

Final Written Submission

National Inquiry on Missing and Murdered Indigenous Women and Girls

30 November 2018

Amnesty International Canada

**AMNESTY
INTERNATIONAL**



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INTRODUCTION: AMNESTY INTERNATIONAL CANADA

Amnesty International is an international non-governmental organization with extensive experience in research and advocacy in the promotion of human rights. Amnesty International has long been an active civil society partner in research and advocacy addressing the national crisis of violence against First Nations, Inuit, and Métis women, girls, and two-spirit people. Amnesty International published a major research report in 2004: *Stolen Sisters: Discrimination and Violence against Indigenous Women in Canada*. Five years later, Amnesty published an update report called *No More Stolen Sisters* that detailed the need for a comprehensive and coordinated national response to address the scale and scope of violence against Indigenous women, girls, and two-spirit people in Canada. More recently, Amnesty International has examined the need for specific attention to the threats facing Indigenous women and girls in the context of large-scale resource development on the traditional territories of Indigenous peoples. The resulting 2016 report, *Out of Sight, Out of Mind*, provides an in-depth analysis of how reliance on large numbers of transient workers has exacerbated violence against Indigenous women and girls while decreasing access to support and services needed to address this violence. At the same time, the impacts of extensive resource development have undermined the ability of Indigenous women and girls to meet their healing and wellness needs through traditional activities and ceremonies on the land.

A HUMAN RIGHTS-BASED APPROACH TO VIOLENCE AGAINST INDIGENOUS WOMEN, GIRLS, AND TWO-SPIRIT PEOPLE

1. Gender-based violence (GBV) is a human rights violation.¹ Violence against women (VAW) has significant impacts on the ability of women and girls to exercise and enjoy a broad range of human rights.² Understanding VAW and GBV as human rights issues, requires recognition that gendered violence is not accidental, but the result of deep, structural discrimination that the State has a legal and moral obligation to address.³ Under human rights law, States are required to take all reasonable and necessary legislative, administrative, and institutional measures to address GBV, including by enacting and enforcing laws and policies that protect women, girls, and two-spirit people from violence and by providing for appropriate physical and mental health services to survivors.⁴ States are also required to take measures to eradicate gender stereotypes that condone or perpetuate GBV and underpin structural inequality.⁵
2. Amnesty International—echoing calls from Indigenous women’s organizations, UN treaty bodies, civil society, and academics⁶—emphasizes the need for a human rights-based

¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, UN Doc A/54/38/Rev.1, chap. I (1999), www.refworld.org/docid/453882a73.html; and CEDAW, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc CEDAW/C/GC/35 (2017), [tbinternet.ohchr.org/Treaties/CEDAW/Shared Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf) (the Committee recognized that the prohibition of GBV has evolved into a principle of customary international law, binding on all States).

² UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16*, UN Doc E/C12/2005/4 (2005) para 27, undocs.org/en/E/C.12/2005/4 (“gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality”); and CEDAW, *General Recommendations No.19: violence against women*, UN Doc A/47/38 (1992), tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf.

³ See, e.g., UN Office of the High Commissioner for Human Rights, “Applying a Human Rights-Based Approach to Climate Change Negotiations, Policies and Measures,” hrbaportal.org/wp-content/files/InfoNoteHRBA1.pdf (“A human rights-based approach is a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze obligations, inequalities and vulnerabilities and to redress discriminatory practices and unjust distributions of power that impede progress and undercut human rights.”).

⁴ CEDAW, *General Recommendations No.19: violence against women*, UN Doc A/47/38 (1992), tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf; and CEDAW, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, UN Doc A/54/38/Rev.1, chap. I (1999), www.refworld.org/docid/453882a73.html.

⁵ *Ibid.*

⁶ See, for example, Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, UN Doc CERD/C/CAN/CO/21-23 (2017) para 24(b), tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/21-23&Lang=En [hereinafter: CERD, *Concluding observations*, CERD/C/CAN/CO/21-23]; CEDAW, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, UN Doc CEDAW/C/CAN/CO/8-9 (2016) paras 26(c) & 27(c)(i),

approach in order to fully address the scale and scope of violence against Indigenous women, girls, and two-spirit people in Canada. A human rights-based response centers the needs, voices, and expertise of Indigenous women, girls, and two-spirit people as rights holders to effectively address systemic and root causes of the extreme and pervasive violence that they face. As noted by the Special Rapporteur on violence against women, gaps in incorporation and implementation of the human rights framework result in insufficient human rights-based approaches in law and policy, and in turn, insufficient services for those impacted by GBV.⁷

3. The outlines of a human rights-based approach have been before Canada for years, through consistent recommendations from a wide array of international bodies, experts and other governments, within both the United Nations and Organization of American States' human rights systems.⁸ In fact, international concerns about Canada's failure to prevent, address, and redress violence against Indigenous women, girls, and two-spirit people has emerged as one of the most frequently highlighted of Canada's human rights failings. Canada's failure to respond to and take up those recommendations through a well-articulated human rights-based approach has betrayed survivors and victims of violence as well as their families and communities. It has also undermined the international human rights standards and mechanisms that Canada frequently champions globally.

[tinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CAN/CO/8-9&Lang=En](http://internet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/CAN/CO/8-9&Lang=En) [hereinafter: CEDAW, *Concluding observations*, CEDAW/C/CAN/CO/8-9]; Brenda L. Gunn, "Engaging a Human Rights Based Approach to the Murdered and Missing Indigenous Women and Girls Inquiry" (2017) 2:2 Lakehead Law Journal 89, li.lakeheadu.ca/article/view/1517; Feminist Alliance For International Action & Native Women's Association of Canada, "The National Inquiry on Murders and Disappearances of Indigenous Women and Girls Recommendations from the Symposium on Planning for Change: Towards a National Inquiry and an Effective National Action Plan," (2016) 28:2 CJWL 408 at 412, muse.jhu.edu/article/629383; and Amnesty International, *Canada: Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*, Index: AMR 20/003/2004 (3 October 2004), www.amnesty.ca/sites/amnesty/files/amr200032004enstolensisters.pdf [hereinafter, Amnesty International, *Stolen Sisters*].

⁷ See, e.g., Special Rapporteur on violence against women, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc A/HRC/35/30 (2017) para 68, undocs.org/A/HRC/35/30.

⁸ See, e.g., CEDAW, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/1 (2015), undocs.org/CEDAW/C/OP.8/CAN/1 [hereinafter: CEDAW, *Report of the inquiry*, UN Doc CEDAW/C/OP.8/CAN/1]. IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, Inter-Am C.H.R., OEA/Ser.L/V/II, Doc. 30/14 (2014), www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf.

4. The following sections outline essential elements of a human rights-based approach to violence against Indigenous women, girls, and two-spirit people.

RECOMMENDATIONS

- Commit to address violence against Indigenous women, girls, and two-spirit people based on the full realization of their rights as set out in international human rights law, including the UN Declaration on the Rights of Indigenous Peoples.
- Commit to and collaboratively develop a human rights-based approach to violence against Indigenous women, girls, and two-spirit people that centers the needs, voices, and expertise of Indigenous women, girls, and two-spirit people as rights holders in order to fully address systemic and root causes of the extreme and pervasive violence that they face.

A. GBV and Economic, Social, and Cultural Rights: An Essential Connection

5. In order to fully address violence against Indigenous women, girls, and two-spirit people, it is essential to undertake a holistic assessment that addresses the interconnectedness of rights violations, as well as the root of violence in socio-economic and cultural rights violations.⁹
6. It is no accident that violence against Indigenous women, girls, and two-spirit people occurs at the intersection of multiple rights violations, many particularly related to colonization and continued social and economic marginalization. States have recognized and affirmed that human rights are indivisible, interdependent, and interrelated.¹⁰ This interconnectedness means that the denial of any right necessarily entails negative impacts on other rights, as well as the reverse; to uphold any one right invariably requires respect for other rights. As the UN Committee on Economic, Social and Cultural Rights has highlighted, Indigenous peoples across Canada experience multi-faceted economic and social marginalization:

The Committee is greatly concerned at the gross disparity between Aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant

⁹ CESCR, *Concluding observations on the sixth periodic report of Canada*, UN Doc E/C.12/CAN/CO/6 (2016) para 34, undocs.org/E/C.12/CAN/CO/6 (notes need to “address violence against women and girls in a holistic manner”).

