are legally bound “to protect and preserve basic human rights” and are obligated “to take administrative, judicial and legislative measures in order to protect the rights enshrined in the treaty to provide an effective remedy.”<sup>103</sup> Similarly, Articles 5, 7, 12, and 16 of the UNDRIP guarantee the civil and political rights of Indigenous People. In addition to these UNDRIP articles, Canada is required to preserve the rights outlined in the ICCPR to fulfil its responsibility to safeguard the civil and political rights of Indigenous People.

#### *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

The ICESCR is an international human rights treaty which commits its States Parties to respect the economic, social and cultural rights of individuals, including but not limited to the right to self-determination, the right to work, the right to social security, the right to an adequate standard of living, the right to education, and rights to engage in cultural practices. It is the most comprehensive and most-widely applicable international human rights treaty in the area of human rights law. This Covenant and its optional protocol, along with the ICCPR and the UDHR, together make up what is referred to as the

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<sup>97</sup> United Nations, Resolution Adopted by the General Assembly on 28 July 2022. UNGA/A/RES/76/300

<sup>98</sup> Ilias Bantekas and Oette Lutz, “International Human Rights Law and Practice” 2<sup>nd</sup> Edition (Cambridge University Press 2016) at 118.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> Canadian Civil Liberties Association, “Summary: International Covenant on Civil and Political Rights”, (2015) online: <<https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/>>.

<sup>102</sup> *Ibid.*

<sup>103</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171 (ICCPR), 118 Art 2.

International Bill of Rights.<sup>104</sup> Adopted by General Assembly Resolution 2200 (XXI) in 1966<sup>105</sup>, and entered into force in 1976, there are currently 71 signatories and 171 State Parties to the ICESCR.<sup>106</sup>

Ratified by Canada in 1976, State Parties are legally bound “to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources” and are obligated to achieve progressively “the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”<sup>107</sup> Similarly, Articles 3, 5, 11, 12, 14, 17, 20, 21, 23, 31 and others of the UNDRIP guarantee the social and cultural rights of Indigenous People. In addition to these UNDRIP provisions, Canada must uphold the rights guaranteed under the ICESCR in terms of protecting Indigenous People's social and cultural rights.

#### *United Nations General Assembly Resolution: Environmental Rights*

Adopted in July 2022, the UNGA resolution on environmental rights recognizes the right to a clean, healthy, and sustainable environment. Canada voted in favour of this resolution and is legally bound by it by the doctrine of conformity. The UNGA resolution is a powerful instrument for enabling the realization of gendered Indigenous rights, as it reaffirms that “all human rights are universal, indivisible, interdependent and interrelated.”<sup>108</sup> It also reaffirms a “commitment to achieving sustainable development in its three dimensions – economic, social and environmental – in a balanced and integrated manner.”<sup>109</sup> It further recognizes that these three dimensions of sustainable development “and the protection of the environment, including ecosystems, contribute to and promote human well-being and the full enjoyment of all human rights, for present and future generations.”<sup>110</sup> Canada has thus committed to recognizing the protection of the environment as an essential component of the fostering of socio-economic and cultural well-being of all peoples, including Indigenous women.

The UNGA resolution further recognizes that “the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services produced by ecosystems interfere with the environment of a clean, healthy and sustainable environment and that environmental damage has negative implication, both direct and indirect, for the effective enjoyment of all human rights.”<sup>111</sup> With regards to Indigenous women, the UNGA resolution specifically recognizes first, “that, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by women

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<sup>104</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171 (ICCPR), 118 Art 2.

<sup>105</sup> *Ibid.*

<sup>106</sup> United Nations Human Rights Commission, “Status of Ratification Interactive Dashboard”, online: <<https://indicators.ohchr.org>> accessed 9 June 2021.

