JUSTICE FOR GIRLS

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Special Committee on Reforming the Police Act
c/o Parliamentary Committees Office
Room 224, Parliament Buildings
Victoria, BC V8V 1X4
Via Email: *Policeactreform@leg.bc.ca*

Honourable Committee Members,

RE: Recommendations for Improving Policing and Police Accountability for Girls

Justice for Girls ("JFG") has been advocating alongside teenage girls for 22 years to advance their equality and human rights.[1] JFG promotes social, economic and environmental justice and an end to violence, poverty and racism in the lives of teenage girls who live in poverty. Our advocacy work is rooted in the belief that young women in poverty are the experts of their own experience. We believe in young women's leadership and push for young women to be at the forefront of designing law, policy, and programs that affect their lives. Our work is guided by the leadership and experience of numerous young women for whom we have advocated and/or who are or have been part of the organization as staff, interns, volunteers, students or board members.

Justice for girls has led multiple advocacy campaigns that have addressed policing of teenage girls, particularly Indigenous girls. We have authored numerous reports, including *Locking them Up to Keep them Safe*[2] that examine criminalization and the inappropriate policing responses to girls' survival, poverty, mental health and addictions. We have routinely pointed to state failures to protect girls and young women from violence as the root cause of girls' homelessness, institutionalization and criminalization. JFG partnered with Human Rights Watch to lead the investigation that informed their report *Those who take us away* in 2013.[3]

Importantly, Justice for Girls worked alongside other advocacy organizations to call for independent oversight of the police. From the IIO's beginning, we identified concerns with the scope, mandate and composition of the IIO. We led a campaign early on to expand the mandate of the Independent Investigations Office in an effort to make it an accessible and effective accountability mechanism in

[1] Special thank you to Sydney Kagetsu, Research Intern at Justice for Girls, for her assistance in drafting this document.
[2] Amber Dean (2005) *Locking them Up to Keep them Safe: Criminalized Girls in British Columbia*.
[3] Human Rights Watch (2013) Those who take us away: Abusive policing and failures in protection of Indigenous Women and Girls in Northern British Columbia, Canada.

response to one of the greatest issues we have observed in our work with teen girls: sexual violence and exploitation perpetrated by police.

We also find that there is insufficient recourse available in law to hold police accountable for failed or inadequate responses to violence against girls and women. Policing failures range from failing to remove abusers from homes and communities or failing to properly investigate cases of missing or murdered Indigenous women and girls to actually criminalizing and institutionalizing girls and young women in response to their efforts to survive.

Finally, JFG believes that prisons and police are not the answer. As much as possible, we believe that the role of police must be constrained - not expanded. Police and prisons are not mental health professionals, social workers or addiction treatment centers. Police should not be the first to respond to people in crisis. We call for the decriminalization of teen girls entirely, operating from the knowledge that their involvement in the criminal justice system is rooted in their efforts to protect themselves.

Recommendations

Meaningful Police Oversight and Accountability

Expand Independent Investigations Office ("IIO") mandate to include sexual violence

Sexual violence by police officers does not currently fall under the definition of serious harm in the *Police Act*. Under international law, sexual assault of women and girls by police is recognized as a form of torture.[4] The failure to include sexual assault and misconduct in the IIO's mandate is an egregious oversight and must be remedied. Further, exclusion of sexual assault within the category of serious harm amounts to discrimination under s. 15 of the *Charter*.

The UN Committee Against Torture has commented on the imperative nature of properly investigating and sanctioning state actors who perpetrate gender-based sexual violence:

> *"...the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de factopermission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking."*[5]

It is critical that independent civilian oversight of police in B.C. comply with domestic and international human rights obligations to act with due diligence in the prevention, sanction and reparation of all acts of gender-based violence and to address inequality and intersectional structural discrimination affecting all women and girls, especially those who are Indigenous, by ensuring that the gender-specific nature and character of police sexual violence against girls and women is defined as serious harm and investigated under the mandate of the IIO.

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[4] UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, paras 18 & 22; Gaer, Felice D. "Rape as a form of torture: The experience of the Committee against Torture." *CUNY L. Rev.* 15 (2011): 293. (*CAT General Comment #2*)

[5] *CAT General Comment #2*, at para. 18.

Multiple human rights bodies, including the Human Rights Committee, have stressed that complaints of violations must be investigated "promptly, thoroughly and effectively through independent and impartial bodies" to make the right to a remedy effective.[6] The Committee has also made it clear on many occasions that "[a] failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant."[7]

Further, the Human Rights Committee has, in fact, found a violation of Article 7 of the International Covenant on Civil and Political Rights ("*ICCPR*") in a number of cases where allegations of rape by state officials have not been investigated.[8]

The Office of the Police Complaints Commissioner ("OPCC") and the RCMP Civilian Review Complaints Commission are inadequate avenues of redress in response to sexual violence by police officers. It is crucial that the IIO be responsible for investigations into police sexual violence of all police agencies in British Columbia to centralize and civilianize the complaint and investigation process into these issues.

