



# The Status of Navajo Women and Gender Violence

*Conversations with Diné Traditional Medicine People  
And a Dialogue with the People*







## LETTER OF TRANSMITTAL

July 26, 2016

Hon. Russell Begay, *President*  
Hon. Johnathan Nez, *Vice-President*  
The Navajo Nation  
Window Rock, Navajo Nation (AZ)

Hon. LoRenzo Bates, *Speaker*  
Hon. *Members*  
The Navajo Nation Council  
Window Rock, Navajo Nation (AZ)

Hon. Allen Sloan, *Acting Chief Justice*  
The Navajo Nation Supreme Court  
Window Rock, Navajo Nation (AZ)

**Nihi naat'lanii,**

The Navajo Nation Human Rights Commission hereby submits to the Diné bi naat'á, our Navajo government and to the Diné the public hearing report entitled "*The Status of Navajo Women and Gender Violence: Conversations with Dine Traditional Medicine People and a Dialogue with the People.*"

The report is a compilation of three public hearings held on the Navajo Nation, in addition to a two day work session with four Navajo traditional practitioners. The Commission also conducted several special work sessions to discuss and analyze Navajo transcripts that relate to this report.

With our utmost respect and with the honor of protect and advance Diné human rights, we offer this report.

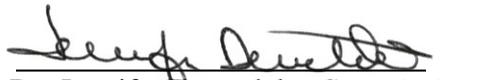
With great esteem, we have the honor to advocate for the  
Protection and recognition of Din4 human rights,

  
Steve A. Darden, *Chairperson*

  
Valerie Kelly, *Vice-Chairperson*

  
Frank Bradley III, *Commissioner*

  
Justin F. Frosie, *Commissioner*

  
Dr. Jennifer Denetdale, *Commissioner*

**Resolution of the  
Navajo Nation Human Rights Commission**

**Approving the Public Hearing Report on the Status of Navajo Women and Gender  
Violence; Conversations with Diné Traditional Medicine People  
and a Dialogue with the People**

**WHEREAS:**

1. Pursuant to 2 N.N.C. §920 and §921, the Navajo Nation Human Rights Commission (herein referred to as “Commission”) is established within the Legislative Branch as an entity of the Navajo Nation government and is organized to operate as a clearinghouse entity to administratively address discriminatory actions against citizens of the Navajo Nation, and to interface with the local, state, federal governments and with national and international human rights organizations in accordance with the Commission’s Plan of Operation and applicable laws and regulations of the Navajo Nation; and
2. Pursuant to the Plan of Operation, the Commission is mandated to conduct public hearings to assess race relations between Navajos and non-Navajos and to educate Navajo citizens on their human rights. Navajo citizens human rights compose of various international human rights laws and standards, domestic civil rights and ultimately rooted in Diné fundamental, traditional and cultural laws, rules and regulations and in Navajo Nation codes and case laws; and
3. The Commission conducted a two-day symposium on the Dine fundamental role of Navajo women and gender discrimination, including Lesbian, Gay, Bi-Sexual, Transgender, Queer and Intersex (“LGBTQI”), at Fort Defiance, Navajo Nation (Arizona). Navajo citizens received presentations from various Diné Traditional medicine persons on the fundamental laws pertaining to traditional roles of Navajo women and náádleehí; and
4. The Commission further conducted several more public hearings and two special meetings on violence against Navajo women and gender discrimination at various places on the Navajo Nation as follows: Window Rock, Toonanees'dizi (Tuba City,) Arizona and Shiprock, New Mexico.
5. The Commission finds it appropriate to issue the report on The Status of Navajo Women and Gender Violence; Conversations with Diné Traditional Medicine People and a Dialogue with the People.

**NOW THEREFORE BE IT RESOLVED:**

1. The Navajo Nation Human Rights Commission hereby approves the public hearing report on The Status of Navajo Women and Gender Violence; Conversations with Diné Traditional Medicine People and a Dialogue with the People, hereto as Exhibit “A.”

2. The Navajo Nation Human Rights Commission further hereby authorizes the dissemination of the Exhibit "A" public hearing report to members of the Navajo Nation Council, President and Vice-President of the Navajo Nation, Office of the Chief Justice of the Navajo Nation and posting it on the Commission's Internet website.

### CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Human Rights Commission as a duly called meeting at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and same was considered by a vote of 4 in favor and 0 opposed, this 26th day of July 2016.

A handwritten signature in black ink that reads "Steven A. Darden". The signature is written in a cursive style with a long horizontal line extending to the right from the end of the name.

---

Steven A. Darden, *Chairperson*  
Navajo Nation Human Rights Commission

# **The Status of Navajo Women and Gender Violence**

**Conversations with Diné Traditional Medicine People**

**And a Dialogue with the People**

**July 26, 2016**

**Submitted by**

**Commissioner Steven A. Darden, Chairman  
Commissioner Valerie Kelly, Vice-Chairwoman  
Commissioner Jennifer R. Nez Denetdale, Ph.D.  
Commissioner Frank Bradley, III  
Commissioner Justin Tsosie**



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**Steven A. Darden, Chairman**

**Valerie Kelly, Vice-Chairwoman**

**Justin Tsosie**

**Jennifer R. Nez Denetdale, Ph.D.**

**Frank Bradley III**

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## An Opening Preface Statement from Commissioner Chairman Steven A. Darden

Ya'ateeh. During the public hearings facilitated by the NNHRC on the issue of Violence Against Diné Women and the LGBTQ community, I learned much about the state of Diné society. I learned from four traditional practitioners who were engaged to provide teachings during the two day session held in Ft. Defiance their perspectives regarding the Diné journey stories of the separation of the sexes, and the nádleehí who is purported to have brought the reunification of the sexes.

An interesting perspective shared by one of the female practitioners was that all others Diné persons who identify themselves as nádleehí are pretenders (nadleeh idili'h).

As the moderator of the Ft. Defiance presentations and hearings, I was personally at a loss as to how to address a person of the LGBTQ community who I perceived as male but presenting themselves as feminine. Their name as listed was certainly male, but still even from a Diné k'é perspective how do I address someone who may have been born male yet identifies as female?

Many from the LGBTQ community conveyed that when young their maternal grandmothers nurtured and loved them and embraced them with their difference, but soon after the matriarch died they were ostracized by other members of their family. Many stated that they moved to the urban off-reservation areas due to the abuse they began to suffer on the Diné reservation.

Many stated that they knew of the traditional Diné story of the nadleeh and believed themselves to be special, but that the treatment they were dealt by their own relatives was denigrating and abusive. Their human rights are certainly being violated. They expressed they are as Diné as any person who is heterosexual.

A very disheartening testimony provided by a Diné professional woman was the abuse she has endured from her spouse, a Navajo police officer. She shared that the Navajo law enforcement have now refused to answer her DV calls, she assumes that it's because her spouse's fellow officers do not want to arrest and then testify against their own. She is also a law enforcement officer and purports that she is often overlooked for advancement in the force. She has filed complaints and yet has not gotten any resolve for her situation. There were other alleged incidences of male Navajo law enforcement officers abusing their spouses.

There are many other disheartening testimonies that are delineated in this report. I respectfully urge the Navajo Nation Council to facilitate the appropriate forums to discuss solutions for this modern day NAAGH'EE (monster). Perhaps, once again, a nádleehí will be the hero for our Diné Nation.

Steven A. Darden, NNHRC Chairman  
Business Representative



## Preface Statement from Vice-Chairwoman Valerie Kelly

As a commissioner of the Navajo Human Rights, I learned so much through the public hearings held throughout the Navajo reservation, and the testimonies of women who have been victims of violence or family members who lost their lives at the hands of violence, and the unfair treatments of the LGBTQ community. The stories and teachings of the sacredness of the Navajo women intrigued me the most.

The story of how the true náadleelhíí originated and how they reunited the Navajo men and women was very interesting. I've heard different versions before but not as detailed as how it was introduced to us by the medicine people. This brought the issue of same sex marriage to our attention and why, according to the stories told by the medicine people, it cannot be performed in tradition marriage ceremonies.

Serving on the Navajo Human Rights Commission has been very educational and I enjoyed serving our Navajo people. I want to thank Navajo Nation Human Rights Commission staff and the Commission on their dedication in completing this report.

Valerie Kelly, Vice Chair  
Social Service Representative



## Preface Statement from Commissioner Justin Tsosie

Serving as a Commissioner with the Navajo Nation Human Rights Commission has been a true experience and educational for me. One of the many tasks that we took on is the treatment of Navajo Women and Gender Violence.

Through public forums, testimonies and teaching from several of our traditional practitioners I have heard the true pains of violence that our Diné women have endured, the outcast and abuse of our relatives that are in the LGBTQ community has suffered, and the teaching of the Diné journey. The teaching of the role and the sacredness of the Diné women the value of the nádleehí, the stories that have been shared the ones that no one speaks of, the separation of the sexes the songs and prayers that the holy ones have bestowed upon us.

The discussion of same sex marriage, why it cannot be done in our tradition marriage ceremony and the foreseeable discussion of honoring States same sex marriage licenses within the Navajo Nation Tribal Government.

We have open the discussion of what no one wants to speak of or even want to acknowledge, the nádleehí. The hesitation of questions that have always been there but were never asked in the LGBTQ community has been discussed.

In discussion of equality between the man and the woman in our culture would be a demotion to our Diné women. Even through our prayers we mention the female spirit, we acknowledge our mother earth, and being the child of the white shell woman. We have also identified notable women through the teachings, our prayers, our songs and chants that have major roles in our Diné life way. The wrong treatment of our Diné women is a modern day influence.

We have received numerous heartfelt testimonies of wrongful and abusive treatments to our Diné Woman and the LGBTQI community in this report. I urge our leaders to discuss the matters at hand and remedy the appropriate corrective action.

Commissioner Justin Tsosie  
Member at Large



## Preface Statement from Commissioner Jennifer R. Nez Denetdale, Ph.D.

It has been three years since the NNHRC began this study to examine the status of Navajo women and our LGBTQI relatives. I am elated that former chair of NNHRC Duane “Chili” Yazzie supported the Commission’s initiative to support this much needed project. As a Diné feminist scholar who has spent more than two decades researching and writing about issues pertinent to Navajo women and non-conforming genders, I felt that this project was one avenue through which our Navajo government and leaders might become aware about women’s and LGBTQI’s issues and experiences and begin to develop laws and policies that address gender equality and inclusion. It is my hope that our visions, thoughts, and words placed in this report will inspire all of us to continue on the path to ensure the well-being and prosperity of our women, children, and LGBTQI relatives. Further, I am appreciative of all who participated in the Commission’s public hearings. Their support and participation in the Commission’s study on various levels hearten me in that the Navajo Nation and our leaders will strive to be inclusive of all of our relatives in nation-building and community initiatives.

Not apparent in this report is the many hours of listening, dialogues and conversations among the Commissioners and the NNHRC executive director and staff as we discussed Diné perspectives on sex and gender, the status of Navajo women and our LGBTQI relatives. I am hopeful that this study is but one source for addressing the needs and issues of women and LGBTQI and that the Navajo Nation will continue to not only hold ourselves and our leaders responsible for the well-being of all our people, but that we will also hold the United States as a trustee of indigenous peoples responsible for the well-being and prosperity of Navajo women and the LGBTQI community. I am enriched by the beautiful traditional stories, prayers, and songs that the medicine people shared during the work sessions on Navajo men, women, and LGBTQI and our roles. Although I do not agree with some findings and recommendations presented in this report, principally related to the Diné Marriage Act (2005), I remain respectful to the Commission’s efforts to produce this study.

I thank the Commission staff, Mr. Leonard Gorman, and chair Steve Darden for the efforts they put into this study. I am also very appreciative of the close work that I did with Ms. Lauren Bernally for this study. There were many hours of thoughtful discussion and dialogue between the commissioners on the issues presented and as the commissioners have expressed, we all learned a great deal on Navajo perspectives regarding sex and gender and in particular, from the LGBTQI community. With great appreciation.

Commissioner Jennifer R. Nez Denetdale, Ph.D.  
Education Representative



## Preface Statement from Commissioner Frank Bradley, III

Ya'ateeh, The public hearings on the violence against Diné women and the LGBTQI community which was facilitated by the Navajo Nation Human Rights Commission, provided a tremendous amount of education for me professionally and personally and it was quite a learning experience for me. The Diné practitioners who conducted the two day sessions provided me with knowledge of my cultural ways with a better understanding of our people's narrative our journey to the present world. It is interesting to note that our relatives how they were identified as LGBTQI have been prominent throughout our history and of the nádleehí who brought about the reunification of the sexes.

As a retired police officer of 24 years, I had the responsibility and duty to take action and investigate criminal activity on the Navajo Nation. In doing so I have witnessed and experienced the violence and sorrow associated with many incidences. As a paneled member on the NNHRC public hearings, I heard the pain and sorrow just as I had when I was an active police officer. I felt like I was a police officer again and longed to counsel and offer advice. I asked questions like I was conducting a criminal investigation, even though knowing now that as a private citizen, I do not have that responsibility or authority. I listened and concentrated on the narratives told by each speaker and went away from each hearing tired and exhausted, just as I had done on many days when I was a police officer.

The speaker who came from Shiprock relayed his experience in calling the police on a domestic violence incident which was in progress. He voiced his frustrations about the response time of the police. His statement about the police and no response angered and embarrassed me personally. As a police officer and a supervisor, I reiterated to my crew, to respond to all calls in a timely manner and conduct a thorough investigation. This lack of response is inexcusable and dangerous. The lack of criminal prosecution of perpetrators is also very concerning, especially to a former law enforcer.

My education of the LGBTQI community was greatly broadened through these public hearings. As it was stated, "We are all relatives in the Diné way" and this holds for the citizens of the Navajo Nation. My personal enlightenment with this sector of our community has helped me to understand some of the issues the LGBTQI community encounter and endure.

With this report, it is my hope that my Diné relatives and the Navajo government gain knowledge and clarification just as I have. It is also important for discussions and dialog to take place to seek solutions. To live in a world where one is accepted and treated fairly should be an aspiration for all.

Commissioner Frank Bradley III  
Law Enforcement Representative



# INTRODUCTION

In 2012, Commissioner Jennifer Denetdale, associate professor at the University of New Mexico, brought a proposal to the Commission that they undertake an investigation of the status of Navajo women and Navajo Lesbian, Gay, Bi-sexual, Transgender, Queer, and Intersex (LGBTQI) community and violence against them on the Navajo Nation and border towns.<sup>1</sup> Under the direction of then chair Duane “Chili” Yazzie, the Commission held an initial meeting and invited Navajo Nation offices, regional non-profits and border town institutions to report on the status of Navajo women and the place of Navajo LGBTQI within Navajo society and the Nation.<sup>2</sup> Invited presenters included representatives from the Navajo Division of Public Safety, Navajo Behavioral Health, regional women shelters, and the LGBTQI communities. The day-long meeting revealed that Navajo women experience violence in the form of domestic violence, assaults, rape, and gender inequalities disproportionately in comparison to other citizens of the Navajo Nation and within the United States (“U.S.”). Further, the meeting revealed that the Navajo LGBTQI community experiences violence that is invisible and unacknowledged by the larger society. Based upon the testimony provided during this meeting, the Commission decided to investigate further into the status of violence against Navajo women and Navajo LGBTQI.

The Commission proposed to produce a report that might reveal the extent and nature of the violence that Navajo women and Navajo LGBTQI experience on and off the Navajo Nation and within the United States, to consider Navajo attitudes about and practices regarding gender, and Navajo laws and policies that inform the status of Navajo women and Navajo LGBTQI, and to apply international standards of human rights as the mechanism to address the material conditions of Navajo women and Navajo LGBTQI. Further, the issue of violence against indigenous women has received widespread international attention as a human rights crisis and is relevant to the concerns of Navajo governance and its leaders.

The Commission then proceeded with an approach to review various Navajo government entities, service units for women and LGBTQI, public safety, and community organizations in order to evaluate the extent and nature of gender violence, thereby supporting efforts to create laws and policies that may return the Navajo Nation to Navajo principles based upon harmony and balance. First, the Commission, with the support of the University of New Mexico’s American Studies Department, hosted a two-day working session where knowledgeable and respected medicine men and women (four) offered their understandings of traditional gender

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<sup>1</sup> When the Commission decided to undertake this project, these terms to identify non-conforming genders beyond the accepted masculine and feminine were standard usage terms that the Navajo LGBTQI used to identify themselves. As the Commission later discussed, these definitions differ from gender terms based upon traditional Navajo perspectives.

<sup>2</sup> In accordance with established practice, in this report the commission alternates between the terms “Navajo” and “Diné” as the most commonly used to refer to who we are as Diné. Diné, translates as “the People” and is our word for ourselves while “Navajo” is how we are often references in reports, histories, studies, and other literature generated about the Diné.

roles in Navajo society. The working session asked Diné traditional practitioners to share their knowledge on traditional gender roles and the Commission guided sessions with questions around the present status of Navajo women and Navajo LGBTQI on the Navajo Nation and the application of human rights as a mechanism that might provide direction for Navajo governance, laws and policies that are inclusive of Navajo women and Navajo LGBTQI. The Commission also asked the Diné traditional practitioners to consider the transformation of gender roles within Navajo society and in what ways. The Commission was also interested in what it means for the Navajo Nation to be a matrilineal society, how Western ideologies and practices have transformed perceptions on traditional gender roles, and how these roles may have transformed as a consequence of colonialism. Of interest, too, is the formation of the modern Navajo Nation government and how it interacts with gender and the traditional roles of Navajo women. In two separate sessions in 2015 and 2016, the Commission continued its study of traditional Navajo gender roles in Navajo society, sessions that lasted two days each. These sessions were devoted to examining closely the transcripts of the traditional practitioners who shared traditional stories regarding Navajo perceptions of sex and gender. Chair Steve Darden also offered valuable insights that helped to develop the Commission's understanding of Navajo traditional gender roles.

Second, the Commission held three public hearings where Navajo citizens were invited to offer testimony regarding the status of Navajo women, the presence and role of Navajo LGBTQI, and changes in gender roles that have occurred across time. The Commission included an invitation to share testimony on issues of gender discrimination and violence, gender inequality, and the status of Navajo women and gender on the Navajo Nation. In this phase, the Commission also attempted to gather pertinent data and statistics that might illuminate the amount and nature of violence that Native women and the LGBTQI experienced. The Commission office and Commissioners also sought information and knowledge from a variety of Navajo offices, service providers and private citizens in order to evaluate Navajo women's and Navajo LGBTQI's quality of life.

Third, the Commission reviewed existing Navajo laws and policies that pertain to the rights and privileges accorded to all citizens of the Navajo Nation, including Navajo women and Navajo LGBTQI as efforts to weigh the truisms that Navajo women are sacred and that at one time Diné recognized genders beyond the feminine and the masculine, which are also termed "non-conforming genders."<sup>3</sup> Navajo Fundamental Law and tribal codes were also examined and reviewed within the scope of universal human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), in order to illuminate how Navajo concerns and issues about gender may be addressed on and off the Navajo Nation. Available

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<sup>3</sup> Wesley Thomas, "Navajo Cultural Constructions of Gender and Sexuality," and Carolyn Epple, "A Navajo Worldview and Nádleehí: Implications for Western Categories," both in *Two-Spirit People: Native American Gender Identity, Sexuality, and Spirituality* ed. Sue-Ellen Jacobs, Wesley Thomas, and Sabine Lang (Urbana: University of Illinois Press, 1997): 156-173 and 174-191, respectively.

studies and research on Navajo women indicate violence against them is pervasive and goes largely unaddressed, although the Navajo Nation has passed laws and policies intended to ensure the protection and safety of Navajo women. In light of Navajo society's often voiced assertions that Navajo women are sacred and that their roles are significant to the perpetuation of Navajo traditional values and teachings, it is imperative that violence against women be addressed in ways that also acknowledge the moral and ethical responsibility of the United States ("U.S.") as trustee of Navajo lands and the guardian of the Navajo people to ensure the well-being and prosperity of Navajo women. Further, although Navajo women's issues have received attention internationally and within the Navajo Nation, the Navajo LGBTQI community remains largely invisible and receive little or no support for the issues and problems they face both on the Navajo Nation and in urban areas. Based upon the principles of K'é, Navajo LGBTQI issues must also be investigated so that the LGBTQI also receive the benefits of Navajo citizenship.

Thus, the Commission's address of these issues will draw upon Diné Life-Way principles and international human rights standards, including those that address the rights of Indigenous peoples and specifically women to provide findings and recommendations to Navajo leaders and those committed to the well-being of all Diné regardless of sex or gender identity. The report is not intended to level charges or insinuate ill will at the Navajo Nation government, leaders, women or LGBTQI members. Rather, we hope the report will illuminate or elevate the awareness of the human rights violations that derived from unethical and immoral actions that cause harm to Navajo women and with individuals who identify as Navajo LGBTQI.



## OVERVIEW

The Commission’s determination to generate this report is based upon on-going concerns about the status of Navajo women and more recent public attention to the Navajo LGBTQI. Some of the concerns are related to gender equality and discrimination, including questions about women’s leadership in governance, and forms of violence, including homophobia, and violence against Navajo women and Navajo LGBTQI such as sexual assaults, rapes, domestic violence, and family violence. To date, although a number of sources, including studies, news articles, ethnographies, and cultural and popular mediums, indicate the prevalence of violence against Navajo women and LGBTQI, there has yet to be a comprehensive report that details the amount and nature of gender violence on the Navajo Nation and in border towns. Further, two Amnesty International reports, *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Women in Canada* and *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* raised international consciousness to the conditions that Native women faced within the U.S. and Canada and directly implicate both Canada and the United States for failing to protect and ensure the safety of Native women.<sup>4</sup>

These reports deliver strong indictments against the U.S. and Canada, charging that they have been indifferent to the realities of Native women’s lives and are directly responsible for the pervasive violence and discrimination that Native women face today, “Indigenous peoples in the USA face deeply entrenched marginalization-the result of a long history of systemic and pervasive abuse and persecution. Sexual violence against Indigenous women today is informed and conditioned by this legacy of widespread and egregious human rights abuses.” The *Maze of Injustice* notes this failure to be “compounded by the federal government’s steady erosion of indigenous government authority and its chronic under-resourcing of those law enforcement agencies and service providers which should protect Indigenous women from sexual violence.”<sup>5</sup> In 2010, the National Institute of Justice released its report, *Violence Against American Indian and Alaska Native Women and Men*, on findings related to intimate partner and sexual violence. The report’s summary indicates that more than 4 in 5 American Indian and Alaska Native women (84.3 percent) have experienced violence in their lifetime, including sexual violence and physical violence by an intimate partner. The report includes data on American Indian and Alaska Native men who also have high victimization rates.<sup>6</sup> Further, although the U.S. based report focuses on Native women who live in urban areas, the same conditions apply to Navajo women who live on their nations. As these reports indicate, the status of Native women is indeed precarious and directly related to a legacy of colonialism that has transformed Native

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<sup>4</sup> Amnesty International USA, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* (New York: Amnesty International, 2007) and *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada* (Amnesty International, October 2004).

<sup>5</sup> *Maze of Injustice*, 2.

<sup>6</sup> André B. Rosay, Ph.D., National Institute of Justice Research Report, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings From the National Intimate Partner and Sexual Violence Survey* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, May 2016), 43, 44.

women's traditional standing of stature and authority to one of subordination; these conditions for Native women are similar for Navajo women and is sustained through various political, religious, social and cultural institutions. Significantly, these reports assert that nations like the U.S. and Canada have failed to ensure the safety and protection of Native women as a result of a lack of attention to their conditions and a consistent lack of resources to address poverty, low education standards, poor health, and limited access to employment opportunities, as well as a failure to address a number of various gender discrimination complaints.

More recently, although not acknowledging its responsibilities for creating conditions that sustain violence against women, because its Constitution upholds equality of the sexes, the U.S. did strengthen laws and policies to address violence against Native women with the reauthorization of the Violence Against Women Act, 2013 (VAWA) and the Tribal Law and Order Act, 2010 (TLOA). These reforms were intended to address federal Indian laws that undercut Native jurisdiction over crimes committed against Native peoples and protected white citizens, including the Major Crimes Act (1885), Public Law 280 (1958), *Oliphant v. Suquamish* (1978), and the Indian Civil Rights Act (1968).<sup>7</sup> Further, Native justice systems were systematically stripped of their authority to prosecute crimes against women so that violence against women go largely unaddressed and ignored. As Rebecca Tsosie notes, "The most salient question is not whether indigenous peoples have the right to govern themselves, but what the United States must do to ensure the quality of that self-governance, including the need of Native nations to maintain their traditional forms of governance, their cultural and religious traditions, their own social and education institutions, their rights to occupy their lands and territories, and other various aspects of their tribal heritage."<sup>8</sup>

As the two international reports indicate, which is reiterated by Sarah Deer, "Sexual violence against women is not only a criminal or social issue, it is a human rights abuse. All women have the right to be safe and free from violence and the authorities have a responsibility to ensure that women can enjoy that right."<sup>9</sup> The applicability of human rights to indigenous women as understood under international law are a combination of different conventions and declarations, including those specific to indigenous peoples. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (the Convention), which entered into force on March 5, 1995, deals primarily with the issue of disparate treatment and gender equality. Further, the U.S. signed onto the Convention in 1980, but has not ratified it as a matter of domestic law, so it remains a document the U.S. agrees to in principle, but it is not willing to enforce. CEDAW asserts that all human beings are born "free and equal in dignity and

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<sup>7</sup> Sarah Deer, *The Beginning and End of Rape: Confronting Sexual Violence in Native America* (Minneapolis: University of Minnesota Press, 2015): 34-43 and 98-106.