<sup>107</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) 993 UNTS (ICESCR), 106 Art 2.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) 993 UNTS (ICESCR), 106 Art 2.

and girls and those segments of the population that are already in vulnerable situations, including Indigenous peoples, children” and others.<sup>112</sup>

The UNGA Resolution further recognizes “the importance of gender equality, gender-responsive action to address climate change and environmental degradation, the empowerment, leadership, decision-making and full, equal and meaningful participation of women and girls, and the role that women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment.”<sup>113</sup> This highlights the necessity of empowering Indigenous women to make decisions about natural resources and environmental protection. Article 29 of the UNDRIP guarantees the environmental rights of Indigenous People. In line with the UNDRIP, Canada must preserve the rights guaranteed by this UNGA resolution in terms of protecting Indigenous People's environmental rights.

However, participants have raised concern that Indigenous women have their access to full participation in decision-making and governance over these matters impeded. It is essential that Indigenous women are full participants and leaders across the sphere of political, economic, and legal decision-making processes. Colonial history has undermined this role, and aggressive action is required to address this issue. Participants have proposed that a policy committee be established (ideally grounded in statute), whereby Indigenous women have seats at the policy table at all levels – from Band to provincial to federal decisions.

#### Already Existing Recommendations

##### Truth and Reconciliation (TRC) Reports

In 2015, the [Truth and Reconciliation Commission of Canada](#) (TRC) produced a series of reports summarizing testimony from witnesses and survivors across the country, as well as 94 Calls to Action to redress the legacy of residential schools and advance the process of Canadian reconciliation. The TRC Calls to Action align with the UNDRIP and NWAC's priorities for its implementation.

##### National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) Report

In 2019, the [National Inquiry into MMIWGs](#) (NIMMIWG) produced a report to explain and work to end the disproportionately high levels of violence against Indigenous women and girls in Canada. The MMIWG Calls for Justice align with the UNDRIP and NWAC's priorities for its implementation.

##### Canadian Feminist Alliance for International Actions (FAFIA) Briefs

The Senate Committee on Aboriginal Peoples (APPA), which is looking into Bill S-3 and the *Indian Act's* sex discrimination provisions, received briefs on May 6, 2022 from the Canadian Feminist Alliance for International Actions (FAFIA) and Toronto Metropolitan University Professor Dr. Pamela Palmater.

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<sup>112</sup> *Ibid.*

<sup>113</sup> United Nations, Resolution Adopted by the Human Rights Council on October 8<sup>th</sup>, 2021.

Dr. Palmater's evidence offers a deeper look at the *Indian Act*'s sex discrimination provisions.<sup>114</sup> The first FAFIA brief summarizes the ways that sex discrimination is still present in the *Indian Act*, either *de jure* or *de facto* (in law).<sup>115</sup> second FAFIA brief elaborates on that conversation and offers background information and a suggested remedy for the ongoing harms brought on by s. 6 (2).<sup>116</sup> The UNDRIP and the NWAC's priorities are in line with the FAFIA's filed briefs.

### Mary Ellen Turpel-Lafond's Report

*In Plain Sight: Addressing Indigenous Racism in B.C. Health Care* is a summary report written by Ms. Turpel-Lafond and published in November 2020.<sup>117</sup> This research report examines the prejudice that specifically targets Indigenous People in British Columbia's healthcare system. The recommendations in this report are consistent with NWAC's gender-based priorities for the implementation of the *UNDRIP Act*.

### NWAC's Recommendations

**Priority 1:** To ensure Canada promotes opportunities for Indigenous women, girls, and gender-diverse people to make political and economic decisions that address the issues of poverty, homelessness, food insecurity and other socio-economic issues that affect them.

- **Recommendation #1:** Canada must increase Indigenous women's access to all levels of education through programs and funding. Both western and Indigenous education approaches must be a part of this commitment.
- **Recommendation #2:** Canada must improve Indigenous women's work opportunities by enacting regulations that encourage all parties to hire Indigenous women and prohibit any forms of discrimination against them.

**Priority 2:** To ensure Canada gives Indigenous communities, particularly Indigenous women, girls, and gender-diverse people, the autonomous right to determine their own membership.