Currently, the OPCC is responsible for municipal police complaints, while the RCMP Civilian Review Complaints Commission is responsible for the RCMP complaints. For complainants, this creates a confusing patchwork of complaint mechanisms based upon jurisdictions that can be difficult to navigate. It also leaves gaps in oversight and accountability, precluding the potential for a centralized process for tracking and identifying patterns and systemic issues.

Additionally, the OPCC currently uses police officers from other jurisdictions to investigate complaints that are made. This undermines the legitimacy of the complaints process because it erodes any perception of independence for complainants and therefore constitutes a barrier.

Most importantly, it is essential that sexual assault investigations be carried out by a dedicated investigative unit that is adequately resourced and comprised of a team with specific training and expertise to investigate police sexual violence and misconduct against women and girls. That would require training to understand the inequalities that shape girls' experiences, including sensitivity to the traumatic impacts of violence they have experienced. This expertise is critical to a proper and fulsome investigation of complaints as it will enable investigators to ask the right questions, to be responsive to the needs and concerns of complainants and to identify the necessary evidence to properly hold police perpetrators accountable.

The *Police Act* must also provide civilian IIO investigators with broad authority to collect and preserve evidence necessary to properly carry out their investigations. We echo the IIO's concern that their current search and seizure powers, as derived from the *Criminal Code,* limit investigators' abilities to secure evidence in a timely manner. This is essential in investigations of sexual violence and exploitation. It is also necessary that the *Police Act* encourage prompt and thorough compliance by police officers and departments in response to civilian investigators' requests for evidence and interviews.

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[6] UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, available at: https://www.refworld.org/docid/478b26ae2.html [accessed 30 April 2021], at para. 15.

[7] *HRC General Comment #31*, at para. 15.

[8] *Chikunov v. Uzbekistan*, Comm. 1043/2002, U.N. Doc. A/62/40, Vol. II, at 26 (HRC 2007).

Finally, there must be victim services supports made available to complainants who initiate complaints against police officers generally, and particularly in cases of sexual violence. Similar to the criminal justice system, complainants engaged in administrative complaints processes require advocacy and support to ensure that they are not further traumatized by the process and that their basic needs are met in order to allow them to see their complaints through.

Provide authority for IIO to initiate Independent inquests and public inquiries to investigate systemic violations of human rights and serious harms against women and girls.

Complaint-based accountability mechanisms are insufficient to effectively address systemic policing failures or abuses. Complaint-driven processes depend upon a complainant who is capable, willing and has meaningful access to the tribunal. For the girls and young women we work with, distrust in the process, economic and social inequalities, along with other barriers make it nearly impossible to move forward with a complaint. Additionally, where police sexual violence is the issue, initiating a complaint against a law enforcement officer can be too intimidating, intrusive and humiliating for individual young women and poses a real threat of retaliatory police actions, especially in rural locations.

The investigative scope of complaint-based accountability mechanisms is also too narrow to effectively identify patterns and fully understand the systemic issues that underpin the actions of individual officers. Remedies are individualized, precluding broader consideration of how systemic discrimination, such as organizational culture or systemic racism and sexism, have contributed to a pattern of violations or behaviours.

The ability to hold an independent public inquiry or investigation where systemic factors appear to have contributed to the conduct at issue is particularly important in cases where serious harm was deemed to have occurred. We, therefore, recommend that the IIO be given authority to initiate inquests and public inquiries to investigate systemic human rights violations, discrimination, violence and abuses of power by law enforcement. Further, this authority must be coupled with adequate resources and investigative powers to carry out thorough and complete investigations. The scope of remedies available must include the ability to make systemic and cultural changes coupled with mechanisms to monitor and enforce compliance with recommended changes.

Though section 93 of the *Police Act* provides authority for the Commissioner to carry out an investigation into violations of the Act irrespective of whether there has been a specific report, these investigations are delegated to other police services where they are initiated. The *Police Act*, therefore, does not go far enough with respect to independent oversight of police. To ensure a robust and complete oversight process, all oversight bodies must have the authority and sufficient resources to initiate independent civilian inquests and public inquiries with or without a specific complaint.

Expand police oversight mandate to include sheriffs and jail guards

JFG recommends that the mandate of the IIO be expanded to include oversight over sheriffs and jail guards contracted to oversee the people imprisoned in police holding cells. Our research and work with girls indicates that many of the human rights violations experienced by teen girls in places of incarceration are actually in police holding cells.

