



Native Women's  
Association of Canada



L'Association des  
femmes autochtones  
du Canada

## Transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts

## Submission to the UN Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-recurrence

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## Introduction

The Native Women’s Association of Canada (NWAC) hereby submits information to the United Nations (UN) Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence in response to the call for submissions for the upcoming report on ‘*Transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts.*’ In this submission NWAC provides combined responses to **questions 2, 3, 4 and 5** of the related questionnaire with an overall focus on the critical need for Canada to make reparations to the many thousands of Indigenous women, girls and gender-diverse persons who have suffered, and continue to experience violations of their fundamental human rights.

For reasons of the restricted word count (750 words per response), this short document will focus solely on a recent Canadian public inquiry into serious human rights violations, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, published in June 2019.<sup>1</sup>

Even so, the UN Special Rapporteur’s attention is drawn to a more in-depth NWAC report from June 2020, which focused on the legacy of serious human rights violations in the context of Canada titled *Reparations & Remembrance in Canada for Indigenous Women, Girls & Gender-Diverse Persons*. This report has been sent as an accompanying document to this submission. In addition to its in-depth focus on the National Inquiry into Missing and Murdered Women and Girls, the report examines the urgent need for state follow-up to the important findings of the Truth and Reconciliation Commission from 2015, the recent state-initiated inquiry into the numerous serious human rights violations committed during the century-long residential school system.<sup>2</sup>

## The Scope of the National Inquiry into Murdered and Missing Indigenous Women and Girls

Canada launched its National Inquiry into Missing and Murdered Indigenous Women and Girls in September 2016, resulting in the publication of the Final Report on 3 June 2019.<sup>3</sup> As the National Inquiry Final Report formally recognized, the advocacy activities of an array of different national and international organizations were instrumental in its establishment, including of NWAC.<sup>4</sup> Moreover, recommendations to launch a national inquiry had previously been advanced by the UN

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<sup>1</sup> Please see: *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 2019) Volumes 1a and 1b and National Inquiry into Missing and Murdered Indigenous Women and Girls – *A Legal Analysis of Genocide, Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 2019).

<sup>2</sup> *Honouring the Truth, Reconciling for the Future* – Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015).

<sup>3</sup> Government of Canada, Backgrounder - National Inquiry into Missing and Murdered Indigenous Women and Girls (26 November 2020): <<https://www.canada.ca/en/status-women/news/2019/06/backgrounder--national-inquiry-into-missing-and-murdered-indigenous-women-and-girls.html>> accessed 20 April 2021.

<sup>4</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a* (June 2019) 57.

Committee on the Elimination of Discrimination against Women during an inquiry visit to Canada in 2013<sup>5</sup> as well as by the Truth and Reconciliation Commission in its 2015 Final Report.<sup>6</sup>

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, published in June 2019, contains 231 Calls for Justice which have been described in the Final Report as ‘legal imperatives’<sup>7</sup> and which are presented by different themes and actors. As the limits of this submission do not allow for these themes to be set out in detail, the UN Special Rapporteur should consult the official National Inquiry document, *Calls for Justice*, for more detailed information.<sup>8</sup> Nonetheless, the individual Calls for Justice are of a non-monetary reparatory nature and are strategically targeted at righting past human rights wrongs and avoiding their repetition across an array of social themes.

The broad scope of the mandate of the National Inquiry into Missing and Murdered Women and Girl allowed it to address a range of interrelated issues concerning all forms of violence against Indigenous women and girls in a holistic manner.<sup>9</sup> In short, the mandate of the National Inquiry was to report on all forms of violence against Indigenous women and girls and make recommendations on the following:

- i. Concrete and effective action that can be taken to remove systemic causes of violence and to increase the safety of Indigenous women and girls in Canada; and*
- ii. Ways to honour and commemorate the missing and murdered Indigenous women and girls in Canada.*<sup>10</sup>

The relatively wide scope of the three-or so-year-long process was very well captured in the Final Report in the following terms:

*More than 2,380 people participated in the National Inquiry into Missing and Murdered Indigenous Women and Girls, some in more ways than one. Four hundred and sixty-eight family members and survivors of violence shared their experiences and recommendations at 15 Community Hearings. Over 270 family members and survivors shared their stories with us in 147 private, or in-camera, sessions. Almost 750 people shared through statement gathering, and 819 people created artistic expressions to become part of the National Inquiry’s Legacy Archive. Another 84 Expert Witnesses, Elders and Knowledge Keepers, front-line workers, and officials provided testimony in nine Institutional and Expert and Knowledge Keeper Hearings.*<sup>11</sup>

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<sup>5</sup> Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (UN Doc. CEDAW/C/OP.8/CAN/1) 30 March 2015 §220a - b.

<sup>6</sup> *Honouring the Truth, Reconciling for the Future* – Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015) 325.

<sup>7</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a* (June 2019) 58.

<sup>8</sup> National Inquiry into Murdered and Missing Indigenous Women and Girls, *Calls for Justice* (June 2019).

<sup>9</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a* (June 2019) 58.

<sup>10</sup> *ibid* 58.

<sup>11</sup> *ibid* 49.

*The truths shared in these National Inquiry hearings tell the story – or, more accurately, thousands of stories – of acts of genocide against Indigenous women, girls, and 2SLGBTQQIA people. The violence the National Inquiry heard amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQQIA people. This genocide has been empowered by colonial structures evidenced notably by the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations.<sup>12</sup>*

The key point should be underscored, however, that the crisis facing Indigenous women, girls and gender-diverse persons is on-going and will continue to persist until the National Inquiry's Calls for Justice are addressed. In a word, the present-day violence encountered by Indigenous women is not an historical artifact.

In terms of the UN Special Rapporteur's present study<sup>13</sup> the National Inquiry sought to achieve several objects, namely: (1) to inquire on and establish the truth about gross violations of human rights committed in a colonial context; (2) to provide reparation to victims (mainly in the form of restoration, rehabilitation, satisfaction and guarantees of non-repetition); (3) to memorialize gross violations of human rights; and (4) to guarantee their non-recurrence through the instigation of sweeping change in the form of the Calls for Justice.

However, the mandate of the National Inquiry prevented it from holding accountable persons accused of committing or bearing responsibility for gross or serious violations of human rights. In this connection the Final Report stated: "One of the National Inquiry's main limitations – which is the same for all public inquiries – is that a public inquiry can't resolve individual cases or declare certain people legally at fault. This is because public inquiries are meant to focus on systemic problems and solutions with the understanding that these problems cannot be traced back to "a few bad apples.""<sup>14</sup> Thus, for the purposes of the present study the National Inquiry did not seek to hold accountable persons accused of committing or bearing responsibility for gross or serious violations of human rights in a colonial context.

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<sup>12</sup> *ibid* 50.

<sup>13</sup> Please see: Mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, *Questionnaire - Transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts* (2021).

<sup>14</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a* (June 2019) 60.

## The National Inquiry Process

On one hand, while there was much to commend the overall National Inquiry process, on the other, it also suffered from certain limitations. As the National Inquiry Final Report itself noted, it had the broadest mandate a Canadian national inquiry had ever received, its work spanned 14 jurisdictions, making it Canada's first truly 'national' inquiry, and it had at its disposal resources solely determined by the government.<sup>15</sup>

The National Inquiry's most significant challenge, however, was – by its own admission – a lack of time.<sup>16</sup> Regrettably, the National Inquiry's request for a two-year extension of its mandate was denied. Instead, it was provided with only a six-month writing extension. As the Final Report observed: "This was profoundly disappointing, and does a disservice to the thousands of Indigenous women, girls, and 2SLGBTQQIA people lost to violence, and to the survivors of violence, some of whom advocated for decades for a public inquiry."<sup>17</sup>

In comparison, the Royal Commission on Aboriginal Peoples inquiry and the Truth and Reconciliation Commission inquiry had approximately five and eight years to undertake their work respectively.<sup>18</sup> Such time constraints inevitably had a direct bearing on the numbers of survivors and their families who could be heard during the National Inquiry process.

