

April 10, 2019

AMNESTY INTERNATIONAL SUBMISSION TO THE SENATE STANDING COMMITTEE ON ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES STUDY OF BILL C-69 ON IMPACT ASSESSMENT

Amnesty International welcomes the inclusion of intersectional gender-based analysis in Bill C-69, *An Act to enact the Impact assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*. The requirement that future impact assessments include an intersectional gender-based analysis is potentially one of the important advancements in the proposed legislation.

Bill C-69 could be strengthened by the addition of a clear statement of purpose related to the necessity of considering how decisions may have different impacts for people of different genders.

Recommendation 1: The inclusion of “the intersection of sex and gender with other identity factors” in 22(s) should be retained unamended.

Recommendation 2: Amend existing reference to gender in the preamble “To help fulfil Canada’s commitments to gender equality” so it reads: “To help fulfil Canada’s commitments to gender equality the Government of Canada is committed to assessing how groups of women, men and gender-diverse people may experience policies, programs and projects and to taking actions that contribute to an inclusive and democratic society and allow all Canadians to participate fully in all spheres of their lives.”

This submission seeks to outline what intersectional gender-based analysis is; sets out the importance of including explicit language mandating gender-based analysis in impact assessment legislation; outlines the harmful consequences that result from excluding gender-based analysis from the assessment process; and concludes that intersectional gender-based analysis in the impact assessment process is a critical tool to upholding Canada’s human rights obligations including the duty of due diligence.

National Office:

312 Laurier Avenue East, Ottawa, ON K1N 1H9
Tel: (613) 744-7667 Fax: (613) 746-2411
info@amnesty.ca

Toronto Office:

1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
Tel: (416) 363-9933 Fax: (416) 363-3103
toronto@amnesty.ca

Vancouver Office:

Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca

INTRODUCTION

In our 2016 report, *Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada*,¹ Amnesty International traced some of the many complex and interconnected ways that decisions about resource development can affect the lives of individuals and communities. They include impacts on community health, safety, and well-being that are matters of human rights protected in both Canadian and international law.

The impacts can be traced not only to the environmental footprint of the project in question, but also to a myriad of other direct and indirect effects, including the impact on the local economy, and the cost and availability of essential goods and services, which tend to rise when large numbers of outside workers are brought into a remote region to work on resource development projects.

In many instances, the impacts differ greatly for people of different genders. Our report drew particular attention to the ways that the influx of large numbers of outside workers increased economic and housing insecurity for local low-income women, and over-burdened social services. Failure to identify and mitigate these impacts inevitable compounds already unacceptable risks to the lives of Indigenous women, girls, and two-spirited persons.²

Canada's current regulatory framework for resource development projects falls short when it comes to assessing or mitigating the human rights impact of resource development projects, particularly impacts on Indigenous women, girls, and two-spirit people.

In Amnesty International's view, the failure to ensure a rights-based analysis, and in particular the absence of a specific gender-based analysis, in resource development decisions in Canada is a serious breach of the state's duty of due diligence.

GENDER-BASED ANALYSIS

The Department for Women and Gender Equality defines gender-based analysis as “an analytical process used to assess how diverse groups of women, men and non-binary people may experience policies, programs, and initiatives. The ‘plus’ in GBA+ acknowledges that GBA goes beyond biological (sex) and socio-cultural (gender) differences. We all have multiple identity factors that intersect to make us who we are; GBA+ also considers many other identity factors, like race, ethnicity, religion, age, and mental or physical disability.”³

Bill C-69 represents a shift from environmental assessment to impact assessment. Whereas environmental assessment includes assessing changes to the environment, impact assessment is a more

¹ Amnesty International, *Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada*, AMR 20/4872/2016, October 2016, www.amnesty.ca/outofsight

² Amnesty International Canada's Submissions on Bill C-69, 6 April 2018, www.ourcommons.ca/Content/Committee/421/ENVI/Brief/BR9830980/br-external/AmnestyInternationalCanada-e.pdf.

³ Department for Women and Gender Equality, “What is GBA+?”, <https://cfc-swc.gc.ca/gba-acis/index-en.html>.