<sup>8</sup> Rebecca Tsosie, "Indigenous Women and International Human Rights Law: The Challenges of Colonialism, Cultural Survival, and Self-Determination," *UCLA Journal of International Law & Foreign Affairs* (Spring 2010), 217.

<sup>9</sup> Sarah Deer, *The Beginning and End of Rape*, 9, 10.

rights” and that women are entitled to equal treatment. The Convention recognizes the contributions of women to family and to society and that there is a need to equalize the position of women and encourage an equitable sharing of responsibility, including the imperative to eliminate discrimination against women, “whether it is attributable to private conduct (e.g. prevailing “social and cultural practices”), the practices of social institutions (work, education, health, etc.), or the practices of legal institutions (national and local laws and policies.)”<sup>10</sup> The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (the Convention) affirms that “violence against women constitutes a violation of their human rights and fundamental freedoms” and “impairs their ability to enjoy their rights and freedoms.”<sup>11</sup> Further, the Convention defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere and makes clear that violence against women includes all forms of physical, sexual and psychological harm.”<sup>12</sup> In regards to LGBTQI and human rights, *The Yogyakarta Principles* are a set of international legal principles that apply human rights standards to issues of sexual orientation and gender identity, thereby affirming the primary obligations of nations-states to implement human rights.<sup>13</sup>

Available data and statistics on Navajo women and violence are periodically updated and difficult to access while media, news reports, conference topics and forums reflect the pervasive violence against Navajo women. For example, the fact that the Navajo Nation Human Rights Commission was unable to find data and statistics that might reveal the amount and nature of violence that Navajo women and Navajo LGBTQI experience both on and off the Navajo Nation is a manifestation of a failure to protect and ensure the safety of Navajo women and Navajo LGBTQI. Rather, as is true of other Native government’s and community’s efforts to gather empirical data on gender violence, the Commission has had to rely upon individual public testimonies, existing studies, and review complaints filed with the Commission office because there has yet to be coordinated data management system on and off the Navajo Nation that might provide a comprehensive overview on the status of Navajo women and gender violence.<sup>14</sup>

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<sup>10</sup> United Nations Convention on the Elimination all Forms of Discrimination Against Women, G.A. Res. 34/180,U.N. Doc. A/34/46 (July 17, 1980) and Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. See Rebecca Tsosie, “Indigenous Women and International Human Rights Law,” 212, 213.

<sup>11</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, June 9, 1994, O.A.S.. A-61. Quoted in Rebecca Tsosie, Indigenous Women and International Human Rights Law,” 214.

<sup>12</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.

<sup>13</sup> *The Yogyakarta Principles: Principles on the Applications of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (Yogyakarta, Indonesia, 2007).

<sup>14</sup> Because it has been difficult for Indigenous peoples and their nations to gather data and statistics regarding gender violence, community people have begun taking the lead and piloting their own studies. See for example, *White Buffalo Calf Woman Society, Not Our Tradition: A Report on Violence on the Rosebud Reservation* (August 2013). As this report indicates, Native women experience patterns of violence as a result of poverty, homelessness, unemployment, patriarchal views of women, inadequate law enforcement resources and domestic violence and assault laws in Native communities, and racist federal laws and policies, which are directly related to historical and continuing injustices as a result of the status of Indigenous nations as “domestic dependents” of the U.S.

The Navajo Nation has a number of legislation and policies in place that address women's issues. For example, the Navajo Bill of Rights explicitly protects the rights of all Navajo citizens, including women in 1 N.C.C. § 3, Denial or abridgement of rights on basis of sex, equal protection and due process of Navajo Nation law. The interpretation of Navajo equal rights guarantee is that there can be no legal results on account of a person's sex, no presumption in giving benefits or disabilities gauged by a person's sex and no legal policy which has the effect of favoring one sex or the other. This provision arguably also protects the rights of the Navajo LGBTQI. This legislation is but one of several that the Navajo Nation Council enacted to protect women, including statutory recognition of customary marriage, family planning programs, and including an Equal Rights provision in the Navajo Nation Bill of Rights in 1980.<sup>15</sup> Other actions intended to ensure the well-being and prosperity of Navajo women include the establishment of the Office of Navajo Women, which was established under then Navajo Nation President Peterson Zah in 1985, which subsequently changed its name to the Office of Navajo Women & Families. The Navajo Women's Commission was established by the Navajo Nation Council's Advisory Council in 1985 and is intended to support the empowerment of Navajo women to establish policies that support and improve the status of women and their families.<sup>16</sup>

In 1992 after cases where several Navajo women died at the hands of their husbands, the Navajo Nation Council held a public hearing to address violence against Navajo women and subsequently sought remedies through legislative actions, including the Domestic Abuse Protection Act (1993); and the Violence Against Family Act (2012). Each of these acts were intended to provide for the safety and the protection of all family members from family violence.<sup>17</sup> However, news sources such as the *Navajo Times*, the *Gallup Independent*, and the *Farmington Daily Times* report that gender violence continues unabated and often with the Navajo public pleading with their elected leaders to address this crisis. For example, in 2009, the *Navajo Times* relayed statistics provided by the Navajo Nation's Division Public Safety where it was reported that on the Navajo Nation, violent crime was down slightly, while the reports of rape had increased, "The most frequent violent crime committed in 2008 was rape, with 300 reported in 2008 as compared to 328 in 2007. That's an average of six rapes per week."<sup>18</sup> The *Navajo Times* article also reported a number of other violent crimes, including murders, aggravated assaults, prostitution, child abuse that included molestation, and sex offenses. Further, cases of domestic violence skyrocketed in 2008, almost doubling from the number of cases in 2007, "Police reported 6,121 cases in 2008, compared to 3,535 in 2007." Further, according to an investigative report, "The Navajo Nation is one of the most violent reservations

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<sup>15</sup> For references to the hearing on Navajo women and domestic violence, see James W. Zion and Elsie Zion, "Hozho' Sokee' – Stay Together Nicely: Domestic Violence Under Navajo Common Law," *Arizona State Law Journal* Vol. 25 (1993): 69-135.

<sup>16</sup> Vivian Arviso, "After 30 Years, Work and Journey to Continue," *Navajo Times* (April 9, 2015).

<sup>17</sup> 22<sup>nd</sup> Navajo Nation Council, Resolution of the NNC CJA-04-12 (2012); Navajo Nation Council Resolution of the NNC CJY-53-93 (1993).

<sup>18</sup> Bill Donovan, "Police Report Rape, Domestic Violence Cases up in 2008," *Navajo Times*, March 26, 2009. Accessed at <http://navajotimes.com/news/2009/0309/032609crimeup.php>.

in the country,” where the FBI states, in 2013, more rapes were reported for the Navajo Nation than in several populous U.S. cities.<sup>19</sup> As reporter Laurel Morales relates, of these violent crimes in Indian country, including the Navajo Nation, the U.S. Attorney’s Office in Arizona declined to prosecute half of Indian Country cases.<sup>20</sup>

Finally, Diné Fundamental Law, founded upon Navajo sacred teachings of Diyin bitsááé” beehaz’áanii (Traditional Law), Diyin Diné é bitsááé” beehaz’áanii (Customary Law), Nahasdzáán dóó Yádiłhił bitsááé” beehaz’áanii (Natural Law) and Diyin Nohookáá Diné bi beehaz’áanii (Common Law) protect the collective rights and freedoms that all Diné enjoy as citizens of a sovereign Navajo Nation. As these laws state, the Diné have always been guided and protected by the immutable laws provided by the Diyin Diné’é, Nahasdzáán and Yádiłhił and these laws have not only affirmed the Diné Life-Way but guide, sustain and protect the Diné as they journey upon and off the sacred lands since time immemorial. The respect for, honor, belief, and trust in the Diné bi beehaz’áanii preserves, protects and enhances the inherent rights, beliefs, practices and freedoms the Diné uphold. This includes individual rights and freedoms each Diné freely exercises.<sup>21</sup> These laws also assure that all Diné, including women and LGBTQI, are provided with safety and well-being and reflect Diné cultural values.

While the world community, including the United States, attempts to ensure that the fundamental human rights of LGBTQI are respected, to date, the Navajo government has not adequately addressed Navajo LGBTQI issues and the challenges this community faces, even though they experience multiple layers of discrimination and homophobia. As a preliminary survey of Navajo LGBTQI’s experiences on the Navajo Nation by Diné College’s Diné Policy Institute indicates, Navajo LGBTQI experience high numbers of suicide and violence as a result of their identities and sexuality.<sup>22</sup> Further, national studies such as *Injustice at Every Turn: A Look at American Indian and Alaskan Native Respondents in the National Transgender Discrimination Survey*, which is the first exhaustive survey of transgender and non-conforming genders, confirms that transgender and non-conforming genders suffer multiple forms of abuse, discrimination, and violence within foundational institutions such as the family, schools, the workplace and health care settings every day. This survey includes a small population of American Indians that nevertheless is significant because it is still the norm that American Indians are not represented in such comprehensive surveys.<sup>23</sup>

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<sup>19</sup> Laurel Morales, “Navajo Nation, Feds Take on Overwhelming Violent Crimes” Fronteras: The Changing America Desk (March 01, 2013). Accessed at [fronterasdesk.org](http://fronterasdesk.org).

<sup>20</sup> Ibid. An example of violent crimes that go unpunished for the Navajo people is Lenita Yellowhorse’s letter to the editor in the *Navajo Times*. Yellowhorse, who is incarcerated in an Arizona prison for a DUI offense while the perpetrators who brutally murdered her brother have yet to be charged with any crime. See Lenita Yellowhorse, “Forgiveness is quite a journey,” letter to the editor, *Navajo Times*, July 21, 2016, A 6.

<sup>21</sup> 1 N.N.C § 202 Diné Bi Beehaz’áanii.

<sup>22</sup> See Diné Policy Institute’s website at [www.dinecollege.edu/institutes/DPI/policy.php](http://www.dinecollege.edu/institutes/DPI/policy.php).

<sup>23</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jody L. Herman, and Mara Keisling, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011). See also “Study: Transgender Native Americans Experience

In 2005, the Navajo Nation Council received international attention when council delegate Larry Anderson introduced legislation to affirm marriage as a sacred act between a man and a woman. Although Mr. Anderson insisted that his legislation was intended to affirm traditional Navajo marriage to be between a man and a woman, it raised national consciousness about the place of Navajo LGBTQI within Navajo society, including whether or not marriage between same-sex couples should be legally recognized. At that time, other indigenous nations, including the Cherokee Nation of Oklahoma, also raised similar questions. The Diné Marriage Act was voted upon and passed by the Navajo Nation Council in 2005 and then vetoed by President Joe Shirley, Jr. The Navajo Nation Council then successfully overrode the president's veto and the Diné Marriage Act became law in 2005. Since then, the Act's passage has stimulated dialogue about traditional Navajo perspectives about sex, identity, and marriage and simultaneously, the place of the LGBTQI within Navajo society. In particular, public attention illuminated allegations of discrimination and violence that the Navajo LGBTQI experienced both within the Navajo Nation and in border towns. In an effort to determine the amount and nature of gender violence on the Navajo Nation and border towns, the Commission agreed to launch a study in order to assure that all citizens of the Navajo Nation are treated with dignity and respect and that their well-being is ensured and their standard of living is in accordance with those set forth for all citizens of the Navajo Nation.

The Commission decided to draw upon the term "gender," rather than focusing on women, in order to acknowledge the presence of multiple genders, LGBTQI, as identified beyond the accepted masculine and feminine roles. Although there has always been the presence of multiple genders who participate in Navajo community life and governance, the Diné Marriage Act (2005) raised questions about traditional gender roles, whether or not traditional Navajo society recognized genders beyond the feminine and the masculine, and the growing public awareness of the discrimination and disdain that Navajo LGBTQI faced. It was also hoped that traditional knowledge about gender roles in Navajo society might illuminate the presence of multiple gender roles. Universal human rights principles, including UNDRIP, seek to ensure States' obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity.

As scholars have argued, modern forms of governance have transformed many indigenous societies into patriarchies where male dominance shapes and influences all aspects of life, from governance and leadership to the social and cultural.<sup>24</sup> These transformations of indigenous societies have resulted in the devaluation of women's roles and the invisibility of

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Discrimination at Worst Rates," *Indian Country Today* Media Network.com, October 12, 2012. Accessed at indiancountrytodaymedianetwork.com.

<sup>24</sup> James W. Zion and Elsie B. Zion, "'Hozho' Sokee"; Jessica R. Goodkind, Julia Meredith Hess, Beverly Gorman, and Danielle P. Parker, "'We're Still in a Struggle: Diné Resilience, Survival, Historical Trauma, and Healing,'" *Qualitative Health Research*, (August 2012): 1019-1036; Mary J. Rivers, "Navajo Women and Abuse: The Context for Their Troubled Relationships," *Journal of Family Violence*, Vol. 20, no. 2 (April 2005): 83-89; Gloria Valencia-Weber and Christine P. Zuni, "Domestic Violence and Tribal Protection of Indigenous Women in the United States," *St. John's Law Review*, Vol. 69, Nos. 1 & 2 (March 2012): 69-170.

LGBTQI, both of whom have not participated equally with men in nation-building. Navajo Women and Navajo LGBTQI have struggled to access leadership roles and to resources and privileges that the Navajo Nation has to offer to their citizens. Two working sessions allowed for the articulation of traditional genders, to ascertain the traditional status of Navajo women and the place of multiple genders in Navajo society and the Navajo Nation. The knowledge gathered from this session provide an understanding of how gender forms the foundation of Navajo society and how these roles have transformed within the modern Navajo Nation. This knowledge will be valuable in making connections between contemporary gender roles, principles of Diné values, and international standards of human rights that pertain to Navajo women and Navajo LGBTQI. It will guide Navajo leaders and concerned citizens to make governance, laws and policies that are simultaneously found in Navajo Fundamental Law and at the same time, accountable and responsible to all of the Navajo Nation's citizens.



## DINÉ PERSPECTIVES ON GENDER

In September of 2013, the Commission partnered with the University of New Mexico's American Studies Department to host a two-day public work session on Diné gender issues and invited four well-respected Navajo traditional practitioners, two men and two women, to serve as Navajo cultural consultants who would share their knowledge on traditional Diné gender roles, the shift of gender roles, with specific references to the presence of third and fourth genders, including the Nádleehí, who appears in traditional narratives and is acknowledged as a person who possesses male and female sexual organs and who most often identifies as feminine. The traditional practitioners were selected on the basis of their expertise of Navajo traditional knowledge and ceremony, which includes the creation story, the journeys through worlds to the present world which were given to us by the Holy People that was then codified as the Diné Life-Way. The Navajo medicine people who served as consultants included Ms. Ruth Gilmore, of Chinle, Arizona; Ms. Marie Salt of Kayenta, Arizona; Mr. Philmore Bluehouse, of Fort Defiance, Arizona; and Mr. Henry Barber of Vanderwagon, New Mexico. At various times throughout each day, the public was invited to share their perspectives on the proceedings and to participate in activities where they shared their understanding of the consultants' reiteration of traditional teachings on gender roles and to articulate questions about the roles, transformations of these roles, and international standards of human rights. Translators provided translations from Diné to English for non-Diné speakers. Commissioner Dr. Jennifer N. Denetdale co-hosted with chair Steven A. Darden for the two-day event. Commissioners Frank Bradley III and Valerie Kelly were also in attendance and participated in one of the two-day sessions.

The first morning session commenced on Thursday, October 31, 2013, with chair Steven A. Darden greeting participants and introducing the Navajo traditional consultants, commission members and staff for the two-day session. Mr. Leonard Gorman, Executive Director of the Commission, gave an overview of the NNHRC's purpose and how Navajo human rights were applicable to this project. Dr. Jennifer Denetdale then proceeded with a presentation on the Commission's rationale for investigating the status of Navajo women and Navajo LGBTQI on the Navajo Nation and in border towns. Immediately following Dr. Denetdale's synopsis, the traditional consultants addressed the topic of Diné traditional gender roles, including the presence of multiple genders beyond the masculine and feminine in Navajo society. Each traditional consultant was allowed thirty (30) minutes to present. The afternoon session for day one began with a discussion facilitated by Commissioner Darden on topics and issues that arose from the morning's session. The audience was also invited to respond and offered their observations and insights regarding the morning's presentations.

On day two (Friday, November 1, 2013) of the work session, practitioners were invited to provide their cultural perspective on the following issues: 1) From a Navajo traditional perspective, what are the roles of men and women? Does Navajo society recognize gender beyond the masculine and the feminine? What are genders that do not conform to the customary

gender expectations?; 2) Has the establishment of a modern Navajo government based upon principles of western democracy contributed to gender inequalities and disparities on the Navajo Nation and across gender, including men, women, and LGBTQI, and if so, how?; 3) How do we take issues of violence against Navajo women and LGBTQI and address within a human rights framework?; 4) How do we ensure that the gender variation that exists within the Navajo Nation is acknowledged and addressed as part of the quest for tribal sovereignty and self-determination? This second day included addresses from two Navajo guest presenters who identified as members of the LBGTQI community who shared their experiences of living on the Navajo Nation.

The final afternoon session of the second day was dedicated to the discussion on the status of Navajo women and gender violence as a human rights issue. Particular attention was directed to how the Navajo Nation Human Rights Commission will understand the intersections of traditional gender roles and human rights. Upon the completion of this discussion, the Commission moved toward the final subject of the day which allowed each Commission member to recap what they heard and to point out critical issues and topics. The Commission was also charged with providing recommendations for data gathering, public hearings, and future research.

Drawing upon the knowledge shared by the medicine people and then listening to the transcription of the two-day session, the Commission followed up with another two day work session to explore in depth the traditional practitioner’s perspectives on gender and traditional roles. Chair Steve Darden, who is also traditional practitioner provided valuable insight and additional context for illuminating traditional gender roles. Generally, the practitioners acknowledged the presence of three sexes in Navajo society: the female, male, and náadheelí (intersex persons were known as hermaphrodites, in accordance with Western society’s definition). A chart identifying the sex and gender delineations is located in the appendix for review. An intersex person is one who was born with male and female sexual organs. Based upon these sessions, the Commission recognized four genders. Gender is defined as socially constructed roles, behaviors, activities, and attributes. Gender is often defined as “feminine” and “masculine.” Native definitions of gender include terms such as “Two-Spirit” and other terms and definitions specific to Indigenous groups.<sup>25</sup>

In traditional Navajo society, the genders acknowledged are the masculine, the feminine, the Nádleehí, and the Dilbaa'. The Nádleehí is a person who is biologically male who takes on feminine characteristics and the Dilbaa' is biologically female who takes on masculine

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<sup>25</sup> See the Tribal Equity Toolkit 2.0: Tribal Resolutions and Codes to Support Two Spirit & LGBT Justice in Indian Country (The Pride Foundation and Western States Center, November 21, 2013) for an exhaustive treatment of sex and gender definitions and terms that are relevant to Indigenous peoples and Native nations.

characteristics.<sup>26</sup> It is also generally observed that contemporary Navajo LGBTQI will draw upon the person of the *nádleehí* in traditional stories as a way to affirm their presence and roles in traditional and contemporary Navajo society. They also assert that as Navajo LGBTQI, they take part in respecting and practicing Diné traditions, thereby indicating that regardless of their sexuality and gender identity, they take pride in being Diné and expect to be responsible and accountable to the needs of the Navajo Nation, their communities, relatives and families. Overall, the Commission received positive responses from the audience who expressed interest in the topics of the status of Navajo women and Navajo LGBTQI and the need to examine gender inequalities and discrimination.

Below is a summary of each traditional practitioner's response to the questions posed concerning traditional roles of Navajo women and the presence of multiple genders beyond the masculine and feminine in Navajo society. This venue revealed a consistent line of traditional Navajo thought and understanding about the presence of genders beyond the masculine and feminine. Consistent with Navajo thought, the medicine people identified as a third sex and gender who is known as a *Náadleehí*. This is a person who has both biological sexual organs and may identify as either feminine or masculine. Additionally, Diné scholar Wesley Thomas identifies Navajo persons who identify as *nádleehí* as either female bodied or male-bodied. He notes that biologically, sex is referred to female as 'Áád and male as Ką'.<sup>27</sup> The *nádleehí* female-bodied is reflected in traditional narratives and documented in anthropological reports while few accounts of the *nádleehí* male-bodied is rarely referenced.<sup>28</sup>

During the course of the Commission's discussions regarding the traditional consultants' references to multiple genders, the term "*nádleehí á díł íní gí*" surfaced and was translated as "those who pretend to be *nádleehí*." The discussion was related to concerns that those who identified as non-conforming may behave inappropriately in accordance with Navajo traditional thought regarding the place of *nádleehí* in Navajo society. It has also been raised that contemporary Navajo LGBTQI persons do not possess biologically both sexual organs, so they are not *nádleehí* in the meaning as intended in the traditional narratives. Further, during the two day session, an audience member Carrie House who identifies as a genderqueer shared her anger concerning some Navajo sentiments that the story of the Separation of the Sexes is interpreted as a lesson that people should not engage in unnatural sex acts because it leads to the birth of "monsters," whom some take as those who identify outside of the normative gender binaries. Chair Darden marks this exchange with House as a point to clarify K'é as the traditional principle by which we related to each other and that such implications are not intended. It should also be noted that contemporary LGBTQI may not draw upon the *Nádleehí* from the traditional stories as a way to affirm their presence and roles in traditional and contemporary Navajo society

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<sup>26</sup> See Sabine Lange, "Various Kinds of Two-Spirit People: Gender Variance and Homosexuality in Native American Communities," Wesley Thomas, "Navajo Cultural Constructions of Gender and Sexuality," and Carolyn Epple, "A Navajo Worldview and *Nádleehí*."

<sup>27</sup> Wesley Thomas, "Navajo Cultural Constructions of Gender and Sexuality."

<sup>28</sup> *Ibid.*, 160.

because they have not been exposed to Navajo traditional thought.<sup>29</sup> However, an understanding of what it means to be nádleehí as related in Navajo traditional stories in contemporary times was reflected in the testimony taken in the public hearings the Commission hosted.

Historically, there is evidence for claims that pre-contact indigenous societies included gender non-conforming people who may or may not have conformed to the definitions of who LGBTQI are today. History also indicates that foreign intruders, Europeans and then Americans, were horrified to observe the presence of indigenous women and men who did not act or dress according to their biological sex. In many instances, these intruders attempted to transform Indigenous societies' attitudes and practices that did not conform to their own standards of sex and gender.<sup>30</sup> These attitudes and practices became part of laws and policies imposed upon indigenous societies so that until recent times, many indigenous peoples, and simultaneously, indigenous nations, do not acknowledge or recognize the presence of multiple genders within their communities. In regards to Navajo society, Navajo traditional narratives acknowledge the existences of genders beyond the recognized feminine and masculine as the Nádleehí and the Dilbaa'.

The traditional practitioners did reference the presence of multiple genders beyond the recognized masculine and feminine with a narrative about the birth of twins to First Man and First Woman, a first set of twins that were not entirely male or entirely female<sup>31</sup>. They were called náadleehí and were hermaphrodites or intersex, meaning that these twins had both male and female sex organs. The twins took their places among the people and shared in the responsibility for the survival of the people. It became known that the twins possessed special skills, including the skills to make useful items from pottery, like plates and bowls. They made wicker bottles from thin twigs. The people recognized that the special and unique skills of the náadleehí were crucial to their survival as a people.<sup>32</sup> Based on traditional Navajo narratives, the traditional practitioners offered the following narratives regarding questions about Navajo conceptions of sex and gender.

Medicine woman Marie Salt began her presentation with first identifying herself through her clan relations, which identifies her matrilineal descent through grandmothers. Ms. Salt's presentation states that Navajo women's roles begins with an understanding of self-awareness and identifying oneself as a Navajo woman. According to Ms. Salt, Navajo sacred stories, prayers and chants are fundamental teachings that secure the survival of Navajo people. These

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<sup>29</sup> Ibid., 161, 162.

<sup>30</sup> There are a number of studies that make observations of the presence of non-conforming genders within indigenous societies. These include the following: Sue-Ellen Jacobs, Wesley Thomas, and Sabine Lang, *Two-Spirit People*; Albert L. Hurtado, *Intimate Frontiers: Sex, Gender and Culture in Old California* (Albuquerque: University of New Mexico Press, 1999); Mark Rifkin, *When Did Indians Become Straight?: Kinship, the History of Sexuality, and Native Sovereignty* (New York: Oxford University Press, 2011); Deborah Miranda, "Extermination of the Joyas: Gendercide in Spanish California," *GLQ: A Journal of Lesbian and Gay Studies* 16: 1-2 (2010): 253-284.

<sup>31</sup> Paul Zolbrod, *Diné bahane' The Navajo Creation Story* (Albuquerque: University of New Mexico Press, 1984).

<sup>32</sup> Ibid.

teachings are the responsibilities of Navajo women who must pass the teachings on to her child[ren]. Because these teachings are sacred, life is sacred and this information is conveyed to the embryo before birth and after birth and into adulthood. Medicine woman Marie attributes the sacred knowledge originating with Yoolgai Asdzáán (White Shell Woman). White Shell Woman and her sacred teachings are the foundation in which Navajo women are imbued values, holistic teachings, self-sufficiency and the prerogative to protect life and the Navajo Life-Way. In this way, when the Navajo child grows he or she will be purposeful in every facet of life. Navajo children will acknowledge their sacredness and their relation to the environment as they grow. This prepares Navajo children for success in the future. This is an important role of Navajo women.

