

Exhibit: National Inquiry into Missing and
Murdered Indigenous Women and Girls
Location/Phase: Part III: Quebec City
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HUMAN RIGHTS BASED APPROACH

- Framework to examine state policy and determine whether the Canadian system complies with international human rights standards
- Using international human rights norms to evaluate and recommend changes to the laws that failed to protect, and in some cases contributed to, murdered and missing Indigenous women and girls
- Analyzes obligations, inequalities and vulnerability, redress discriminatory practices and unjust distributions of power that impede progress and uncut human rights
- Keeps Indigenous women's needs at centre: acknowledges women as right holders, promote their agency and autonomy, including the evolving capacity of girls, from childhood to adolescence
- Goal of increasing the safety, protection and empowerment of Indigenous women
- Informs substantive issues and process of inquiry
- Develop recommendations that promote realization of Indigenous women's rights

INTERNATIONAL LAW IN CANADA

- **Hard law** – binding on States, directly enforceable
 - Treaties, Customary international law, General principles of law
- **Soft law** – not directly binding on their own
 - General assembly resolutions, Declarations, Reports of UN committees, Previous decisions of international bodies
- In Canada, application technically depends on type of intl law:
 - **Treaties:** must be implemented through domestic legislation, Unimplemented treaties may still have legal effect
 - **Customary international law:** generally held to apply directly, unless law expressly states otherwise
 - **Declarations:** not directly enforceable
- **Presumption of conformity:** courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations
 - Canadian courts do not focus technical application, but rather the normative value of the instrument

CORE PRINCIPLES

- universality and inalienability of human rights
- indivisibility, interdependence and interrelatedness of human rights
- non-discrimination and substantive equality
- participation and inclusion of Indigenous peoples in the process
- accountability and the rule of law
- international human rights principles such as Canada's duty of due diligence to prevent, investigate, prosecute, punish, and compensate for murdered and missing Indigenous women and girls

CONTRIBUTING FACTORS

- Economic and social marginalization contributes to Indigenous women's susceptibility to violence and lessened ability to escape violate circumstances
 - CEDAW: "The Committee is concerned that indigenous women continue to suffer from multiple forms of discrimination, in particular with regard to 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 and 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"
- Canada's failure to recognize these as rights, and not just social policy issues (that can be prioritized or not when making funding decisions)
- Failure to properly fund programs to address underlying causes
- colonial and post-colonial policies which targeted women, including socioeconomic marginalization

INTERNATIONAL INSTRUMENTS (CEDAW, CERD, CEDAW GEN REC 35)

- prohibition of gender-based violence against women has evolved into a principle of customary international law, may be torture
- federal government has failed to take sufficient measures to ensure that all cases of missing and murdered Indigenous women are duly investigated and prosecuted
- SRVAW: Gaps in incorporation & implementation of international human rights framework, including CEDAW and other treaties result in insufficient human rights based approach in laws on policies on preventing VAW and insufficient services for women and girls victims
 - lack of specific federal law or model law on violence against women and domestic violence & lack of a National Action plan
- Common recommendations of various reports include:
 - Collect disaggregated data
 - Take a human rights based approach / address root causes (ESCR)
 - Monitor & evaluate measures
 - Promote the justiciability of rights (legislative action)
 - Strengthen services / dedicate adequate resources
 - Adopt a national action plan
 - Ratify other instruments
 - Train public officials on human rights

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

- Article 2.1: Each State Party undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures
- "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"
- "Failure to protect women against violence or to prosecute perpetrators is a violation of the right to health"
- Canada is not a party to Optional Protocol that recognizes the competence of the Committee to receive and consider communications

UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

- Grounds Indigenous peoples' inherent human rights in Indigenous peoples' own customs, laws & traditions
 - Canada's statement of support: "We intend nothing less than to adopt and implement the Declaration **in accordance with the Canadian Constitution**. ... By adopting and implementing the Declaration, we are **breathing life into section 35** and recognizing it as **full box** of rights for Indigenous peoples."
- All rights apply equally to Indigenous men and women
- UNDRIP is limited in the articulation of Indigenous women's rights with only three specific references: the primary provision being article 22(2), which requires states to take special measures to provide Indigenous women protection against all forms of violence
- Special mention on including Indigenous women in decision making
- Broader recognition of social, economic, and cultural rights also apply to Indigenous women, and thus should inform the conceptual framework of human rights
- Provides a lens to view Canada's general human rights obligations