The National Inquiry's restricted mandate and powers to forensically examine cases of missing and murdered Indigenous women and girls and police misconduct in the related investigations was deemed another major weakness.<sup>19</sup> Only after the start of the National Inquiry process was the Forensic Document Review Project established, namely in March 2018 becoming operational only in the latter part of lifetime of the inquiry.<sup>20</sup> Other cited limitations included: the National Inquiry's limited focus on cases of missing or murdered 2SLGBTQQIA people and its partial investigation into the complexity of inter-sectional colonial violence<sup>21</sup>; and its failure to deeply probe state complicity in cases of missing and murdered Indigenous women, girls and gender-diverse persons.<sup>22</sup>

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<sup>15</sup> *ibid* 59-60.

<sup>16</sup> *ibid* 72.

<sup>17</sup> *ibid* 74.

<sup>18</sup> Please see: Royal Commission on Aboriginal Peoples, *Highlights of the Report of the Royal Commission on Aboriginal Peoples Inquiry - People to People, Nation to Nation* (Minister of Supply and Services Canada 1996); and *Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015).

<sup>19</sup> Please see: Connie Walker, 'MMIW national inquiry to focus on violence prevention not police investigations' (CBC News, 20 July 2016): <MMIW national inquiry to focus on violence prevention not police investigations | CBC News> accessed 23 April 2021.

<sup>20</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 2019) *1b: Annex 1 Summary of Forensic Document Review Project* 238.

<sup>21</sup> *ibid* 247 and 251.

<sup>22</sup> *ibid* 218, 237 and 242.

Despite these limitations and being beset by certain fundamental organizational challenges as well as the hurdles associated with circumnavigating federal government rules and procedures, the overall process included many positives. Most significantly, it ensured that the voices of those persons and communities most severely afflicted by Canada’s race-based genocide were included in the overall process.<sup>2324</sup>

In summary, while a welcome first significant step in ensuring that justice is finally served vis-à-vis Indigenous women, girls and gender-diverse persons in Canada, the challenge now will be to ensure that the National Inquiry’s 231 Calls for Justice are implemented in practice, as discussed below.

### **Follow-up to the 231 Calls to Justice**

In December 2019, the Crown-Indigenous Relations Minister Carolyn Bennett publicly stated that the Canadian government is developing an Action Plan to act on the 231 Calls for Justice, which were to be published by June 2020.<sup>25</sup> Regrettably, on 26 May 2020 – the week before the first anniversary of the release of the National Inquiry Final Report – Minister Bennett announced in interviews with select media that the government had not drafted its promised National Action Plan and, at the time, had no timetable for doing so.<sup>26</sup>

In a positive development, however, from summer 2020 onwards the government department playing the lead role in relation to the National Action Plan, Crown-Indigenous Relations and Northern Affairs Canada undertook concrete action to do so. It has since established a National Family and Survivors Circle, a Core Working Group, and eight sub-working groups on a range of thematic issues with a view to drafting a National Action Plan in relation to the 231 Calls for Justice.<sup>27</sup> The work of these entities remains on-going, but it is hoped that a National Action Plan will be finalized by June 2021, although, as a so-called ‘evergreen’ document, the National Action Plan will not be published in a final, definite form.

As a closing comment, it is essential to recall that the National Inquiry stressed through its focus on the principle of ‘substantive equality and human and Indigenous rights’ as one of its so-called *principles of change* that women and girls should not be treated solely as victims, but as independent rights holders.<sup>28</sup> Moreover, as additional *principles of change*, the report underlined

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<sup>23</sup> *ibid* 72.

<sup>24</sup> A section of volume 1a of the National Inquiry Final Report was devoted to the successes and challenges of the overall process, meriting closer scrutiny. Please see: *ibid* 72-75.