In this journey of life, it is said Navajos must follow a corn pollen path. In life, there are destructive life forms and events that bring harm and destruction to life. Navajos must find balance between the good and the bad. The evil and goodness of every thought and action must always be weighted. According to medicine woman Salt, the perpetual balance of harmony brings prosperity, blessings and security to the home. In this respect it is the woman's responsibility to orchestrate a nurturing holistic environment that maximizes the opportunity for the success of her children, her government and her people. Traditional Navajo teachings for Navajo women proscribe their responsibility that must be followed throughout their lives. Across time and in a world where federal Indian policies, technology, education and employment expectations have transformed women's roles, women remain central to the perpetuation and survival of the people. Because the Kinaaldá is a central ceremony that affirms the centrality of women as mothers and grandmothers, women continue to be important to the conveying of traditional principles of the Navajo Life-Way. In the end, Ms. Salt points out that had Navajo families imparted these sacred teachings to their children, we would not be discussing the issues of violence against women and gender at this time.

Medicine woman Rita Gilmore offered the earliest account of Navajo narratives that begin when the earth was made. In this account she begin with the layers of how Mother Earth was formed. Following these layers, the surface colors of black, blue, yellow and white bring order and existence to the earth. In the black surface period, First Man and First Woman were made. They were placed opposite of one another and dawn and dusk emanate between them. Fire was significant in the building of their relationship. The fire that First Woman bore was weak and First Man transported his fire and integrated it with First Woman's fire, to create a complete fire. This is referred to as the life-fire. Navajo narratives describe two types of fire, a spiritual fire and a utility fire. The spiritual fire is used for ceremonial purposes while the utility fire is used to feed and keep one warm. The compassion shown between First Man and First Woman lead to the birth of twins. The twins were clothed in both male and female clothes as their gender identity was unclear. The twins were male and found to transform themselves. They were referred to as "nadleeli" (*transformers*) because they change themselves. As one twin traveled to the south, the twin turned in to Sunray Girl. To the north, she was referenced as North

Girl. Thus a twin that journeyed to the east was referenced as Dawn Boy while a twin that the journeyed to the dusk was referred to as Dusk Boy. The twins were instructed to always journey opposite of one another. This process of changing from dusk boy to night girl is called náadleelii. The twins would never be able to father a child or give birth, as they were formed in a spiritual manner.

In the third layer of earth's evolution, at a place called blanket of dusk, White Shell Woman was made. She was made to combat the evil and bad monsters that came to surface in the evolution of the earth. White Shell Woman, a spiritual being, transformed herself from a young girl at dawn to an older woman at dusk. She too is a transforming woman. She is known as Asdzáán Nadleehi, Changing Woman. Navajo narratives speak about a period in time when First Man and First Woman separated because of a dispute that ceased their working together. This dispute caused the men to take an eastern direction crossing the Rio Grande River near present day Albuquerque, New Mexico. The women journeyed into the opposite direction. In the first year of separation both male and female camps were successful surviving without each other. The women had an abundant harvest and the males had a bountiful hunting season. As they enjoyed the abundance of their efforts, they both began to gain significant weight. In the second year both male and female camps became lazy and nonproductive. They were not properly prepared to survive the upcoming months. Thus, both the men and women entered into starvation and lost weight. Only then did they realize they yearned for each other. There existed a desire to mate and they both resorted to devices that relieved their sexual yearnings. Navajo men began to see feminine features in other men who had assumed the roles and skills the women had performed when they were together. Their minds became weak and uncivil and thus, they engaged in acts that violated natural laws.

Navajo traditional practitioner Philmore Bluehouse spoke about sacredness and origins of sacredness as it related to being Diné. Bluehouse described the place of where Navajos originated from as ni'na'ahóden, a place he referenced as the home of a Supreme Being. Being Diné is both male and female. No Navajo is completely male and no female is completely female. The essences of this Supreme Being derives from sacred knowledge that were gifted by the Holy People. It is understood that every Navajo has an awareness, responsibility of knowing who they are. Moreover, as Navajo, we gather knowledge and information that guides the pathway in which we all take. This information that enters the body and mind makes us sacred, special and precious as that living being.

Henry Barber, who is a healer of the Peyote Way, opened his presentation with comments that included the environment and its relevance to the Navajo cosmology and Navajo traditional teachings. In his words the environment offers life and is the source of life which bears witness to human actions. There is no separation from the sacred Navajo teachings and the environment. They complement each other and support the concept of duality that the previous traditional practitioners spoke to. Mother Earth and Father Sky, land and water, North direction is masculine and South direction is feminine, female and male are a reflection of the sacred

ingredients that explains Navajo origins and existence. These and others elements derive from natural law give and sustain life. The concept of K'é describes the relationship between the duality of every element. Respect, understanding and working together are the basis of this relationship. They support one another, hold each accountable and in general serve to balance the good and bad of each element. For the Diné, the concept of K'é is applied and its meaning remains sacred in everything that is thought, with actions taken and the words that are spoken. In contemporary Diné thought, this is a very high order of personal integrity that is expected and sought out always. In Diné thinking, K'é is sacred and is central to the divine plan for creation.

The divine plan includes the creation of the five-fingered human beings. The purposed of this sacred plan is to procreate life and to diversify life, which includes the feminine divine and the masculine divine duality. The Navajo concept for procreation is referenced as the fire. Once this fire is lit, life proceeds and all forms of well-being can transpire. For the Navajo woman, because she is responsible and has the role to carry life and transfer life at birth, she is considered Asdzáá Nahat'a (woman leader). She is already blessed with leadership abilities. It is therefore understood Navajo women and men are both necessary to the proliferation of the people, neither sex is greater than the other. The Navajo male physiology is designed to endure and engage in physical labor and bring sustenance to the home. Together the Navajo male and female accept the responsibilities of rearing the child[ren] and building a home that follows the instructions outlined by the Holy People. Mr. Barber also spoke to hardship and difficulties confronting individuals. The restoring of harmony and healing in life involves a holistic process. Because the environment, natural law, mother earth, father sky and five fingered people are interdependent upon one another, healing and restoring harmony and balance must include all of these elements. Nature's energy forces are natural laws recognized in Navajo Fundamental law, which are essential to the Navajo Life-Way. There is no separation, between sacredness and respect. Consequently, Mr. Barber called to accept the sacred roles of Navajo men and women in the masculine divine and feminine divine and return to the original sacred intent to create and diversify life.



## DINÉ FUNDAMENTAL LAW AND INTERNATIONAL HUMAN RIGHTS

A review of international human rights standards as a mechanism to address Indigenous peoples' and women's rights was undertaken to determine how the Commission's findings and recommendations might illuminate the laws and policies that address gender on the Navajo Nation and second, to determine how human rights standards and the United Nations Declaration on the Rights of Indigenous Peoples, among other international doctrines, are applicable to the Navajo Nation's use of International Human Rights principles, both as mechanisms to affirm traditional principles as the means through which sovereignty and self-determination will be realized. Diné Fundamental Law, founded upon Navajo sacred teachings of Diyin bitsááé" beehaz'áanii (Traditional Law), Diyin Diné é bitsááé" beehaz'áanii (Customary Law), Nahasdzáán dóó Yádiłhił bitsááé" beehaz'áanii (Natural Law) and Diyin Nohookáá Diné bi beehaz'áanii (Common Law) was intended to protect the collective rights and freedoms that all Diné enjoy as citizens of a sovereign Navajo Nation. As these laws state, the Diné have always been guided and protected by the immutable laws provided by the Diyin Diné'é, Nahasdzáán and Yádiłhił and these laws have not only affirmed the Diné Life-Way but guide, sustain and protect the Diné as they journey upon and off the sacred lands since time immemorial. The respect for, honor, belief, and trust in the Diné bi beehaz'áanii preserves, protects and enhances the inherent rights, beliefs, practices and freedoms the Diné uphold. These laws are inclusive of Navajo women and non-conforming Navajo genders.

International human rights standards have addressed gender equality in order to protect women from discrimination and promote their equal treatment in society. Indigenous peoples have maintained that the United Nations Declaration on the Rights of Indigenous Peoples, intended for nation-states to promote an ethic of equality for Indigenous people as "peoples" who "have the right to self-determination," and by virtue of those rights, "they freely determine their political status and freely pursue their economic, social and cultural development," simultaneously recognizing Indigenous women's rights as interdependent and requires reciprocity between all living beings and better understood as responsibilities rather than rights.<sup>33</sup> UNDRIP affirms Indigenous peoples right to self-determination as a right to self-governance, and more importantly, an affirmation that Indigenous nations must maintain their traditional forms of governance, their cultural and religious traditions, their own social and educational institutions, and the rights to occupy their lands and territories. UNDRIP is an instrument that fosters understanding and cooperation in order for domestic laws and policies to affirm Indigenous peoples' rights and with the expectation that nations like the United States and Canada will take necessary measure to ensure Indigenous nations' and their peoples' human rights. Thus, the Navajo Nation takes UNDRIP as the affirmation of Navajo sovereignty and self-determination as articulated in Diné Fundamental Law.

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<sup>33</sup> Rauna Kuokkanen, "Self-Determination and Indigenous Women's Rights and the Intersection of International Human Rights," *Human Rights Quarterly* 34 (2012), 230.

Studies and reviews of the application of UNDRIP and other international human rights mechanisms to the Navajo Nation and its governance in regards to the status of Navajo women and Navajo LGBTQI indicate that mechanisms and their implementation are still in development, with attention to gender discrimination and inequalities. Within the international scope, issues specific to gender have raised questions about gender inequalities, including charges that Western values of patriarchy have transformed indigenous governance, women's leadership in government and public spaces is often challenged, and women experience discrimination in employment, and complaints that violence against women in the form of domestic violence, assaults, and rapes often goes unreported and unprosecuted. As then Navajo Nation chief prosecutor Bernadine Martin explained to the Commission during one of its regular meeting, Navajo cases regarding assaults on Navajo women are often rejected by the federal prosecutor at alarming rates.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) identifies the issues of disparate treatment and violence against women as “the paramount human rights issues confronting women within global society.”<sup>34</sup> CEDAW was adopted by the U.N. General Assembly on December 18, 1979, but the U.S. has not ratified it as a matter of domestic law, so the U.S. agrees with the Convention but is not willing to enforce it. CEDAW asserts that all human beings are born “free and equal in dignity and rights” and that women are entitled to equal treatment. The Convention recognizes women's roles in assuring the welfare of their families and to the development of society as a result of their ability to bring forth the next generation and nurturing qualities. Because of these qualities attributed to women, the CEDAW requires states to address gender inequality in order to elevate the roles of women and encourage an equitable sharing of responsibility. Further, states must work to eliminate discrimination against women, whether it is attributable to prevailing “social and cultural practices,” or the practices entrenched in institutions such as employment, health, education, etc., or the institutions of law and policies.

Part I of the Convention defines discrimination against women very broadly to include any “distinction, exclusion, or restriction made on the basis of sex” which contributes to inequality in the enjoyment of human rights and fundamental freedoms in “the political, economic, social, cultural, civil or any other field,” and “a practice of equality in all laws, policies, and practices.” This requires states to identify and modify discriminatory practices, including those “social and cultural patterns of conduct of men and women” that sustain prejudice and discrimination.

Part II of the Convention addresses discrimination against women in the political and public life of the country, including obstacles to voting and participation in governance. The

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<sup>34</sup> U.N. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/34/46 (Dec. 18, 1979), available at <http://www.un.org/womenwatch/daw/cedaw/>.

Convention requires states to ensure women's rights to vote and equal participation in governance.

Part III of the Convention requires states to ensure equality in educational advantages, social programs, employment, and pay, and to promote balance between work and family responsibilities. Women must also have equal access to healthcare, as well as other areas of "economic and social life."

The Commission established UNDRIP as the minimum standard for assessing Navajo human rights on and off the Navajo Nation. Indigenous peoples have long engaged these standards and engage the concept of "individual rights," which is deemed as a Western concept that may interfere with Indigenous peoples' commitment to "collective rights." With a commitment to "collective rights, concepts of gender equality may actually be an assault on Indigenous peoples' rights to sovereignty and self-determination."<sup>35</sup>

As the findings section of this report indicates, the United States' failure to protect Navajo women and to ensure their well-being and prosperity is at the heart of the unprecedented violence against them. Because of a shift from Navajo traditional governance to a Western model, which includes the loss of Navajo control over jurisdictional issues and resources, there has been a shift in Navajo women's formerly high status that has resulted in their experiencing multiple forms of violence. For example, Navajo attorney Genevieve Chato and non-Indian anthropologist Christine Conte found that Navajo women negotiated the complexities of laws and statutes from the Navajo Nation, to states, to the U.S. and which often, as a result of the imposition of foreign rule, has transformed their formerly valued roles within Navajo society. As the pair reported of their findings, "Navajo women not only suffer because of inadequate legal protections they also seem to be losing their customary protections if these compete with the legal system."<sup>36</sup> While there has been some strides made to improve the conditions of Navajo women, as Chato and Conte note, there remains the imperative to address the status of Navajo women within a human rights framework. Further, universal human rights standards are just now beginning to address the rights of Native LGBTQI and the Commission acknowledges this development within the international and Navajo Nation realm.

In regards to Diné Beehaz'áanii and its intersection with international human and Indigenous human rights, the Commission affirms Diné traditional principles that make up the foundation of the Diné Fundamental Law to be inclusive of all Diné regardless of sex or gender identity. Navajo Life-Way principles, reflected in the concept of K'é, are relevant to all Diné and inclusive of Navajo women and Navajo LGBTQI. Among an assortment of fundamental human and individual rights issues is the concept of "collective rights." The Navajo Nation in its participation in the deliberation and negotiation of the United Nations Declaration on the Rights

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Ibid., 229.

<sup>36</sup> Genevieve Chato and Christine Conte, "The Legal Rights of American Indian Women," in *Readings in American Indian Law: Recalling the Rhythm of Survival* ed. Jo Carrillo (Philadelphia: Temple University Press, 1998), 257.

of Indigenous People helped shape the meaning of collective rights in order for nation-states to understand and appreciate Indigenous collective rights, in the way that Indigenous peoples interpret the concept. On one hand, Indigenous peoples embrace the concept of individual rights, founded on the basic principle of self-reliance. On the other hand, no individual person owns a tradition, value, concept and/or design; the concept of collective ownership and rights are foreign to the colonizers and many nation-states in the modern world.

In the frame work of collective rights, everyone in the community, including the baby to be born tonight and the elder to pass on tonight, have equal access to such right. As an example, the Beauty way chant does not belong to a single person as would be the case under the concept of individual rights. However, in this case, the entire Navajo peoples collectively use, manifest, preserve and own the Beauty way chant. When assisting the world community to appreciate and understand collective rights, the Navajo Nation provided assortment of examples in which the entire Navajo people hold a right to a single or collection of traditions, values and culture. Another example is the repatriation of the ye'ii bich'ei masks. Ye'ii bich'ei masks are significant in the winter nine night ceremony. The masks are referred to as "g'jsh," a sacred bundle. No single individual owns the masks and possesses the right to sell them. The masks collectively belong to the entire Navajo people. Therefore, when the Navajo government sought the advice of the medicine people, it was informed that a Navajo person selling the masks is in fact that such person is stealing the masks from the entire Navajo people.

While the international community has begun to understand indigenous collective rights, they believe under the international human rights standards, "individual rights" must also be recognized for indigenous persons. The world community concentrated on individual rights as the core of human rights in their adoption of the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights. However, although indigenous peoples, find these individual rights standards as appropriate, raised the issue that individual rights are not exclusively the core of fundamental indigenous human rights. Examples of individual rights include the right to change your belief, be free from discrimination, nationality, life, physical and mental integrity, liberty, security of person, employment, etc. In the Navajo sense, individual rights are defined by one's own decision making, self-identification (t'aawhiniik'ehgo nits'ijikees). The attributes of individual rights could be defined as outside the Navajo thinking that privileges collective rights.

The Commission also draws upon UNDRIP and Diné Fundamental Law as the mechanisms to clarify and affirm traditional Navajo perspectives on the Navajo marriage ceremony. Based upon a two day-work session with Navajo traditional practitioners and subsequent work sessions the Commission explored traditional perspectives on sex and gender, and examined this application to the Diné Marriage Act (2005). The Commission affirms the traditional Navajo perspective, that marriage is a sacred act between a man and a woman, which is intended to perpetuate the Navajo people through propagation. Through traditional marriage, the survival of the Navajo people is assured. According to traditional Navajo thinking, the

obligations that a man and a woman have to marry in order to procreate cannot be duplicated in same sex marriages. Further, marriage is an act that affirms the responsibility and commitment to bring children into the world so that Navajo Life-Way will be passed on from generation to generation. The right to affirm the traditional Navajo marriage between a man and woman is further supported by Articles 11 and 12 of UNDRIP, which states indigenous peoples have the right to practice and revitalize their cultural, traditions and customs. UNDRIP, then, recognizes the human rights that ensures the continuity of traditional customs, ceremonies, and practices that solidifies the distinctiveness that is central to Indigenous sovereignty and self-determination.

There is no doubt that colonization, including Christian influences, shifted Navajo perspectives regarding the Dilbaá and Náádleeh presence. When examining traditional Navajo principles and human rights standards, the Commission found the rights afforded to these individuals to be misunderstood. This is important because the Commission heard at the public hearings, concerns that collective and individual rights were being violated. Collective and individual rights of Diné citizens derive from our political, economic and social structures and from our culture, spiritual tradition, history and philosophy. When we speak to the Diné Marriage Act and the objections that it is an act of discrimination against same sex couples, we are reminded that White Shell Woman set the guidelines and regulations for marriage. The traditional perspectives that Navajo marriage can only be between a man and women is absolute. From this viewpoint, then, the Navajo Nation as a collective whole freely exercises its right to honor and adhere to this cultural standard which has been practiced since time immemorial.

While the collective rights of the people remain intact and are immutable, the aspect of individual rights remain paramount and alive.<sup>37</sup> Individual rights of Navajo LGBTQI to identify with a gender identity persist and is not hampered by Diné teachings. K'é embodies the ability for an individual to find a place, their livelihood in the midst of the Navajo people. This embodiment brings about happiness. Dilbaá and Náádleeh are five fingered people who exercise the same individual rights and freedoms as every other Navajo person. According to the Navajo traditional practioners and agreed upon by the Commission, the roles and responsibilities of all Diné were clearly articulated and assumed by each person, regardless of their sexual or gender identity. When analyzed from this perspective, the traditional Navajo marriage and the analysis of collective and individual rights, there is no violation of a person's rights with the Diné Marriage Act.<sup>38</sup> It is clear collective and individual rights were exercised then, as they are now.

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<sup>37</sup> Diné 1. N.N.C. §202 Diné Beehaz`áanii.

<sup>38</sup> Steven A. Darden, Navajo Traditional Practitioner, NNHRC Commission Chairman. Commission work session on 2/4/16.



## PUBLIC HEARING TESTIMONIES

The Commission hosted three public hearings in Window Rock, Arizona; Tuba City, Arizona; and in Shiprock, New Mexico. Participation at the hearings varied where Navajo women testified to the amount and nature of violence they experienced. Further, perhaps unprecedented, the Navajo LGBTQI community attended the hearings and offered testimony. In addition, the Commission reviewed four case studies that were complaints filed by Navajo women alleging violence. The women felt they were discriminated because their issues were not properly addressed or resolved by various Navajo programs. These case studies reflect the issues and problems regarding gender violence and discrimination complaints the Commission heard at the public hearings.

Early on, the Commission contacted various Navajo entities that address violence against Navajo women, including law enforcement to gather data and statistics in order to ascertain the violence perpetrated against women and the conditions that women live with. Unfortunately, all efforts to gather this information was thwarted and today, Navajo leaders continue to express concern about violence against women and children. Further, there is even less attention paid to the experiences of Navajo LGBTQI with regards to their well-being and how much violence they experience. Issues of domestic violence, discrimination and acceptance into Navajo society and Navajo governance were revealed. Overall, testimonies were consistent with studies and news reports of pervasive violence against women and LGBTQ in the U.S. The Commission concurred the violence is significant. Navajo citizens identified as LGBTQI affirmed they experienced discrimination and violence early on in their life. Many testified that they recognized a different identity and sexual orientation at a very young age. Others testified they were victims of sexual abuse by relatives or family acquaintances at an early age. In some instances, parents were made aware of the abuse but due to shame and not believing their child they chose to ignore these stories and instead, encouraged them to move forward. Other reported of violent beatings and verbal abuse encountered by parents and relatives as a result of their coming out. They were ostracized by families and forced to seek shelter for their own safety. Several spoke about finding safe havens amongst elder Navajo members. Navajo elders, especially grandmothers, understood gender identities and expressions that accompanied a grandchild's developing sexual identity and orientation. The acceptance amongst elder traditional Navajo matriarchal was evident.

The Commission staff also met with personnel from women's shelters on the Navajo Nation that serve domestic violence victims. Many of these shelters lack adequate resources to meet the needs of women and children who seek refuge from domestic violence. There is a consistent failure on the part of the Navajo Nation to adequately support facilities and fund personnel to support women and children. Education, counseling, legal assistance and medical care are services most shelters need to provide. It should be noted that the resources to run the shelter are almost always exhausted by the middle of each fiscal year. Shelter personnel also

witnessed an increase with LGBTQI victims. Most shelters are designed to accommodate one parent and children. There are limitations on the resources for males and gay and transgender's who seek refuge from domestic violence situations. Additionally, existing shelters do not provide private areas for Navajo LGBTQI who are also served. Lavatory facilities are not designed to accommodate individuals with different sexual identities. Because children are often left in the care of women, housing accommodations can become complicated and can cause disruption to the daily schedule of activities planned. Moreover, integrating Navajo LGBTQI victims into group counseling sessions and other activities can be difficult because staff have not been trained to accommodate the needs of LGBTQI victims. There is also a general fear that divulging too much information about same-sex partner relationships may inhibit support from the shelter personnel.

## Navajo Nation Museum – Window Rock, Navajo Nation (ARIZONA) December 18, 2013

The public hearing in Window Rock opened the doors to the first of three planned public hearings. The testimonies provided additional support and evidence for the number of reports and observations that Navajo women and the Navajo LGBTQI community are subjected to frequent episodes of violence that indicts the cultural, traditional, judicial, law enforcement institutions for failure to adequately respond to complaints.

**Nicole Walker** began testimony with expressing her gratitude to the Commission. Ms. Walker characterized herself as a proactive community member with many years of personal experience where she helped her daughters through several sexual harassment cases. This experience empowered her to speak up and out about violence against women. Through her experience she learned the process for filing a complaint. It's a long a tenuous process. She understood why victims gave up, she understood the stigma and she understood the enormous responsibilities that rest with everyone involved to bring some resolution to domestic violence. Ms. Walker believed Union representation would help women employees address workforce abuse. She felt it was her duty to help streamline data to bring effective resolution to violence in the work force. Ms. Walker believed to access information from various Navajo agencies she has to file a request through the public information act. She offered to make this information available once she acquired it.

**Radmilla Cody** opened her testimony on her personal revelation about abuse she endured fifteen years earlier. As a survivor of domestic abuse, she has dedicated her life to speaking out against domestic abuse and teen dating violence. Ms. Cody frequently speaks before groups to educate young women about domestic violence. Ms. Cody recanted an attack that she personally witnessed. She testified about a road incident that she and another professional colleague

witnessed while driving near Bloomfield. They witnessed a male person beating and dragging a female person near a van parked off the road. When they turned around and maneuver their vehicle behind the van, they witnessed the male person throw the female into the vehicle and speed off. While the two young ladies followed the vehicle into the Shiprock community, they kept in contact with the dispatcher at the Shiprock Law Enforcement Department. They gave the description and license plate number of the vehicle to the dispatcher. As they approached Shiprock, they spied a police vehicle parked alongside the road. They let the dispatcher know of the officer parked off the road but did not receive a response from the dispatcher. The officer did not turn on his emergency lights or follow their vehicles to indicate he was aware of the situation. They decided to follow the van until it pulled up to a house. At this point they decided to go back to where the officer was parked and report the incident directly to him. This officer was gone when they returned to the roadside. This experience left Ms. Cody to wonder aloud whether police officers followed their oath to protect and serve the people of the Navajo Nation. It seems that police personnel have desensitized themselves from these types of incidents. Ms. Cody believed some victims can be empowered to refuse to be violated and assaulted, but there needs to be support for the victim; otherwise she may have few alternatives but to return to the perpetrator and continue to endure a life of violence. She stressed that domestic violence has so many dynamics of abuse and violence.

**Ronald Kinsel** was sexually abused as a young man while attending Albuquerque Indian School. Albuquerque Indian School provided education to many Native children, including Navajos. He shared the first incident when other male students threw a blanket over him and repeatedly raped him. This physical assault continued every weekend and he felt that he could not go to school administrators for help. He felt that the assaults would become even more abusive if he reported it. He eventually made friends with non-Indian families off campus and stayed with them on weekends, which kept him from being sexually assaulted. Mr. Kinsel explained that his early experience led to his inability to form intimate relationships or allow anyone to come into his personal space. He closed himself off to friendships and relationships and felt a tremendous amount of shame and humiliation as a result. Mr. Kinsel said that his appearance, which some might call “effeminate,” often led to others bullying him, calling him names like “home girl” or rumors being relayed about him. As a young Navajo person and before being sent to school in Albuquerque, Ronald often helped his mother with daily chores in the home. He babysat, cooked and did similar chores as his sisters. He found nothing wrong with these responsibilities. Mr. Kinsel spoke about the challenges he faced later in life because of his appearance, including times when he enters a men’s restroom and he was questioned about whether or not he is in the “correct” restroom. On other occasions he had been mistaken for a woman, but when he spoke up, people recognized their mistake and changed their behavior. He often wondered why he was mistaken for a female and concluded that people made mistakes because he wears his hair in a traditional Navajo bun and wears jewelry. He continues to live with the physical and emotional scars as a result of the violence perpetuated against him at Albuquerque Indian School. Mr. Kinsel expressed concerns with the police department. He testified about recent violent

altercations perpetrated by people he knew. No officer rendered assistance even when they were present to address the situation. The people who harmed him on three separate occasions were never arrested or prosecuted. He has not had his day in court and probably never will. There are friends and relatives that accept him for who he is while many others do not.