- **Recommendation #3:** Canada must amend the *Indian Act* and fully dismantle the state-managed system centred on the Indian register, replacing it with an UNDRIP-compliant framework. Indigenous women must be consulted on what that framework should look like.

**Priority 3:** To ensure Canada addresses Indigenous women, girls, and gender-diverse people's health care issues, needs and priorities, including by addressing Indigenous People's health inequities and poorer health outcomes, as compared to non-Indigenous population of Canada.

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<sup>114</sup> Feminist Alliance for International Action, Fafia Files Briefs about Indian Act Sex Discrimination with Senate Committee on Aboriginal Peoples, online: <FAFIA FILES BRIEFS ABOUT INDIAN ACT SEX DISCRIMINATION WITH SENATE COMMITTEE ON ABORIGINAL PEOPLES (fafia-afai.org)> [FAFIA Files Briefs]

<sup>115</sup> *Ibid.*

<sup>116</sup> Fafia Files Briefs, *supra* note 105.

<sup>117</sup> In Plain Sight, *supra* note 61.

- **Recommendation #4:** Canada must establish a strong accountability system addressing Indigenous women's health inequities and mandate cultural humility training for medical professionals
- **Recommendation #5:** Severe penalties must be enforced to stop the perpetuation of stereotypes and discriminatory experiences that deter Indigenous women from seeking medical care.
- **Recommendation #6:** Canada must strengthen support and funding for Indigenous women rehabilitation centers.

**Priority 4:** To ensure Canada investigates the MMIWG final report's findings, end systemic violence against Indigenous women, girls, and gender-diverse people, and provide options to escape abusive environments.

- **Recommendation #7:** Canada must implement the recommendations of the TRC 94 Calls to Action and the MMIWG 231 Calls to Justice.
- **Recommendation #8:** Canada must significantly increase funding for Indigenous women to access safe housing, shelters, counselling services, legal assistance, and healing projects.
- **Recommendation #9:** Canada must create a system for reporting and investigating sexual and physical assaults, run by Indigenous women.

**Priority 5:** To ensure Canada investigates allegations of forced sterilization, criminalize it, and establish a reparation fund to compensate victims and their families.

- **Recommendation #10:** Canada must appoint an independent and impartial body to investigate allegations of forced sterilization and make recommendations to the government based on Indigenous community voices.
- **Recommendation #11:** Canada must establish a system that enables Indigenous women to access ultrasound services easily and unrestrictedly to determine whether they have been forcibly sterilized without their knowledge or consent. To establish what context is best supported, Indigenous women must be consulted.

**Priority 6:** To ensure Canada amends other sex-based discrimination issues not addressed by Bill S-3, depriving Indigenous People the right to belong to an Indigenous community.

- **Recommendation #12:** Canada should implement NWAC's recommendations that were made in the Bill S-3 Indian Act final report.

**Priority 7:** To ensure Canada preserves and revitalizes Indigenous languages and culture, and empower Indigenous women, girls, and gender-diverse people by educating families and communities on the benefits of early age language development.

- **Recommendation #13:** Canada should fund the development of Indigenous language immersion programs to support Indigenous youth's early age language development.
- **Recommendation #14:** Canada must support the development of land-based education with secure access to the land, dependable and safe transportation, and payment of Indigenous educators.

**Priority 8:** To ensure Canada implements human right recommendations from international human rights treaty bodies with the goal to promote and foster the socio-economic and cultural wellbeing of Indigenous women, girls, and gender-diverse people.

- **Recommendation #15:** Canada must respect and adhere to the international legal treaties and obligations by which they are bound. This includes human rights within the CEDAW, the ICCPR, the ICESCR, the UNGA resolution on environmental rights, and other UN-based human rights frameworks.

**Priority 9:** To ensure Canada consult with and include Indigenous women, girls, and gender-diverse people on matters and policies affecting their rights.

- **Recommendation #16:** Canada must establish broad consultation processes composed of Elders, children, title and rights holders, people without "Indian" status, people who live in metropolitan areas or outside of reserves, and people from all educational backgrounds. The dialogues arranged by the Canadian government must focus on economic, political, and legal issues and inform all legislative action impacting Indigenous people's rights.
- **Recommendation #17:** Canada must establish an Indigenous women's council that can be consulted on the implementation of the *UNDRIP Act*.