¹⁰ See, e.g., UN, Vienna Declaration and Programme of Action (1993) para 5, www.ohchr.org/en/professionalinterest/pages/vienna.aspx.

rights. There has been little or no progress in the alleviation of social and economic deprivation among Aboriginal people. In particular, the Committee is deeply concerned at the shortage of adequate housing, the endemic mass unemployment and the high rate of suicide, especially among youth, in the Aboriginal communities. Another concern is the failure to provide safe and adequate drinking water to Aboriginal communities on reserves. The delegation of the State Party conceded that almost a quarter of Aboriginal household dwellings required major repairs and lacked basic amenities.¹¹

The Committee issued these remarks in 1998, encompassing a significant range of human rights, which Canada is obligated to respect, protect, and fulfill, including the rights to water and sanitation,¹² housing,¹³ work,¹⁴ health¹⁵ (as well as mental health¹⁶), and an adequate standard of living.¹⁷ Unfortunately, these concerns remain relevant today and have been echoed in virtually every UN committee review of Canada's human rights record in the twenty years since.¹⁸

7. Amnesty International's research has demonstrated how these rights violations are inextricably bound to the continued cycle of violence against Indigenous women, girls, and two-spirit people and in fact perpetuate this cycle. Deep inequalities in living conditions and access to government services have pushed many Indigenous women, girls, and two-spirit people into situations that carry heightened risks of violence such as overcrowded housing, homelessness,

¹¹ CESCR, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN Doc E/C.12/1/Add.31 (1998) para 17, tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1%2fAdd.31&Lang=en.

¹² CESCR, *General Comment No. 15: The Right to Water*, UN Doc E/C.12/2002/11 (2003), www.undocs.org/e/c.12/2002/11; and UN General Assembly, *Resolution 64/292: The human right to water and sanitation*, UN Doc A/RES/64/292 (2010), www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292.

¹³ International Covenant on Economic, Social and Cultural Rights (ICESCR), article 11.

¹⁴ ICESCR, article 6.

¹⁵ ICESCR, article 12.

¹⁶ Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc A/HRC/35/21 (2017), documents-dds-ny.un.org/doc/UNDOC/GEN/G17/076/04/PDF/G1707604.pdf?OpenElement.

¹⁷ ICESCR, article 11.

¹⁸ CEDAW, *Concluding observations*, CEDAW/C/CAN/CO/8-9, para 28 ("The Committee is concerned about the fact that indigenous women continue to suffer from multiple forms of discrimination, particularly as regards their access to employment, housing, education and health care and continue to live in poverty in the State party, as reflected by high poverty rates, poor health, inadequate housing, lack of access to safe water, low school-completion rates. It further notes with concern the low participation of indigenous women in the labour market, in particular in senior or decision-making positions, their disproportionately high unemployment rates and their lower pay compared with men and non-indigenous women.").

and commercial sex.¹⁹ These same inequalities deny Indigenous women, girls, and two-spirit people access to necessary support and emergency services, such as shelters, preventing them from escaping violence.²⁰

8. At the same time, it is clear that some men—influenced by dehumanizing attitudes toward Indigenous peoples in general, and Indigenous women, girls, and two-spirit people in particular—target Indigenous women, girls, and two-spirit people for crimes of hatred and extreme violence.²¹ Failure to publicly condemn, investigate, and punish such acts normalizes violence against Indigenous women, girls, and two-spirit people and encourages perpetrators to believe that they can act with impunity.
9. Intersectional discrimination lies at the heart of all these concerns.²² Amnesty International’s research has highlighted how Indigenous women in Canada face discrimination on numerous fronts: from gender and Indigenous identity, to other socio-economic factors that compound this discrimination, such as poverty, ill-health, or involvement in commercial sex.²³ For Indigenous women with disabilities, this discrimination is further compounded.²⁴
10. The continued denial of Indigenous rights in Canada is another element of this pattern of rights violations at the root of violence against Indigenous women, girls, and two-spirit people. In this respect, the UN Committee on the Elimination of Discrimination against Women (CEDAW) noted the importance of meaningful implementation of the full scope of rights protections set out in the UN Declaration on the Rights of Indigenous Peoples “in order to combat the root cause of their vulnerability to violence.”²⁵
11. Amnesty International’s case study on resource development in Northeast British Columbia, published in the report *Out of Sight, Out of Mind*, documented how the promotion of intensive

¹⁹ Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada*, Index: AMR 20/012/2009 (2009), www.amnesty.org/download/Documents/44000/amr200122009en.pdf [hereinafter: Amnesty International, *No More Stolen Sisters*]; and Amnesty International, *Stolen Sisters*.

²⁰ Amnesty International, *No More Stolen Sisters*, pp 8-9.

²¹ Amnesty International, *Stolen Sisters*, pp 16-17.

²² The Inter-American system has also marked “the strong connection between the problems of discrimination and violence against women.” IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, Inter-Am C.H.R., OEA/Ser.L/V/II, Doc. 30/14 (2014) para 135, www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf.

²³ Amnesty International, *Stolen Sisters*, p 7.

²⁴ CERD, *Concluding observations*, CERD/C/CAN/CO/21-23, paras 25-26.

²⁵ CEDAW, *Concluding observations*, CEDAW/C/CAN/CO/8-9, paras 28 & 29(c).

resource development activities on the traditional territories of Indigenous peoples—often without the consent of affected communities or adequate consideration of human rights impacts—increases the risk of violence to Indigenous women, girls, and two-spirit people.²⁶ This compounding of risk results from numerous factors, but most directly from the dangerous pattern of anti-social behavior among transient workers, commonly referred to as “blowing off steam,” characterized by heavy drug and alcohol use during off-shift hours, frequently leading to violence.²⁷ Additionally, resources and services for survivors of violence are limited by loss of lands necessary for culturally-based healing and wellness activities, as well as by the influx of large numbers of transient workers who severely strain local social and emergency services.²⁸ Further, as high resource sector wages drive up the costs of local essentials such as food and housing, those without access to this income, which includes the majority of Indigenous women and girls, face increased food and housing insecurity, exacerbating their risk of exposure to violence.²⁹

12. The current regulatory framework for resource development projects in Canada does not adequately assess or mitigate these risks. The Site C dam environmental assessment, for one, highlights how the impact of resource development projects on Indigenous women, girls, and two-spirit people can be overlooked during project approval processes. While the assessment noted how jobs created by the project would draw more workers to the region, likely reducing access to affordable housing, the review failed to consider whether increased housing insecurity might affect women differently than men, and whether some groups of women—for example, Indigenous women—would face a heightened risk of experiencing housing insecurity and homelessness.³⁰ In contrast, the Peace Project, a research initiative carried out on behalf of the Fort St. John Women’s Resource Society, identified insecure housing as a critical risk factor

²⁶ Amnesty International, *Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada*, Index: AMR 20/4872/2016 (2016), www.amnesty.ca/sites/amnesty/files/Out%20of%20Sight%20Out%20of%20Mind%20EN%20FINAL%20web.pdf [hereinafter: Amnesty International, *Out of Sight, Out of Mind*].

²⁷ *Ibid.* at 37.

²⁸ *Ibid.* at 17, 33-35.

²⁹ *Ibid.* at 45-49.

³⁰ *Ibid.* at 70.

for VAW, with local service providers identifying affordable housing as the top need for those women and girls most at risk of violence.³¹

13. Currently, there is no requirement for public environmental impact assessments to specifically incorporate a gender-based analysis.³² In a positive step, Bill C-69, before the Senate as of November 2018, would mandate gender-based analysis as part of a move to a more holistic impact assessment framework. However, even if this legislation passes, it would not cover all projects, nor would it address all impacts, such as impacts that are assumed to be known and manageable, which are routinely excluded from review.

RECOMMENDATIONS

- Work with First Nations, Inuit, and Métis governance and civil society advocates to ensure substantive equality in access to all government services and programs (i.e. housing, health, and education), including culturally-relevant programs to prevent violence that effectively ensure the safety of Indigenous women, girls, and two-spirit people and support survivors of violence.
- Ensure funding on par with the scale and gravity of the crisis of violence against Indigenous women, girls, and two spirit people, including sustained, long-term, core funding to civil society organizations for culturally-specific services to meet the needs of Indigenous women, girls, and two-spirit people who are at risk of violence or in contact with law enforcement and court officials, including shelters.
- Ensure all government departments have a publicly available gender-based analysis policy with resources to support implementation.
- To help address bias in the provision of government and social services, ensure all civil servants, healthcare professionals, and frontline service providers receive cultural competency training as outlined in the TRC Calls to Action.
- Make intersectional gender-based analysis mandatory in the approval and regulatory process for large-scale resource development projects.

³¹ Clarice Eckford and Jillian Wagg, *The Peace Project: Gender Based Analysis of Violence against Women and Girls in Fort St. John – revised*, Fort St. John Women’s Resource Society (2014) pp17-18, thepeaceprojectfsj.files.wordpress.com/2014/03/the_peace_project_gender_based_analysis_amended.pdf.

³²Amnesty International, *Out of Sight, Out of Mind*, pp 69-71.