**Virginia Edgewater** concurred with the comments made earlier by Navajo citizens about a lack of sensitivity from Navajo law enforcement. She gave the example of the Kayenta police department where a person has difficulty just getting information because windows obscure the view and it is difficult to see state police personnel. Upon inquiry, one is usually given a general response that the matter you raise will be looked into. Ms. Edgewater felt that citizens who come in with their issues are not taken seriously because she could hear giggling and laughing. She added that it's difficult to get the person's name or a description of the person assisting you when trying to get additional information. She compared this police setting with that of Apache County, where clear and open access is present and the public feels assured their issues are important. She felt that Apache County offices treated people with respect. Ms. Edgewater reported that she never received a response from the Kayenta police department to her issue. She added to her testimony on the loss of traditional ways and teachings from Navajo elders who addressed issues of gender discrimination and violence. Grandmothers and grandfathers were instrumental in the discipline and upbringing of their grandchildren, including clan children. Navajo elders provided protection and counseled troubled young. Ms. Edgewater does not see this type of teaching anymore. She chastised Navajo leaders for their unwillingness to really address the trouble Navajo families are confronted with today. Ms. Edgewater felt that Navajo leaders have removed themselves from these types of problems and are not addressing them. Families have turned to internal fighting and there is no respect for the elders and the wisdom they offer. The resources that are available through the Navajo Nation are ineffective and don't fix problems. Ms. Edgewater envisioned the human rights commission as the vehicle to restore the traditional ways that kept Navajo families and the Navajo government together. Family violence, law enforcement, courts, prosecutors and Navajo governmental officials have failed to address the violence and the issues brought were the focal point of her closing testimony. She described a court case in which she was accused of domestic violence. After four years she was finally exonerated from those charges. She claimed court personnel defended the plaintiff and never investigated the entire components of her case. Ms. Edgewater's abusive treatment by the Navajo judicial system still haunts her. She now advocates for domestic violence awareness. She attended a conference where she learned from a federal presenter that if a person commits domestic violence three times on the Navajo Nation, the Federal Bureau of Investigation can arrest the individuals for parole violations.

**Olin Kieyoomia** is a Navajo veteran who expressed agreement with Ms. Edgewater's testimony. He hoped new leadership with Navajo Nation government would help to address her frustration. Mr. Kieyoomia focused much of his testimony on the upbringing of Navajo children and the responsibilities of the parents, communities, and Navajo leaders. The incident of domestic

violence appears to be on the rise and he noticed fathers are not involved in their children's education. Not only are fathers not involved in the education of their children, but they are not involved in their own education and therefore not conducting themselves properly. As a veteran, Mr. Kieyoomia suffers from PTSD, has difficulties finding employment and adjusting back into the family home. He also seeks counseling services to support his reintegration into civilian life. As a result of his experiences, Mr. Kieyoomia realized that support services for veterans are not available on the Navajo Nation. He gets help from the Prescott Veteran Medical Center, which is near Phoenix, Arizona. Mr. Kieyoomia also recognized a shortage of Navajo medicine men who are gifted in restoring balanced thinking and living. He also spoke to the experience of police officers and whether or not they had the training to recognize the hardships and violence individuals are going through. For the most part, many are arrested but then released after serving a short time in jail. These individuals don't get the treatment that is needed; instead they commit the same acts of violence and end up back in jail. Mr. Kieyoomia added that conditions on the Navajo Nation, including unemployment, single parent families, a lack of a quality education and individuals who stay home contribute to the problems of violence. He is especially concerned with the role of fathers and in general the well-being of men in Navajo society. Mr. Kieyoomia feels a fatherhood initiative is needed. As a Head Start advocate, he understands many of the children have father figures that are step fathers, grandfathers, uncles and even brothers that serve as the primary male figure in the family. These children lack the guidance and *manly* support that is important for raising a family. Navajo leaders ignore this fact and refuse to get involved because the issues are too sensitive and should not be talked about. Mr. Kieyoomia fears the reluctance to address changing values that do not address support and encouragement for fathers will only bring more despair to families and add to the criticism about programs designed to provide services but appear to not addressing the need for family support. He spoke about a personal tragedy where his wife was left to bury their child because he was in Afghanistan at the time. Mr. Kieyoomia expressed remorse as he recalled leaving his wife to handle the deep personal loss of their child and has learned from his past mistakes as a father, husband and man to his family. He too suffered from hardships and violence as a child. He learned and understood many Head Start families endure the same hardships today. He recalled a fourteen year old mother whose child was enrolled in the program. He recalled children coming to school hungry and not properly clothed or bathed. He wondered whether Navajo elected officials were aware of these hardships. He expressed difficulty in understanding how our elected leaders appear to distance themselves from the suffering, violence and hardships that families endure. Mr. Kieyoomia believes that concrete efforts need to be made with male figures to curtail the cycle of violence. This effort would involve the instilling of responsibilities coupled with traditional and cultural teachings that appear to be eroding. He asked the commission to help him convey the message to the Navajo leaders the need to restore the responsibilities of the male figure in the family. Mr. Kieyoomia added that men have not addressed abuse and how widespread abusive actions affect the families. He added children need to be educated as well. Children are aware of what is happening in the family. They

express the family's dysfunctions through their play, facial expressions and when they speak. Mr. Kieyoomia reported the Navajo Nation's Head Start program was one of the largest programs in the United States. He insists that this is the best place to start educating young Navajo children. Mr. Kieyoomia concluded his remarks by reassuring the commission that raising the issue of domestic violence and gender discrimination was the proper step forward.

## Tuba City Chapter House – Tuba City, Navajo Nation (ARIZONA) January 15, 2014

The Navajo Nation Human Rights Commission heard from eight presenters at the Tuba City hearing. The women experiencing domestic violence testified to similar issues raised at the previous hearing. The LGBTQI community shared testimony as well. Their stories included experiences of domestic violence, abuse, harassment, discrimination, and suicides. They also referenced the Diné creation story of the separation of First Man and First Woman. After a certain time, the men and women who had separated realized they needed to reconcile if the people were going to continue. It was the nádlééhí who brought the sexes back together. Thus, among the LGBTQI community, it is thought that the nádlééhí's role as a negotiator and mediator between the sexes reflects their own places within Navajo society. Many of the LGBTQI community expressed a respect for Navajo traditional teachings and practices. Some of the presenters stated that European and then American colonization of indigenous lands and peoples, changed Diné views to where they experience homophobia and discrimination from their own people.

**Massoud Hayoun** is a visiting journalist from New York City who was investigating Navajo LGBTQI issues on the Navajo Nation. When he came here, he had no intention on testifying, but witnessed a physical attack of a Navajo woman by a Navajo man earlier in the day which compelled him to share this story. Mr. Hayoun was with a Navajo colleague when they saw a Navajo man beating a Navajo woman near the Dominquez restaurant in Window Rock, Arizona. Stunned and upset to see this assault unfold he called 911. His colleague's reaction to the fight was, *"That's the kind of stuff that just happens."* His efforts to report the attack by calling 911 was frustrating. On two separate attempts, there was no response. On the third attempt, a dispatcher answered and told him that an officer would be dispatched to the site. Massoud retold his story to other associates with whom they met later in the day. Massoud Hayoun grew up in a single parent home with his mother. The sight of a Navajo woman being beaten by a man and screaming for him to let her go bothered him. He returned to the Dominquez restaurant with Navajo friends. When they arrived, the couple was gone. He spoke to an employee of Dominquez about the incident, to inquire if the police had ever arrived. Initially, the employee he talked to thought the couple was related to him, so he did not bother to call the police. But the employee eventually took action himself and held the male assailant down while the woman

escaped by running north toward a hill. Her condition or her safety could not be determined. The Dominquez employee reportedly asked the male assailant, “*What are you doing?*” The man beating the woman responded with he was trying to save his marriage! Mr. Hayoun said the employee told him that he told the Navajo man that beating your wife is not how you save a marriage. Mr. Hayoun did not know if the police ever arrived, if assailant was apprehended, or if even a police report was filed. This ordeal was quite traumatic for him. Massoud also expressed wonderment at his colleague’s initial response to the incident, which appeared to lack concern, that such incidents were a normal part of Navajo life. He was uncertain if his actions were appropriate especially since he was a visitor to the Navajo Nation. Mr. Hayoun is of Middle Eastern descent and recognizes a need to educate all sectors of Navajo society, including the Navajo Nation police about domestic violence.

**Phil Begay** represents the Navajo Treatment Center for Children and their Families. The purpose of this program is to provide outpatient mental health therapy for families who have been affected by trauma. They also work with children between the ages of five and seventeen. Outreach counseling is also an important part of the services that are provided. Mr. Begay reported that his office has worked with young people who are afraid to reveal their identities as LGBTQI for fear of being rejected by family members. According to Mr. Begay, there are few and almost no resources on the Navajo Nation to help young people deal with their identities and sexuality and Navajo perceptions of them. These young people face bullying and name calling at school with little or no support from their teachers or school administration. Being a part of the LGBTQI community can be a stigma because many Navajos are ignorant on these matters. In fact, suicides or attempted suicides are high among this group of young Navajos. Many feel that they must remain quiet about their identities until they leave their home communities. Mr. Begay blamed western values as the reason for the LGBTQI not being accepted in Navajo families and communities today. Overall, Mr. Begay insisted that support systems be available for children who identify as LGBTQI and for their families. He stressed that there are no such support programs on the Navajo Nation.

**Tristin Moone** grew up with family violence. She recalled that her childhood was filled with days and months of her family abandoning their home in search of safety. She believes violence tears communities apart. Ms. Moone felt that the Navajo court system also compounded family violence because the justice system does not focus on the concept of K’é when dealing with offenders. There is no rehabilitation for those serving time in prison. Her own sibling is serving time and will soon be released. There are no programs to help individuals like her sibling reintegrate back into their community. No therapy services and no help to get them back on their feet. According to Ms. Moone, Navajo courts have embraced the western judicial systems and largely make decisions based on those laws and policies.

**Lynn Worker** is a social worker who specializes in family therapy. Through her work she has seen women return to abusive relations that they were trying to escape. Many of these women find it difficult to leave abusive relationships because it is expected that they should return to the

home. Navajo female role models, especially the mother's role, compel them to return to the home. Women think they must remain in a relationship in order for everyone to be happy, especially children. Ms. Worker reminded the audience that the abuser will often focus his/her abuse on the children and abuse is often cyclical and sometimes exacerbates with time. Relatives will often encourage women to forgive their spouse in order to restore family harmony. She noted that mothers who stayed with an abusive spouse did not have support services or were not familiar with the signs or factors of domestic violence. Women often do not realize that their children are also in danger when they stay with an abusive partner. Rather, many feel that as care takers and protectors of their children, they should make a home, even with an abusive partner. Ms. Worker spoke about the need to incorporate wraparound services, services that provide a more comprehensive robust delivery of services to a family. Social workers experience burn out and the amount of cases they have prevented needed intense and therapeutic services to families. According to Ms. Worker, children see family violence, grow accustomed to it and think that it's normal. As a young child, Lynn recalled spending a night at a friend's house where she witnessed her friend's mother being beaten by the father. It is important to Ms. Worker that education in the home about healthy families began early. In addition to dealing with family violence, Ms. Worker added that other factors add to the stress on families. Homelessness, alcoholism, substance abuse, unemployment and crowded homes all contribute to family stress and can be triggers to compound violence and abuse that women experience. Her testimony continued with the topic of co-dependency and the need to educate families about this topic as a way to stop family violence. Ms. Worker also added that historical trauma as a consequence of colonization manifests as family violence and domestic abuse. Navajo cultural teachings are not evident in many young families today. There also appears to be a lack of faith within families, which she finds important in the upbringing and guidance of young children. Ms. Worker also stressed the need to have support services for the LGTBQ community.

**Jeremy Yazzie** responded to one Navajo perspective that suggests those who do not conform to the masculine/feminine binary are anomalies. He says that he is not a mistake. Contrary to some attitudes that LGBTQI were not traditionally a part of Navajo society and that traditional stories suggest that they were conceived as a result of women's sexual indiscretions that occurred during the time of creation. He found purpose in his life that extends to the next generations. As children, Jeremy and his sister were sexually abused by their stepfather. Their mother was an alcoholic and unstable. His family moved several times and Jeremy learned to keep his feelings from everyone. He was ashamed of the sexual abuse he suffered and turned to alcohol and drug use for relief from trauma. Jeremy endured homophobia and was called a faggot or queer by others. His private battle was personal until he went to work with the Navajo AIDS Network program. He is now a health educator. Jeremy has learned to forgive himself and recognized that he was not at fault for the sexual abuse he suffered as a child. Mr. Yazzie remains on the road to recovery and serves as an advocate to educate about AIDS. He is sober five years now. The sobriety credit is spread among several role models including individuals that identify themselves as LGBTQI. His work continues in the Gallup area today. Mr. Yazzie knows about

the identity, rejection and discrimination issues the gay community endures. He appreciates the NNHRC bringing attention to these issues and hopes this report will lead to positive policy decisions with the Navajo Nation government.

**Stella Martin** identifies herself as a Diné transgender woman. She does not see herself as an emerging new gender but as a transgender person who has significant relevance in traditional Navajo history. Stella, unlike others who are transgender, has always been accepted by her family. Her grandmother and mother embraced her difference and shared in her blessings as she fulfills her work to protect and restore the rights of the LGBTQI community. As a teen, Ms. Martin also encountered identity issues and misused alcohol and drugs as the venue of escape. But she realized this was not the life she wanted and committed to changing her quality of life. Sobriety and hard work was the route she embarked upon. Ms. Martin found a more rewarding and discipline lifeway that has meant advocating for the rights of the LGBTQI. She spoke about an experience with an eastern Navajo judge. In alignment with her gender as feminine, Stella petitioned the Navajo Nation courts for a name change. Judge Toledo, who heard her case, did not understand her petition to change her name from a men's name to a woman's name and instead, asked questions that were insulting. Toledo also appeared not to understand how to proceed in a case that was unprecedented. Two hearings followed and Judge Toledo continued to appear hostile to Stella's petition. Stella had letters of support and evidentiary documents that were in line with the New Mexico statutes. She also had family support. On the third and final hearing, Judge Toledo agreed to a name change, but chastised Stella that the order did not allow for a name change that correlated with her identity as a woman. Ms. Martin felt humiliated by the entire legal process. When she received the final court order, the judge's order referenced her birth identity and included other information that Stella found unnecessary. She had filed a petition for a simple name change, but the judge's inquisition added more into the final order. The order was design to shame her. Even within the Navajo Nation judicial system, Ms. Martin's identity as a transwoman was scrutinized in ways that others who seek name changes do not have to face. She acknowledged that gender inclusion and education about the LGBTQI are needed within the Navajo Nation, including the government. The Navajo Nation and its judicial systems is based upon a patriarchal system that excludes women and LGBTQI. Bigotry and injustice against any citizens of the Navajo Nation should not be condoned within the Navajo Nation. Ms. Martin added that the LGBTQI are contributing members to Navajo society, are part of families and communities and they can no longer be excluded.

**Mattie Jim** identifies as a Diné transgender woman. She recognized at an early age that she was in a wrong body—biologically her body is male, but she is a woman otherwise. She has always identified as a girl and then a woman. She has accepted her identity and sexuality as a transwoman. She was a child, four years old, when she experienced discrimination because of her identity as trans. By the time she was twelve years old, she was an alcoholic. Alcohol helped her cope with the pain and anguish she experienced because of how she was treated by society. When she was twenty-four years old, she contemplated suicide, but overcame this

difficult period in her life. Mattie is now a strong and vibrant person. She is an advocate for the inclusion and acceptance of the LGBTQI and offers her support to individuals who find themselves questioning their sexuality or gender identity. For Mattie, it's important that support services for do not conform to the gender binary be available. She spoke about the difficulties young LGBTQI experience today. As an advocate for the HIV prevention program and other related services, Mattie is qualified her to train and provide workshops on LGBTQI issues, including health issues and Native transgender medical needs. She also trains in the area of traditional cultural knowledge about the origins of transgenders and how the perceptions and status of being transgender has changed as a result of colonization. She is very respectful of her cultural upbringing and relies on those teachings to guide her active life. Ms. Jim credits Navajo cultural teachings for restoring balance and Hozhó back into her life. She learned of the stories of the Separation of the Sexes and the role of the Nadlééhi and applies them to what it means to be a Diné transwoman. Mattie also spoke about existing Navajo laws. She asked the commission to look at current Navajo laws and policies and close loop holes that protect heterosexuals but are not extended to the LGBTQI community. The LGBTQI remain unprotected on the Navajo Nation, in particular, the Navajo Nation does not have a hate crime bill, which is something Ms. Jim believes is necessary. Ms. Jim noted that there are no support services on the Navajo Nation for transgender individuals. There are many factors that need be reviewed when dealing with the LGBTQI community. Grouping them into one support group, like victims of domestic violence is not enough. Many encounter different mental, emotional and physical issues that require specialized counseling and services. Mattie recommended the establishment of a taskforce composed of Navajo LGBTQI would be a good start to organizing a community based support group on the Navajo Nation. One important and significant element that needs to be gathered is data. There is no uniform collection of data on the Navajo Nation and between agencies outside of the Navajo Nation. Ms. Jim spoke about a survey that was done in 2008 and again in 2010. The results of this survey were very beneficial. Six thousand five hundred individuals representing the LGBTQI community took part in this survey. Fifty-six percent of the Native LGBTQ population has attempted suicide because of discrimination and other issues directly related to homophobia. Ms. Jim wanted to highlight in her testimony that data collection is needed and so far, the Navajo Nation has not seen data gathering necessary to understand and respond to LGBTQI issues. Finally, Ms. Jim reported that the transgender population often moves away from the Navajo Nation to urban areas where employment and other opportunities are available and because of the discrimination and homophobia they experience. Many also report they leave their homes because they are not accepted by family members and are not accepted for employment positions. As result, some resort to sex work because no one will employ them. Ms. Jim stressed the importance of providing funding to secure transitional housing for the Navajo LGBTQI so they can begin to work toward a better life. Violence, discrimination and acceptance are part of the life that the LGBTQI community deals with daily. Ms. Jim hopes the Human Rights Commission will help to address this discrimination in meaningful ways.

**Lola Dee** identifies as a Diné transgender woman who has experienced much discrimination based upon her identity and sexuality. She volunteers at the Navajo AIDS Network. She credits Mattie Jim for educating her about AIDS and health issues. In her volunteer work, Ms. Dee reports she has heard from young kids who express ideas about their sexual identities. The young LGBTQI often feel pain and anguish because they are not accepted in their communities. They have few role models who will provide them with direction and when they leave home, they experience a sense of loss. Ms. Dee reported that young LGBTQI often encounter hatred and have little support or protection. Suicide is often contemplated by many of these young LGBTQI people. She hopes that the Human Rights Commission will address the concerns presented to today. She's seen initiatives like this swept under the rug and nothing is ever done.

**Reed Tso** asked the commission to consider hosting a civil rights hearing on law enforcement in Flagstaff. He alleged that Flagstaff police officers racially profile Native Americans who come into the town. He shared a personal experience where a police officer drove up to him as he exited a local convenient store. The officer asked him for his identification. When he asked why, the officer stated that if he disobeyed, he could be arrested. Mr. Tso was informed about his rights and requested that the officer show probable cause for stopping him and then he would show his identification. After an exchange of unpleasant words with the officer, the officer left. Mr. Tso had entered the store to purchase soft drink and gum and he had his receipt. As far as Mr. Tso could tell, he was stopped only because he was Native American.

**Teresa Montoya** is a Ph.D. student in Anthropology and Culture and Media Studies at New York University in New York City. She is Diné and grew up in western Colorado. Her maternal relatives are located in Window Rock, Arizona. Ms. Montoya took a law class that examined the application of the United Nations Declaration of the Rights of Indigenous Peoples to Indigenous peoples globally. This class aided in her understanding of human rights and its application to fostering cultural practices as the promotion of Indigenous human rights. She was completing a paper on same sex marriage and thought attending this hearing would be beneficial for her research. She has an interest in the Diné Marriage Act of 2005 and its effects for the LGBTQI community. Ms. Montoya saw similarities between the Diné Marriage Act and the Defensive Marriage Act of 1996 (DOMA) in that both recognize marriage as between one man and one women. She noted that same-sex marriage bans are discriminatory because same-sex couples are not entitled to benefits that are extended to heterosexual married couples, including benefits related to employment. She asked if the recent change in the New Mexico law concerning same sex marriage would have any impact on the Navajo Nation's same sex marriage ban. Ms. Montoya believed that questions about same sex marriage forum for any discussion concerning same sex marriage should not be politicized and should be addressed from a human rights perspective. The language of marriage is pivotal to this discussion. This was especially important to Ms. Montoya because traditionally, Navajos have a different understanding of gender identity, compared to Western perspectives. She believed the rights of citizens are fundamental and should be supported by Navajo leaders. Ms. Montoya also spoke to the violence that disabled

individual's experience. The Navajo Nation has not adequately addressed the issues concerning discrimination against persons with special needs and disabilities. She added that the Navajo Nation reflects a patriarchal framework that discourages the integration and practice of Navajo fundamental law, which then results in discrimination. While in Tuba City, Ms. Montoya observed the newly constructed judicial complex and found it ironic that a substantial amount of money was invested in the complex. The concept of incarcerate, penalization, punishment and criminalization of Navajo citizens appears to be important to this community, thereby obfuscating the possibility for finding more traditional means to address violence in the community. Ms. Montoya felt that the Navajo Nation takes a similar position that the U.S. holds when addressing violence, one that is about punitive justice. She stressed the need for education that includes teaching children about gender equality and to be respectful to those who do not conform to the gender binary.

**Alray Nelson** represents the Coalition for Navajo Equality and its mission to advocate for the rights of Navajo LGBTQI couples on the Navajo Nation and to repeal the Diné Marriage Act (2005). Mr. Nelson acknowledged that his efforts to repeal the Marriage Act stir controversy among people with whom he dialogues. He is mindful of his traditional teachings and is respectful and centered when conversing about this important subject matter. He shared his childhood in which he suffered abuse. Today he finds strength in Navajo teachings as the foundation from which he forwards the Coalition of Navajo Equality's mission. Mr. Nelson asked the commission to serve as an advocate of the LGBTQI before Navajo government and to illuminate historical understanding and roles of the LGBTQI. He shared his understanding that traditional Navajo leadership was not by one chief, but by shared consensus with Navajo women. Navajo women always had an important role in decision making. The current patriarchal system of operation within Navajo government and families is a result of colonization. He referenced the reluctance of Navajo leaders to take a stance on same sex marriage, which, according to him, has been an issue they would rather not address. Mr. Nelson acknowledged the resilience of the Navajo people and their ability to meet change in positive ways. He stressed that Navajo leaders will not make efforts to repeal the Diné Marriage Act and that this stance is reflective of the hypocrisy for which Navajo leaders are often criticized. The Navajo government's solution to the same-sex marriage ban has been to tell couples to marry off the Navajo Nation where such marriages are recognized by states and the United States government. The government should have no role in defining who loves who and that is what the Diné Marriage Act does, according to Mr. Nelson. The Navajo government will not recognize same-sex couple's marriage licenses. As a result, gay couples are forced to live off the Navajo Nation and seek employment off the Navajo Nation as well. Mr. Nelson remains committed to the advocacy of marriage equality. Moreover, a solution presented by Mr. Nelson was the simple performance of a marriage ceremony before a judge, preferable a Navajo judge who would validate the marriage. Mr. Nelson surmises that with a document recognized by the Navajo Nation, same-sex couples would have the same benefits as other married couples. Mr. Nelson shared information about other Indigenous nations that have passed resolutions to recognize same sex marriages. These nations

may have been guided by the development of a toolkit book that was developed by the Indigenous Ways of Knowing at the Lewis and Clark Graduate School of Education and Counseling in Portland, Oregon. The toolkit is designed to help tribal nations draft legislation to develop their own laws pertaining to same-sex couples on legal, social and economic issues concerning domestic partnerships, civil unions and marriages. The right to marry is pivotal to one's personal right and should not be circumvented. Additionally, all rights extended to heterosexual couples in a marriage, including adoption, inheritance, home site leases and other benefits, should be extended to same-sex couples. In his closing statements, Mr. Nelson reiterated earlier comments about the unwillingness of Navajo leaders to address this matter when many other entities and constituents have expressed a desire to see marriage equality for all couples regardless of sex. He asked the Navajo Nation Human Rights Commission to consider supporting the coalition's efforts. Discrimination has no place on the Navajo Nation.

### Shiprock Chapter House – Shiprock, Navajo Nation (NEW MEXICO) February 19, 2014

The hearing in Shiprock disclosed a number of domestic issues that continued in the theme of violence and gender discrimination. The chapter house was almost filled to capacity and the audience did not waver in their stance to bring their personal stories to the Commission. The personal accounts of abuse and violence against Navajo women, children and the LGBTQ community left the impression that abuse remains rampant and is ingrained in some systems that promote and perpetuate the bad behavior as acceptable. For many of the victims the perception of domestic violence and gender discrimination is an issue that is far more widespread and systemic. A monumental effort would have to be put in place to change the attitudes, behaviors and perceptions of how women, children and those identified as different genders are treated. The Commission continued to hear of the indifference in treatment of Navajo women in domestic, social and employment settings live with.