National Office:

312 Laurier Avenue East, Ottawa, ON K1N 1H9
Tel: (613) 744-7667 Fax: (613) 746-2411
info@amnesty.ca

Toronto Office:

1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
Tel: (416) 363-9933 Fax: (416) 363-3103
toronto@amnesty.ca

Vancouver Office:

Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca

holistic approach that assesses changes to the “environment or to health, social, or economic conditions and the positive and negative consequences of these changes.”⁴

When applied to the impact assessment process for resource development projects, GBA+ is a tool to assess the “social” implications of projects, to help understand how people of different genders are likely to be positively or negatively impacted by projects, and to help identify what strategies can be put in place to mitigate any likely harmful impacts.

In 1995, the federal government committed to conduct a gender-based analysis “on all future legislation, policies and programs.”⁵ Despite the official government-wide commitment to conducting gender-based analysis, the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals includes no mention of gender or gender-based analysis.⁶ In 2009, the Auditor General of Canada found that the federal government’s commitment to gender-based analysis was unevenly implemented across government departments and had little influence on the policy-making process.⁷

Although the government developed a new action plan to implement gender-based analysis after the Auditor General’s report,⁸ in 2015 the Auditor General again reported on the failure to fully implement a gender-based analysis across government, noting that such analysis is still not mandatory. The reported stated, “This is important because when gender-based analysis is missing or incomplete, gender-specific impacts might not be fully factored into government decisions about policy, legislative, and program initiatives.”⁹

In response to the latest report by the Auditor General, in 2016 the government announced a five-year action plan which “renewed its commitment to GBA, including by mandating the Minister of Status of Women to, as an overarching goal, ensure government policy, legislation, and regulations are sensitive to the different impacts that decisions can have on men and women.”¹⁰ The action plan does not include any specific commitment around impact assessment and project approval.

Despite a whole of government commitment to implement gender-based analysis, in practice, gender-based analysis remains an under-utilized tool to inform policy-making unless it is explicitly referenced

⁴ Bill C-69, definition of “effects,” p. 4.

⁵ Status of Women Canada, *Setting the Stage for the Next Century: The Federal Plan for Gender Equality*, August 1995.

⁶ Canadian Environmental Assessment Agency, *The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, 2010.

⁷ Auditor General of Canada, *Spring 2009 Report of the Auditor General of Canada to the House of Commons, Office of the Auditor General of Canada*, 2009, Chapter 1.

⁸ Status of Women Canada, ‘Departmental Plan on Gender-based Analysis,’ www.swc-cfc.gc.ca/gba-ac/s/ap-pa-en.html

⁹ Auditor General of Canada, *Report 1: Implementing Gender-Based Analysis*, Office of the Auditor General of Canada, Fall 2015.

¹⁰ Status of Women Canada, *Status of Women Canada, Privy Council Office and Treasury Board of Canada Secretariat Action Plan (2016-2020): Audit of Gender-based Analysis: Fall 2015 Report of the Auditor General of Canada*.

National Office:

312 Laurier Avenue East, Ottawa, ON K1N 1H9
Tel: (613) 744-7667 Fax: (613) 746-2411
info@amnesty.ca

Toronto Office:

1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
Tel: (416) 363-9933 Fax: (416) 363-3103
toronto@amnesty.ca

Vancouver Office:

Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca

as it is, for example, in section 22(s) of Bill C-69, which calls for consideration of “the intersection of sex and gender with other identity factors” in the assessment process.

WHEN GENDER-BASED ANALYSIS IS ABSENT

Incorporating a gender-based analysis is an essential tool for identifying potential risks and harms that may otherwise be overlooked.¹¹ The World Bank has stated that failure to consider impacts on women and girls can contribute to and exacerbate a number of risks including “lack of voice and representation in the formal decision making process,” “risk in violence and sexual abuse as a result of domestic disputes, alcoholism, drug use, or gambling,” “rise in prostitution and HIV/AIDS and other STDs,” “poor working conditions and incidences of sexual abuse for women in the project workforce,” and “loss of safety and security due to influx of construction workers.”¹²