**Priority 10:** Ensure government increase water infrastructure, water distribution and community water treatment facilities, prioritizing Indigenous People's concerns of pollution and toxic substances in Canada that affect their communities.

- **Recommendation #18:** Canada must revise their federal water infrastructure goals to end all long-term and medium-term water advisories within two years.
- **Recommendation #19:** Canada must amend laws and policies to prevent pollution and toxic substances that affect Indigenous communities access to safe and clean water. Canada must include communities of Indigenous People who reside in urban and rural settings in developing these frameworks.

**Priority 11:** Ensure government provide Indigenous women, girls, and gender-diverse people and their communities with self-determination over their right to health, including where they access and who provides their healthcare.

- **Recommendation #20:** Canadian must fund training of Indigenous women, girls, and gender-diverse people for careers as doctors, nurses, midwives, and other roles within the healthcare system.

**Priority 12:** Ensure government includes Indigenous women, girls and gender-diverse people in decision making relating to their natural environment such as measures to combat climate change and conserve the environment.

- **Recommendation #21:** Canada must ensure Indigenous women and gender diverse people are included in decision-making and consultation frameworks at all levels from Band to provincial to federal decisions.

#### Next Steps

After receiving Canada's Draft Action Plan in 2023, NWAC will proceed with the project's following phases, which involve organising three more grassroots roundtables and one more expert roundtable. Prior to the creation of Canada's final Action Plan, the second set of roundtables aims to gather insightful feedback on Canada's Draft Action Plan. NWAC will then release the final version of its Action Plan.

## Appendix A: Legislation list

The chart below identifies NWAC's priorities, how they connect to specific UNDRIP Articles, and which federal legislation requires further attention to ensure Canada honours its commitment to align legislation with UNDRIP. NWAC's future work on the UNDRIP implementation project will identify legislation's inconsistencies with UNDRIP and provide more specific recommendations on how these inconsistencies can be remedied.

|   | NWAC PRIORITIES  | RELATED UNDRIP ARTICLE   | RELEVANT LEGISLATIONS   |
|---|--|--|---|
| 1 | To ensure Canada promotes opportunities for Indigenous women, girls and gender-diverse people to make political and economic decisions that address the issues of poverty, homelessness, food insecurity and other socio-economic issues that affect them. | <p><b>Article 21</b> provides Indigenous Peoples the right to improve their economic and social situations, and for states to take measures to improve Indigenous Peoples' economic and social situations, with particular attention to Indigenous women.</p> <p><b>Article 20</b> explains Indigenous Peoples' right to enjoy their own means of subsistence, and not to be deprived thereof without redress.</p> <p><b>Article 24</b> provides Indigenous Peoples the right to access and conserve traditional medicines (including animals, plants and minerals) to attain the highest standard of health.</p> <p><b>Article 23</b> provides Indigenous Peoples the right to develop priorities in determining housing and other programs, and to administer them through their own institutions.</p> | <p><b><i>Plant Protection Act</i></b><br/>(SC 1990, c 22)</p> <p><b><i>Poverty Reduction Act</i></b><br/>(SC 2019, c 29, s 315)</p> <p><b><i>National Housing Strategy Act</i></b><br/>(SC 2019, c 29, s 313)</p> |
| 2 | To ensure Canada gives Indigenous communities, particularly Indigenous women, girls, and gender-diverse people the autonomous right to determine their own membership.   | <p><b>Article 33</b> explains Indigenous Peoples have the right to determine their own identity or membership in accordance with their customs and traditions. The <i>Indian Act</i> operates in stark contrast, giving the Indian Registrar (a state agent) the authority to determine who is eligible for Indian Status, which affords formal Band membership.</p> <p><b>Article 3</b> provides Indigenous Peoples the right of self-determination.</p>  | <p><b><i>Indian Act</i></b><br/>(RSC, 1985, c I-5)</p>  |