**Evie Tsoie** opened the day's testimony with her personal account of an abusive relationship she was in with her husband who in one specific incident beat her and left her unconscious off a main highway where many vehicles drove by and drivers ignored her. From that day onward, Ms. Tsoie made a personal commitment to herself that she would no longer submit to the abuse of the man for whom she had borne children. She left him and took their two kids to restart a new life. She went to college and afterwards, found employment in the field of mining. Her entire work history, thirty-three years, had been in the arena of mining. As she reminisced about the work environment that is largely male dominated, she shared several situations where male co-workers and supervisors harassed, bullied and threatened her because she was woman who tried to protect herself against their assaults. In one situation, she was a water truck driver where communication between drivers and other personnel required the use of CB radios. Every time she reported her location and activity, she received responses that had sexual overtures or remarks from men who made fun of her. When women spoke over the radio, men would

response at random. She heard talk between men that degraded women by sexualizing them. She kept a log of these episodes because she could not identify who was speaking on the radio. When she raised this concern with her co-workers and later with the supervisor, she was ostracized, yelled at and ignored. She sought assistance from the union representative, but they did not want to take her case. She had evidence and filed complaints with several other employment agencies, including the Navajo Nation Human Rights Commission to seek resolution into her work situation. Ms. Tsosie was raised with traditional Navajo values. She was constantly told to speak with respect, but this not what she encountered while working at the mine. Ms. Tsosie decided to resign from this male dominated work site because the environment was taking an emotional toll on her. She recalled the day when a supervisor was upset with a male co-worker and wanted to terminate this person. She intervened and got the supervisor to reconsider terminating this person. Unfortunately, no man came to her aid when she sought relief from the harassment and bullying she encountered. She realized how tight the male bond was at the mine. They protect the brotherhood at all means. Ms. Tsosie decided to turn the table and use the language the males used at work. She was told by her supervisor and male co-workers she was forbidden from talking to them using that kind of language. Her response was that she hoped they realize how it felt to be spoken to in that manner. She reiterated to her co-workers that traditional Navajo teachings dictated women were to be respected and how they were to respect themselves as well. None of this had any bearing on her efforts to alleviate the emotional pain she suffered. Her supervisor promptly told her she needed to go home and make more babies. She again filed charges against her supervisor and the union did nothing. She filed with the federal agency responsible to address discrimination in the work place and was told *“you did not get hurt, you’re okay.”* Ms. Tsosie may have no physical marks of abuse, but her emotional and spiritual scars were deep. She found herself defeated again. Those who offered support would tell her, *“you’re strong, you’re a woman,”* but the men would just brush her pain off. She spoke about another encounter at work where young Navajo male college students were placed at their work site. Some of these young men wore earrings and were quickly subjected to ridicule and taunted as being *“homos”* and laughed at. Her co-workers did not want to work besides these college men and instructed her to work with them. The things that were said and the behaviors exhibited by her grown male co-workers were unbearable. She had to confront them. She was again disciplined and she found herself without support. Throughout her entire career she kept reliving the ugly past of being with the man who beat and belittled her constantly. She was not a whore, she did not end up on welfare and she did not turn into an alcoholic. Everything her husband did to abuse her instead gave her the strength to keep moving forward. She would not give up. Consequently, she ended up retiring. Ms. Tsosie later filed employment discrimination charges against the mining company because they would not pay her out on her annual leave nor her vacation pay. She turned to the union again, and they told her they could not help her; she was on her own. Ms. Tsosie then took her case to court and there, without an attorney, she won judgment against the company. Evie Tsosie read about the hearing today and she wanted to tell her story. She closed by asking the audience to help their mothers, sisters and

grandmothers. Many are afraid to speak up. She found that talking about her past experience with domestic violence and of the violence and abuse in her workplace gave her some peace. She felt strengthened by talking and listening to her grandmother.

**Margaret Lee** testified about the brutal stabbing and bludgeoning death of her young sister, Betty Lee who was murdered by a white male in June of 2000. The perpetrator, Robert Frye, remains incarcerated in a New Mexico penitentiary and has averted the death penalty since being sentenced to death in 2004. The family feels justice has not been served. Mr. Frye's fourteen year sentencing is a slap on the hand. Robert Frye had also gotten three life sentences for three other murder convictions prior to Lee's death. Ms. Lee also spoke to the rise in child sexual abuse on the Navajo Nation. She pled to the audience that as a community, the people need to work together and address this abuse. She had conducted a session with Navajo elders to bring awareness to them about the sexual abuse of our children. She wanted to seek their advice on how to handle this abuse. Not one elder offered any advice. Ms. Lee thought they were too shocked to hear about these violent acts against our children. But on a return visit she received a startling response from an elder Navajo male. He reported that while serving overseas in the war he witnessed a lot of things that the five fingered people did to each other. He saw them hurt one another and sexual abuse one another. When he returned to the Navajo Nation he sought traditional help from Navajo medicine. This helped him. He was disturbed to learn this violence was among them. The elders decided they wanted to speak to children at schools about the concept of K'é. It was their way of confronting the abuse. They wanted to stop any furtherance of the messing up of the young minds of those abused. Nurses explained to the group that not only did this abuse affect their minds but it also led to self-abuse and the use of alcohol. Ms. Lee asked the audience to take care of their children and keep K'é in mind. She ended she had to bring this message on behalf of her beloved sister.

**Gertrude Bedonie** wanted to raise awareness about the excessive patrolling of vehicles along N-36 and Hwy 371 south of Farmington. Ms. Badonie while selling wood with her son observed officers stopping vehicles coming off the Navajo Nation at various locations before entering into Farmington. She also spoke about an officer by the name of Randy Valarde who is known to accost Navajos sitting at a particular bus stop as they wait for the bus. This officer does bike patrol and came upon six Navajo individuals sitting at this one bus stop. Her son was there. He had them all arrested and while in jail, among the those arrested, the name of Officer Valarde surfaced time and time again as the arresting officer. She wanted the commission and the audience to be aware of this.

**Melvin Harrison** spends a great amount of his time working with Navajo citizens through the Navajo AIDS Network program. Through his work he has many encounters with individuals that identify themselves as LGBTQ. He was nervous and found talking about the subject difficult. Mr. Harrison began with the story of meeting of a Navajo girl who called because she needed to talk to someone. He had talked at the local high school awhile back and this young lady had been trying to reach him since. They met at the Chilchinbeto trading post where she

disclosed she was transgender and her family rejected her. This young lady cried and wanted to end her life. She spoke about the verbal and physical abuse her father committed against her. Her mother was too afraid to intervene and kept quiet. She was not allowed to attend after school functions. Her refuge was her bedroom. When her father was not around, she had some relief, because her mother would let her be who she wanted to be. This person remains in touch with Mr. Harrison today. She graduated from high school and relocated into southern Arizona. The point Mr. Harrison wanted to convey is that the LGBTQI population is here and here to stay. He emphasized that they, the LGBTQI, are our children, mothers, teachers, fathers, providers, medicine people and they are part of the Navajo Nation. Mr. Harrison asserted that Navajo leaders need to take the lead and help these folks. It is important that the Navajo Nation community stop the denial and accept this population into our homes. Mr. Harrison is familiar with the abuse that the LGBTQI endure. They are told to leave their homes, they are isolated, they are told they are not normal, and they are abused. They are also told they have a mental illness and encouraged to seek counseling which would change them into heterosexuals. Mr. Harrison made it clear that being LGBTQI is not an affliction or a sign of mental illness. They need to be understood, accepted and supported under the terms of unconditional love, which is what all parents should have for their children. Unconditional love is the idea that parents love their child no matter who your child is. He noted that the Navajo term of endearment is “My little one” and “My baby.” Corn pollen is used in prayers and these prayers are heard and it does not matter what a child’s sexual identity is. The LGBTQI’s quality of life is what needs to be understood without biases and prejudices, according to Mr. Harrison. He emphasized that community members, parents, Navajo leaders and everyone concerned should be looking from the perspective of a better way of life for the LGBTQ. Mr. Harrison pointed out that other Indian Nations and countries have taken steps to repeal laws and recognize the rights of the LGBTQI communities by sanctioning marriage between them. He looked to the commission to take the lead in addressing the issues that confront domestic violence, gender discrimination and identity. More importantly he saw the Human Rights Commission as the appropriate program to bring this matter before the Navajo people and leaders for policy discussion and development. He also advocated for training to medical personnel who serve the LGBTQI because there is a high rate of concern that providers do not know the needs of the LGBTQI.

**Milton Chee** advocated for an increase in funding to assist in the protection and enforcement of employment opportunities for the Navajo people. Mr. Chee related this comment to earlier testimony about the right to be happy and to live in *hozhó* no matter who you are or what your social status is. A simple Navajo chant brings comfort to many Navajo women according to Mr. Chee. He added *nádleehí* existed amongst the Diné and are not to be bothered. They possess both sex organs and this happens from time to time. He believes that traditionally, *nádleehí* presence was understood and therefore accepted. He spoke about a time in the early 1900’s when in the Navajo Mountain area they called these individuals cursed and urge the killing of individuals born with male and female organs. Mr. Chee believes the white men’s religion and their language changed the attitude and acceptance of these individuals. Milton spoke of the

significance of pollen and how pollen surrounds us, is in the environment and eventually becomes part of us as we breathe, eat and digest various fruit, vegetables and animal products. Navajos understand how pollen is utilized and is sacred. The white men's perspective has changed the language and understanding of pollen. Mr. Chee added that Navajo teachings and the corn pollen pathway are the foundation of Navajo tradition and culture. He believes bringing Navajo teachings back will restore resilience. Navajos adapted to pass influences and can readapted. This would not be a complicated process for the Nation. In closing his testimony, Mr. Chee reiterated the need for additional funding for law enforcement.

**Sammy Ahkeah** a retired law enforcement officer from Shiprock reminded the audience that a person's tongue is one of the most important part of the body. It can make changes if you use it right according to him. His mother guided his career into law enforcement and he witnessed terrible atrocities that were committed against Navajo women and children. I mentioned two cases where Navajo women were violently killed. As an investigator, he noted in his wound analysis that the face of each victim showed severe cuts and beating indicated extreme rage and hate toward their victims. Mr. Ahkeah sees no decrease with violence against women. In fact, he sees the violence getting worse. More problematic is that resources and services for abused women and children are lacking. He mentioned that the shelter in Shiprock remains unfinished, with construction still needing to be completed. One million dollars is need to complete that project and he feels the leaders of the Navajo Nation are responsible for the completion of the project. According to Mr. Ahkeah, many of the shelter programs are funded from other resources that rely on supplemental funds to survive. Employees are mostly volunteers. Leadership in the Navajo Nation purports to be working on assisting these programs, but nothing has come through. Nothing is being done to help the women who remain victims of violence as far as he is concern. Mr. Ahkeah reported federal and state agencies cannot help either. This is why it is important for the Navajo Nation to accept the responsibility to address the issues of violence against women and children. He further added that discrimination in the workplace, at schools and with businesses on the Navajo Nation need to be addressed by a separate program that can investigate and get things done quickly. Mr. Ahkeah would like to see heavy fines imposed on the violators. He also insisted any violence against women should be met with mandatory jail time. He wanted Navajo officers to investigate violent crimes that are now the Federal Bureau of Investigation's responsibility. He thought this could be a solution to rampant violence that is amongst the nation. Mr. Ahkeah completed his testimony with asking where "*are the officers*" when you call them. They don't respond. As far as he was concern domestic violence is not a priority to the officers. He spoke about a situation where a husband and wife were fighting. He called local law enforcement several times and no one came. He started to yell at them to stop. The man started to cuss at him and then he stopped. Mr. Ahkeah's solution to violence is to fix the entire system. It's not working the way it should be.

**Jeremy Yazzie** described himself as a thirty-two year old Navajo gay man. He found attending the hearings comforting because of his life experiences. The opportunity to share his stories of

being a gay Navajo man and growing up with discrimination and homophobia were not stories that people wanted to hear. He began by thanking Melvin Harrison, who is his boss, for his support and the help he brings to the LGTBQI community. As a young person, Jeremy had been on a path of self-destruction. His employment with the Navajo AIDS program brought stability. He realized that the fear of HIV remains misunderstood as some people do not want to talk about HIV for fear that talking about it will bring it here. Jeremy says *“It’s here and it needs to be talked about.”* At twenty-one years of age, Jeremy attempted suicide with a heroin overdose. The suicide attempt failed and he found himself bleeding heavily with a puncture wound to his arm. Jeremy and his siblings were raised by their grandmother. Their parents were alcoholics and could not care for them. Growing up with their grandmother was the best thing that could have happened to them. He kept his secret about his sexual identity to himself all through his formative education years. To his dismay and the dismay of his siblings, their mother regained custody of them. They were subjected to alcoholic parents and an unstable environment that included violence, sexual abuse and retaliation from their biological mother who refused to believe their accounts of sexual abuse by their stepfather. Jeremy had enough and left that home. He walked to his grandmother’s home in the middle night. Jeremy is glad the Human Rights Commission is taking this matter seriously and investigating issues about the rights of the LGBTQ community and assessing gender discrimination.

**Calvin Hesuse** has worked and supported his cousin sister Linda Willie since 2008. Willie has been a victim of domestic abuse for five years. She sought assistance from the Crownpoint law enforcement, social services and other non-profit organizations that assist victims of domestic abuse. Ms. Willie is not a fluent English speaker and is easily discouraged when questioned about her circumstances. Therefore, Mr. Hesuse has accompanied her to various meetings and speaks on her behalf when he can. Unfortunately, Ms. Willie’s case has not been remedied to her satisfaction. The mobile home she lived in with her former husband and children is severely vandalized and damaged. It remains in a remote location in eastern Navajo agency and needs to be moved to another location where it can be repaired. Ms. Willie would like to move back into her trailer after it is repaired. Her children are in protective custody because of the condition of her home and because of her husband’s abusive behavior. Mr. Hesuse reported that they met with President Shelly and with the Executive Director Cora Maxx for the Navajo Nation Division of Social Services but no follow up has been initiated by either office. Mr. Hesuse also spoke to the lack of services and respect to individuals he identified as gay. He knows of friends and relatives that identify as such, and has good long lasting friendships with them. He can identify with the victimization and violence women and gays encountered. Mr. Hesuse appreciated NNHRC’s willingness to hear from the public about their experiences.

**Alicia Merchen-Perez** is an attorney at DNA People’s Legal Service in Tuba City, Arizona. Ms. Merchen-Perez reported she is here on behalf of the victims of domestic violence that the offices of Kayenta and Page serve. Three attorneys at these offices have helped over fifty victims with protection orders, child custody, divorce and the issue of financial exploitation. Thirty-nine of

the fifty cases were abuse by their partners. According to Ms. Merchen-Perez the violence from partners is outrageous. She reported a non-Navajo female's partner who is Navajo would threaten her and remind her of how isolated they were from other neighbors. Allegedly he would tell her he could kill her and bury her out there and no one would ever find her. Another violent encountered a husband who beat his wife and left her out in the wilderness. This person called the police but got no response from her call. She called a family member and they found her and took her to the hospital. The vast remote land base and the isolation of the homes from one another make it difficult for law enforcement to respond. Ms. Merchen-Perez reported sexual assaults are underreported and are often a jurisdictional nightmare. The race of the victim and the perpetrator make it difficult as to who is to take jurisdiction of a case. The Navajo Nation only has crime for sexual assault if it involves a foster or stepchild and sexual assault against a family member. There remains loop holes with the Navajo Nation that prevents victims from obtaining justice. The commission heard of another disturbing account of sex for sale. This involved a fourteen year old victim was solicited by a nineteen year old Navajo male for sex. The perpetrator was so desperate he lingered outside her home after she blocked his text, phone calls, twitter and Facebook accounts. Neither the Navajo Nation nor the federal government had any laws in place to arrest this man for sexually propositioning the young girl. The only legal remedy was a protection order, which provided her some protection but would not stop this man from harming others. Many victims do not own the property that they share with partners. They are the ones that leave and end up in shelters that are so important to restoring a person's well-being.

**Sheldon Benally** is employed with UNM Truman Health Services. He works at the HIV primary health care clinic and primarily serves the northwestern region of New Mexico. Truman treats patient's diagnosis with HIV and other sexual transmitted diseases. He reported it is always difficulty contacting the partner of patient that is reported to have positive test results of HIV. This is probably the most difficult part of his job. He encouraged the audience, especially women to be careful with the partners they choose. His office also works with the LGBTQI community and the clinic offers a variety of services that all communities can benefit from. Mr. Benally remains committed to advocating for youth and the LGBTQI community.

**Elarina Nakai** is a community involvement specialist with the Shiprock social service center. She reported that some women in shelters have also been abused and re-victimized while in the shelters. Ms. Nakai has been with Social Services for fourteen years now and witnessed problems with the shelters on and off the Navajo Nation. She reported that with limited funding, not enough training is available to help all the women and staff at these shelter locations. The Navajo Nation has only three (3) advocates under the community involvement program. Ms. Nakai also reported abuse to children perpetuated upon them by fathers, uncles, grandfathers, nalis (paternal grandparents) and aunts. She thinks it is important that earlier education be rendered to children and parents. As a child, she was instilled with disciplined by her parents. She recognizes teaching a child at an early age about self-respect is important and values the

attribute of teaching she gained when she speaks with her grandchildren. Ms. Nakai believes that a woman who has been abused for so long will abuse others. Many Navajo women, she estimated 75 to 80% are single parents, raising their children alone. Ms. Nakai is the co-chair to the Navajo Nation Advisory Council against Domestic Violence where specific legislations like the Domestic Abuse Protection Act and the Violence against Women Act derived. She added Nádleehí also deserved the same protections and should not be abused while in shelters either. Ms. Nakai wants the abuse to end. It needs to stop.

**Mykle Redhouse** identifies as a member of the LGBTQI community and grew up in Shiprock, New Mexico. She is a graduate of Arizona State University and Simmons College in Fenway in Boston Massachusetts. She thanked the commission for looking into the rights of women and taking LGBTQ seriously. Ms. Redhouse shared a story of a seventeen-year-old transgender friend who no longer lives in the community because she fears for her life. This person was on her way home late one night and was forced off the road. She thought something was wrong with the driver of the vehicle and proceeded to call the police after checking on the car that forced her off the road. Little did she know she was set up for an attack by other people who were in the vehicle. She was beaten up. They took her car and left her to die in the median of the road. Her friend made it to a house near the road and they took her to the hospital. Her friend left the community of Shiprock because there are no protections for her. Ms. Redhouse can identify with the feelings and rejection the LGBTQI face. She came out when she was twenty-four herself. For someone much younger, coming out can be difficult. Suicide, denial, bullying, alcoholism and drug abuse all seem to alleviate pain, especially when you are rejected by family, friends and relatives after coming out. She looked to the vacant chairs in the room and said they may be vacant but those that were rejected and found peace are here. She wants to help those that are conflicted with their gender identity and be a friend to them.

**Zefren Anderson** spoke about teachings she received from her grandmother. Zefren is not gay but “*special*” according to her grandmother. Her grandmother was a very traditional woman who made sense of her identity to her mother and other family relatives who were confused. She encouraged and protected Zefren. Everyone had a purpose in spite of how they were created according to Zefren’s grandmother. Zefren found her traditional teachings tested while in college, where friends pursued drugs, alcohol and competed for the prettiest boyfriend. When her beloved grandmother died, she realized the importance of the traditional teachings. Belonging in a family is important. When her dad got sick she returned home to care for him. She found being home reinvigorated her grandmother’s teachings and she immediately put to practice those teachings. Family members grew to admire her teachings and she felt accepted again. Zefren feels that there is a lack of services that deliver support the way her grandmother did. According to Zefren there are services out there but these services have a religious overtone to them, which she found unacceptable. She wants to see programs that empower the victims whether they are female, male, or from the LGBTQI community. Victims need to learn to stop the violence and

say no. Zefren's past experience taught him to say "no." She is proud of who she has become. She knows where she belongs.

**Jerlene Heyde** is a survivor of domestic violence and a single parent. She sought shelter from the Home for Women and Children in Shiprock where after several months she found a much better life. Ms. Heyde is grateful for the support and direction the shelter staff provided. They taught her to be more responsible and do things she never experience before. She believes the choices that she makes now leads her to a positive and healthy lifestyle. Ms. Heyde has an eleven year old son, who also has adjusted to a new lifestyle outside from the abusive community they both lived in. His grades have improved and he is much happier. She recanted how broken she was before entering the shelter home. Physical scars remain on her body. Shelter staff gave her hope. She regained herself spiritually, mentally and emotionally. Ms. Heyde had nothing but good comments about the help she received from the shelter home.

**Alray Nelson** was raised with traditional Navajo values. He was very proud of his great grandfather, a Navajo entrepreneur who provided for his family. Mr. Nelson credits his mother, grandmother, and grandfather who gave him direction for his life. He credits the core values instilled in him by his relatives for empowering him to address discrimination on the Navajo Nation. He also spoke for those that were not there to speak for themselves. Alray began his testimony about a visit to Northern Edge casino. It was a first visit for him and his partner. They saw a model of a Navajo Hogan on top of a group of slot machines and questioned its relevance in a casino. He found the symbol of a Hogan in a casino hypocritical as it implied that gambling is an acceptable means for supporting your family. Alray despised the way the Hogan is portrayed. In the Navajo life-way the Hogan is sacred where ceremonies are held. Mr. Nelson found Navajo leaders to be hypocritical for allowing the Hogan to part of the casino. He further implied money corrupted our Navajo leaders and issues like veteran's rights, equality and other matters are not important to them. They are out of touch with issues that affect the grassroots. He added that prior to colonization Navajos were self-sustaining. The repercussions of historical trauma continue to impact and ravage the nation. The LGBTQI communities are victims of the past and the target of learned aggression that is a result of the violence against them. Mr. Nelson related this to his work with Navajo Nation leaders, in that equality for everyone should be the forefront of all Navajo leaders. But with his work with Navajo government it was the complete opposite. His relationship with his male partner was constantly scorned and belittled by these leaders. For this reason, his relationship with his male partner can never be realized. They can never raise a child, build a home or live a life of husband and husband yet, the sacredness of a Hogan where ceremonies are taught can be replicated in a casino. Gay rights and the issues confronting their rights will not be addressed because it does not matter to the leaders of the Navajo Nation. Mr. Nelson indicated when he spoke with the President of the Navajo Nation about the marriage issue, the reply was, *"It's okay for us Navajo people, but our gay and lesbians, it's okay for you to leave and get married off the reservation, but don't come back."* The Vice President of the Navajo Nation was also reported to be unsupportive. Alray interprets

the Diné Marriage Act, which defines marriage between one man and one woman, in same manner as the U.S. constitution as discriminatory. According to Alray, the Navajo Nation is known to react to the same U.S. national issues. The Diné Marriage Act was drafted as law without a full examination of its implication on the Navajo Nation. Alray remains committed to repealing the Diné Marriage Act. Mr. Nelson is also working on changing the name to the Diné Human Rights Act and Hate Crime Prevention Act of 2014 to the Fred Martinez Human Rights and Hate Crime Prevention Act. Fred was a Navajo transgender who was brutally murdered in Cortez, Colorado. Her life is portrayed in a short film and outlines the need for more education and understanding of the transgender community. Overall, there remains a real need to address the issues confronting Navajo LGBTQI with the Navajo Nation.

**Tommy Yazzie** presented a situation that involved border town law enforcement. Mr. Yazzie was traveling east on highway 64 toward Farmington, New Mexico when he was stopped just after passing the Hogback rock, which delineates the Navajo Nation boundary line. The officer pulled Mr. Yazzie for flashing his lights to on-coming traffic. This officer cited him for flashing because he was thought to have warned on coming drivers about an officer monitoring traffic. According to Mr. Yazzie, he dimmed his lights when he rounded the Hogback rock as it was turning dusk. When the officer pulled him over, Mr. Yazzie gave him all the documents requested by the officer. He noted this officer was taking a longer time with issuing a citation. The officer then returned and arrested him, citing him for DUI and driving with a revoked and suspended license. Mr. Yazzie recalled that he had been cited for these violations twenty years earlier and thought that the case had been resolved. He questioned the statute of limitation and its application to his situation. When he checked with the New Mexico Department of Motor Vehicles, no record was found of any violations. He also checked with the Arizona Department of Motor Vehicles and again, nothing was found. Mr. Yazzie reported that he took a CDL class and received the certification to drive under that designation. Mr. Yazzie had a scheduled court hearing on the upcoming Friday. He was concerned that he was targeted as a criminal by law enforcement. Mr. Yazzie also remarked upon the high volume of stops conducted by law enforcement just off the Navajo Nation border, which he felt was excessive. Mr. Yazzie also responded the issue of gay and Nádleehí. He reported as a child, his mother always encouraged him to be respectful to relatives and friends who identified as gay or Nádleehí. Throughout his childhood, school years and while in the military he interacted and accepted them on their terms. He respects them and noted that the Shiprock community has a recognizable population of LGBTQI. Mr. Yazzie expressed the need to begin educating youth as young as seven and eight years of age about HIV and other issues concerning sex education. Mr. Yazzie closed his remarks with comments about jealousy and his understanding of jealousy. There are two types of jealousy. One application of jealousy concerns relations to a partner while the other concerns the jealousy of someone else's personal or material possessions. He thanked the commission for giving him an opportunity to speak.

**Norman Dave Benally** testified that he came from a violent past. He considers himself to be a product of the federal government. His mother had a lifelong career with the Bureau of Indian Affairs education system. Because of his mother's career, the family moved a lot. To many he is known as Dave Mason. Dave wanted to thank the people who shared their stories with the commission and public. He knows there is an issue with the acceptance and recognition of the LGTBQI community.