British Columbia has successfully reduced the rate of incarceration for youth - and specifically girls - to almost negligible levels. However, these statistics do not accurately account for the number of girls, especially Indignenous youth, who are held for one or two days in police custody prior to being

released. It does not paint a picture of the girls and youth who are placed in drunk tanks awaiting transfer to treatment or in lieu of child welfare interventions.

Many of the police abuses we have documented against girls have occurred in holding cells. These include inappropriate, and therefore unlawful, strip searches, excessive use of force, denials of basic necessities and proper health care, racist and sexist harassment, and placement in cells with adults. Girls have also reported abusive conduct by sheriffs during transport, including placement in vans with adult men and boys, unsanitary conditions, rough driving, lack of proper airflow and excessive force. Serious harm has been perpetrated against girls and adults in holding cells and sheriffs' vans throughout British Columbia, and particularly in the north. Sadly, there have been deaths as well. There must be effective and civilian-based accountability processes for those agencies if the overall framework of independent police oversight is to be effective.

We, therefore, recommend to the Committee that the IIO mandate be expanded to include incidents involving serious harm, including sexual violence, that are alleged to have been perpetrated by jail guards and sheriffs.

Civilianization of Police Oversight

We echo the excellent submissions from *Pivot Legal Society* and *BC Civil Liberties Association*, among other organizations, to ensure all police oversight bodies in British Columbia are entirely civilianized. Police should not be investigating police or other law enforcement. With adequate training and resources, there is no rationale for relying upon former law enforcement officers to conduct investigations. We remain concerned that 50% of IIO investigators are ex-police officers.

We strongly urge the Committee and the government to commit to a fully civilianized police oversight framework in British Columbia.

Criminalization and abusive policing practices

Stop imprisoning girls in police holding cells

We call on the government and this Committee to reform the *Police Act* and related legislation in a manner that prevents the placement of girls in police holding cells and drunk tanks. There is insufficient data or information about the rates at which girls are held in police holding cells, however, we know from our work with girls that it is more common than is necessary. In JFG's years of advocacy, girls have reported being incarcerated in holding cells in response to foster-care issues, mental health crises, addictions and where they have been the victim of physical or sexual violence.

Article 37 of the *UN Convention on the Rights of the Child* states that imprisonment must only be used as a last resort and never as a means of protection. In our experience, it is rarely, if ever, necessary to restrain a teen girl for public safety reasons. In the exceptional cases where it is necessary, it still must be done in a setting that preserves personal dignity, and is physically and psychologically safe for the child. Police holding cells are inhumane and entirely inappropriate for teen girls. The routine processing of prisoners into holding cells is humiliating and degrading, and unnecessary when dealing with children.

Indigenous girls and young women in remote and northern communities are routinely placed in police holding cells due to a lack of safe and appropriate places for them to go. It is, therefore, necessary that the government focus resources on creating gender-specific and community-based safe housing for all

girls, LGBTQ2S+ and other youth in those communities. A police holding cell should never be the only option. This is a human rights violation.

Moratorium on strip searching girls

The police power to conduct a strip search is derived from the common law. The Supreme Court of Canada, in *Cloutier v. Langlois,* 1990 1 S.C.R. 158 (*Cloutier*), stipulated that a strip search must involve the least intrusion that is necessary to ensure that criminal justice is properly administered. Most importantly, the court clarified that the police do not have a *duty* to conduct a strip search, rather they only have common law authority to do so. Where they opt to exercise their discretion, it must be for a valid purpose and it must not be conducted in an abusive manner. Strip searches should be carried out with as little possible intrusion into the privacy and dignity of the person being searched.

As documented in two Human Rights Watch investigations and JFG's *Locking them up* report, girls and women experience strip searches as humiliating and traumatizing. It is an experience akin to rape. For those who have experienced sexual violence, the experience can be re-traumatizing and triggering. For Indigenous girls and women who are over-criminalized and have a greater likelihood of experiencing sexual violence as a direct result of colonization and residential schools, police strip searches represent continued colonial state violence.

Teen girls are more likely to be apprehended by the police in response to their efforts to flee from violence, failed state responses to protect them from that violence, and due to poverty, racism and colonization. Teen girls have historically been criminalized in response to their efforts to survive. Girls have very low rates of violence; the offences they are convicted of are often property related or administrative offences. Alternatively, girls and young women come into contact with police in response to mental health concerns and addictions. Rarely do young women present such a risk to police that it would be justifiable to subject them to a strip search.

Therefore the traumatic and discriminatory impact of strip-searching for teen girls renders the practice inherently abusive and so degrading to their personal dignity that it could not possibly justify the exercise of the discretion to search.

Following the Human Rights Watch investigation in British Columbia, the Civilian Review and Complaints Commission issued a report looking into the concerns raised. That report identified ambiguities and gaps in the policy framework governing the RCMP strip-searching practices and procedures.