ADDITIONAL INTERNATIONAL INSTRUMENTS

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- Canada is obligated to take effective action to prevent torture and ill-treatment, as well as “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.”
- Committee has noted that Indigenous women in Canada “experience disproportionately high levels of life-threatening forms of violence, spousal homicides and enforced disappearances,” and that Canada has “failed to promptly and effectively investigate, prosecute and punish perpetrators or provide adequate protection for victims.”
- “inaction by police and law-enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened” is a violation of CAT

INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

- Right against enforced disappearance may be a rule of customary international law, which would apply in Canada
- enforced disappearance violates civil & political rights: "right to recognition as a person before the law; right to liberty & security of the person; right not to be subjected to torture & other cruel, inhuman or degrading treatment or punishment; right to life, when the disappeared person is killed; right to an identity; & right to a fair trial & to judicial guarantees."
 - also violates economic & social rights: "right to protection & assistance to the family; right to an adequate standard of living; right to health; right to education."
- enforced disappearances must be a criminal offence; as well, **widespread or systemic practices of enforced disappearances must constitute a crime against humanity**
- State may be responsible under ICPED for disappearances even if the disappearance is not directly perpetrated by the state,
- requires states to ensure that their domestic legal system provides victims with the "right to obtain reparation and prompt, fair and adequate compensation" for both material & moral damages, including restoration of dignity & reputation.

COMMON MISTAKES / INCORRECT ASSUMPTIONS WHEN ENGAGING HUMAN RIGHTS

- Belief that international law isn't actual law, but rather just moral precepts
 - Housing as a social policy issue, not a human right
- Look at human rights in isolation (or consider article by article)
- Look at human right instruments in isolation
 - Synthesize to determine broader norms and principles
- Continuing to separate economic, social & cultural rights from civil and political rights with the subtle hierarchy that is implicit within this distinction
- Failing to interpret in the specific Indigenous women context, including the interaction between individual and collective human rights, gender, ability, colonial legacy, racism

IMPACTS OF COLONIZATION ON HUMAN RIGHTS

- *Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,
- *concerned* that indigenous peoples have suffered from historic injustices as a result of their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests
- *convinced* that the recognition of the rights of indigenous peoples in this declaration will enhance harmonious and cooperative relations between the state and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith
- *Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect

WHO IS OBLIGATED TO UPHOLD HUMAN RIGHTS

- State responsibility applies when states fail to take all appropriate measures (due diligence) to prevent, investigate, punish, and compensate violence against women for, acts or omissions by non-State actors that result in gender-based violence against women
 - Pursue by all appropriate means and without delay a policy of eliminating violence against women
- States are responsible for violations of human rights through acts or omissions
- State responsibility may be found even if a state actor did not directly violate the rights, if the state failed to exercise due diligence in preventing or responding to the violation
- The obligations are binding on the state as a whole (all branches at all levels), and internal division of powers cannot be used as an excuse for failing to implement obligations
- Guiding principles on Business and Human Rights: corporations have the responsibility to respect human rights
- Indigenous governments

RECOMMENDATIONS

- Undertake research to look at the broad human rights that are implicated / Canada's obligations / what is required to uphold these obligations
- A human rights based approach should inform the substantive issues considered by the Inquiry and the process of the Inquiry
- Use a human rights based approach to provide a framework to examine state policy, and determine whether the Canadian system complies with all of its obligations
- build upon the rich body of existing reports and recommendations developed by various international human rights bodies, including treaty monitoring bodies on causes and recommendations to address violence against Indigenous women and girls
- develop recommendations that strengthen the capacity of Indigenous women to know and assert their human rights
- Consider recommending that Canada accede to key human rights protections that are specifically relevant to protecting Indigenous women's rights:
 - Convention for the Protection of all Persons from Enforced Disappearances
 - Optional Protocol to ICESCR
 - American Convention of Human Rights