## THE FINDINGS

It is clear to the Commission that significant issues and problems related to Navajo women and gender need to be addressed by every citizen of Navajo Nation. In particular, the Navajo Nation's efforts to seek and implement Navajo human rights in the laws and policies must be extended to Navajo women and Navajo LGBTQI is pivotal to governance that affirms the rights and entitlements of all citizens of the Navajo Nation. It is also clear that as a result of the colonial relationship that the United States has with Indigenous nations, including the Navajo Nation, that Navajo women have been disempowered to some extent and that the Navajo LGBTQI community has been largely invisible and ignored.

First, the investigation affirms that Navajo women traditionally have held important roles in Navajo society as grandmother and mothers. Their roles are modeled upon the deity Changing Woman (Asdzáán Nadleehi), who is the first Mother of the Navajo people. Women also are recognized for their leadership roles and that male leaders conferred with them in matters of good for all of the people. Traditionally, Navajo women were honored and respected in Navajo society as mothers and nurturers who bring life into the world, who provide for their children and guide them and who are the leaders in the Hogan. Navajo women were envisioned as the strength and stability of Navajo society. Women's roles are based upon those of the deity Yoolgai Asdzáán (White Shell Woman) who became Changing Woman when she became a woman. Her birth and then her birthing of the Hero Twins brought about a new era in Navajo history, one based upon Hózhó. The Hero Twins set out to destroy the monsters that were plaguing the people. After a time, Changing Woman left to go live on the ocean and some of the people went with her. However, they became lonely and decided to return to the homeland. It was at this time that Changing Woman created the first clans, thereby establishing the networks of matrilineality where all Diné identify themselves and their relations to each other through clans. These clans are the foundation of K'é, Diné principles of kinship. Clans are key to Navajo identity, with maternal clan identification the foundation to identity, and the basis for determinations of land use, how livestock permits are passed on to the next generation, and determining factors for the inheritance of home and property. Matrilineal clans are also foundational to the clan network system of kin relationships within the extended Navajo family. Medicine people affirmed Diné concepts of gender as the importance of both the masculine and the feminine to the perpetuation of Navajo life and that leadership is also based upon the concept of complementarity. That is, both men and women are important in leadership and decision making. Although men may have been the public voice of leadership, it is acknowledged that women are consulted and their advice and wisdom is considered in matters of the Navajo Nation.

The public testimonies, case studies, newspaper articles, and a number of studies on the status of Navajo women, confirm general sentiment that indeed women have experienced a devaluation of their roles as mothers, grandmothers, and leaders. In spite of the often reiterated statement that Navajo women are sacred, in fact, they are not treated in a manner that Navajo

philosophy and teachings dictates. Rather, discussions by the Commission regarding the status of Navajo women indicate that Diné teachings reflected in ceremonies, prayers, stories, and songs, place women in high esteem by not only the holy people but by the Navajo people themselves. The Commission learned of twelve significant female deities that are represented in various ceremonies and chants. These deities are Asdzáán Shush, Dził Asdzáán, Asdzáán Nadleehi, Yoolgai Asdzáán, T'óh Asdzáán, Ch'il Asdzáán, Asdzáán Ałganí, Ałtsé Asdzáán, Asdzáán Ashijhi, Ch`aháleeł Asdzáán, (Spider Woman) and Seven Sisters who with Shell woman guided and protected the Navajo people with sacred traditional teachings. In the Commission's review male deities although present, do not carry the significant recognition and responsibilities as their female counter part. Hence reaffirming the permanent prominent status of Navajo women in Navajo society.

Congruent with “Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey,” and two Amnesty International Reports cited earlier in this report, indigenous women are more likely to experience violence and gender discrimination and the violence against them was more likely to be unaddressed by nation-states and indigenous nations. Navajo women also find themselves in similar predicaments where the violence against them goes unreported and unaddressed by the Navajo Nation.<sup>39</sup> The Commission's findings makes clear that women have experienced a devaluation of their formerly well-regarded roles and that they are subjected to high rates of violence that includes gender discrimination, domestic violence, rape, and assaults. The Amnesty International reports further that gender violence is manifested in work places, including male-dominated fields, in the lack of protection and security in the justice system and the lack of resources provided for women and their families when they are seeking safety and protection as victims of domestic violence and other kinds of abuse. Indeed, national Navajo news draws attention to the pervasive violence against women and children in their homes, including incidents where Navajo police officers who answer domestic violence calls are also in danger. These conditions indicate the pervasiveness of the violence and the inadequacy of law enforcement and the justice system to address domestic and family violence. Finally, women who seek justice within the Navajo justice system find that there is a backlog in rectifying their cases and they often have to wait months and years before they see resolution.

The Commission's public hearings were the first time that a significant number of the LGBTQI community came to share their experiences and offer recommendations on how the Navajo Nation might address their issues and problems. The testimony shared indicates that the LGBTQI identify along a spectrum of identities that are linked to their sexuality. Although the Commission's sessions with medicine people and subsequent working sessions identified three sexes—the female, the male, and the intersex, and four genders—the feminine, masculine, the

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<sup>39</sup> Patricia Tjaden and Nancy Thoennes, “Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women; Findings from the National Violence Against Women Survey,” National Institute of Justice and the Centers for Disease Control and Prevention, U.S. Department of Justice, Washington DC. November 2000.

nadleehi, and the dilbaa', the Navajo LGBTQI studies express a range in gender identity within and beyond traditional Navajo gender identities. It is noted from these sessions that although the Nádleehi and the Dilbaa' were present and valued in the creation stories, contemporary LGBTQI do not fit the definition of these two genders; however, many of the LGBTQI draw upon the figures of the Nádleehi and the Dilbaa' as the sources from which they found acceptance in Navajo society. Further, the Navajo LGBTQI community stressed that their sexuality was not the only thing about their identities that was important, but that they also, like other Diné, valued traditional teachings and practices. Their roles as LGBTQI extended beyond a sexual identity to the roles they brought to their families and communities as part of the kin network system. As Navajo LGBTQI, they are also nurturers and caregivers. They perform duties and responsibilities that are important to the maintenance of families and communities. Those who offered their testimony to the Commission indicated that they are educated and familiar with the issues and needs of the Navajo LGBTQI community.

Testimony revealed that the Navajo Nation does not understand such issues as transgenders' desire to change their names to fit their identities as either feminine or masculine. Navajo transgender persons shared their experiences of being young, recognizing their difference, and subsequently being treated with disdain. Indeed, there are indications that this population of Diné attempt suicide more often than young heterosexual people. They spoke of being rejected by their families because of their identities and being unable to find employment. Some also stated that they felt the Creation stories could not provide evidence of their identities in contemporary times, but that they are not "new" forms of Navajo people or "monsters" who have different sexual identities. Others shared stories about not being able to use the bathroom that conformed to their gender identity and were so traumatized by bathrooms that are heterosexual. This community was also heartened by the fact that activities and events on the Navajo Nation recognized their issues and needs through such events as the annual Navajo LGBTQI symposiums. As the testimonies and the annual Navajo LGBTQI symposiums indicate, this community experiences a prevalence of violence that has gone undetected on the Navajo Nation.

There are questions about exactly what "Náadleehí" means and the relevance of the term to contemporary LGBTQI. Some say that the Náadleehí in the creation narratives are ones who possess both female and male sex organs and that contemporary LGBTQI are not "true nádleehí." However, it is important to acknowledge that today's LGBTQI often draw upon the roles of the Nádleehí and Dilbaa' as means to affirm and validate their roles in Navajo society. Further, the term "Two-Spirits" is not universally accepted as a term of identification for Navajo LGBTQI.

One issue raised was the Diné Marriage Act (2005), which affirms marriage between a man and a woman, based upon Navajo traditional law. As the testimony indicates, the basis of the objections to the Act is based upon the Navajo Nation's position that it will not sanction same-sex marriages and that same-sex couples do not receive the same benefits that heterosexual

couples are entitled to on the Navajo Nation. However, even in the Navajo LGBTQI community, marriage between same-sex couples is not deemed an important matter.

While the Navajo Nation's laws and policies do not adequately recognize or address the need as illustrated throughout the report, of the LGBTQI community, the Navajo Nation does receive federal and state funding that comes with anti-discrimination mandates that require acceptance of same sex relationships where couples have all the rights and benefits that heterosexual couples are entitled to. The Navajo Nation must reexamine its responses to these anti-discriminatory mandates pertaining to same sex couples. The Navajo Bill of Rights, N.C.C. §3 guarantees the rights of all Navajo citizens regardless of sex. Further, there are no Navajo laws solely devoted to anti-discrimination or hate crimes as they pertain to Navajo LGBTQI.

## COMMISSION RECOMMENDATIONS

The Navajo Nation Human Rights Commission endorses the following recommendations that offer solutions and directions for the Navajo Nation as it addresses the status of Navajo women and the Navajo LGBTQI community. The recommendations, based upon Navajo traditional principles and universal human rights standards, are intended as a guide for the development of legislation, laws, and policies.

1. As a body that represents the Navajo Nation's interests in participating at the United Nations, the Commission, with support from the Navajo Nation Council and Council Delegate Dwight Witherspoon, initiated a study to examine the United Nations system and the need for the Navajo Nation to continue its involvement at the UN. The preparatory efforts included an agreement to support and work with the National Congress of American Indians (NCAI), the Indian Law Resources Center, and other Indigenous organizations and nations to unify on positions that would then be advanced through the UN Permanent Forum on Indigenous Issues (UNPFII) and the other arms of the United Nation system, such as the general assembly. UNPFII holds annual meetings in New York, NY. In promoting UDRIP and the Navajo Nation's position in regards to Navajo human rights, a three pronged course of action to address the problem of violence against Indigenous women was put forth and includes a call for the safety and well-being of Indigenous women and children and the need to share perspectives and best practices; the need to require that the UN monitor and implement UNDRIP as it pertains to Indigenous women and children; and the need to appoint a Special Rapporteur to focus exclusively on the human rights of Indigenous women and children, including but not limited to violence against them and changing state laws that are discriminatory. (See Appendix) The purpose of the Navajo delegation's participation in this initiative was to seek participation status for the Navajo Nation and to address the rights of Indigenous women as they pertain to Navajo women. The Commission recommends that the NNHRC continue to seek participation status and address the rights of Navajo women according to international human rights standards and that these principles be endorsed and supported by the Navajo Nation. As a result of the unified efforts, the World Conference of Indigenous Peoples has further comp the needs of indigenous women to be removed from violence.
2. The Commission recommends the status of Navajo women based upon the roles of Asdzáá Nádleehé and other female deities be restored and honored as dictated by the teachings of Áłtsé Hastiin, (First Man) and Áłtsé Asdzáá, (First Woman). The Navajo Nation is matrilineal where all kin relations begin with clans based upon the centrality of maternal clans. A Navajo person's identity begins with the mother's and grandmother's clan and then extends to the father's clan and dictates how each person is related to one another. As one of the primary ceremonies and a rite of passage to womanhood, the

Kinaaldá continues to be performed and is the key instruction where women are instructed on the roles of womanhood. These roles are based upon the female deities of Aszdáán Nadleehi (Changing Woman) and Yoogai Aszdáán (White Shell Woman), who is one

and the same, and who is the Mother of all Navajos. Thus, women are crucial to the perpetuation and survival of the Navajo people and the Navajo Nation and our governance, laws, and policies should reflect the respect accorded to women.

3. The Commission recommends that the Navajo Nation make a concerted effort to develop and implement a data management information system that will tie data information from law enforcement to the judicial and prosecutor's office to health care organizations and lastly, to shelter programs in order to ensure that victims of crimes and alleged perpetrators receive due justice and the care and assurance of restoring balance, Hozhó. These efforts would necessarily lead to a gathering of data and information on violence against Navajo women and Navajo LGBTQI.
4. The Commission recommends the Navajo Nation judicial districts and law enforcement be provided additional resources to assist in the arrest, apprehension, prosecution and monitoring of victims of domestic violence and the perpetrators/offenders of these crimes. The U.S. government should be held responsible for the conditions that prevail on the Navajo Nation.
5. At the time of this report, the Navajo Nation has only three women's shelters, and victims of domestic violence must seek safety and protection off the Nation. The Commission recommends more funding for these shelters and for services and resources. Moreover, the shelter in Shiprock, which has now closed its doors, reported the LGBTQI community were seeking refuge from domestic violence. Shelters and other resource providers indicate that they not only do not have adequate resources to meet the needs of women seeking support from shelters, but that the LGBTQI also are not receiving support and resources. Further, support staff at these shelters must be provided with training to meet the needs of Navajo LGBTQI.
6. The Commission recommends medical staff and police officers investigating violent crimes, including sexual assault, be trained in appropriate measures to ensure confidentiality and sensitivity to the victims. Although there is ample training to medical staff, there remains a concern that medical staff continue to blame the victim. The Navajo Nation Training Department must provide mandatory child, elder and spousal abuse training for all employees. This training should be mandatory for all current and incoming employees of the Navajo Nation. This training should include training on LGBTQI issues for all levels of the Navajo Nation government.

7. The Commission recommends that law enforcement centers in Too'nanees'dizi (Tuba City), Arizona and Crownpoint, New Mexico be fully utilized. These complexes are understaffed and operate at a less-than minimal standard. Critical medical, counseling and education programs designed for these centers are not up and running. Inmates requiring to meet certain sentencing mandates must have these services when the courts adjudicate. Moreover, having these types of services on the Navajo Nation make it more accessible for family members to participate in the therapy and the treatment of Navajo offenders.
8. The Commission recommends legal advocates and attorneys representing civil matters that involve child custody, divorce, restraining orders and domestic violence cases be held to a standard of accountability that includes fair representation and expeditious timelines to conclude cases. The backlog on court cases is intolerable and shameful which raises questions about the violation of the third amendment of the Navajo Nation Bill of Rights. No one should wait years to finalize a divorce or to make the determination on the custody of a child.
9. The Commission recommends that public education is essential and necessary. The delivery of written and oral material must satisfy the reader's ability to access information, and read and understand the content of the material. Information should be reinforced in as many public and private venues as possible. The status of women and their changing status should be a topic of discussion in schools, chapter meetings and radio broadcast forums. Moreover, the Navajo Nation government should mandate a violence against women and gender discrimination training to all employees. We encourage the next Commission to follow up on these recommendations and support the efforts addressed in this report.
10. The Commission recognizes that Navajo LGBTQI are increasingly visible in Navajo society and on the Navajo Nation. Public accommodations and support services must be available for those identifying as such. Employment opportunities are essential for Navajo LGBTQI community to gain acceptance, demonstrate employment skills and increase awareness of the emerging competent workforce that has been essentially ignored. Human Resources must be educated on these issues in order to alleviate gender discrimination complaints.
11. The Commission recommends that the Navajo Nation enact laws and policies that would ensure the protection of people regardless of sex, gender identity and sexual orientation. Navajo laws and policies must prohibit discrimination or harassment against a member and/or employee of the Navajo Nation because of race, color, creed, religion, national origin, citizenship, sex, age, marital status, sexual orientation, or gender identity. In accordance with the recognition to ensure the Navajo Nation as gender safe, it is recommended that the Navajo Nation explore gender discrimination mandates as outlined

by the federal government and that the Navajo Nation comply with these regulations, especially in light of federal monies that the Navajo Nation receives.

12. The Commission established UNDRIP as the minimum standard for assessing Navajo human rights from entities and organizations off the Navajo Nation. The Navajo Nation is supported by UNDRIP when it affirms traditional Navajo perspectives on Navajo marriage and based upon these perspectives, the Diné Marriage Act (2005) affirms a traditional Navajo perspective that marriage is a sacred act between a man and a woman. Traditionally, marriage is intended to perpetuate the Navajo people through propagation. By marriage, the survival of the Navajo people is assured. According to Navajo thinking, the obligations that a man and a woman have to marry in order to procreate cannot be duplicated in same sex marriages. Marriage is an act that affirms the responsibility and commitment to bring children into the world so that Navajo life will continue. While the affirmation of traditional Navajo marriages stands on its own merits, Articles 11 and 12 of UNDRIP also affirms the rights of indigenous peoples to practice and revitalize their cultural traditions and customs. UNDRIP, then, is an appropriate mechanism that protects the Navajo Nations' right to traditional customs, ceremonies, and practices.
13. It is evident that the Navajo people continue to suffer from the trauma of boarding schools where many children were victims of sexual assaults as well as all manners of physical and emotional abuse. Trauma stemming from the boarding school experiences continues to haunt the Navajo people and it is time that the Navajo Nation seek resolution for this grievance in the form of a public apology from the United States and that there be reparation.
14. Navajo people have long existing Life-Way principles. These principles are seen as the strength and stability of the people. As commented upon by Marie Salt, if only the principles are practiced by the people, then Navajo people would not have to expend limited resources to address what are now complicated issues. Therefore, the Commission urges the Navajo government to institute the principles of K'é and Hozhó, coupled with human rights principles to effectively address all Navajo human rights issues. To begin this discussion a copy of Navajo guiding principles are found in the appendix. It should also be acknowledged that international human rights in regards to gender have been developed and may be referenced and includes The Yogyakarta Principles and the Tribal Equity Toolkit 2.0, both of which are readily available on-line.

## CONCLUSION

The time and effort that the Commission spent on researching this topic to produce this report is commendable. As the first human rights commission to be established by any Indigenous Nation within the United States, with this report, the Commission indicates its attention and support to international indigenous human rights efforts to ensure the health, well-being, and prosperity of all its citizens, regardless of sex or gender identity. The Commission further affirms the value of Diné Beehaz'áanii cited in Fundamental Law and its applicability to all of the Navajo Nation's citizens. As noted, the principles of K'é and Hozhó are inclusive and the Diné are all related to each other through kin networks. It is hoped that this report will be the basis for the on-going dialogues and conversations on these issues and be pertinent to our leaders, our community, relatives and family as we envision a just Navajo Nation.



## APPENDIX A Navajo and Western Sex and Gender Delineations

	<b>Diné</b>	<b>Western</b>
<b>SEX</b>	‘Áád	Female
	Ką’	Male
	Náádleeli	Intersex
<b>GENDERS</b>	Feminine	Lesbian
	Masculine	Gay
	Nádleehí	Bi-Sexual
	Dilbaa’	Transgender
		Queer
		Masculine
		Feminine

*The Commission had many long discussions regarding Navajo perceptions of sex, sexual identity, and gender. This tablet by no means capture the discussions or the terms that were brought up. As has been said many times, capturing Navajo thought and concepts in the English language is difficult, if not impossible.*



## APPENDIX B LGBTQ Terms and Definitions

*Note - it is very important to respect people's desired self-identifications. One should never assume another person's identity based on that person's appearance. It is always best to ask people how they identify, including what pronouns they prefer and to respect their wishes. The terms here are from a collection of definitions found from various sources.*

**Advocate:** A person who actively works to end intolerance, educate others and support social equity for a marginalized group.

**Ally:** Any non-LGBTQ person who supports and stands up for the rights of LGBTQ people. LGBTQ people **can also be allies, such as a lesbian who is an ally to a transgender person.**

**Androgyny/ous:** A gender expression that has elements of both masculinity and femininity.

**Androsexual/Androphilic:** A person attracted to men, males and/or masculinity.

**Aromantic:** A person who experiences little or no romantic attraction to others and/or a lack of interest in forming romantic relationships.

**Asexual:** A person who generally does not feel sexual attraction or desire to any group of people. Asexuality is not the same as celibacy. Another term used within the asexual community is "ace," meaning someone who is asexual.

**Bicurious:** A curiosity about having attraction to people of the same/gender/sex.

**Bigender:** A person who fluctuates between traditionally "woman" and "man" gender-based behavior and identities, identifying with both genders (and sometimes with a third gender).

**Biological Sex:** A medical term used to refer to the chromosomal, hormonal and anatomical characteristics that are used to classify an individual as female or male or intersex. Often referred to as simply "sex," "physical sex," "anatomical sex," or specifically as "sex assigned at birth."

**Biphobia:** A range of negative attitudes (e.g., fear, anger, intolerance, resentment, erasure or discomfort) that one may have/express towards bisexual individuals. Aversion toward bisexuality and bisexual people as a social group or as individuals. People of any sexual orientation can experience such feelings of aversion. Biphobia is a source of discrimination against bisexuals, and may be based on negative bisexual stereotypes or irrational fear.

**Bisexual:** A person who is attracted to both people of their own gender and another gender. Also called "bi."

**Butch:** A person who identifies themselves as masculine, whether it be physical, mentally, or emotionally. "Butch" is sometimes used as a derogatory term for lesbians, but is also claimed as an **affirmative identity label.**

**Cisgender:** Types of gender identified where an individual's experience of their own gender matches the sex they were assigned at birth.

**Cisnormativity:** The assumption, in individuals or in institutions, that everyone is cisgender, and that cisgender identities are superior to trans\* identities of people.

**Closeted:** An individual who is not open to themselves or others about their (queer) sexuality or gender identity. This may be by choice and/or for other reasons such as fear for one's safety, peer or family rejection or disapproval and/or loss of housing, job, etc. Also known as being "in the closet."

**Coming Out:** The process of acknowledging one's sexual orientation and /or gender identity of other people.

**Cross-dresser:** Someone who wears clothes of another gender/sex.

**Demisexual:** An individual who does not experience sexual attraction unless they have formed a strong emotional connection with another individual. Often within a romantic relationship.

**Dilbaa':** Navajo term that identifies a person who is biologically female who assumes a masculine role.

**Drag King:** Someone who performs masculinity theatrically.

**Drag Queen:** Someone who performs femininity theatrically.

**Dyke:** A term referring to a masculine presenting lesbian. While this term is often used in a derogatory manner, it is adopted affirmatively by many lesbians (and not necessarily masculine ones) as a positive self-identity term.

**Fag (got):** A derogatory term referring to a gay person, or someone perceived as queer. Occasionally used as a self-identifying affirming term by some gay men, at times in the shortened form – fag.

**Femme:** Someone who identifies themselves as feminine, whether it be physically, mentally or emotionally. Often used to refer to a feminine-presenting queer woman.

**FtM/F2M; MtF/M2F:** The abbreviation for female-to-male transgender or transsexual person; abbreviation for male-to-female transgender or transsexual person.

**Gay:** A person who is attracted primarily to members of the same sex. Although it can be used for any sex (e.g. gay man, gay woman, gay person), "lesbian" is sometimes the preferred term for women who are attracted to women.

**Gender Binary:** The idea that there are only two genders – male/female or man/woman and that a person must be strictly gendered as either.

**Gender Expression:** A term which refers to the ways in which we each manifest masculinity or femininity. It is usually an extension of our “gender identity,” our innate sense of being male, female, etc. Each of us expresses a particular gender every day – by the way we style our hair, select our clothing, or even the way we stand. Our speech, appearance, behavior, movement and other factors signal that we feel – and wish to be understood – as masculine or feminine, or as a man or a woman.

**Gender Identity:** The sense of “being” male, female, genderqueer, a gender, etc. For some people, gender identity is in accord with physical anatomy. For transgender people, gender identity may differ from physical anatomy or expected social roles. It is important to note gender identity, biological sex, and sexual orientation are separate and that you cannot assume how someone identifies in one category based on how they identify in another category.

**Gender Non-Conforming (GNC):** Someone who’s gender presentation, whether by nature or by choice, does not align in a predicted fashion with gender-based expectations.

**Gender Normative/Gender Straight:** Someone who’s gender presentation, whether by nature or by choice, aligns with society’s gender-based expectation.

**Gynesexual/Gynephilic:** Attraction to women, females and/or femininity.

**Genderqueer:** A term which refers to individuals who “queer” or problematize the hegemonic notions of sex, gender and desire in a given society. Genderqueer people possess identities which fall outside of the widely accepted sexual binary (i.e. “men” and “women”). Genderqueer may also refer to people who identify as both transgendered and queer, (i.e. Individuals who challenged both gender and sexuality regimes and see gender identity and sexual orientation as overlapping and interconnected).

**Heteronormativity:** The assumption, in individuals or in institutions that everyone is heterosexual, and that heterosexuality is superior to all other sexualities. Leads to invisibility and stigmatizing of other sexualities. Often included in this concept is a level of gender normativity and gender roles, the assumption that individuals should identify as men and women, and as masculine men and feminine women, and finally that men and women are a complimentary pair.

**Heterosexism:** Behavior that grants preferential treatment to heterosexual people, reinforces the idea that heterosexuality is somehow better or more “right” than queerness or makes other sexualities invisible.

**Heterosexual:** A person who is only attracted to members of the opposite sex. Also called “straight.”

**Homophobia:** A range of negative attitudes and feelings toward homosexuality or people who are identified or perceived as being lesbian, gay, bisexual or transgender, etc. Attitudes can be

expressed through antipathy, contempt, prejudice, aversion, or hatred, may be based on irrational fear, and is sometimes related to religious beliefs.

**Homosexual:** A clinical term for people who are attracted to the same sex.

**Intersex:** A person whose sexual anatomy or chromosome do not fit with the traditional markers of “female” and “male.” For example: people born with both female and male anatomy (penis, testicles, vagina, and uterus), people born with XXY chromosome.

**In the Closet:** Describes a person who keeps their sexual orientation or gender identity a secret from some or all people.

**LGBT, LGBTQ, LGBTQI, LGBTQA, TBLG:** These acronyms refer to Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Asexual or Ally and Intersex. Although all of the different identities with “LGBT” are often lumped together, there are specific needs and concerns related to each individual.