B. NEED FOR WHOLE OF GOVERNMENT RESPONSE AND NATIONAL ACTION PLAN

14. A comprehensive, whole of government response, coordinated across all jurisdictions, is essential to address gaps and shortcomings in current policies, programs, and services to stop violence against Indigenous women, girls, and two-spirit people. Implementation of a National Action Plan to prevent and address gender-based violence is also necessary to fulfill Canada's international human rights commitments.³³
15. Under human rights law, the state writ-large is responsible for its human rights obligations, regardless of how domestic law may allocate responsibility for provision of services between and among different levels of government.³⁴ This principle of State accountability means that all levels of government—provincial, territorial, federal, and First Nation—are bound by Canada's human rights obligations.³⁵ CEDAW specifically reminded Canada of this duty in its most recent country review, and called on the federal government to provide “leadership to the provincial and territorial governments” and ensure the “coherent and consistent implementation of the Convention throughout its territory.”³⁶
16. In the context of combatting VAW, States are specifically required to have “executive policies or plans of action to eliminate violence against women,”³⁷ which should take the form of a National Action Plan.³⁸ Canada has played a leading role in promoting National Action Plans

³³ See, e.g., UN Women, “UNiTE to End Violence against Women,” www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/unite; and Canadian Network of Women's Shelters & Transition Houses, *A Blueprint for Canada's National Action Plan on Violence Against Women and Girls (2015)*, endvaw.ca/wp-content/uploads/2015/10/Blueprint-for-Canadas-NAP-on-VAW.pdf.

³⁴ Human Rights Council, *Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee*, UN Doc A/HRC/30/49 (2015) paras 17-18, documents-dds-ny.un.org/doc/UNDOC/GEN/G15/174/88/PDF/G1517488.pdf?OpenElement. See also, Vienna Convention on the Law of Treaties, 1155 UNTS 331, 8 ILM 679, art 27 (entered into force 27 January 1980).

³⁵ *Ibid.*

³⁶ CEDAW, *Concluding observations*, CEDAW/C/CAN/CO/8-9, paras 10-11; and see also CEDAW, *Concluding observations on the seventh periodic reports of Canada*, UN Doc CEDAW/C/CAN/CO/7 (2008) para 12, undocs.org/CEDAW/C/CAN/CO/7.

³⁷ UN General Assembly, *In-depth study on all forms of violence against women: report of the Secretary General*, UN Doc A/61/122/Add.1 (2006), para 284, undocs.org/A/61/122/Add.1.

³⁸ In January 2007, the UN General Assembly adopted a resolution that called on all States to eliminate all forms of violence against women “by means of a more systematic, comprehensive, multisectoral and sustained approach, adequately supported and facilitated by strong institutional mechanisms and financing, through national action plans.” UN General Assembly, *Intensification of efforts to eliminate all forms of violence against women: resolution adopted by the General Assembly*, UN Doc A/RES/61/143 (2007) para 8, undocs.org/A/RES/61/143. See also, UN General Assembly, *Intensification of efforts to eliminate all forms of violence against women: resolution adopted by the General Assembly*, UN Doc A/RES/63/155 (2009), undocs.org/A/RES/63/155.

on VAW through resolutions led by Canada at the UN Human Rights Council. However, UN treaty bodies have repeatedly remarked on Canada's failure to live up to this obligation domestically.³⁹ In 2016, for example, CEDAW called on Canada to "expeditiously adopt a national action plan, in consultation with civil society organizations, especially indigenous women's organizations, to combat gender-based violence against women and ensure that adequate human, technical and financial resources are allocated for its implementation, monitoring and assessment."⁴⁰

17. In 2017, the federal government announced a more limited strategy on gender-based violence, which only addresses areas under federal jurisdiction, failing to initiate the coordinated development of a comprehensive, whole of government response through a National Action Plan.⁴¹ Indeed, to date, measures to address discrimination and violence against Indigenous women, girls, and two-spirit people in Canada remain piecemeal. As the above discussion on the interconnectedness of rights reveals, however, such a fragmentary approach cannot hope to provide a meaningful basis for change.

18. CEDAW noted that while Canada has made positive steps through recent programs, such disjointed initiatives have not been adequate.⁴² For example, despite the Canadian Statement of Basic Principles of Justice for Victims of Crime being endorsed at all levels of government in 1988 and reiterated in 2003, there continues to be "significant variation in services provided to victims in the different provinces" and a "lack of coordination between the various agencies from which women may seek help."⁴³ This one example highlights the shortcomings

³⁹ CERD, *Concluding observations*, CERD/C/CAN/CO/21-23, para 24(a) ("Enact a national action plan on violence against women, inclusive of the federal, provincial and territorial jurisdictions, with special provisions to end the high rates of violence against indigenous women and girls"); CEDAW, *Concluding observations*, CEDAW/C/CAN/CO/8-9, para 25(d) ("Expeditiously adopt a national action plan, in consultation with civil society organizations, especially indigenous women's organizations, to combat gender-based violence"); and Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/CO/6 (2015), para 9(b), http://internet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CAN/CO/6&Lang=En (Canada should "review its legislation at the federal, provincial and territorial levels, and coordinate police responses across the country, with a view to preventing the occurrence of such murders and disappearances").

⁴⁰ CEDAW, *Concluding observations*, CEDAW/C/CAN/CO/8-9, para 25(d).

⁴¹ Status of Women Canada, "It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence" (19 June 2017), www.canada.ca/en/statuswomen/news/2017/06/its-time-canadasstrategytopreventandaddressgender-basedviolence.html.

⁴² As the CEDAW committee remarked, "Although the Committee notes the recent increased efforts by the State party to address these problems, it regrets that such efforts remain fragmented and is of the view that the magnitude of the required changes cannot be achieved by piecemeal reforms of existing programmes and services." CEDAW, *Report of the inquiry*, UN Doc CEDAW/C/OP.8/CAN/1, para 172.

⁴³ *Ibid.* at 175. See also, National Inquiry on Missing and Murdered Indigenous Women and Girls, *Part I Public Hearings, Winnipeg* (Vol 10), pp 169-170 ("There needs to be a standard and consistent way how Indigenous families

of relying on isolated policies. Secretary-Treasurer of the Union of BC Indian Chiefs, Chief Kukpi7 Judy Wilson, testifying in her personal capacity to the National Inquiry, noted, “we need more than just programs and services. What is needed is systemic change for violence against our women and girls from the level right from the police to the high levels of government.”⁴⁴

19. A comprehensive response—that involves all levels of government and holistically addresses root causes of violence against Indigenous women, girls, and two-spirit people—must address the staggering disparity in standard of living and access to government services experienced by First Nation, Inuit, and Métis women, girls, and two-spirit people; the continued disruption of Indigenous societies by the removal of children, frequently from families struggling to support themselves; the disproportionate rate of incarceration of Indigenous women; and the police response to GBV.

RECOMMENDATIONS

- Work with Indigenous women, girls, and two-spirit people and representative organizations; the federal government; provincial and territorial officials; municipal officials; and First Nations to develop a comprehensive, measurable, well-resourced, time-bound National Action Plan to holistically address all forms of violence against women, girls, and gender diverse people in Canada, which includes specific provisions to address violence against First Nations, Métis, and Inuit women, girls, and two-spirit people, and ensures the provision of adequate resources for its implementation, monitoring, and assessment.
- Include concrete measures in the National Action Plan to address the staggering disparity in standard of living and access to government services experienced by First Nation, Inuit, and Métis women, girls, and two-spirit people; the continued disruption of Indigenous societies by the removal of children, frequently from families struggling to support themselves; the disproportionate rate of incarceration of Indigenous women; and the police response to GBV.

are treated”); and National Inquiry on Missing and Murdered Indigenous Women and Girls, *Part I Public Hearings, Happy Valley Goose Bay*(Vol 52), p 41 (noting need for minimum standard of policing).

⁴⁴ National Inquiry on Missing and Murdered Indigenous Women and Girls, *Part I Public Hearings, Vancouver* (Vol 86), p 4.

C. HUMAN RIGHTS DUE DILIGENCE

20. When measuring State compliance with rights obligations, the human rights standard of “due diligence” offers an essential assessment framework for ascertaining what constitutes effective rights fulfilment. Due diligence—the State responsibility to take every reasonable precaution to prevent human rights violations—has a specific characterization in the context of VAW that is now so well-established and so widely accepted that it is considered a matter of customary international law, meaning that not only is it a moral obligation of all States, it is a legally-binding obligation.⁴⁵
21. Laid out in Article 4(c) of the Declaration on the Elimination of Violence Against Women (1993), the standard for due diligence in the context of VAW requires States to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”⁴⁶ CEDAW has clarified that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.”⁴⁷
22. The requirement of due diligence is even greater where, as in the case of Indigenous peoples in Canada, government actions have already harmed groups or individuals or put them in situations of heightened risk of further human rights violations. A BC provincial inquiry into the disappearance and murder of marginalized women in Vancouver called attention to this heightened standard: “The State must be cognizant that certain groups of females, such as girls, poor women and Aboriginal women, may be even more vulnerable to these acts of violence; and that they are, therefore, under a heightened duty of due diligence vis-à-vis these groups.”⁴⁸
23. In decisions potentially affecting the rights of Indigenous peoples, governments in Canada need to take account of the lasting harm created by such wrongs as the Residential School program,

⁴⁵ Special Rapporteur on Violence Against Women (Yakin Ertürk), *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc E/CN.4/2006/61 (2006) para 29, undocs.org/E/CN.4/2006/61.