|   |  |   |   |
|---|--|---|---|
| 3 | To ensure Canada addresses Indigenous women, girls and gender-diverse people's health care issues, needs and priorities, including by addressing Indigenous People's health inequities and poorer health outcomes, as compared to non-Indigenous population of Canada. | <p><b>Article 17</b> ensures states take measures to protect Indigenous children's health.</p> <p><b>Article 21</b> ensures Indigenous Peoples have the right to improve their health.</p> <p><b>Article 23</b> ensures Indigenous Peoples have the right to determine their health programs and administer such programs through their own institutions. Similarly,</p> <p><b>Article 24</b> ensures Indigenous Peoples retain the right to maintain traditional health practices, including using traditional medicines in order to attain and enjoy the highest standard of health.</p> <p><b>Article 29</b> ensures states take effective measures to monitor, maintain and restore Indigenous Peoples' health.</p> | <p><b>Canadian Environmental Protection Act, 1999</b><br/>(SC 1999, c 33)</p> <p><b>Canadian Institutes of Health Research Act</b><br/>(SC 2000, c 6)</p> <p><b>National Framework for Diabetes Act</b><br/>(SC 2021, c 19)</p>   |
| 4 | To ensure Canada investigates the MMIWG final report's findings, end systemic violence against Indigenous women, girls and gender-diverse people, and provide options to escape abusive environments.  | <p><b>Article 7</b> provides Indigenous Peoples the right to be free from any act of genocide or any other act of violence.</p> <p><b>Article 22</b> ensures Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.</p>   | <p><b>Department for Women and Gender Equality Act</b><br/>(SC 2018, c 27, s 661)</p> <p><b>Criminal Code</b><br/>(RSC, 1985, c C-46)</p> <p><b>An Act respecting First Nations, Inuit and Métis children, youth and families</b><br/>(SC 2019, c 2)</p>  |
| 5 | To ensure Canada investigates allegations of forced sterilization, criminalize it, and establish a reparation fund to compensate victims and their families.   | <b>Article 7</b> ensures Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person, including the right not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.   | <p><b>Criminal Code</b><br/>(RSC, 1985, c C-46)</p> <p><b>Prisons and Reformatories Act</b><br/>(R.S.C., 1985, c. P-20)</p> <p><b>Youth Criminal Justice Act</b><br/>(S.C. 2002, c. 1)</p> <p><b>Corrections and Conditional Release Act</b><br/>(S.C. 1992, c. 20)</p> <p><b>Royal Canadian Mounted Police Act</b><br/>(R.S.C., 1985, c. R-10)</p> |

|   |   |  |  |
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|   |   |  | <b><i>Canadian Victims Bill of Rights</i></b><br>(S.C. 2015, c. 13, s. 2)  |
| 6 | To ensure Canada amends other sex-based discrimination issues not addressed by Bill S-3, depriving Indigenous People the right to belong to an Indigenous community.  | <b>Article 33</b> explains Indigenous Peoples have the right to determine their own identity or membership in accordance with their customs and traditions. The <i>Indian Act</i> operates in stark contrast, giving the Indian Registrar (a state agent) the authority to determine who is eligible for Indian Status, which affords formal Band membership. <b>Article 3</b> provides Indigenous Peoples the right of self-determination.  | <b><i>Indian Act</i></b><br>(RSC, 1985, c I-5)   |
| 7 | To ensure Canada preserves and revitalizes Indigenous languages and culture, and empower Indigenous women, girls and gender-diverse people by educating families and communities on the benefits of early age language development. | <b>Article 11</b> states that Indigenous people have the right to practise and revitalize their cultural traditions and customs.<br><b>Article 12</b> codifies Indigenous people's right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; and their right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.<br><b>Article 13</b> codifies Indigenous Peoples' right to revitalize, use, develop and transmit to future generations their languages. This includes a state's responsibility to ensure this right is protected by providing interpretations services in political, legal and administrative proceedings.<br><b>Article 14</b> applies this right to Indigenous Peoples to provide education in their own language. | <b><i>Indigenous Languages Act</i></b><br>(SC 2019, c. 23)<br><b><i>Canada Evidence Act</i></b><br>(RSC, 1985, c C-5)<br><b><i>Official Languages Act</i></b><br>(RSC, 1985, c 31)<br><b><i>Privacy Act</i></b><br>(R.S.C., 1985, c. P-21)<br><b><i>Museums Act</i></b><br>(S.C. 1990, c. 3)<br><b><i>Civil Marriage Act</i></b><br>(S.C. 2005, c. 33) |