Where Indigenous peoples have carried out their own gender-based analysis of projects proposed in their territories, the result has often been to highlight critical issues that might otherwise have been ignored. For example, a study for the Nak’azdli Whut’en First Nation in central British Columbia found that loss of access to wild foods could have potentially greater impact on female-headed households than on male-headed households because they were more likely to hunt or fish and were much more likely to eat traditional foods.¹³

The environmental assessment of the Site C dam is one example of how, even with the additional attention to social and economic impacts called for in BC’s assessment regime, the review process failed to consider specific gendered impacts. The assessment noted that jobs created by the project would draw more workers to the region and make accommodation even harder to find and more expensive.¹⁴ However, 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—face a heightened risk of experiencing housing insecurity and homelessness. 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 for violence against women, with local service providers identifying affordable housing as the top need for those women and girls most at risk of violence.¹⁵

¹¹ UN, *Beijing Declaration and Platform for Action: The Fourth World Conference on Women*, September 1995; and Status of Women Canada, ‘Gender-Based Analysis Plus,’ www.swc-cfc.gc.ca/gba-acis/index-en.html

¹² World Bank, *Gender in Extractive Industries*, 21 November 2013.

¹³ Quintessential Research Group Inc., *Socio-Economic Impact Assessment of Spectra Energy’s Westcoast Connector Gas Transmission Project on Nak’azdli Band and Community Members*, prepared for the Nak’azdli Band, 28 October 2014, p. 34.

¹⁴ Review Panel Established by the Federal Minister of the Environment and the BC Minister of the Environment, *Report of the Joint Review Panel – Site C Clean Energy Project*, 1 May 2014, p. 188.

¹⁵ 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, pp.17-18, thepeaceprojectfsj.files.wordpress.com/2014/03/the_peace_project_gender_based_analysis_amended.pdf.

National Office:

312 Laurier Avenue East, Ottawa, ON K1N 1H9
Tel: (613) 744-7667 Fax: (613) 746-2411
info@amnesty.ca

Toronto Office:

1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
Tel: (416) 363-9933 Fax: (416) 363-3103
toronto@amnesty.ca

Vancouver Office:

Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca

A positive example of what gender-based analysis in the context of resource development can look like is a project by Lake Babine First Nation and Nak'azdli Whut'en First Nation, together with The Firelight Group, that explored strategies to mitigate the harmful, unintended consequences of resource development projects on Indigenous women and girls.¹⁶ Resource development projects have been undertaken on or near the traditional territories of both nations. Indigenous women drew from their experiences with previous or ongoing resource development projects and identified harmful impacts associated with industrial development.

Amnesty International participated in a workshop organized as part of the project, which brought together Indigenous women, Indigenous leaders, industry representatives, and government to discuss potential mitigation strategies identified by Indigenous women. Project participants then engaged in a substantive dialogue about mitigation strategies that Indigenous nations, industry partners, and the provincial government could employ to prevent future harms. For example, to help eliminate sexual assault, sex trafficking, and problems associated with drugs and alcohol, community mitigation strategies included creating support groups for recovering addicts and supports for sexual assault survivors and perpetrators, as well as increasing sexual and reproductive health information and services in the community. Industry mitigation strategies included working with Indigenous leadership and community members to identify sex and drug traffickers coming into the community and jointly develop mitigation strategies. Government mitigation strategies included increasing policing resources to respond to increased policing needs.¹⁷ From the discussions that Amnesty International participated in, the suggested strategies were well received by both industry and government.

THE STANDARD OF DUE DILIGENCE

Gender-based analysis in the impact assessment process isn't just a helpful tool; it is a necessary tool to employ to meet the standard of due diligence.

Everyone has the right to live in dignity and safety¹⁸ and to maintain and practice their identity and culture.¹⁹ Under international human rights law, states are obligated to do everything they can to ensure

¹⁶ Gibson, G., K. Yung, L. Chisholm, and H. Quinn with Lake Babine Nation and Nak'azdli Whut'en, "Communities and Industrial Camps: Promoting healthy communities in settings of industrial change," 2017, http://www.thefirelightgroup.com/firelightmaterials/wp-content/uploads/2016/03/Firelight-work-camps-Feb-8-2017_FINAL.pdf.

¹⁷ Ibid, p. 39.