⁴⁶ Declaration on the Elimination of Violence Against Women (1993), article 4(c).

⁴⁷ CEDAW, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992) para 19, www.refworld.org/docid/453882a422.html.

⁴⁸ Wally T. Oppal, *Forsaken: the Report of the Missing Women Commission of Inquiry*, 19 November 2012, Vol. I, p 135, www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf.

the Sixties Scoop, and other efforts to forcefully assimilate Indigenous societies. Particular attention must be paid to the fact that Indigenous women and girls in Canada face much higher rates of violence than other women and girls.

24. Due diligence obligations must also be implemented in “good faith,” meaning States must genuinely and effectively fulfil their obligations through all possible means.⁴⁹ Taking steps toward addressing VAW, such as through enacting legislative measures, is laudable, but these steps alone are insufficient to meet the duty of due diligence. Due diligence is a requirement of result. CEDAW made strong reference to this fact in a report resulting from the Committee’s inquiry into violence against Indigenous women and girls in Canada, noting:

The Committee recalls that the State party has a well-established legislative and institutional framework, a functioning judiciary, preventive and protective measures against violence and remedies for women victims of violence. In order to meet the due diligence standard, however, the formal framework established by the State party must also be effective in practice, as it is not the formal existence of judicial remedies that demonstrates due diligence, but rather their actual availability and effectiveness.⁵⁰

It is not enough for Canada to point to initiatives and reforms made in the interest of addressing violence against Indigenous women, girls, and two-spirit people; Canada must be able to show measurable success.

25. Thus far, Canada’s efforts to effectively address GBV and meet the due diligence standard have been hampered by a lack of accurate, disaggregated data on the ethnicity of victims of violent crime, as well as by a lack of independent civilian oversight of police investigations of violence against Indigenous women, girls, and two-spirit people.

i. KEY TO EFFECTIVENESS: DISAGGREGATED DATA

26. Accurate and comprehensive information on the rates of violence faced by Indigenous women, girls, and two-spirit people is essential to developing effective prevention strategies. It is also essential to meeting the due diligence standard. As the Special Rapporteur on violence against

⁴⁹ Special Rapporteur on Violence Against Women (Yakin Ertürk), *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc E/CN.4/2006/61 (2006) para 36, undocs.org/E/CN.4/2006/61.

⁵⁰ CEDAW, *Report of the inquiry*, UN Doc CEDAW/C/OP.8/CAN/1, para 207.

women has noted, a general principle of due diligence “is the duty to ensure that interventions designed to prevent and respond to violence against women are based on accurate empirical data. . . . There is a glaring need to establish reliable statistics and indicators concerning violence against women and the evaluation of interventions designed to eliminate it.”⁵¹

27. Canada has failed to assemble adequate data as required by human rights law, which has hampered the effectiveness of policy planning and investigations.⁵² UN treaty bodies have repeatedly emphasized the need for publicly available disaggregated data on GBV in Canada.⁵³ Yet, until the RCMP’s “Aboriginal Women: A National Operational Overview”⁵⁴ was released in 2014, there were no official national police statistics on the number of missing and murdered Indigenous women and girls. This report was followed by a limited update in 2015,⁵⁵ but has since been discontinued. As of November 2018, there is no regular, publicly accessible, country-wide police reporting on disappearances and murders of Indigenous women, girls, and two-spirit people.

28. The RCMP continue to tout their 2014 report as the “most comprehensive and accurate statistics available about the extent of the problem of MMIWG,”⁵⁶ but this data is deeply flawed and contains significant gaps.⁵⁷ Notably, the data excludes essential groups such as victims

⁵¹ Special Rapporteur on Violence Against Women (Yakin Ertürk), *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc E/CN.4/2006/61 (2006) para 37, undocs.org/E/CN.4/2006/61.

⁵² CEDAW, *Report of the inquiry*, UN Doc CEDAW/C/OP.8/CAN/1, para 166 (“the Committee considers that the inadequacy and lack of accurate data to identify the victims and perpetrators of murders and disappearances of aboriginal women and girls, that are disaggregated by race and ethnicity and collected over a long period of time, impaired the development of effective strategies and solutions within the criminal justice system.”)

⁵³ CERD, *Concluding observations*, CERD/C/CAN/CO/21-23, para 24(d) (“Publicly report on violence against indigenous women and girls, including data on reported cases of violence, murder, and missing indigenous women and girls, and on the numbers of investigations, prosecutions and convictions”); CEDAW, *Concluding observations*, CEDAW/C/CAN/CO/8-9, para 25(f) (“Systematically collect data on all forms of gender-based violence against women, disaggregated by sex, age, ethnic group, including indigenous women”); and Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/CO/6 (2015), para 8, tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CAN/CO/6&Lang=En (noted “lack of statistical data on domestic violence”).

⁵⁴ RCMP, *Missing and Murdered Aboriginal Women: A National Operational Overview* (2014), www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-national-operational-overview.

⁵⁵ RCMP, *Missing and Murdered Aboriginal Women: 2015 Update to the National Operational Overview* (2015), www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-2015-update-national-operational-overview#p4.

⁵⁶ RCMP, *Working Together to End Violence Against Indigenous Women and Girls: National Scan of RCMP Initiatives* (May 2017), at 7, www.rcmp-grc.gc.ca/wam/media/1830/original/c9e8444da1a3ddb48aefab3f48a7306.pdf.

⁵⁷ Amnesty International, “New statistics on violence against Aboriginal people released” (25 November 2015), www.amnesty.ca/blog/new-statistics-violence-against-aboriginal-people-released; and Amnesty International, “Missing and murdered Indigenous women and girls: every life should matter” (19 June 2015), www.amnesty.ca/blog/missing-and-murdered-indigenous-women-and-girls-every-life-should-matter.

whose Indigenous identity was not recorded by police, those who died under suspicious circumstances, and two-spirit people. Further, it does not disaggregate between Métis, Inuit, and First Nations women, girls, and two-spirit people. Métis advocate and artist, Christi Belcourt, summarized these shortcomings as follows:

They cited 1,181 missing [and murdered] Indigenous women or girls, but they do not, for example, explain how they determined the ethnicity of Indigenous women, particularly among those who may not have been registered as a status Indian or are Métis. There are still lingering questions about how many of those listed as “Jane Doe” may in fact be Indigenous women. In addition, there are many deaths listed as “suspicious,” but without evidence to support a homicide they are not officially listed as homicides. As well there are outstanding files that are not within the RCMP jurisdiction that are not factored into the overall count. There are deaths listed as suicides or accidental that families dispute and feel were not properly investigated. There are two-spirit and transgender people who are not listed as part of the murdered and missing Indigenous women but should be⁵⁸

As Belcourt notes, the RCMP report, while a welcome first step, provides only a limited window into the scale and scope of violence against Indigenous women, girls, and two spirit people.

29. The RCMP themselves acknowledge that there is still “insufficient data relating to currently missing Aboriginal women from which to draw reliable conclusions with respect to risk factors contributing to their disappearance.”⁵⁹ Indeed, data on the prevalence and patterns of violence against Indigenous women, girls, and two-spirit people will continue to be inadequate so long as the Indigenous identity of victims is not consistently and accurately recorded by police. Police often do not record whether victims are Indigenous. According to the Canadian Centre for Justice Statistics, Canadian police did not record or report on whether the victim was an Indigenous person in 11% of homicides in 2000.⁶⁰ Even when police do record Indigenous identity, they do not distinguish between First Nations, Inuit, and Métis, precluding a more nuanced analysis for these very differently situated peoples. As of November 2018, there are no national protocols and very little training offered to ensure that all police forces in Canada

⁵⁸ Christi Belcourt, “Waking Dreams: Reflections on Walking With Our Sisters,” in *Keetsahnak: Our Missing and Murdered Indigenous Sisters* (University of Alberta Press, 2018) p xv-xvi.

⁵⁹ RCMP, *Missing and Murdered Aboriginal Women: A National Operational Overview* (2014) p 17, www.rcmp-grc.gc.ca/wam/media/460/original/Ocbd8968a049aa0b44d343e76b4a9478.pdf.

⁶⁰ *Juristat*, Vol 21, No.9, Canadian Centre for Justice Statistics, Statistics Canada, 2001.

consistently and accurately record the Indigenous identity of victims, and enter this data into national crime databases.⁶¹

30. Further, as Amnesty International research has indicated, police do not always fully and properly investigate deaths of Indigenous women, girls, and two-spirit people.⁶² The 2014 RCMP report and 2015 update only address cases where the original police investigation determined that a murder had taken place, and therefore failed to include suspicious or unexplained deaths. As a result, existing data likely obscures murders of Indigenous women, girls, and two-spirit people whose deaths were wrongly classified as accidental.