<sup>25</sup> Global News, *Action plan on missing, murdered Indigenous women inquiry to be released in June: minister* (Global News, 4 December 2019): <<https://globalnews.ca/news/6255882/missing-murdered-indigenous-women-inquiry-june/>> accessed 19 April 2021.

<sup>26</sup> The Native Women’s Association of Canada, *Canada’s Failed UN Security Council Bid: Lead by Example at Home to Lead by Example Abroad* (18 June 2020).

<sup>27</sup> Government of Canada, *Statement from the MMIWG National Action Plan Core Working Group* (6 December 2020): <<https://www.rcaanc-cirnac.gc.ca/eng/1607207513882/1607207535679>> accessed 19 April 2021.

<sup>28</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 169.

that (1) families and survivors should be included in the implementation of the Calls for Justice and that (2) solutions must be led by Indigenous governments, organization and people.<sup>29</sup>

NWAC has accordingly argued that it is incumbent upon the Canadian authorities to include Indigenous women, girls and gender-diverse persons in the conception, design and implementation of any follow-up measures in the short, medium and longer terms.<sup>30</sup> The Final Report's very first Call for Justice also underscores the importance of inclusion, as follows:

*We call upon federal, provincial, territorial, municipal, and Indigenous governments (hereinafter “all governments”), in partnership with Indigenous Peoples, to develop and implement a National Action Plan to address violence against Indigenous women, girls, and 2SLGBTQQIA people, as recommended in our Interim Report and in support of existing recommendations by other bodies of inquiry and other reports. As part of the National Action Plan, we call upon all governments to ensure that equitable access to basic rights such as employment, housing, education, safety, and health care is recognized as a fundamental means of protecting Indigenous and human rights, resourced and supported as rights-based programs founded on substantive equality. All programs must be no-barrier, and must apply regardless of Status or location.*<sup>31</sup>

The Final Report therefore makes it explicitly clear that Indigenous women and girls should be located at the heart of the National Inquiry Final Report follow-up process. Moreover, it is not accidental that frequent reference is made throughout the Calls for Justice to the terms 'led by' and/or 'in partnership with' Indigenous peoples or communities, regarding their implementation.

It was additionally significant that the importance of involving Indigenous women and girls in the process of follow-up to the National Inquiry's findings is deeply anchored elsewhere in the Final Report, namely in a chapter devoted to commemoration, itself a very symbolic form of non-material reparation.<sup>32</sup> The report stated:

*In many ways, the purpose of the commemoration fund reflects what we heard from family members appearing to testify for a lost loved one, or from survivors speaking out about their experiences. In other ways, though, witnesses appearing before the National Inquiry went further, calling not only for commemoration, but for commemoration activities that ultimately support concrete action and the need to recognize their experiences as rights violations, in order to make change for future generations. In particular, many families noted the need to gather with other families, as well as their own families, in order to remember, to gather strength to move forward, and ultimately, to heal.*<sup>33</sup>

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<sup>29</sup> *ibid* 171.

<sup>30</sup> The Native Women's Association of Canada, *Reparations & Remembrance in Canada for Indigenous Women, Girls & Gender-Diverse Persons* (Ottawa, Canada June 2020) – Sections 3 and 4.

<sup>31</sup> Summary: *Calls for Justice* (June 2019) 5.

<sup>32</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1b* (June 2019) 53-82.

<sup>33</sup> *ibid* 54.

The *Final Report* therefore welcomed the establishment in February 2019 of the federal government's commemoration fund<sup>34</sup>, whereby from June 2019 onwards some 13 million CDN have been awarded to over 100 different public initiatives aimed at honoring the lives and legacies of missing and murdered Indigenous women and girls.<sup>35</sup>

While a welcome initiative, it remains crucially important that governments in Canada now go beyond the symbolic aspects of memorialization and ensure that they act on the country's domestic and international obligations to provide reparations for past and present serious human rights violations and to guarantee their non-recurrence. The swift, concrete and meaningful implementation of the 231 Calls for Justice is arguably a means of doing so, along with long overdue follow-up in relation to the other state-initiated inquiries (please see below). Nonetheless, Indigenous actors at the domestic level should remain vigilant of the risk of being coopted into National Inquiry follow-up processes which becomes ends in themselves and which sidestep the need for demonstrable action and progress.