**Lesbian:** A woman who is primarily attracted to other woman.

**Lipstick Lesbian:** Usually refers to a lesbian with a feminine gender expression. Can be used in a positive or a derogatory way. Is sometimes also used to refer to a lesbian who is assumed to be (or passes for) straight.

**Metrosexual:** A man with strong aesthetic sense who spends more time, energy or money on this appearance and grooming than is considered gender normative.

**MSM/WSW:** Initialisms for “men who have sex with men” and “women who have sex with women,” to distinguish sexual behaviors from sexual identities (e.g., because a man is straight, it doesn’t mean he is not having sex with men. The initialism is often used in the field of HIV/Aids education, prevention and treatment.

**Mx.:** Is a title (e.g. Mr., Ms., etc.) that is gender neutral. It is often the option of choice for people who do not identify within the cisgender binary.

**Nádleehi:** Navajo term that identifies a person who is biologically male and who takes on feminine roles.

**Náadleeli:** Navajo term that identifies First Man and First Woman’s twins. The Hero twins were neither male or female. They possess both sex organs.

**Náádleeh:** Navajo term that identifies contemporary LGBTQ where persons identify with either masculine or feminine roles opposite their biological sex organ identification.

**Outing:** The involuntary or unwanted disclosure of another person’s sexual orientation, gender identity or intersex status.

**Pansexual:** A person who experiences sexual, romantic, physical, and/or someone feels towards others. Often labeled based on the gender identity/expression of the person and who they are attracted to. Common labels: lesbian, gay, bisexual, pansexual, etc.

**Passing:** A term for trans\* people being accepted as or able to “pass for,” a member of their self-identified gender/sex identify (regardless of birth). An LGB/queer individual who can is believed to be or perceived as straight.

**Polyamory/Polyamorous:** Refers to the practice of, desire to, or orientation towards having ethically honest consensual non-monogamous relations (i.e. relationships that many include multiple partners). This may include open relationships, polyfidelity (which involves more than two people being in romantic and /or sexual relationships which is not open to additional partners), amongst many other set ups.

**Queer:** An inclusive term sometimes used by LGBTQA people to refer to the entire LGBTQI community. An alternative that some people use to “queer” the ideal of the labels and categories such as lesbian, gay, bisexual, etc. Similar to the concept of genderqueer. It is important to note the word queer is an in-group term, and a word that can be considered offensive to some people, depending on their generation, geographic location and relationship with the word.

**Questioning:** For some, the process of exploring and discovering one’s own sexual orientation, gender identity or gender expression, (similar to bicurious).

**Sexual Orientation:** The type of sexual, romantic and physical attraction someone feels toward others. Often labels based on the gender identity/expression of the person and who they are attracted to. Common labels: lesbian, gay, bisexual, pansexual, etc.

**Sexual Preference:** The types of sexual intercourse, stimulation and gratification one likes to receive and participate in. Generally when this term is used, it is being mistakenly interchanged with “sexual orientation,” creating an illusion that one has a choice (or “preference”) in who they are attracted to.

**Sexual Reassignment Surgery/SRS:** A term used by medical professionals to refer to a group of surgical options that alter a person’s biological sex. “Gender confirmation surgery” is considered by many to be a more affirming term. In most cases, one or multiply surgeries are required to achieve legal recognition of gender variance. Some refer to different surgical procedures as “top” surgery and “bottom” surgery to discuss what type of surgery they are having without having to be more explicit.

**Stud:** A term most commonly used to indicate a Black/African-American and/or Latina masculine lesbian/queer woman. Also known as “butch” or “aggressive.”

**Trans\*/Transgender:** This term as many definitions. It is frequently used as an umbrella term to refer to all people who do not identity with their assigned gender at birth or the binary gender

system. This includes transsexuals, cross-dressers, genderqueer, drag kings, drag queens, two-spirit people, and others. Some transgender people feel they exist not within one of the two standard gender categories, but rather somewhere between, beyond or outside of those two genders.

**Transitioning:** This term is primarily used to refer to the process a trans\* person undergoes when changing their bodily appearance either to be more congruent with the gender/sex they feel themselves to be and/or to be in harmony with their preferred gender expression.

**Transman/Transwoman:** An identity label sometimes adopted by female-to-male transgender people or transsexuals to signify that they are men while still affirming their history as assigned female sex at birth, (sometimes refer to as transguy). Identity label sometimes adopted by male-to-female transsexuals or transgender people to signify that they are women while still affirming their history as assigned male sex at birth.

**Transphobia:** The fear or hatred of transgender people or gender non-conforming behavior. Like biphobia, transphobia can also exist among lesbian, gay and bisexual people, as well as among heterosexual people.

**Transsexual:** A person whose gender identity is different from their biological sex, who may undergo medical treatments to change their biological sex, often times to align it with their gender identity or they may live their lives as another sex.

**Transvestite:** A person who dresses as the binary opposite gender expression (“cross-dresses”) for any one of many reasons, including relaxation, fun, and sexual gratification (often called a “cross-dresser,” and should not be confused with transsexual).

**Two-Spirit:** An umbrella term traditionally used by Native American people to recognize individuals who possess qualities or fulfill roles of both genders.

**Ze/Hir:** Alternative pronouns that are gender neutral and preferred by some trans\* people. Pronounced; ‘zee’ and ‘here’ they replace “he” and “she” and “his” and “hers” respectively. Alternatively, some people who are not comfortable do not embrace he/she use the plural pronoun “they/their” as gender neutral singular pronoun.

## APPENDIX C A Candid Interview with Two Navajo Gay Men

On September 23<sup>rd</sup>, 2015, NNHRC staff interviewed Jack Jackson Jr. and Mellor Willie of Washington DC. Both identify themselves as gay. They are educated professionals married to non-indigenous spouses. The opportunity to interview them provided a perspective into issues that confronted them as married gay men, how they dealt with these issues and how their families reacted after coming out. Our interviewed also addressed the Diné Marriage Act and how they perceive the Act in their current marital relations. For the most part, the lack of resources, recognition of equality and the importance of Navajo tradition and cultural were significant themes in the three hour meeting.

Both chose to move away from the Navajo Nation to seek better lives for themselves and their partners. Their legal rights as a married couple symbolized doing the right thing as married couples. The benefits of their marriages is no different than what is found in a monogamous heterosexual marriage. The realization that the Navajo Nation and the government is not ready to embrace the ideal of same sex marriage was not the principle reason why these couples choose to remain off the Navajo Nation. Navajo's opposition to same sex marriage when compared to employment opportunities, professional desires, social and other economic benefits support and justify a quality of life that the Navajo Nation cannot provide. Social acceptance, legal, housing and medical resources also factored into why they remain where they are today. Resources off the Navajo Nation for LGBTQ communities are more diverse where expertise, acceptance and advancement go hand in hand.

What was apparent at the beginning of our conversation was how important Navajo traditional teachings served in their acceptance and understanding of being gay. Both of these individuals come from strong Navajo traditional upbringings where family kinship and Navajo ceremonies served as the foundation in which they aspired from. Coming out gay was of course difficult and difficult for some family members to accept. But as time pasted changes occurred. The concept that every family member has a role in the family played a significant part in the acceptance and understanding of this person's life. Families learned to depend on one another and from this respect evolved. The traditional role of *helping out* and *stepping up* to do chores and complete assignments were the bases for acceptance of their gay lifestyle with family. If there is a message that can be press upon young adults undergoing gender identity issues, Mellor and Jack found strengthen in Navajo culture and drew self-assurance from these teachings. The solutions for understanding their own sexuality were found within Navajo teachings.

They shared common concerns about discrimination on the Navajo Nation. While they have heard about housing and employment discrimination they themselves had not been victims to these types of discrimination. They both can see how current housing policies on the Navajo Nation and marital status can configured into denying a person a home simply because a person

is in a same sex relation. These policies and the interpretation of such policies need to be revisited, especially since funding derives from the federal government. Whatever measures that are put in place, both Jackson and Willie insist individual rights be recognized and equality serve all. The prevalence of discrimination against the gay community must be confronted with the equal application of the law and no less. Unfortunately, they also recognize that many, many Navajo citizens remain complacent and rather not raise this issue. They both see persistence and public education as avenues that bring this discussion to the table of Navajo leaders. Until a strategic plan is in place that involves the international principle of free, prior and informed consent, this issue- the LGBTQ issue, will not get the attention that is needed.

Both Jackson and Willie, stress the importance of raising the equity variable in the Diné Marriage Act. The right to marry a person of the same sex received a favorable decision when the United States Supreme Court rendered its opinion on June 26, 2015 which allowed the recognition of same-sex marriages nationwide. Although they are committed to upholding their marriage vows and the commitment to marriage, they believe the Navajo's marriage law denies same sex couples the right to equal protection under the U.S. Constitution. Moreover the Navajo Bill of Rights is meaningless when there is no equal application of the law either. These reactions by Navajo leaders about same sex marriage is contrary to the principles of K'é and Hozhooji of Navajo Fundamental law. Both surmise change and adaptation of lifeways are recognized in K'é and Hozhooji. However, with the current interpretation of the Diné Marriage Law, the LGBTQ community will continue to find acceptance including equal dignity before the law off the Navajo Nation.

The aspect of Navajo common law and its application as an alternative form of marriage that could be recognized on the Navajo Nation was quickly dismissed. Navajo common law to both Jackson and Willie, was equivalent to sitting on the fence. There would be no advancement to same sex marriage and more importantly, no public education to advance the issues these couples encounter. The right to marry whoever one chooses is important, but the right to have the same-sex marriage recognized before Navajo law is imperative. Mellor Willie had an interesting analysis as to why Navajo legislatures turned away from recognizing gay marriages. Willie prophesied that gay marriage itself is not the threat. The fear is that Navajo culture will be lost. The solutions can be found in tribal sovereignty, which recognizes self-governance. Indigenous peoples are self-governing and by virtue of that status the Navajo people should decide on this matter themselves according to both men.

Drug use and alcohol seem to be the easier solution for resolving problems that confront young gay males today. If and when legislation is brought before Navajo Nation Council, it is hoped that a thorough understanding of the history and the emergence of the gay community within the Navajo Nation be articulated. This includes colonization and how European and Christian influences changed the view of sexuality. Federal funding and its application to Navajo Nation programs also need to be reviewed, as it is clear, discrimination based on sexual

orientation can be a means to withhold funding. Both Jackson and Willie emphasize that human rights allows for the recognition of change and adaptation. This should be that starting point.



## APPENDIX D

### Navajo Nation Human Rights Commission

#### Diné Principals on Life-Ways

##### **Preambular**

Diné People are resilient, compassionate people; has lived in the midst of the four sacred mountains since time immemorial. Diné people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The Diné people define their existence in accordance with and be governed by their traditions, values and culture based on Sa'a Naaghai Bik'e Hozhoo, Hashkééjí, Hózhóójí and K'é (given to them by the Holy People since time immemorial).

##### **Principals**

Diné culture, traditions and values must be passed on from generation to generation in order to rejuvenate, preserve, protect and manifest the culture, traditions and values.

Diné people respect the environment, earth, metaphysics, nature, and all other forms of existence. In accordance with Diné tradition and culture, all forms of living beings must be protected in a dignified manner. (bich'ááh na'adá)

Diné basket defines that every Diné person has the responsibility to life, liberty and pursuit of happiness in accordance with Diné chants and ceremonies.

Diné people are compassionate (sih nisin, sih hasin, hajooba', 'aháánihts'íikees, ayoo'o'o'ne') people and recognize in one's life that there is suffering and well-being. It is the duty of the Navajo people to maintain harmony.

Diné women are held important in the Diné society, which is why a Diné person will trace their lineage through their mother and Diné married couples develop residence where the wife's parents live.

Diné people accept (yoosaah, doozhoogo) family members as they are, without any condition.

Diné people can adapt and acclimate to the existing conditions.



## APPENDIX E

### NN Council Delegate Weatherspoon's presentation at the Alta Conference Preparatory

## **WORLD CONFERENCE ON INDIGENOUS PEOPLES ALTA PREPARATORY CONFERENCE**

### **Report by Dwight Witherspoon, Navajo Nation Council Delegate, and Navajo Nation Human Rights Commission**

#### **INTRODUCTION**

Navajo Nation participated in international meetings to negotiate the draft United Nations Declaration on the Rights of Indigenous Peoples ("Declaration"). Over fifteen years the United Nations negotiated with indigenous peoples the content of Declaration where Navajo Nation provided specific recommendations. In September 2007, UN General Assembly adopted the Declaration; however, United States, Canada, New Zealand and Australia voted against the Declaration.

Since the adoption of the Declaration, several initiatives were instituted either as ongoing or new efforts by the UN system, including but not limited to establishing the Expert Mechanism on Indigenous Peoples' Rights, appointment of Professor James Anaya as Special Rapporteur, and assessment of United States' human rights record by the UN Human Rights Council. As part of the UN effort to implement the Declaration, the UN General Assembly in 2010 set aside September 2014 to hold the World Conference on Indigenous Peoples ("WCIP"). The purpose of WCIP is "to share perspectives and best practices on the realization of the rights of indigenous peoples, including to pursue the objectives of the United Nations Declaration on the Rights of Indigenous Peoples."<sup>1</sup> Since 2010, the UN devised a systematic way to receive input from indigenous peoples, and UN accepted the Norwegian government's offer to host an indigenous peoples preparatory meeting at Alta, Norway in June 2013.<sup>2</sup>

#### **BACKGROUND**

Navajo Nation Human Rights Commission ("Commission") initiated study in spring of 2009. With the assistance of a Navajo college student, research was conducted to examine the UN system and the need for Navajo Nation's continued involvement in UN activities. The conclusion reached by the Commission was to advance the position that Navajo Nation becomes a permanent observer in the UN system. The Commission by resolution recommended the permanent observer status and Navajo Nation Council,

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<sup>1</sup>United Nations General Assembly Resolution A/RES/65/198, paragraph 8.

<sup>2</sup> The WCIP preparatory conference at Alta, Norway was organized by regions and caucuses. UN system recognized seven regions and two caucuses: 1) Africa; 2) Asia; 3) Central, South America and Caribbean; 4) Arctic; 5) Eastern Europe, Russia Federation, Central Asia and Transcaucasia; 6) North America; 7) Pacific; 8) Women's Caucus; and 9) Youth Caucus. Global Coordinating Groups were formulated to disseminate information to their respective regions and agencies and also organize the "bureau" that will oversee the Alta Conference. The "bureau" selects the co-chairpersons that preside over the conference.

Intergovernmental Relations Committee, by Resolution IGRCAU-121-09 supported the Commission and authorized the Commission to advocate for the special recognition in the UN system.

In addition, also by authorization by the Intergovernmental Relations Committee resolution, the Commission registered a complaint with UN Special Rapporteur on Indigenous Issues, Professor S. James Anaya, stating that U.S. Forest Service is violating Navajo and other indigenous peoples' human rights by issuing use permit to Arizona Snowbowl to operate a ski resort. In August 2011, Special Rapporteur Anaya issued his report on the desecration of San Francisco Peaks with recommendations to the United States. Naabik'iyat'i' Committee of the Navajo Nation Council by resolution NABIS-58-11 acknowledged Professor Anaya's report and authorized the Navajo Nation President and Vice President, Speaker of the Navajo Nation Council, their designees, and the Navajo Nation Human Rights Commission "to do all things necessary to protect and advocate for the human rights of the Navajo people as they pertain to the San Francisco Peaks, sacred site for the Navajo people."<sup>3</sup>

### **PREPARATORY EFFORTS**

Navajo Nation worked with National Congress of American Indians ("NCAI"), Indian Law Resources Center ("ILRC") and other indigenous organizations and nations to arrive at an understanding and unify on positions to be advanced through the United Nations Permanent Forum on Indigenous Issues ("UNPFII"). UNPFII conducts an annual meeting in New York, NY; the 2013 session was held on May 20-31.

In preparation for the Alta, Norway Conference, Navajo Nation signed onto an intervention delivered by Mr. Darwin Hill, *Haudenosaunee Chief*, on behalf of 72 indigenous nations seeking three issues to be addressed during the WCIP at New York. The three issues are:

1. United Nations establish a new body responsible for promoting state implementation of the Declaration on the Rights of Indigenous Peoples and monitoring states' actions with regard to indigenous peoples' rights.
2. Three-pronged course of action to address the problem of violence against indigenous women:
  - a. A decision to convene a high-level conference to examine challenges to the safety and well-being of indigenous women and children and to share perspectives and best practices.
  - b. A decision to require that the UN body for monitoring and implementing the Declaration (recommended above) give particular attention, on at least an annual basis, "to the rights and special needs of indigenous ... women, youth, children and elders ... in the implementation of the Declaration"; and
  - c. A decision to appoint a Special Rapporteur to focus exclusively on

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<sup>3</sup> Resolution of the Naabik'iyat'i' Committee of the Navajo Nation Council. NABIS-58-11. Section 3. Authorization, paragraph C.

human rights issues of indigenous women and children, including but not limited to violence against them and on changing state laws that discriminate against them.

3. Action be taken to give indigenous peoples, especially indigenous constitutional and customary governments, a dignified and appropriate status for participating regularly in UN activities.

The three recommendations were analyzed against the draft Alta outcome document circulated at the Alta, Norway conference.<sup>4</sup> Proposed amendments were developed for presentation during the Native American Indigenous Peoples' Caucus ("NAIPC") meetings at Alta, Norway. The comparison and contrast matrix is attached here to as Exhibit "A".

## **PARTICIPATION IN ALTA CONFERENCE**

The Alta Conference took place at Alta, *Norway*, hosted by the Sami Parliament. In advance of the conference, registration was opened on June 8th and regional and caucus meetings took place on June 9th. From June 10 to June 12, 2013, the regions and caucuses met in plenary sessions to provide recommendations on the drafting of the Alta outcome document. In between the plenary sessions, the regions and caucuses met to continue assessing and formulating recommendations towards the adoption of the final outcome document.

### **North America Indigenous Peoples' Caucus Meetings**

Navajo Nation participated in the NAIPC meetings to advance three issues: 1) United Nations establish a new monitoring mechanism the reports and promotes the implementation of the Declaration; 2) address violence against indigenous women; and 3) establish special recognition of indigenous peoples/nations in UN system. On Sunday, June 9th Navajo Nation presented proposed amendments to the draft Alta outcome document as provided in Exhibit "A".

Navajo Nation demonstrated that there is a need for an entirely new entity which would be dedicated monitoring, reporting and promoting the full implementation of the Declaration. There were concerns raised from among NAIPC members that UN has already designated the Special Rapporteur on Indigenous Issues, Expert Mechanism on Rights of Indigenous Peoples and Permanent Forum on Indigenous Issues to concentrate on indigenous issues. However, there is a clear need for a monitoring agency to assess nation-states regarding their implementation of the Declaration. At the conclusion of the debate over the amendment offered by the Navajo Nation, NAIPC achieved consensus to add language to the draft Alta outcome document to include "new" UN monitoring agency.

While Navajo Nation supported the need to have a UN high level meeting on indigenous women, designate special rapporteur on indigenous women and institute a monitoring

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<sup>4</sup> A team of drafter that met at Madrid, Spain earlier in the year developed the draft Alta Outcome Document. The drafters had representation from the seven regions and two caucuses.

body, it became clear during the NAIPC meetings that recommendations on indigenous women issues should be addressed by the women's caucus. Moreover, participants in the NAIPC meetings expressed concerns that recommendations to specifically address indigenous women issues may in fact be a counter effort to achieving the recognition of rights for all indigenous peoples. In other words, the point was raised that indigenous women are a part of the concerned indigenous peoples; these concerns were raised by indigenous women in the NAIPC meetings.

In addition, there were concerns raised by NAIPC members that there already exists a UN Special Rapporteur on Violence against Women; that recommending the establishment of a new special rapporteur on indigenous women may in fact be duplicate the work performed by the current Special Rapporteur. Therefore, Navajo Nation did not offer the recommendation to establish a new special rapporteur on indigenous women, instead recommended language to require full and effective participation by indigenous women when states institute efforts to strength protection of indigenous women.

The Navajo recommendation that gained significant debate was UN to create special recognition and status for indigenous peoples and nations in UN system, but not as non-government organization status. Questions were raised pertaining to the word "constitutional and customary" indigenous governments. Some NAIPC members were concerned that constitutional indigenous governments mean Indian Reorganization Act government, PL208 governments. These forms of indigenous governments are in fact puppets of US government. As a response to points raised that current "tribal governments" are not representative of indigenous beliefs, Navajo noted that no one at the NAIPC meeting should criticize choices made by indigenous leaders when they lead their peoples to accept the U.S. federal policies under the prevailing circumstances. However, there are traditional indigenous governments that pre-existed the contact by colonizers that govern in the 21st century; these traditional governments exist either through adopted written constitutions or unwritten constitutions. After several hours of debate, NAIPC formulated a paragraph that attempts to revisit human rights issues that were vetted and discussed during the adoption of the Declaration. As an example, NAIPC members assert that indigenous right to self-determination as recognized under Article 3 must be recognized under the binding international treaties often referred to as Covenants Article 1.5

### **Plenary Alta Conference**

The plenary Alta conference took place inside the Alta activity center. Conference organizers report that two hundred delegates and six hundred observers attended the three-day conference. On Tuesday, NAIPC presented recommendations from the caucus

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<sup>5</sup> Covenant on Civil and Political Rights, Article 1, Paragraph 1: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Covenant on Economic, Social and Cultural Rights, Article 1, Paragraph 1: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

regarding the Alta draft outcome document. Navajo Nation followed with an intervention from the floor of the conference by supporting the UN permanent observer status recommended by the caucus; attached as Exhibit "B" is Navajo intervention. The permanent observer status survived the first round of review with a number of changes made by the Arctic and Asian regions. Sami Parliament representative, Jon Henricksen, expressed support for permanent observer status as presented by Navajo Nation. The original proposal was changed several times but NAIPC supported the language stating "at a minimum" indigenous nations and peoples need to be recognized by the UN system as permanent observers.

A Skype teleconference was conducted on Tuesday with NCAI, Navajo Nation and ILRC. There was strong concern shared by those on the teleconference regarding the proposal to have at a minimum permanent observer status for indigenous peoples and nation in the UN system. Navajo Nation continued to negotiate with Sami representatives to ensure that *at the minimum* indigenous peoples and nations are recognized as permanent observers in UN system. During the remainder of the Alta conference, Sami Parliament representative, Jon Henricksen, continued to express support to Navajo Nation regarding the language as permanent observer status provided in the Alta outcome document that reached consensus on Wednesday, June 12, 2013. The final Alta Outcome Document is attached as Exhibit "C".

## **MEETING WITH SAMI PARLIAMENT**

On June 13th, the Navajo delegation visited the Sami Parliament at Karasjok, Norway; three hours drive southeast of Alta. The Navajo Nation partnered with the Sami Parliament to advocate for the UN system to recognize indigenous nations by allowing them to formally participate in the UN activities. The following are some information shared with the Navajo delegation:

1. Sami Parliament a part of Norwegian government: while the Sami people are indigenous to the northern parts of Norway, Sweden, and Finland, and western portion of Russia, recently the Norwegian government started to appropriate funds to the Sami Parliament;
2. Sami Parliament administers programs: Sami parliament presently has not achieved the ability to make laws for Sami people, except the Norwegian government appropriates funds for the parliament to implement programs for the Sami people that otherwise would be administered by the Norwegian government;
3. Sami lands and territories: while Sami people live in Norway, Sweden, Finland and Russia, their lands have not been demarcated and ownership of resources difficult to address. Sami Parliament intends to seek ways and means to ensure its people's territories, resources and lands are recognized by the Norwegian government; and
4. Sami language: Sami people have made significant strides to ensure their indigenous language is preserved, including the assurance that computer software programs are written in the Sami language. However, with the recent upgrades in the computer operating systems, Microsoft has not upgraded its software to ensure Sami language is used to run the software.

Sami Parliament requested to engage the Navajo Nation on human rights issues, especially the need to ensure that computer operating systems are upgraded by assuring that major corporations properly accommodate indigenous languages.

## **RECOMMENDATIONS**

There are several UN activities that concentrate on indigenous rights, including human rights violations raised by the Navajo Nation Human Rights Commission. These activities are in addition to the WCIP to take place in September 2014.

### **Unified Effort by Indigenous Nations**

Indigenous nations have been absent from UN discussions pertaining to indigenous peoples' human rights. Post Alta conference, Navajo Nation should take the lead to unify other indigenous nations to ensure significant participation towards the final planning and WCIP conference in September 2014. The world community will use the Alta Outcome Document as a consensus document from world wide indigenous peoples although a few North American indigenous nations participated in the Alta conference. Presently, Non-Government Organizations ("NGO's") have been at the forefront advocating for indigenous human rights and portraying they represent indigenous peoples, while they are not accountable to any indigenous electorate. Indigenous nations must fully participate in NAIPC.

### **Navajo Participation in WCIP**

One of the proposals presented to NAIPC was support and recommendation to have a specific representative from Haudenosaunee speak on the floor of WCIP. Navajo Nation interjected this request by stating that Navajo Nation must speak on the floor of WCIP. Thus, Navajo Nation must take measurable and strategic effort to ensure its representatives not only participate in the WCIP but also speak to members of UN during the plenary WCIP session.

### **Navajo Nation host Post Alta meeting with Indigenous Leaders**

Alta Outcome Document is setting the stage for nation-states to comment and react between June 2013 and September 2014, preparatory period leading to WCIP. WCIP is a historic moment for indigenous human rights where all UN member states have the opportunity to discuss these rights. In order to solidify efforts to recognize indigenous human rights in the United States, Navajo Nation should host a post Alta conference meeting at the new Twin Arrows casino. The post Alta gathering would be an opportunity for indigenous leaders to become familiar with Alta Outcome Document and refine human rights issues that would be advanced to WCIP. United States Department of State is planning an indigenous leaders listening session to take place at Washington, DC either on August 7, 13, 14 or 15, 2013.