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| 8 | To ensure Canada implements human right recommendations from international human rights treaty bodies with the goal to promote and foster the socio-economic and cultural wellbeing of Indigenous women, girls and gender-diverse people. | <b>Article 17</b> , Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.  | <b>Intellectual property legislations</b><br><b>Department for Women and Gender Equality Act</b><br>(SC 2018, c 27, s 661)  |
| 9 | To ensure Canada consult with and include Indigenous women, girls, and gender-diverse people on matters and policies affecting their rights.  | <p><b>Article 4</b> explains that Indigenous people, in their right to self-determination, have the right to autonomy in matters relating to their internal affairs as well as ways and means for financing their autonomous functions.</p> <p><b>Article 17</b>, Canada must consult with Indigenous Peoples to protect children from economic exploitation.</p> <p><b>Article 30</b> requires states to consult with Indigenous Peoples, including Indigenous women, before using their lands for military activity</p> <p><b>Article 32</b> requires states to consult with Indigenous Peoples to obtain their free, prior and informed consent before approving projects that affects their lands and resources.</p> <p><b>Article 36</b> requires states to consult with Indigenous Peoples to facilitate their right to maintain and develop relations with their members and peoples across borders</p> | <p><b>An Act respecting First Nations, Inuit and Métis children, youth and families</b><br/>(SC 2019, c 24)</p> <p><b>National Defence Act</b><br/>(RSC, 1985, c N-5)</p> <p><b>Agricultural and Rural Development Act (ARDA)</b><br/>(RSC, 1985, c A-3)</p> <p><b>Customs Act</b><br/>(RSC, 1985, c 1 (2nd Supp.))</p> <p><b>Law Commission of Canada Act</b><br/>(S.C. 1996, c. 9)</p> <p><b>First Nations Elections Act</b><br/>(S.C. 2014, c. 5)</p> <p><b>First Nations Financial Transparency Act</b><br/>(S.C. 2013, c. 7)</p> <p><b>First Nations Fiscal Management Act</b><br/>(S.C. 2005, c. 9)</p> |


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| 10 | Ensure government increase water infrastructure, water distribution and community water treatment facilities, prioritizing Indigenous People's concerns of pollution and toxic substances in Canada that affect their communities. | <p><b>Article 25</b> states that Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas.</p> <p><b>Article 26</b> states that Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, they have rights to use and develop.</p> <p><b>Article 32</b> requires states to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.</p> | <p><b>Canada Water Act</b><br/>(R.S.C., 1985, c. C-11)<br/><b>Safe Drinking Water for First Nations Act</b><br/>(S.C. 2013, c. 21)</p>   |
| 11 | Ensure government provide Indigenous women, girls, and gender-diverse people and their communities with self-determination over their right to health, including where they access and who provides their healthcare.              | <p><b>Article 24</b> ensures Indigenous Peoples retain the right to maintain traditional health practices, including using traditional medicines in order to attain and enjoy the highest standard of health.</p>  | <p><b>Canadian Institutes of Health Research Act</b><br/>(S.C. 2000, c. 6)<br/><b>National Framework for Diabetes Act</b><br/>(S.C. 2021, c. 19)<br/><b>Federal Framework on Post-Traumatic Stress Disorder Act</b><br/>(S.C. 2018, c. 13)<br/><b>Canada Health Act</b><br/>(R.S.C., 1985, c. C-6)</p> |
| 12 | Ensure government includes Indigenous women, girls, and gender-diverse people in decision making relating to their natural environment such as measures to combat  | <p><b>Article 26</b> states that Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, they have rights to use and develop.</p>   | <p><b>Indian Oil and Gas Act</b><br/>(R.S.C., 1985, c. I-7)<br/><b>Nuclear Fuel Waste Act</b><br/>(S.C. 2002, c. 23)</p>   |