¹⁸ The *Universal Declaration of Human Rights* (1948) recognized that "All human beings are born free and equal in dignity and rights" (Article 1) and that "Everyone has the right to life, liberty and security of person" (Article 3).

¹⁹ For example, Article 27 of the *International Covenant on Civil and Political Rights* states, "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." The Lubicon Cree, an Indigenous nation in the Canadian province of Alberta, used this article to challenge oil and gas developments taking place in their traditional territory without their consent. The UN Human Rights Committee ruled in their favour in 1990. UN Human Rights Committee, *Communication No. 167/1984: Canada* (Index: CCPR/C/38/D/167/1984), 10 May 1990. The federal and provincial governments failed to act on this ruling. See Amnesty

National Office:

312 Laurier Avenue East, Ottawa, ON K1N 1H9
Tel: (613) 744-7667 Fax: (613) 746-2411
info@amnesty.ca

Toronto Office:

1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
Tel: (416) 363-9933 Fax: (416) 363-3103
toronto@amnesty.ca

Vancouver Office:

Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca

that rights essential to individual and collective well-being, such as the rights to education, health, livelihood, and the right to live free from violence, can be fully realized in the lives of all people, without discrimination.

Governments and private actors have a fundamental responsibility to ensure that their actions do not lead to human rights violations, whether directly or indirectly, even when such violations are an unintended consequence of their actions. All governments are additionally expected to prevent human rights violations, including preventing crimes and abuses committed by private actors such as corporations and individuals. Where rights have been violated, states have an obligation to ensure justice by acknowledging the harm, assisting the victims in their recovery, and preventing the harms being repeated.

The responsibility to take every reasonable precaution to prevent human rights violations is often described as the duty of “due diligence.” The duty of due diligence applies both to states and to industries: measures that are supportive of due diligence help both governments and corporations fulfil their fundamental obligations.

Domestic and international human rights standards consistently affirm the need for an enhanced standard of precaution to respect, protect, and fulfil the rights of groups and individuals who have been historically marginalized and disadvantaged or who face ongoing discrimination because of their gender, ethnicity, or other aspects of their identity.

This standard of care is particularly relevant to the situation of Indigenous peoples as a whole, and to Indigenous women and girls in particular. UN Women has said that states must address the risk factors that increase the likelihood that a woman will experience violence including: having experienced childhood violence, limited economic opportunities and gender-based income disparities, and impunity for perpetrators.²⁰

Following an investigation on violence against Indigenous women in BC, the Inter-American Commission on Human Rights (IACHR) noted that prevention of violence requires specific attention to the social and economic situation of Indigenous women and girls. The IACHR stated, “Given the strong connection between the greater risks for violence that indigenous women confront and the social and economic inequalities they face, States must implement specific measures to address the social and economic disparities that affect indigenous women.”²¹

International, *Canada - 20 years' denial of recommendations made by the United Nations Human Rights Committee and the continuing impact on the Lubicon Cree* (Index: AMR 20/003/2010), 2 March 2010.

²⁰ UN Women, ‘Causes, protective and risk factors,’ www.endvawnow.org/en/articles/300-causes-protective-and-risk-factors-.html

²¹ Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada* (Index: OEA/Ser.L/V/II. Doc.30/14), 21 December 2014, para. 165, www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf.

National Office:

312 Laurier Avenue East, Ottawa, ON K1N 1H9
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1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
Tel: (416) 363-9933 Fax: (416) 363-3103
toronto@amnesty.ca

Vancouver Office:

Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca

In relation to violence against women, the standard of due diligence is 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.²²

ESTABLISHED CONCERNS AROUND GENDER IMPACTS OF RESOURCE DEVELOPMENT IN CANADA

A growing body of studies and reports in Canada and worldwide draw links between intensive resource development and negative social impacts in host communities. These negative impacts include social strains and increased violence against women, as well as factors such as wage inequalities and shortages of affordable housing that lead to a heightened risk of violence.²³

Amnesty International's research in northeast BC found numerous studies by government agencies and frontline service providers, such as the regional health agency Northern Health, and the Fort St. John

²² Yakin Ertürk, *Report of the Special Rapporteur on violence against women, its causes and consequences* (Index: E/CN.4/2006/61), UN Commission on Human Rights, 20 January 2006, para. 29.