31. Without broad, multi-jurisdictional collaboration and reform, the full scale of violence against Indigenous women, girls, and two-spirit people cannot be established. This lack of data has serious consequences for allocation of resources necessary to address the violence and hinders governments' ability to measure the impact of initiatives meant to combat violence against Indigenous women, girls, and two-spirit people.

RECOMMENDATIONS

- Ensure that interventions designed to prevent and respond to violence against Indigenous women, girls, and two-spirit people are based on accurate empirical data. To this end:
 - Undertake the collection and routine publication of data on health and social and economic conditions for Indigenous peoples disaggregated by Indigenous identity (Inuit, Métis, and First Nations), gender, sexual orientation, and gender identity.
 - Establish a national protocol with rigorous training for law enforcement to ensure that the identity of Indigenous victims of violence, disaggregated by Indigenous identity (Métis, Inuit, and First Nations), sexual orientation, and gender identity, is regularly and accurately recorded and entered into national crime databases.
 - Make disaggregated data on GBV regularly and publicly available, including by regularly reporting on violence against Indigenous women, girls, and two-spirit people, including instances of murder, missing persons, and suspicious deaths.

⁶¹ See e.g., CEDAW, *Report of the inquiry*, UN Doc CEDAW/C/OP.8/CAN/1, para 166; IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, Inter-Am C.H.R., OEA/Ser.L/V/II, Doc. 30/14 (2014) para 135, www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf.

⁶² Amnesty International, *No More Stolen Sisters*; and Amnesty International, *Stolen Sisters*.

ii. KEY TO EFFECTIVENESS: INDEPENDENT OVERSIGHT

32. Effective, independent, civilian oversight is another essential component to meeting the due diligence standard. Effective oversight is an indispensable part of policing in all circumstances and is even more necessary in a context of intense mistrust between police and Indigenous communities.
33. Effective oversight is needed to bridge this divide, and thus help ensure that Indigenous women, girls, and two-spirit people who face violence trust that they can safely report such crimes. As CEDAW has specifically noted, “the police cannot protect aboriginal women effectively without a more robust complaints mechanism as an essential component of ensuring trust.”⁶³ Similarly, the National Inquiry’s own interim report has marked the need for “comprehensive and independent police oversight.”⁶⁴
34. The need for independent, and specifically civilian, oversight was made painfully clear in the wake of the Val-d’Or accusations. When no charges were laid against eight Quebec officers accused of abuse of power and sexual assault against Indigenous women, community members and Indigenous leaders warned of increased lack of trust, fear of reprisals for victims brave enough to speak out, and the increasing likelihood that other women would avoid coming forward in future.⁶⁵
35. An oversight mechanism must be accessible and understandable to impacted individuals and communities, taking into account language barriers, as well as fears of reprisal and stigma.

RECOMMENDATIONS

- Ensure all allegations of police abuse of power, including violence and sexual assault, are handled by independent, civilian complaints mechanisms, with sufficient support, protection, and redress provided to victims. Ensure complaint mechanisms are accessible across all jurisdictions in Canada, and understandable to impacted individuals and communities, taking into account language barriers, as well as fears of reprisal and stigma.

⁶³ CEDAW, *Report of the inquiry*, UN Doc CEDAW/C/OP.8/CAN/1, para 158.

⁶⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Interim Report: Our Women and Girls are Sacred* (2017) p 52, www.mmiwg-ffada.ca/files/ni-mmiwg-interim-report-en.pdf.

⁶⁵ Benjamin Shingler, “‘Our women should not be silenced, intimidated or discouraged,’ AFN regional chief says” *CBC*, 16 November 2016, www.cbc.ca/news/canada/montreal/indigenous-reaction-police-abuse-charges-val-d-or-1.3853031; and Ingrid Peritz, “Aboriginal women ‘feel anger’ no charges laid against Val-d’Or officers” *Globe and Mail*, 18 November 2016, www.theglobeandmail.com/news/national/two-retired-quebec-police-officers-charged-after-val-dor-assault-investigations/article32928990/.

iii. KEY TO EFFECTIVENESS: EXTERNAL REVIEW OF CURRENT FILES AND PAST INVESTIGATIONS

36. Numerous public inquiries have confirmed that systemic racism in Canadian police services has denied Indigenous peoples the equal protection of the law.⁶⁶ Such bias necessitates innovative approaches to ensure that all cases of missing and murdered Indigenous women, girls, and two-spirit persons are fully and effectively investigated.
37. First, as has been noted by several UN treaty bodies, there is a need for an independent oversight mechanism or taskforce to specifically re-examine cases that were improperly handled by police investigators.⁶⁷ To this end, Amnesty International supports the interim report of the National Inquiry in its call for the creation of a national taskforce able to re-examine and even reopen past investigations where there are reasons to believe that the death or disappearance of an Indigenous woman, girl, or two-spirit person has not been properly investigated, including cases where an Indigenous woman, girl, or two-spirit person died under suspicious circumstances.⁶⁸ Amnesty International was among a number of organizations that expressed concern that such a body was not created to work parallel to the National Inquiry.⁶⁹
38. In addition to such a mechanism, Amnesty International supports advocates and survivors in calling for the adoption of the “Philadelphia model” to address systemic bias in policing. The Philadelphia model requires the creation of a committee, consisting of law enforcement and civil society, to regularly review police decisions to classify an allegation of sexual assault as unfounded (meaning it would be considered baseless and therefore not be investigated). This

⁶⁶ For example, Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform (Saskatchewan Justice Reform Commission), Final Report, 2004; Commissioners A.C. Hamilton and C.M. Sinclair, Report of the Aboriginal Justice Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper, 1991; Province of Nova Scotia, Royal Commission on the Donald Marshall, Jr., Prosecution: Digest of Findings and Recommendations, December 1989; Sidney B. Linden, Report of the Ipperwash Inquiry, Government of Ontario, 31 May 2007; and Anthony Sarich, Report on the Cariboo Chilcotin Justice Inquiry, Government of BC, 15 September 1993.

⁶⁷ CERD, *Concluding observations*, CERD/C/CAN/CO/21-23, para 24(c) (“Establish an independent review mechanism for unsolved cases of missing and murdered indigenous women and girls where there is evidence of bias or error in the investigation”); CEDAW, *Concluding observations*, CEDAW/C/CAN/CO/8-9, para 27(c)(iii) (establish “a mechanism for the independent review of cases in which there are allegations of inadequate or partial police investigation”).

⁶⁸ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Interim Report: Our Women and Girls are Sacred* (2017) p 81, www.mmiwg-ffada.ca/files/ni-mmiwg-interim-report-en.pdf.

⁶⁹ Amnesty International, “Amnesty International alarmed at Canada’s failure to act on MMIWG Inquiry police task force recommendation” (5 June 2018), www.amnesty.ca/news/amnesty-international-alarmed-canada%E2%80%99s-failure-act-mmiwg-inquiry-police-task-force.

model was adopted in Philadelphia almost 20 years ago and has seen incredible results, including a significant decrease in the rate of sexual assault cases closed as unfounded and is now being piloted in several communities in Canada.⁷⁰

39. The Philadelphia model of independent police file review could be adapted to cases of violence against Indigenous women, girls, and two-spirit people, whereby a committee of law enforcement and community representatives could be established to, under conditions of confidentiality, review outstanding case files concerning violence against women, missing persons, and other sensitive cases, to provide greater assurance to victims of violent crime and their family members, that all cases have been handled without bias.⁷¹

RECOMMENDATIONS

- Work collaboratively with provinces and territories to create a national taskforce able to re-examine and reopen past investigations where there are reasons to believe that the death or disappearance of an Indigenous woman, girl, or two-spirit person has not been properly investigated, whether through bias or error, including cases where an Indigenous woman, girl, or two-spirit person died under suspicious circumstances.
- Ensure that Indigenous peoples in all jurisdictions have access to justice through the creation of committees of law enforcement and community representatives that can, under conditions of confidentiality, review outstanding case files concerning violence against women, missing persons, and other sensitive cases, to provide greater assurance to victims of violent crime and their family members, that all cases have been handled without bias.

⁷⁰ Joanna Walters, “Investigating rape in Philadelphia: how one city’s crisis stands to help others” *The Guardian* (2 July 2013), www.theguardian.com/world/2013/jul/02/rape-philadelphia-investigation-crisis-crimes; Joe Pavia, “What is the ‘Philadelphia Model’ used to review sexual assaults?” *CBC* (23 April 2017), www.cbc.ca/news/canada/kitchener-waterloo/unfounded-sex-assaults-waterloo-task-force-carol-tracy-philadelphia-1.4080309; and Robyn Doolittle, “Unfounded: Police dismiss 1 in 5 sexual assault claims as baseless” *The Globe and Mail* (3 February 2017), www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/.

⁷¹ Amnesty International, *Out of Sight, Out of Mind*, p 74.