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|  | climate change and conserve the environment. |  |  |
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## Appendix B: Recommendations from NWAC

- **Recommendation #1:** Canada must increase Indigenous women's access to all levels of education through programs and funding. Both western and Indigenous education approaches must be a part of this commitment.
- **Recommendation #2:** Canada must improve Indigenous women's work opportunities by enacting regulations that encourage all parties to hire Indigenous women and prohibit any forms of discrimination against them.
- **Recommendation #3:** Canada must amend the *Indian Act* and fully dismantle the state-managed system centred on the Indian register, replacing it with an UNDRIP-compliant framework. Indigenous women must be consulted on what that framework should look like.
- **Recommendation #4:** Canada must establish a strong accountability system addressing Indigenous women's health inequities and mandate cultural humility training for medical professionals
- **Recommendation #5:** Severe penalties must be enforced to stop the perpetuation of stereotypes and discriminatory experiences that deter Indigenous women from seeking medical care.
- **Recommendation #6:** Canada must strengthen support and funding for Indigenous women rehabilitation centers.
- **Recommendation #7:** Canada must implement the recommendations of the TRC 94 Calls to Action and the MMIWG 231 Calls to Justice.
- **Recommendation #8:** Canada must significantly increase funding for Indigenous women to access safe housing, shelters, counselling services, legal assistance, and healing projects.
- **Recommendation #9:** Canada must create a system for reporting and investigating sexual and physical assaults, run by Indigenous women.
- **Recommendation #10:** Canada must appoint an independent and impartial body to investigate allegations of forced sterilization and make recommendations to the government based on Indigenous community voices.
- **Recommendation #11:** Canada must establish a system that enables Indigenous women to access ultrasound services easily and unrestrictedly to determine whether they have been forcibly sterilized without their knowledge or consent. To establish what context is best supported, Indigenous women must be consulted.
- **Recommendation #12:** Canada should implement NWAC's recommendations that were made in the Bill S-3 Indian Act final report.
- **Recommendation #13:** Canada should fund the development of Indigenous language immersion programs to support Indigenous youth's early age language development.
- **Recommendation #14:** Canada must support the development of land-based education with secure access to the land, dependable and safe transportation, and payment of Indigenous educators.
- **Recommendation #15:** Canada must respect and adhere to the international legal treaties and obligations by which they are bound. This includes human rights within the CEDAW, the ICCPR,



the ICESCR, the UNGA resolution on environmental rights, and other UN-based human rights frameworks.

- **Recommendation #16:** Canada must establish broad consultation processes composed of Elders, children, title and rights holders, people without "Indian" status, people who live in metropolitan areas or outside of reserves, and people from all educational backgrounds. The dialogues arranged by the Canadian government must focus on economic, political, and legal issues and inform all legislative action impacting Indigenous people's rights.
- **Recommendation #17:** Canada must establish an Indigenous women's council that can be consulted on the implementation of the *UNDRIP Act*.
- **Recommendation #18:** Canada must revise their federal water infrastructure goals to end all long-term and medium-term water advisories within two years.
- **Recommendation #19:** Canada must amend laws and policies to prevent pollution and toxic substances that affect Indigenous communities access to safe and clean water. Canada must include communities of Indigenous People who reside in urban and rural settings in developing these frameworks.
- **Recommendation #20:** Canadian must fund training of Indigenous women, girls, and gender-diverse people for careers as doctors, nurses, midwives, and other roles within the healthcare system.
- **Recommendation #21:** Canada must ensure Indigenous women and gender diverse people are included in decision-making and consultation frameworks at all levels from Band to provincial to federal decisions.