### **Inter Tribal Council of Arizona Sacred Site/Places Summit**

Inter Tribal Council of Arizona ("ITCA") is planning a sacred site/places summit to take place in fall of 2013. The summit is intended to concentrate on how United States domestic laws do not fully protect indigenous sacred sites and places. Navajo Nation should impress on ITCA to also dedicate a portion of their summit where indigenous leaders can develop additional and specific recommendations on implementing Alta Outcome Document, Theme 1, paragraph 2.

## **UN Activities**

There are several United Nations activities that may shape the WCIP, especially the recommendations contained in the Alta Outcome Document. Navajo Nation's participation in these meetings is necessary and needed.

- EXPERT MECHANISM ON RIGHTS OF INDIGENOUS PEOPLES:<sup>6</sup> after adoption of the Declaration by the UN General Assembly in September 2007, UN established the Expert Mechanism on Rights of Indigenous Peoples ("EMRIP") to study and provide thematic recommendations on indigenous rights to the Human Rights Council. EMRIP is scheduled to meet in Geneva, Switzerland, on July 8 – 12, 2013. EMRIP will address WCIP.
- HUMAN RIGHTS COMMITTEE:<sup>7</sup> the United States will be under review by the UN Human Rights Committee as they pertain to the implementation and compliance with the International Covenant on Civil and Political Rights. US is a party to the international treaty and submitted a report to HRC detailing its domestic efforts to draw on CCPR. Navajo Nation is invited to participate in the HRC meeting to take place at Geneva, Switzerland, on October 14– November 1, 2013. US has not been scheduled as to when HRC will review its report during the October-November session.
- MEXICO POST ALTA CONFERENCE GATHERING: during the Alta conference, a diplomat from Mexico announced that Mexico is planning on hosting a post Alta conference where indigenous leaders will be invited to attend the meeting. It is not clear when this conference will take place but more likely in January or February 2014 in Mexico. The purpose of the meeting is to further the work on the Alta Outcome Document.

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<sup>6</sup> EMRIP was established in 2007 by the Human Rights Council as its subsidiary body to "provide the Council with thematic expertise on the rights of indigenous peoples in the manner and form requested by the Council: (a) The thematic expertise will focus mainly on studies and research-based advice; and (b) The mechanism may suggest proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council." Resolution 6/36.

<sup>7</sup> International Covenant on Civil and Political Rights was adopted in 1966 by the UN General Assembly. It is considered one of the international bills of human rights. In the international treaty, Part IV, Article 28 established the Human Rights Committee. HRC is made up of independent experts the reviews complaints filed with it. US ratified the treaty in 1972.

- COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION:<sup>8</sup> Navajo Nation and International Indian Treaty Council filed a complaint with the Committee on the Elimination of Racial Discrimination ("CERD") in August 2011. The complaint pertained to human rights violations by the US by issuing permits to Arizona Snowbowl to use treated waste-water to make artificial snow. United States more likely will be reviewed by CERD during the first CERD session in 2014. Navajo Nation must not only lobby but also provide side events to provide additional information to CERD member prior to the 2014 first session.

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<sup>8</sup> Similar to the Human Rights Committee, Committee on the Elimination of Racial Discrimination was established under the International Covenant on the Elimination of all Forms of Racial Discrimination, Part II, Article 8. ICERD was adopted in 1965. US ratified the treaty in 1994.

North American Indigenous Peoples Caucus  
 Alta, Norway  
 June 9, 2013

Issues	Drafting Team Recommendations	72 Indigenous Nations' Recommendations	RECOMMENDED CHANGES to Alta Outcome Document
<p>Establish new UN monitoring mechanism to implement UNDRIP</p>	<p>Theme Two                      1. <i>Recommend</i> the creation of a United Nations body with a mandate to promote, monitor and review the implementation of the rights of Indigenous Peoples, including but not limited to those affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, and that such a body be established with the full, equal and effective participation of Indigenous Peoples;</p>	<p>United Nations establish a new body responsible for promoting state implementation of the Declaration on the Rights of Indigenous Peoples and monitoring states' actions with regard to indigenous peoples' rights</p>	<p>Theme Two                      1. <i>Recommend</i> the creation of a <u>new</u> United Nations body with a mandate to promote, monitor and review the implementation of the rights of Indigenous Peoples, including but not limited to those affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, and that such a body be established with the full, equal and effective participation of Indigenous Peoples <u>and Nations</u>;</p>
<p>Address violence against indigenous women and</p>	<p>Theme Three  <i>Recommend</i> that States</p>	<ul style="list-style-type: none"> <li>• Hold high-level conference</li> </ul>	<p>Theme Three                      4. <i>Recommend</i> that States</p>

## EXHIBIT "A"

<p><b>children</b></p>	<p>uphold and implement the rights of indigenous women as well as strengthen the protection of indigenous women through the formulation and implementation of effective laws, policies and strategies; and that States with the full, equal and effective participation of Indigenous women take immediate action to review and monitor the situation of indigenous women and provide comprehensive reports on violence against indigenous women and girls, particularly sexual violence and violence in the context of armed conflict;</p>	<ul style="list-style-type: none"> <li>• UN monitoring body give special attention to this issue</li> <li>• Appoint special rapporteur on indigenous women</li> </ul>	<p>uphold and implement. with <u>the full and effective participation by indigenous women concerned.</u> the rights of indigenous women as well as strengthen the protection of indigenous women through the formulation and implementation of effective laws, policies and strategies; and that States with the full, equal and effective participation of Indigenous women take immediate action to review and monitor <u>by the U.N. Special Rapporteur on Violence Against Women, Its Causes and Consequences</u> the situation of indigenous women and provide comprehensive reports on violence against indigenous women and girls, particularly sexual violence and violence in the context of armed</p>
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# EXHIBIT "A"

			conflict;
<b>Indigenous peoples and nations formally participate in UN system</b>		Action be taken to give indigenous peoples, especially indigenous constitutional and customary governments, a dignified and appropriate status for participating regularly in UN activities	Theme Two 7. Recommends that the United Nations take action to give indigenous peoples, especially indigenous constitutional and customary governments, a dignified and appropriate status for participating regularly in UN activities.



# THE NAVAJO NATION

Intervention by  
Hon. Dwight Witherspoon, Council Delegate  
Navajo Nation Council  
June 11, 2013  
At the  
World Conference on Indigenous Peoples  
Preparatory Meeting at Alta, Norway

## I. Introduction

- a. Clans
- b. Member of the Navajo Nation Council
  - i. Governing Body of the Navajo Nation
  - ii. 24 members

## II. Declaration

The Navajo Nation participated in the negotiation of the U.N. Declaration on the Rights of Indigenous Peoples. When attending the U.N. meetings, Navajo Nation had to seek credentials under an NGO because the UN system did not recognize indigenous nations.

Articles 3, 4, 18, 19, *inter alia*, of the Declaration affirm that indigenous peoples, in the exercise of their right of self-determination, have governments equivalent to nation-states.

## III. Indigenous Nations

The United States government recognizes 566 indigenous nations and more have not been recognized. These indigenous nations exercise their right of self-determination, have lands, territories, resources and governments. We, indigenous nations are not non-government organizations. We are equivalent to the 192 UN member states. However, the UN system does not recognize participation by indigenous nations.

## IV. Recommendation

Therefore, working with the North American Indigenous Peoples Caucus, the Navajo Nation, based on its policy decision in 2009 and support by 72 indigenous nations in the U.S., seeks your support to add new paragraph 7 under Theme 2 to provide for indigenous nations and peoples to formally participate and have a seat at the table in the UN system.



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# WORLD CONFERENCE ON INDIGENOUS PEOPLES

A HIGH-LEVEL PLENARY MEETING OF THE GENERAL ASSEMBLY

EXHIBIT "C"

Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting  
of the General Assembly to be known as the World Conference on Indigenous Peoples  
10-12 June 2013, Alta

## ALTA OUTCOME DOCUMENT

### Introduction

We Indigenous Peoples and Nations (hereinafter referred to as Indigenous Peoples) representing the 7 global geo-political regions including representatives of the women's caucus and the youth caucus have gathered in the traditional territories and lands of the Sami people at Alta, Norway. Our purpose was to exchange views and proposals and develop collective recommendations on the UN High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples (hereinafter referred to as HLPN/WCIP), which will convene in New York, 22-23 September 2014. This document sets forth our recommendations along with the historical and current context of Indigenous Peoples.

### Preamble

As the original and distinct Peoples and Nations of our territories we abide by natural laws and have our own laws, spirituality and world views. We have our own governance structures, knowledge systems, values and the love, respect and lifeways, which form the basis of our identity as Indigenous Peoples and our relationship with the natural world.

Indigenous Peoples have been instrumental in the advocacy for and recognition of human rights including the collective and individual human rights of Indigenous Peoples and have participated in international forums and processes. This has, among other things, resulted in the adoption of the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (herein after referred to as the Declaration), the establishment of the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the UN Special Rapporteur on the Rights of Indigenous Peoples.

For centuries, we Indigenous Peoples have faced and continue to face colonization of our lands, territories, resources, air, ice, oceans and waters, mountains and forests. This has resulted in patterns of domination, exploitation and subjugation of our Peoples. Such patterns can be traced to claims of discovery and conquest, papal bulls, royal charters, "manifest destiny" and other erroneous and legally invalid doctrines.

These claims have manifested in colonial strategies, policies, and actions designed to destroy Indigenous Peoples thereby resulting in the ongoing usurpation of Indigenous Peoples' lands, territories, resources, air, ice, oceans and waters and, mountains and forests; extensive destruction of Indigenous Peoples' political and legal institutions; discriminatory practices of colonizing forces aimed at destroying Indigenous Peoples' cultures; failure to honour Treaties, agreements and other constructive arrangements with Indigenous Peoples and Nations; genocide, ecocide, loss of food sovereignty, crimes against humanity, war crimes and the militarization of Indigenous Peoples and our lands; corporatization and commodification of Indigenous Peoples and our natural resources; and the imposition of "development" models that are destroying the life-giving capacities and integrity of Mother Earth and producing a range of detrimental impacts of which climate change could prove to be the most destructive.

The provisions of the Declaration that affirm the inherent rights of Indigenous Peoples to participate fully in decision-making that affects us, will continue to guide and frame our work for the HLPW/WCIP.

We further affirm that nothing in this process or its outcomes may be interpreted as diminishing or eliminating any of the rights of Indigenous Peoples contained in the Declaration, or any of the other international standards which protect, defend and uphold the inherent economic, social, cultural, civil, political, educational and spiritual rights of Indigenous Peoples.

We reaffirm the peremptory norms of international law, including on equality and non-discrimination, and assert that the realization of the rights of Indigenous Peoples, including those affirmed in the Declaration, must be upheld by States, individually and collectively, free from all forms of discrimination including discrimination based on race, ethnicity, religion, gender, sexual orientation, age and disability. We also reaffirm that the Declaration must be regarded as the normative framework and basis for the Outcome Document and its full realization.

We affirm that the inherent and inalienable right of self determination is preeminent and is a prerequisite for the realization of all rights. We Indigenous Peoples, have the right of self determination and permanent sovereignty over our lands, territories, resources, air, ice, oceans and waters, mountains and forests.

We condemn violence against Indigenous women, youth and children as one of the worst human rights violations affecting Indigenous Peoples and families. Violence against Indigenous women, youth and children is dehumanizing and also affects their spiritual development and violates their fundamental rights.

We have identified four overarching themes that encapsulate those issues that are of greatest importance to us as Indigenous Peoples. We recommend that each overarching theme be the respective theme for each of the three round tables and the one interactive dialogue that make up the HLPW/WCIP. Each of the four themes are accompanied by specific and concrete recommendations for inclusion in the final Outcome Document of the HLPW/WCIP.

Theme 1: Indigenous Peoples' lands, territories, resources, oceans and waters

1. *In order* to fulfil their obligations to guarantee Indigenous Peoples' right of self determination and permanent sovereignty over our lands, territories, resources, air, ice, oceans and waters, mountains and forests, we recommend that States, as a matter of urgency, establish effective mechanisms through agreements reached with the Indigenous Peoples concerned, to effectively implement the aforementioned rights consistent with State's obligations under international law, the UN Charter, the Declaration and Treaties and agreements concluded with Indigenous Peoples and Nations;
2. *Recommend* that States affirm and recognize the right to the protection, preservation and restitution of our sacred places, sites and cultural landscapes and establish mechanisms that can effectively promote the implementation of these rights including through the allocation of sufficient financial resources;
3. *Recommend* that States, in keeping with Indigenous Peoples law, traditions, customs, and land tenure systems, and with the full, equal and effective participation of Indigenous Peoples, establish tribunals, commissions or other bodies with full judicial authority, to identify lands, territories and resources including lands taken without the free, prior and informed consent to which Indigenous Peoples have inherent rights through traditional ownership and/or use, including through delineation and demarcation, and to resolve disputes, including through the recovery of such lands, territories and resources. In all of the aforesaid situations, the laws, customs and usages of Indigenous Peoples shall be recognized;
4. *Recommend* that States comply with judicial pronouncements, decisions of national and international courts and recommendations of Treaty bodies and establish and provide adequate resources for effective redress for historical injustices in relation to Indigenous Peoples' lands, territories and natural resources;
5. *Recommend* that States with the full and effective participation of Indigenous Peoples establish mechanisms, to ensure the implementation of the right of free, prior and informed consent before entering the lands and territories of Indigenous Peoples, including in relation to extractive industries and other development activities. We further recommend that States cease the removal of Indigenous Peoples from their ancestral lands and territories. In cases where they are being or have been removed, displaced and/or dispossessed, States shall provide restitution or when this is not possible, just, fair and equitable compensation including the return of land and humanitarian assistance as required by the Indigenous Peoples affected;
6. *Recommend* that States uphold and respect the right of self determination and the free, prior and informed consent of Indigenous Peoples who do not want mining and other forms of resource extraction, "development" and technologies deemed as degrading to their human, cultural reproductive and ecosystem health. Where mining and other forms of resource extraction are already occurring, States shall develop mechanisms with the full and effective participation of Indigenous Peoples to develop a comprehensive strategy for ecologically sustainable and equitable development to end and prevent uncontrolled and unsustainable industrial contamination and degradation with plans for clean-up, remediation and restoration. Such a strategy shall incorporate strengthening the capacity of Indigenous youth in relation to sustainable development practices based on Indigenous knowledge and the

- relationship with the land as well as the protection and promotion of the important role of traditional knowledge holders including Indigenous Elders and women;
7. *Recommend* that States implement a comprehensive human rights and ecosystem based approach into all climate change measures and initiatives recognizing and valuing Indigenous world views including knowledge systems, technologies, innovations and practices, customary institutions and Indigenous governance, lands and resources, with enforceable safeguards in all climate agreements. We further recommend the urgent transition away from fossil fuel dependence towards decentralized, locally controlled, clean, renewable energy systems and infrastructure; and
  8. *Recommend* that States develop and enforce in conjunction with Indigenous Peoples legislation or policies to acknowledge and protect Indigenous Peoples' traditional and subsistence livelihoods and other customary or culturally based land and resource uses and Indigenous economies and that such legislation or policies be adopted with the free, prior, and Informed consent of Indigenous Peoples.

#### Theme 2: UN system action for the implementation of the rights of Indigenous Peoples

1. *Recommend* the creation of a new UN body with a mandate to promote, protect, monitor, review and report on the implementation of the rights of Indigenous Peoples, including but not limited to those affirmed in the Declaration, and that such a body be established with the full, equal and effective participation of Indigenous Peoples;
2. *Recommend* that the General Assembly call for the establishment of an international mechanism to provide oversight, redress, restitution and the implementation of Treaties, agreements and other constructive arrangements between Indigenous Peoples or Nations and States, predecessor and successor States;
3. *Recommend* that States provide legal recognition to Indigenous Peoples as Indigenous Peoples where so demanded by the Peoples concerned, consistent with the provisions of the Declaration that affirm the inherent rights of Indigenous Peoples;
4. *Recommend* that the General Assembly appoint an Under-Secretary General for Indigenous Peoples, in order to strengthen the capacity and efforts of the UN towards ensuring the full realization of the rights of Indigenous Peoples as well as the inclusion and reflection of these rights including the right to full and effective participation in decision making in all activities of the UN;
5. *Recommend* that all UN agencies, programs and funds engaging in activities impacting on Indigenous Peoples appoint an officer, or establish a team of officers on a permanent and full-time basis, with particular responsibility to ensure that all such activities are responsive to and adapted for the particular situation of Indigenous Peoples and to provide training and capacity building for all new and existing UN staff regarding Indigenous Peoples' rights;
6. *Recommend* that all UN agencies, funds and programmes engaging in activities impacting on Indigenous Peoples form advisory councils or forums composed of representatives of Indigenous Peoples including women, youth and persons with disabilities to engage in dialogue and provide advice on policy making and country and regional level operations;
7. *Recommend* that a review be undertaken of the nomination processes for UN mandated positions relating to Indigenous Peoples' rights to ensure that the processes are consistent

- with the Declaration. Further we recommend that more Indigenous candidates with expertise on Indigenous Peoples' rights be appointed to Treaty monitoring bodies;
8. *Recommend* that following the HLPW/WCIP, work be undertaken to organize an official UN World Conference on Indigenous Peoples with the full, equal and effective participation of Indigenous Peoples at all stages;
  9. *Call* on the World Heritage Committee, UNESCO and States to revise the World Heritage conventions operational guidelines to ensure the rights and territories of Indigenous Peoples are respected in the nomination, designation, management and monitoring of world heritage sites incorporating *or* affecting their lands, territories, resources, ice, oceans and waters, and mountains and forests and to ensure that Indigenous Peoples' right to free, prior and informed consent is obtained in world heritage decision making processes;
  10. *Pursuant* to the universal application of the right of self determination for all Peoples, recommends that the UN recognize Indigenous Peoples and Nations based on our original free existence, inherent sovereignty and the right of self determination in International law. We call for, at a minimum, permanent observer status within the UN system enabling our direct participation through our own governments and parliaments. Our own governments include *inter alia* our traditional councils and authorities;
  11. *Recommend* States, UN agencies and donor groups ensure the rights of Indigenous Peoples are respected in development aid cooperation; and
  12. *Recommend* that the Declaration be a minimum human rights standard used in the Human Rights Council Universal Periodic Review so that States are formally assessed in relation to their progress in implementing the rights of Indigenous Peoples.

### Theme 3: Implementation of the Rights of Indigenous Peoples

1. *Based* on the right of self determination Indigenous Peoples have the right and authority to develop and implement on an equal basis with States the standards and mechanisms that will govern relationships between them and, with the full, equal and effective participation of Indigenous Peoples we recommend that:
  - a) States develop processes to ensure that regional, constitutional, federal/national, provincial, and local laws, policies and procedures comply with the Declaration and other international human rights standards that uphold the rights of Indigenous Peoples;
  - b) Indigenous Peoples institutions, conflict resolution processes and juridical systems are respected and protected; and
  - c) that National Human Rights Institutions develop specific programmes that focus upon the implementation of the Declaration;
2. *Recommend* that States enter into new Treaties, agreements and other constructive arrangements with Indigenous Peoples and Nations as a way to effectively Implement their rights and resolve violent conflicts and disputes and that the implementation of all Treaties, agreements and other constructive arrangements be ongoing and effective;
3. *Recommend* that States using the principles of Indigenous consent, ownership, control and access, collect, analyze and disaggregate data on Indigenous Peoples, including Elders, women, youth, children and persons with disabilities, to help draft and implement public

- policy and legislation that better addresses the situation of Indigenous Elders, women, youth, children and persons with disabilities;
4. *Recommend* that States recognize that the implementation of the rights of Indigenous Peoples includes the review, formulation, amendment and implementation of laws, policies, and strategies and that these processes must be undertaken with the free, prior and informed consent of Indigenous Peoples, and be informed by evidence based on ethical collection, analysis, and the use of disaggregated data;
  5. *Recommend* that States uphold and implement the rights of Indigenous women as sacred life givers and nurturers as well as strengthen – with the full and effective participation of Indigenous women- the protection of Indigenous women and girls through the formulation and implementation of national, regional and International plans of action developed in conjunction with Indigenous Peoples effective laws, policies and strategies;
  6. *Recommend* States with the full, equal and effective participation of Indigenous women, youth and girls take immediate action to review, monitor and provide comprehensive reports on violence against Indigenous women, youth and girls, in particular sexual violence, domestic violence, trafficking and violence related to extractive industries as well as provide redress for victims;
  7. *Recommend* States cease current, and refrain from any further, militarization and initiate processes to demilitarize the lands, territories, waters and oceans of Indigenous Peoples. This can be achieved *inter alia* through the repeal and/or discontinuance of "anti terrorist", national security, immigration, border control and other special laws, regulations, operations and executive orders that violate the rights of Indigenous Peoples. Special measures should be taken to ensure the protection of Indigenous Elders, women, youth, children and persons with disabilities, particularly in the context of armed conflicts;
  8. *Recommend* that States in conjunction with Indigenous Peoples establish and develop commissions of inquiry or other independent, impartial and investigative mechanisms to document matters of impunity and other human rights concerns of Indigenous Peoples and to ensure that recommendations to governments to end impunity for violations of Indigenous Peoples' rights are effectively implemented. We further recommend that perpetrators be brought to justice and the victims compensated and rehabilitated;
  9. *Recommend* that States work proactively, nationally and internationally with the full equal and effective participation of Indigenous Peoples to develop effective mechanisms to identify and repatriate sacred and culturally significant items and ancestral remains, in accordance with Indigenous Peoples' customs, traditions and beliefs;
  10. *Recommend* that States fully honour and in conjunction with Indigenous Peoples create conditions for the right of self determination of Indigenous Peoples Including through formal decolonization processes to those Indigenous Peoples who seek it, and that all administering powers of non-self governing territories take all steps necessary to eradicate colonialism in all its forms and manifestations;
  11. *Recommend* that States, in conjunction with Indigenous Peoples support the effective implementation of Indigenous Peoples' right of self determination through providing financial support and revenue sharing to Indigenous Peoples;
  12. *Recommend* also that States, relevant UN system organizations and international financial institutions and donor organizations support the implementation of Indigenous Peoples' right of self determination including through capacity building to achieve this end in all regions;

13. *Further* recommend that, in keeping with our right of self determination and free prior and informed consent, Indigenous Peoples participate effectively and fully in the negotiations of all relevant international agreements that may affect them including multi lateral and bilateral trade and investment agreements and organizations including in the review of existing agreements;and
14. *Recommend* States establish regional mechanisms to monitor the implementation of the Declaration.

#### Theme 4: Indigenous Peoples' priorities for Development with free,prior and informed consent

1. *Indigenous Peoples'* priorities for development are predicated on the full, equal and effective recognition of our rights to lands, territories, resources, air, ice, oceans and waters, and, mountains and forests and the connection between customs, belief systems, values, languages, cultures and traditional knowledge. We therefore recommend that rights, culture and spiritual values be integrated into strategies that relate to development including sustainable development goals and the post 2015 UN Development Agenda;
2. *Recommend* States adopt public policies which guarantee the right to food, food sovereignty, food security and safety and the right to water and clean air for Indigenous Peoples. Further, that States cease subsidizing the expansion of industrial, commercial agriculture plantations which promote toxic chemical fertilizers and pesticides as well as genetically modified organisms (GMO's) in Indigenous lands and territories;
3. *Recommend* States support programmes of Indigenous Peoples to strengthen the capacity of Indigenous youth, including on the transmission of traditional knowledge, innovations and practices as well as languages and on the important role of Indigenous Peoples including Elders and women as traditional knowledge holders. Further, that States and UN agencies, programs and funds respect and promote Indigenous Peoples' right to free, prior and informed consent in relation to their traditional knowledge and traditional cultural expressions;
4. *Recommend* States take a rights based and culturally appropriate approach to public safety and access to justice guided by Indigenous Peoples' legal orders and traditional justice systems and by standardised and disaggregated data collection focused on prevention and restorative justice as well as protection and rehabilitation;
5. *Recommend* States cease State sponsored population transfers and demographic engineering of Indigenous Peoples that *inter alia* result in the minoritization of Indigenous Peoples;
6. *Recommend* States with the full, equal and effective participation of Indigenous Peoples provide adequate resources that enable the empowerment of Indigenous Peoples to deliver and have access to high quality and culturally based education, health including mental health and housing to improve the wellbeing of Indigenous Peoples; and that Indigenous individuals are provided with appropriate health care on an equal basis;
7. *Recommend* States take urgent action to adopt strategies that enable Indigenous Peoples to exercise their right to education particularly youth and children and their sovereign rights to establish their own educational system affirming the scholarship of their knowledge systems, sciences, technologies, intellectual property and cultural manifestations;
8. *Recommend* States ensure meaningful and effective participation and the free, prior and informed consent of Indigenous Peoples in accordance with their protocols in order to reform

the dominant education system to reflect the histories, identities, values, beliefs, cultures, languages and knowledge of the Indigenous Peoples to whom it is being delivered; and

9. *Call* on States to reaffirm the rights of Indigenous Peoples to their economic, social and cultural development with due regard to their freedom and identity and the recognition that the right to sustainable development is both procedural and substantive. We further call upon States to ensure the full, equal and effective participation of Indigenous Peoples in the development of mechanisms to ensure that ecosystem based sustainable development is equitable, non-discriminatory, participatory, accountable, and transparent, with equality, consent and decolonization as important overarching themes that protect, recognize and respect the rights of Indigenous Peoples and that are in harmony with the sacredness of Mother Earth.