JFG recommends clear legislative direction to police forces operating in British Columbia to place a moratorium on the practice of strip-searching girls under any circumstances.

Stop enforcing criminal laws against Indigenous Land defenders

Article 3 of the *UN Declaration on the Rights of Indigenous Peoples* ("UNDRIP") establishes the right to self-determination for Indigenous people. Indigenous peoples have the right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired by virtue of *UNDRIP* 26(1).

The *Committee on the Elimination of Racial Discrimination* ("CERD") responded to concerns raised by Indigenous land defenders about violent and abusive policing in response to their efforts to enforce their right to self-determination and their lands. CERD urged Canada to immediately cease the forced eviction

of Secwepemc and Wet'suwet'en, and guarantee that no force would be used and to withdraw the RCMP and other police from traditional lands.

JFG recommends that clear direction be provided in the *Police Act* that police in British Columbia must respect the self-determination of Indigenous people over their lands and territories and that they respect the obligation to obtain free, prior and informed consent.

Implement recommendations by First Nations organizations and communities to establish community based alternatives to colonial policing on Indigenous territories

We further recommend that the government work with and take leadership from Indigenous governments and communities with respect to policing on their territories, many of whom made submissions to this Committee. Many of those submissions include recommendations for creating alternatives to policing on Indigenous territories, including agreements, resources and community-based wellness and accountability programs.

We urge the Committee to look at alternatives to colonial policing wherever possible and to work with First Nation communities to ensure that they have the resources to implement those alternatives. This must include non-carceral options to temporarily house girls and people who require support while in crisis.

At the same time, this must be coupled with a commitment to working with those communities to develop strategies to prevent gender-based violence and to provide adequate resources to create safe and gender-specific places for girls and adult women to go to escape violence without becoming displaced from their communities.

Implement recommendations from multiple public inquiries and investigations into policing in British Columbia

Multiple domestic and international investigations, reports and public inquiries have issued comprehensive, thorough and evidence-based recommendations for addressing systemic abuses and flaws in BC's policing systems and oversight mechanisms. With too many to list in this letter, we recommend that the Committee revisit, and update where necessary, the recommendations from the following reports:

1. 2006 Highway of Tears Symposium[9]
2. Missing and Murdered Indigenous Women and Girls Inquiry[10]
3. Truth and Reconciliation Commission[11]
4. Investigation by CEDAW to Missing and Murdered Indigenous Women and Girls in British Columbia[12]

[9] Lheidli T'enneh First Nation, Carrier Sekani Family Services, Carrier Sekani Tribal Council, Prince George Native Friendship Centre and Prince George Nechako Aboriginal Employment & Training Association (June 16, 2006), *Highway of Tears Symposium Recommendations Report: A Collective voice for the victims who have been silenced*.

[10] National Inquiry into Missing and Murdered Indigenous Women and Girls (2019), Reclaiming Power and Place: The Final Report of the National Inquiry Into Missing Indigenous Women and Girls.

[11] The Truth and Reconciliation Commission of Canada (2015), Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commision of Canada.

[12] B.C. CEDAW Group, Lawyers' Rights Watch Canada (January 2012), Missing and Murdered Aboriginal Women and Girls in British Columbia and Canada.

5. Inter-American Commission on Human Rights, Report on Missing and Murdered Indigenous Women and Girls in British Columbia, Canada[13]

Conclusion

JFG calls on the Committee to demonstrate a commitment to developing a robust and meaningful system of *civilian* oversight and accountability for all police agencies operating in British Columbia. First and foremost, the definition of serious harm must be expanded to include sexual violence. A failure to do so would send the message that police officers are not accountable for rape to the same degree they are accountable for other forms of violence. The specific gender-based nature of sexual violence against women and girls makes it even more imperative that it be met with strong condemnation from the government, the absence of which is discriminatory and contravenes International law.

Oversight and accountability measures must both ensure that police do not abuse their power, but must also be capable of responding to police failures to properly investigate gender-based and racist violence against women and girls. For police in British Columbia to truly be compliant with *UNDRIP*, they must respect Indigenous self-determination, but they must also respond when asked to properly and thoroughly investigate violence against Indigenous women and girls. Our police accountability process must be able to address both, and must have the authority and resources to enforce and monitor implementation of recommendations.

We further call for the decriminalization and de-incarceration of girls, particularly racialized and Indigenous girls. Teen girls should not be dehumanized, degraded or humiliated through strip-searching or incarceration in prisons or holding cells.

We thank the committee for your time and consideration of our submissions. We look forward to an opportunity to expand and to address any questions you may have.

SIncerely,

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[13] Inter-American Commission on Human Rights (December 21, 2014), Missing and Murdered Indigenous Women in British Columbia, Canada.