D. PARTICIPATORY DECISION-MAKING: FUND & INVOLVE GRASSROOTS INDIGENOUS ORGANIZATIONS

40. The strong participation of frontline, grassroots, Indigenous service providers in the delivery of culturally-relevant solutions and programs centered on the needs articulated by Indigenous women, girls, and two-spirit people is key to addressing the severe consequences of systemic violence against Indigenous women, girls, and two-spirit people. In fact, a human rights-based approach requires the active and meaningful participation of impacted communities and individuals, recognizing that those experiencing the harm of rights violations have the expertise and perspective to best address their rights fulfilment needs.
41. The importance of grassroots involvement of Indigenous communities and organizations in any effective solution has been borne out, as studies suggest that the transfer of responsibility of service delivery from the federal government to Indigenous peoples—when accompanied by both genuine control over decision-making and adequate resources to implement such decisions—has resulted in improved delivery of these services and consequently improvements in the standard of living and quality of life.⁷²
42. The need for greater devolution of control from the federal government to Indigenous peoples and Indigenous peoples' organizations, accompanied by appropriate funding, was also recently recognized by Canada's correctional investigator, who called on the federal government and the Correctional Service to work on handing responsibility, control, and resources to Indigenous communities to address "the enormity of the challenge of Indigenous over-incarceration."⁷³ In addressing violence against Indigenous women, girls, and two-spirit people, the UN Committee on the Elimination of Racial Discrimination has specifically called on Canada to "[m]onitor progress to achieve [the National Inquiry] recommendations, with the participation of affected survivors, families and stakeholders."⁷⁴

⁷² See e.g., Manitoba First Nations Centre for Aboriginal Health Research and Health Canada, *The Evaluation of the First Nations and Inuit Health Transfer Policy: Final Report* (2005), publications.gc.ca/collections/collection_2016/sc-hc/H14-191-2006-eng.pdf.

⁷³ Correctional Investigator Canada, *Office of the Correctional investigator: Annual Report: 2017-2018* (October 2018), p 66, www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf

⁷⁴ CERD, *Concluding observations*, CERD/C/CAN/CO/21-23, para 24(b).

43. Similarly, many have echoed the need to fund and support community-led, community-centered, culturally-relevant solutions in their testimony before the Inquiry,⁷⁵ including Winnipeg Police Chief Dany Smyth who spoke about the success of Indigenous-led community services through his own experiences collaborating with community initiatives.⁷⁶ Core, multi-year funding—in addition to project-specific funding—is imperative in empowering organizations to shift their priorities and activities as needed to meet evolving needs, and in recognition of the fact that it may take years of sustained action to create measurable and transformational change. As Witness Leona Star said, “Decentralize your process. Decentralize and give that voice back to communities so that they can actually bring forward, really, what works for them, because what works in one are or one territory may not work for the other, because . . . we are so diverse.”⁷⁷
44. Where funding is not adequate the benefits of devolution cannot be realized. Underfunding of Indigenous services is a rampant issue across all areas. For example, despite reported need, on-reserve shelters serving Indigenous women, children, and families receive up to 50% less funding than their provincial counterparts.⁷⁸ Similarly, child services on reserves received, as of 2000, an average of 22% less funding per child than provincially funded counterparts, despite the higher costs associated with service delivery in remote communities.⁷⁹

⁷⁵ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Part I Public Hearings, Winnipeg* (Vol 10), p 90; *Part I Public, Hearings, Membertou* (Vol 18), pp 104-105; *Part I Public Hearings, Saskatoon* (Vol 26), p 86; *Part I Public Hearings, Saskatoon* (Vol 28), pp 37, 40-41; *Part I Public Hearings, Montreal* (Vol 59), p 58; *Part I Public Hearings, Vancouver* (Vol 86), p 7; *Part I Public Hearings, Vancouver* (Vol 104), pp 64-65; *Part II Institutional Hearings, Calgary* (Vol II), p 18 (Leanne Gardiner, Director of the Community Justice and Policing Division for the Department of Justice, Government of the NWT, assenting to recommendation that “more First Nation service providers, frontline workers, be hired and funded and be properly qualified for the people they serve”); *Part 2 Institutional Hearings, Calgary* (Vol II), p 225 (Naomi Giff-MacKinnon, Senior Policy Analyst, Government of Canada, assenting to recommendation that “community-based service organizations have more autonomy and control over their funding.”); and National Inquiry into Missing and Murdered Indigenous Women and Girls, *Part II Institutional Hearings, Calgary* (Vol II), p 119 (Recommendation from Betty Ann Pottruff, Q.C., Senior Advisor for the Government of Saskatchewan, for greater support for “community-based solutions”).

⁷⁶ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Parts II & III Public Hearings, St. John's* (Vol XVIII).

⁷⁷ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Part I Public Hearings, Winnipeg* (Vol 10), pp 93-94.

⁷⁸ A. Johnson, “*Moving Forward! Planning for Self-determination.*” *Final report prepared for the Alberta Council of Women's Shelters* (2011), acws.ca/sites/default/files/documents/AlbertaOnReserveSheltersFinalReport2011NovemberCS.pdf.

⁷⁹ Dr. Rose-Alma J. MacDonald, Dr. Peter Ladd, et. Al, First Nations Child and Family Services, *Joint National Policy Review, Final Report* (2000), fncaringsociety.com/sites/default/files/docs/FNCFCS_JointPolicyReview_Final_2000.pdf.

45. Inadequate funding for Indigenous-led solutions must also be understood in the context of the right to participation. Under the human right to participation,⁸⁰ States must work to eliminate barriers to participation,⁸¹ such as prohibitive costs.⁸² Where Indigenous women, girls, and two-spirit people—as well as the communities and organizations to which they belong—are forced to repeatedly demonstrate the value of their lives in order to receive even minimum, unstable funding for community-based and community-owned projects,⁸³ or are unable to access funding to support participation in decision-making processes,⁸⁴ their rights to participation are not being respected.
46. Another barrier to participation that States must address is lack of trust. UN Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, notes:

The most persistent barrier to participation may lie in surmounting a culture of low expectations and cynicism, beliefs harboured both by individuals and public officials. States should revise the incentive structures for public officials so that they are rewarded for facilitating genuine participation rather than regarding it merely as an item to be mechanically ticked off on a checklist. This may require training on facilitation and inter-personal skills.⁸⁵

The perceived lack of political will to fully address the crisis of violence against Indigenous women and girls was noted by CEDAW as a key impediment in this respect, embodied by Canada's failure to follow-up on recommendations made in numerous previous reports on murdered and missing Indigenous women, girls, and two-spirit people.⁸⁶ Amnesty International has also called attention to Canada's continued failure to act on the majority of

⁸⁰ ICCPR, art. 25(a).

⁸¹ Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation (Catarina de Albuquerque), *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, UN Doc A/69/213 (2014), para 22, undocs.org/A/69/213.

⁸² *Ibid.* at 37.

⁸³ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Parts II & III Public Hearings, St. John's* (Vol XVII) p 148 (noted by Dr. Robyn Bourgeois, Assistant Professor at the Centre for Women and Gender Studies at Brock University).

⁸⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Parts II & III Public Hearings, St. John's* (Vol XVII) p 105 (Testimony of Witness Lanna Moon Perrin).

⁸⁵ Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation (Catarina de Albuquerque), *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, UN Doc A/69/213 (2014), para 23, undocs.org/A/69/213.

⁸⁶ CEDAW, *Report of the inquiry*, UN Doc CEDAW/C/OP.8/CAN/1, para 100.

recommendations from a provincial inquiry,⁸⁷ in-depth investigations by CEDAW⁸⁸ and the Inter-American Commission on Human Rights,⁸⁹ and a parliamentary committee report.⁹⁰

RECOMMENDATIONS

- Place the expertise and voices of Indigenous women, girls, and two-spirit people at the forefront of policy-making and planning on how to address violence against Indigenous women, girls, and two-spirit people.
- Ensure long-term, core funding and support for Indigenous communities, Indigenous women's organizations, grassroots initiatives, and frontline service providers to pioneer culturally-relevant, community-led solutions.
- Address perceived lack of political will by taking concrete action to fully implement this Inquiry's recommendations as well as the recommendations from previous international investigations, treaty body reviews, and Parliamentary committee studies.

E. RESPECT FOR PEOPLE WITH LIVED EXPERIENCE IN COMMERCIAL SEX

47. Any comprehensive response to violence against Indigenous women, girls, and two-spirit people must acknowledge and respect the spectrum of experiences with and views on commercial sex.⁹¹ Some Indigenous women, girls, and two-spirit people may have been sexually exploited

⁸⁷ Wally T. Oppal, *Forsaken: the Report of the Missing Women Commission of Inquiry*, 19 November 2012, Vol. I, www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf.

⁸⁸ CEDAW, *Report of the inquiry*, UN Doc CEDAW/C/OP.8/CAN/1, para 216-220.

⁸⁹ IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, Inter-Am C.H.R., OEA/Ser.LV/II, Doc. 30/14 (2014), www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf.