## Final remarks

Domestically, the recommendation that Canada should institute broad reparations for the past conduct of its representatives and other private persons acting on its behalf have been a key output of various high-level independent inquiries initiated over the years aimed at establishing the truth about serious human rights violations against Indigenous persons.

Perhaps most notable of all were the key findings of the Royal Commission on Aboriginal Peoples inquiry from 1996.<sup>36</sup> Regrettably relatively little became of the Commission's sweeping recommendations for much-needed change.<sup>37</sup> As such, the present and continuing crisis facing Indigenous women, girls and gender-diverse persons is hardly surprising.

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<sup>34</sup> Women and Gender Equality Canada, '*Backgrounder - Government of Canada Launches Commemoration Fund for Missing and Murdered Indigenous Women and Girls*' (Women and Gender Equality Canada, Ottawa, Canada, 26 November 2020): <<https://www.canada.ca/en/women-gender-equality/news/2019/02/backgrounder---government-of-canada-launches-commemoration-fund-for-missing-and-murdered-indigenous-women-and-girls.html>> accessed 19 April 2021.

<sup>35</sup> Women and Gender Equality Canada, '*Missing and Murdered Indigenous Women and Girls: initiatives will rally communities across Canada to commemorate, heal and advance reconciliation*' (Women and Gender Equality Canada, Winnipeg, Canada, 24 June 2019): <<https://www.canada.ca/en/status-women/news/2019/06/missing-and-murdered-indigenous-women-and-girls-initiatives-will-rally-communities-across-canada-to-commemorate-heal-and-advance-reconciliation.html>> accessed 19 April 2021.

<sup>36</sup> Royal Commission on Aboriginal Peoples, *Highlights of the Report of the Royal Commission on Aboriginal Peoples Inquiry - People to People, Nation to Nation* (Minister of Supply and Services Canada 1996). See also: *Interim Report – The National Inquiry into Missing and Murdered Indigenous Women and Girls: Our Women and Girls are Sacred* (2017) 10.

<sup>37</sup> CBC News, *20 years since Royal Commission on Aboriginal Peoples, still waiting for change* (CBC News, Ottawa, Canada, 3 March 2016): <<https://www.cbc.ca/news/indigenous/20-year-anniversary-of-rcap-report-1.3469759>> accessed 14 April 2021.

What is more, there have been other high-profile inquiries into the treatment of Indigenous Peoples in Canada at different jurisdictional levels, including Indigenous women. The British Columbia Missing Women Commission of Inquiry from 2011-2012<sup>38</sup>, the Truth and Reconciliation Commission from 2015<sup>39</sup>, and the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec from 2019 are more recent illustrative cases in point.<sup>40</sup> The National Inquiry into Missing and Murdered Indigenous Women and Girls report should therefore be seen as a continuity of demands situated in a context of frequent state inaction.

In a word, despite the commissioning of multiple high-level inquiries as attempts to inquire on and establish the truth about serious violations of human rights committed in Canada's past and present colonial context, much remains to be done to ensure that Indigenous persons, particularly women, girls and gender-diverse persons, receive full reparations for the many different harms caused to them. Only by providing full reparation to victims through the instigation of sweeping change in the form of the Calls for Justice will Canada ensure the non-recurrence of violations of human rights and that a semblance of justice is finally served.

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International Unit  
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<sup>38</sup> Please see: The Missing Women Commission of Inquiry, British Columbia, Canada: <<https://missingwomen.library.uvic.ca/>> index.html accessed 20 April 2021.

<sup>39</sup> *Honouring the Truth, Reconciling for the Future* – Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015).

<sup>40</sup> *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress – Final Report*, (Government of Québec, Canada 2019).