²³ See for example, The Labrador West Status of Women Council et al., *Effects of Mining on Women's Health in Labrador West*, 7 November 2004; Alison Cretny et al., *Boom to Bust: Social and cultural impacts of the mining cycle*, Pembina Institute, 2008; Catherine Coumans and Mining Watch Canada, 'Research on Contested Ground: Women, Mining and Health,' in *Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health*, 3:1, Winter 2005, pp. 9-32; Ginger Gibson and Jason Klinck, 'Canada's Resilient North: The Impact of Mining on Aboriginal Communities,' in *Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health*, 3:1, Winter 2005, pp. 116-139; First Nations Women Advocating Responsible Mining, *Submission to Committee on the Elimination of Racial Discrimination, 80th Session*, January 2012; Conseil du statut de la femme Quebec, *Opinion - Women and Plan Nord: for Equality in Northern Development*, October 2012; Janis Shandro et al., *Ten Steps Ahead: Community Health The Social Dimension of Sustainable Development and the Mining Industry: A Background Paper and Safety in the Nak'ál Bun/Stuart Lake Region During the Construction Phase of the Mount Milligan Mine*, December 2014; Lisa Aurore Lapalme, *The Social Dimension of Sustainable Development and the Mining Industry: A Background Paper*, Natural Resources Canada, November 2003, p. 14; Robert James Early, *DISCONNECT: Assessing and Managing the Social Effects of Development in the Athabasca Oil Sands*, University of Waterloo, 2003, p. 167; Nobel Women's Initiative, *Breaking Ground: Women, Oil and Climate Change in Alberta and British Columbia*, 2013, pp. 18-20; Pauktuutit, *The impact of resource extraction on Inuit women and families in Qamani'tuaq, Nunuvut Territory: a qualitative assessment*, January 2014; Linda Archibald and Mary Crnkovich, *If Gender Mattered: A Case Study of Inuit Women, Land Claims and the Voisey's Bay Nickel Project*, November 1999; National Aboriginal Health Organization, *Resource Extraction and Communities in Northern Canada: Gender Considerations*, 2008; World Health Organization, *Managing the public health impacts of natural resource extraction activities: a framework for national and local health authorities*, Draft Discussion Paper, 17 November 2010; Shira M. Goldenberg et al., 'Sexually Transmitted Infection (STI) Testing among Young Oil and Gas Workers: The need for Innovative, Place-based Approaches to STI Control,' in *Canadian Journal of Public Health*, 99:4, July-August 2008, pp. 350-254; Shira M. Goldenberg et al., 'And they call this progress? Consequences for young people of living and working in resource-extraction communities,' in *Critical Public Health*, 20:2, p. 162; S. Barton, 'Aspects of the effect of substance use on health, wellness and safety of employees and families in northern remote work sites,' in *Social Indicators Research*, 60:1. p. 267; S. Markey and K. Heisler, 'Getting a fair share: Regional development in a rapid boom-bust rural setting,' in *Canadian Journal of Regional Science*, 33:3, p. 56; Northern British Columbia Women's Task Force, *Report on Single Industry Communities: Kitimat, BC; Fraser Lake, BC; Mackenzie, BC*, 1977; Northern Health, *Men's Health Matters Because Men Matter: Community Consultation on Men's Health: What We Heard*, September 2011; and Northern Health, *Where are the Men? Chief Medical Health Officer's Report on the Health and Wellbeing of Men and Boys in Northern BC*, November 2011.