⁹⁰ Special Committee on Violence Against Indigenous Women, *Invisible Women: A Call to Action: A Report on Missing and Murdered Indigenous Women*, 2nd Sess., 41st Parl. (March 2014), www.ourcommons.ca/DocumentViewer/en/41-2/IWFA/report-1.

⁹¹ Amnesty International defines sex work as “the exchange of sexual services (involving sexual acts) between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer. Sex work takes different forms and varies between and within countries and communities. Sex work may vary in the degree to which it is more or less “formal” or organized.” The term “sex work” is used to describe situations where adults who are engaging in commercial sex have consented to do so. Where consent is absent for reasons including threat or use of force, deception, fraud, and abuse of power or sexual exploitation of a child, such activity would constitute a human rights abuse which must be treated as a criminal offence. The phrase 'commercial sex' describes all forms of sexual transactions. Amnesty International uses the term 'sex work' specifically to describe situations where adults consensually engage in commercial sex. Not all commercial sex is consensual. Amnesty International, “Amnesty

and/or trafficked. Some may consensually exchange sexual services for remuneration as a means to support their family. Some may engage in commercial sex because they feel they have no other means of earning a living. These are some, but not the totality of experiences that Indigenous women, girls, and two-spirit people have with the commercial sex trade, and it should be recognized that people may have multiple and varied experiences with commercial sex throughout their lives.⁹²

48. Given the breadth of experiences, and in line with a human right-based approach, the perspectives of current and former sex workers, as well as survivors of sexual exploitation and trafficking, should drive State policies and a variety of programming approaches meant to address violence and discrimination against sex workers, and protect Indigenous women, girls, and two-spirit people from human trafficking and sexual exploitation.⁹³ A human rights-based approach should include offering a variety of programs designed to meet the individual needs of each person, and should include initiatives to support sex workers not seeking to exit commercial sex, as well as support and protection for those seeking to exit the commercial sex trade.

49. It is essential to acknowledge that, for some Indigenous women, girls, and two-spirit people, sex work is a function of survival, the result of severe socio-economic marginalization, addiction, illness, or exploitation. As Witness Robert Chamberlin noted in his testimony before the Inquiry:

When I consider how media and society characterizes the women that have had tragedy on the Lower Eastside [of Vancouver] as prostitutes, as drug addicts, it bothers me because not enough of society understands the

International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers,” Index: POL 30/4062/2016, (26 May 2016), www.amnesty.org/en/documents/pol30/4062/2016/en/; and Amnesty International, *Out of Sight, Out of Mind*, p 49.

⁹² See, e.g., National Inquiry into Missing and Murdered Indigenous Women and Girls, *Parts II & III Public Hearings, St. John’s* (Vol XVII) (testimonies encompassing a broad spectrum of experience with commercial sex).

⁹³ Amnesty International uses the definition of human trafficking (or ‘trafficking in persons’) as set forth in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). The UN Trafficking Protocol defines trafficking as constituting three elements: (1) An “action”: that is, the recruitment, transportation, transfer, harbouring or receipt of persons; (2) A “means” by which that action is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and (3) A “purpose” (of the action/means): specifically, exploitation. UN Trafficking Protocol, 2000, Art. 3(a). All three elements must be present to constitute “trafficking in persons” under the UN Trafficking Protocol. The only exception is when the victim is a child, in which case a trafficking-in-persons crime is deemed to have been committed even if none of the above “means” is involved. Human trafficking is not the same as sex work.

predicament that the country has put First Nations people in. And what I mean is, you see these are more symptoms or an action of survival.⁹⁴

50. High rates of poverty and socio-economic marginalization, speak to the need for culturally appropriate services to ensure Indigenous women, girls, and two-spirit people do not engage in commercial sex because they feel they have no other choice.⁹⁵ Amnesty International's global policy on State Obligations to Respect, Protect, and Fulfil the Human Rights of Sex Workers calls on States to, "comply with their obligations with respect to all people's economic, social and cultural rights, in particular guaranteeing access for all to education and employment options and social security to prevent any person from having to rely on selling sex as a means of survival due to poverty or discrimination."⁹⁶

51. Additionally, a human rights-based approach to State policies surrounding commercial sex recognises the stigmatized and criminalized nature of the commercial sex trade, which routinely forces sex workers to operate at the margins of society in clandestine and dangerous environments with little recourse to safety or State protection. Sex workers face an increased risk of violence and abuse, and crimes against them often go unreported, under-investigated, and/or unpunished, offering perpetrators impunity.⁹⁷ In order to effectively address this human rights-violating pattern, States must ensure equal access to justice by investigating and prosecuting crimes against sex workers without discrimination, in addition to refraining from discriminatory enforcement against sex workers.⁹⁸

52. Stigmatization and criminalization of sex work has a profound impact on people involved in commercial sex and their families, often infringing on right fulfillment in the context of access to social services, healthcare, and equal protection of the law, including where families are seeking assistance in locating a missing relative.⁹⁹ The stigma of association with sex work was

⁹⁴ National Inquiry on Missing and Murdered Indigenous Women and Girls, *Part 1 Public Hearings, Vancouver* (Vol 114), p 44.

⁹⁵ National Inquiry on Missing and Murdered Indigenous Women and Girls, *Part 1 Public Hearings, Saskatoon* (Vol 28), pp 49–50 ("We need to provide more protection and preventative measures to vulnerable Indigenous women and girls. . . . Protection for, and support for women and girls who are forced into prostitution or are otherwise sexually exploited because of poverty, social conditions, human trafficking, mental status and addiction.").

⁹⁶ Amnesty International, "Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers," Index: POL 30/4062/2016, (26 May 2016), p 2, www.amnesty.org/en/documents/pol30/4062/2016/en/

⁹⁷ *Ibid.*

⁹⁸ *Ibid.* at 2.

⁹⁹ Amnesty International, *Stolen Sisters*, pp 13 & 16.

apparent during the trial of Cindy Gladue’s alleged killer, where she was regularly referred to as a “native” and a “prostitute.”¹⁰⁰ Former sex worker Lanna Moon Perrin, in her testimony before the National Inquiry, outlined how she experienced this stigma in her encounters with law enforcement, and it’s very real impact on access to justice and the equal protection of the law:

It would be nice to be able to report a bad date to a police officer without getting – being given the attitude, “Well, you know, a girl could run faster with their dress up than a guy can with their pants down,” you know, I have heard that from a police officer before... So, I would like to be able to go to the police, and, you know, I would like to say, you know, “I was robbed.” You know, “I was assaulted.” ... I can’t even think of someone who would even go to the cops, honestly, if they were hurt like that. Like, I sure the heck wouldn’t. And so, I guess to be able to see police that might take us seriously, that we’re allowed that protection too.¹⁰¹

Beyond personal interactions with law enforcement, the Honourable Wally Oppal noted in the final report of the Missing Women Commission of Inquiry in Vancouver that how police policy enforces stigma, noting “there is a clear correlation between law enforcement strategies of displacement and containment and increased violence against women engaged in the sex trade.”¹⁰²

53. In the December 2013 *Canada (Attorney General) v. Bedford*¹⁰³ ruling, the Supreme Court of Canada declared that three provisions of Canada’s Criminal Code were unconstitutional: 2.210 (keeping or being found in a bawdy house), s 212 (1)(j) (living on the avails of prostitution), and s. 213(1)(c) (communicating in public for the purpose of prostitution). These provisions were struck down by the Court because they violate the right to security of the person protected by the Charter of Rights and Freedoms. The judgement states, “The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky – but

¹⁰⁰ Sean Fine, “Cindy Gladue hearing to shine spotlight on questions about racism in Canada’s courts,” *Globe and Mail* (9 October 2018), www.theglobeandmail.com/canada/article-cindy-gladue-hearing-to-shine-spotlight-on-questions-about-racism-in/.

¹⁰¹ National Inquiry on Missing and Murdered Indigenous Women and Girls, *Part II and III Hearing (St. John’s)* (Vol 17), pp 205-206.

¹⁰² Wally T. Oppal, *Forsaken: the Report of the Missing Women Commission of Inquiry*, 19 November 2012, Vol. IIA, p 2, www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-Vol-2A-web-RGB.pdf.

¹⁰³ *Canada (Attorney General) V Bedford* (Index: 2013 SCC 72), 20 December 2013, scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do.

legal – activity from taking steps to protect themselves from the risk.”¹⁰⁴ The Court gave the federal government one year to introduce new Charter-compliant legislation.