National Office:

312 Laurier Avenue East, Ottawa, ON K1N 1H9
Tel: (613) 744-7667 Fax: (613) 746-2411
info@amnesty.ca

Toronto Office:

1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
Tel: (416) 363-9933 Fax: (416) 363-3103
toronto@amnesty.ca

Vancouver Office:

Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca

Women's Resource Society,²⁴ that specifically link the resource economy in northeast BC and significant social strains being experienced in the region.²⁵ The provincial health ministry has noted that concerns about harmful social impacts of resource development in the northeast have been documented for at least three decades.²⁶ For example, a study of Chetwynd, a community near Fort St. John, conducted during an increase in resource development activity in the late 1970s, concluded that "this increased economic activity in the community resulted in increased demand for accommodation, and inflation in housing, rental accommodations, and land prices."²⁷ The Chetwynd study also found that, "proximity of the construction camp labour force to the community may also have affected the increase in alcohol consumption within the community, but the workforce was blamed for incidents within the community, such as breaking and entering, theft or alcohol offences."²⁸

Two studies conducted in 1979, one by the Women's Research Centre, a Vancouver-based feminist research organization, and the other by the Northern BC Women's Task Force, listed issues of concern to women in northeast BC during pipeline construction as including "access to healthcare for women and their families, adequate education for children and adults, higher food prices and lower quality, shortage of affordable housing, transportation outside of the community, and increased crime rates within the communities."²⁹ In the early 2000s, a study of the community of Fort Nelson, north of Fort St. John, found that rapid development of the oil and gas sector had led to increased drug and alcohol use, increased need for addiction treatment facilities, and accommodation shortages.³⁰

The 2008 health ministry study called for continued attention to the "potential social impacts of resource development on northeastern British Columbia communities, particularly with respect to a transient workforce." The study recommended that this investigation "should include, at a minimum, an analysis of community social health effects."³¹ In a 2015 submission to the provincial government, a coalition of northeast BC municipalities, including the City of Fort St. John, noted the urgency of planning for the cumulative social and economic impacts of continued resource development, calling

²⁴ Northern Health, *Understanding the State of Industrial Camps in Northern BC: A Background Paper, Version 1*, 17 October 2012 (Northern Health, *Industrial Camps*); and 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, February 2014 (hereinafter: Clarice Eckford, *Peace Project*).

²⁵ Northern Health, *Population Health and Oil and Gas Activities: A Preliminary Assessment of the Situation in North Eastern BC*, 10 January 2008 (hereinafter: Northern Health, *Population Health*); BC Ministry of Health, *Identifying Health Concerns relating to oil and gas development in northeastern BC: human health risk assessment - phase 1 compendium of submissions*, Fraser Basin Council, 30 March 2012; and W. Beamish Consulting Ltd. and Heartwood Solutions Consulting, *Policy, Communications, Capacity: A Time to Lead: Scoping the Impacts and Benefits of Work Camps in the Peace Region*, prepared for Peace Valley Regional District, 27 June 2013.

²⁶ Northern Health, *Population Health*, pp. 17-19.

²⁷ Northern Health, *Population Health*, p. 17.

²⁸ Northern Health, *Population Health*, p. 17.

²⁹ Northern Health, *Population Health*, p. 18.

³⁰ Northern Health, *Population Health*, pp. 18-19.

³¹ Northern Health, *Population Health*, p. 42.

National Office:

312 Laurier Avenue East, Ottawa, ON K1N 1H9
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1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
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toronto@amnesty.ca

Vancouver Office:

Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca

such planning “mandatory and essential.”³² There is no indication that these concerns have significantly affected provincial and federal government decision-making around resource development in the region.

The preceding factors are elaborated in greater detail in Amnesty International’s report. As noted above, these concerns have long been raised with government but have not demonstrably influenced government decisions about what projects to authorize and under what conditions. In fact, the decision-making process has not only failed to properly consider gender impacts and other social concerns, governments in Canada have to a large degree purposely designed the regulatory process to exclude proper consideration of their human rights obligations.

CONCLUSION

Indigenous women and girls face a greater risk of experiencing violence than other women and girls in Canada. Harmful, unintended consequences of resource development lead to increasing marginalization of Indigenous women and girls, further exacerbating the risk of violence.

The government of Canada, and corporations operating in Canada, have a duty to take every reasonable measure to prevent human rights violations. In the context of resource development, a critical step to fulfilling the duty of diligence is mandating intersectional gender-based analysis in the impact assessment process to identify likely harms, and to proactively develop mitigation strategies.

For these reasons, Amnesty International supports the inclusion of gender-based analysis in Bill C-69.

³² NEBC Resource Municipalities Coalition, Submission to the Select Standing Committee on Finance and Government Services, 14 October 2015.