54. In response to the Bedford ruling, in 2014 the federal government passed into law the *Protection of Communities and Exploited Persons Act (PCEPA)*, which criminalized the purchase of consensual sex between adults as well as many aspects surrounding the sale of consensual adult sex.¹⁰⁵ The Bedford ruling stated that “Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes.”¹⁰⁶ Amnesty International is deeply concerned that rather than strengthening rights protections for sex workers in Canada, the PCEPA has further marginalized and heightened risks to their security, is not rights-based, and does not protect the human rights of sex workers.
55. Research conducted by the Canadian Alliance for Sex Work Law Reform since the December 2014 enactment of the PCEPA shows that sex workers have reported being displaced and isolated, fearing and avoiding contact with law enforcement officials and agencies; increased levels of targeted violence against sex workers; interference with safety mechanisms used by sex workers; increased police profiling and surveillance of Indigenous sex workers; misuse and over application of trafficking laws; antagonistic treatment by police; and increased stigmatization and discrimination against sex workers.¹⁰⁷
56. A human rights-based approach to State policies surrounding the commercial sex trade that is Charter compliant and meets Canada’s international human rights obligations to protect the rights of sex workers would include repealing the PCEPA to allow sex workers to increase measures to protect their security, as outlined in the Bedford judgement. It would include enforcing the application of existing criminal laws to protect sex workers from violence and discrimination including, notably, laws regarding the sexual exploitation of children. Finally, it would include substantively engaging with sex workers and representative organizations in the development of policies and programs that will best help to ensure that the social, economic and cultural rights of sex workers are respected, protected, and fulfilled.

¹⁰⁴ *Ibid.* para 60.

¹⁰⁵ Protection of Communities and Exploited Persons Act (Index: SC 2014, c.25), 6 November 2014, laws-lois.justice.gc.ca/eng/AnnualStatutes/2014_25/page-1.html.

¹⁰⁶ Canada (Attorney General) V Bedford (Index: 2013 SCC 72), 20 December 2013, scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do.

¹⁰⁷ Canadian Alliance for Sex Work Law Reform, “Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada” (March 2017), sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf.

RECOMMENDATIONS

- Repeal the Protection of Communities and Exploited Persons Act, thereby decriminalizing all aspects of commercial sex between consenting adults. This will allow sex workers to increase measures to protect their security, as outlined in the *Bedford* judgement.
- Enforce the application of existing criminal laws without discrimination in order to protect Indigenous women, girls, and two-spirit people engaged in commercial sex from violence and discrimination, including, notably, laws regarding the sexual exploitation of children, sexual assault, and trafficking.
- Substantively engage with sex workers and representative organizations in the development of policies and programs that will best help to ensure that the social, economic and cultural rights of all Indigenous women, girls, and two-spirit people engaged in the commercial sex trade are respected, protected, and fulfilled.
- Ensure that the development of laws, regulations, policies, and programming concerning the rights of sex workers in Canada complies with the UN Declaration on the Rights of Indigenous Peoples.

RECOMMENDATIONS

HUMAN RIGHTS-BASED APPROACH TO VIOLENCE AGAINST INDIGENOUS WOMEN, GIRLS, AND TWO-SPIRIT PEOPLE

57. Commit to address violence against Indigenous women, girls, and two-spirit people based on the full realization of their rights as set out in international human rights law, including the UN Declaration on the Rights of Indigenous Peoples.
58. Commit to and collaboratively develop a human rights-based approach to violence against Indigenous women, girls, and two-spirit people that centers the needs, voices, and expertise of Indigenous women, girls, and two-spirit people as rights holders in order to fully address systemic and root causes of the extreme and pervasive violence that they face.

GBV AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS: AN ESSENTIAL CONNECTION

59. Recognizing the connection between socio-economic and cultural rights violations and violence against Indigenous women, girls and two-spirit people, work with First Nations, Inuit, and Métis governance and civil society advocates to ensure substantive equality in access to all government services and programs (i.e. housing, health, and education), including culturally-relevant programs to prevent violence that effectively ensure the safety of Indigenous women, girls, and two-spirit people and support survivors of violence.
60. Ensure funding on par with the scale and gravity of the crisis of violence against Indigenous women, girls, and two spirit people, including sustained, long-term, core funding to civil society organizations for culturally-specific services to meet the needs of Indigenous women, girls, and two-spirit people who are at risk of violence or in contact with law enforcement and court officials, including shelters.
61. Ensure all government departments have a publicly available gender-based analysis policy with resources to support implementation.
62. To help address bias in the provision of government and social services, ensure all civil servants, healthcare professionals, and frontline service providers receive cultural competency training as outlined in the Truth and Reconciliation Commission Calls to Action.
63. Make intersectional gender-based analysis mandatory in the approval and regulatory process for large-scale resource development projects.

NEED FOR WHOLE OF GOVERNMENT RESPONSE AND NATIONAL ACTION PLAN

64. Work with Indigenous women, girls, and two-spirit people and representative organizations; the federal government; provincial and territorial officials; municipal officials; and First Nations to develop a comprehensive, measurable, well-resourced, time-bound National Action Plan to holistically address all forms of violence against women, girls, and gender diverse people in Canada, which includes specific provisions to address violence against First Nations, Métis, and Inuit women, girls, and two-spirit people, and ensures the provision of adequate resources for its implementation, monitoring, and assessment.
65. Include concrete measures in the National Action Plan to address the staggering disparity in standard of living and access to government services experienced by First Nation, Inuit, and Métis women, girls, and two-spirit people; the continued disruption of Indigenous societies by the removal of children, frequently from families struggling to support themselves; the disproportionate rate of incarceration of Indigenous women; and the police response to GBV.

HUMAN RIGHTS DUE DILIGENCE: DATA

66. Ensure that interventions designed to prevent and respond to violence against Indigenous women, girls, and two-spirit people are based on accurate empirical data. To this end:
 - a. Undertake the collection and routine publication of data on health and social and economic conditions for Indigenous peoples disaggregated by Indigenous identity (Inuit, Métis, and First Nations), gender, sexual orientation, and gender identity.
 - b. Establish a national protocol with rigorous training for law enforcement to ensure that the identity of Indigenous victims of violence, disaggregated by Indigenous identity (Métis, Inuit, and First Nations), sexual orientation, and gender identity, is regularly and accurately recorded and entered into national crime databases.
 - c. Make disaggregated data on GBV regularly and publicly available, including by regularly reporting on violence against Indigenous women, girls, and two-spirit people, including instances of murder, missing persons, and suspicious deaths.

HUMAN RIGHTS DUE DILIGENCE: INDEPENDENT OVERSIGHT

67. Ensure all allegations of police abuse of power, including violence and sexual assault, are handled by independent, civilian complaints mechanisms, with sufficient support, protection, and redress provided to victims. Ensure complaint mechanisms are accessible across all

jurisdictions in Canada, and understandable to impacted individuals and communities, taking into account language barriers, as well as fears of reprisal and stigma.

HUMAN RIGHTS DUE DILIGENCE: EXTERNAL REVIEW OF CURRENT FILES AND PAST INVESTIGATIONS

68. Work collaboratively with provinces and territories to create a national taskforce able to re-examine and reopen past investigations where there are reasons to believe that the death or disappearance of an Indigenous woman, girl, or two-spirit person has not been properly investigated, whether through bias or error, including cases where an Indigenous woman, girl, or two-spirit person died under suspicious circumstances.
69. Ensure that Indigenous peoples in all jurisdictions have access to justice through the creation of committees of law enforcement and community representatives that can, under conditions of confidentiality, review outstanding case files concerning violence against women, missing persons, and other sensitive cases, to provide greater assurance to victims of violent crime and their family members, that all cases have been handled without bias.

PARTICIPATORY DECISION-MAKING: FUND & INVOLVE FRONTLINE/GRASSROOTS INDIGENOUS ORGANIZATIONS

70. Place the expertise and voices of Indigenous women, girls, and two-spirit people at the forefront of policy-making and planning on how to address violence against Indigenous women, girls, and two-spirit people.
71. Ensure long-term, core funding and support for Indigenous communities, Indigenous women's organizations, grassroots initiatives, and frontline service providers to pioneer culturally-relevant, community-led solutions.
72. Address perceived lack of political will by taking concrete action to fully implement this Inquiry's recommendations as well as the recommendations from previous international investigations, treaty body reviews, and Parliamentary committee studies.

RESPECT FOR PEOPLE WITH LIVED EXPERIENCE IN COMMERCIAL SEX

73. Repeal the Protection of Communities and Exploited Persons Act, thereby decriminalizing all aspects of commercial sex between consenting adults. This will allow sex workers to increase measures to protect their security, as outlined in the *Bedford* judgement.
74. Enforce the application of existing criminal laws without discrimination in order to protect Indigenous women, girls, and two-spirit people engaged in commercial sex from violence and

discrimination, including, notably, laws regarding the sexual exploitation of children, sexual assault, and trafficking.

75. Substantively engage with sex workers and representative organizations in the development of policies and programs that will best help to ensure that the social, economic and cultural rights of all Indigenous women, girls, and two-spirit people engaged in the commercial sex trade are respected, protected, and fulfilled.
76. Ensure that the development of laws, regulations, policies, and programming concerning the rights of sex workers in Canada complies with the UN Declaration on the Rights of Indigenous Peoples.