



# Indigenous Women, Girls, and Gender-Diverse People's Human Right to Public Transportation

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## **Content Warning:**

This policy brief relates to missing and murdered Indigenous women and girls and Two-Spirit+ people and its content may be disturbing or triggering for readers. A reminder that the National Inquiry into Missing and Murdered Women and Girls has a free 24-hour Support Line available at: 1-844-413-6649.

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## EXECUTIVE SUMMARY

- The current state of public transportation pushes Indigenous women and Two-Spirit Plus people to **dangerous and unsafe situations**.
- Fulfilling various modes of public transportation is a **human rights obligation**.
- A failure to facilitate rights holders' access to public transportation prompts **potential human rights violations**.

### STATEMENT OF THE ISSUE

The scarcity, inadequacy, or absence of public transportation continues to threaten the safety and security of Indigenous women and Two-Spirit Plus people. Forced to rely on private services as a means of transportation, Indigenous community members experience precarious situations where individuals are discriminated against, harassed, and/or sexually assaulted. Community members in Winnipeg responded to the harmful instances systemically imposed on Indigenous women and Two-Spirit plus people by initiating grassroots efforts providing safe rides to Indigenous women. However impressive these efforts are, the provision of supposedly public services should not have to be mitigated by rights holders (Winnipeggers) as it is the human rights obligation of duty bearers (City of Winnipeg) to fund public transportation.

It is necessary to understand how poor policy decisions concerning public transportation violate human rights, with particular reference to Indigenous people. This policy brief focuses on the human rights violations implicated in the scarcity or absence of an operational public transportation infrastructure as it relates to Indigenous women, girls, and gender diverse people. The aim is to explain the human rights that are at risk in the continued inadequacy of public

services dedicated to transit. Without proactive efforts from all levels of government to address and improve the capacity of public transportation, the State perpetuates an ongoing cycle of systemic violence, rooted in colonial relations, that pushes Indigenous women and Two-Spirit plus people into unsafe and dangerous situations, and/or limits their ability to leave such contexts.

### BACKGROUND

The Centre for Human Rights Research's (CHRR) *Missing the Bus report* (2022) explores the connections between uneven mobility and mobility justice in the context of Indigenous women and Two-Spirit plus people in Manitoba and questions the role of public transit in ensuring the safety of this population. They state, "the absence or scarcity of public transit can [also] exacerbate the targeting of Indigenous women and Two-Spirit Plus people and diminish their ability to leave unsafe situations, places and circumstances." <sup>1</sup>

Indeed, the current state of public transportation cannot equitably support the diverse needs of Indigenous women and Two-Spirit Plus people. Linovski et al. note how poor transit service, unaffordability of transit fares, safety, and policing and enforcement

are several factors impacting the experiences of Indigenous peoples on transit.<sup>2</sup>

The effects of an inadequate public transportation system on Indigenous peoples are also based on their circumstances. For example, there is no formal system of tracking and ensuring safety for Indigenous women and Two-Spirit plus people post-incarceration and post-hospitalization in Winnipeg. This is especially important since individuals exiting institutions (hospitals, jails, and others) already struggle with the lack of available transportation options. Take for example how penal institutions are usually situated outside urban centres where there is no public transit connecting rural to urban areas. Even when institutions, like hospitals, are located within metropolitan areas, the individual must pay a fare to access public transit. The ideal mobility option of private transportation is a luxury many individuals cannot afford. Most often, private transportation relies on the individual's economic class and financial income. Hailing cabs or taxis is limiting given the expense associated with it. While there are organizations offering shuttle services, access to personal vehicles is limited for individuals involved in the legal system. An option for individuals is to rely on social support who have access to private transportation; however, such a situation can quickly become unstable, unreliable, or violent.

The CHRR rightfully points out how public transit is a means to escape unsafe situations. Worth noting, however, is how the absence of public transit often drives Indigenous women and Two-Spirit Plus people to violent situations they were initially escaping from. The National Inquiry shared the story of

Monique F.H., a mother, grandmother, and survivor of many forms of violence. They state:

Inadequate infrastructure and transportation, or transportation that itself becomes a site for violence, punish Indigenous women trying to “make a better life” through efforts to escape violence or improve their lives or find safety. The lack of supportive infrastructure and transportation further violates that safety. Rather than the safety and protection she sought, Monique found what she aptly described as a “deeper level” of violence.<sup>3</sup>

Subjected to racialization and discrimination when accessing public transportation, Indigenous women and Two-Spirit Plus people resort to private transportation when possible. Yet, cabs and rideshares impel Indigenous women into unsafe situations. James Wilt points out that ridesharing options, such as Uber or Lyft, are unsafe for women and gender non-conforming people with users reporting harassment through these services.<sup>4</sup> Rachel Sansregret, the CEO of Winnipeg Indigenous Friendship Centre, indicates that Indigenous organizations refrain from using taxi service providers due to the repeated incidents of sexual harassment and inappropriate behaviour by Indigenous women and girls.<sup>5</sup> Indeed, it is these very concerns that led to the creation of community ride-sharing efforts in the city, such as Ikwe, Neechi Rides, and Ayangwamizik. While Winnipeggers' community-led efforts are remarkable, the burden of providing what ought to be public services provided by the government should not be unduly imposed on community members, especially Indigenous community members, operating on limited

capacity and resources. After all, Winnipeggers are legally entitled access to transportation by the City of Winnipeg under international human rights law.

## A RIGHT TO PUBLIC TRANSPORTATION

When Canada signs and ratifies international human rights instruments, these obligations automatically apply to all levels of government - federal, provincial, and municipal. Article 50 of the International Covenant on Civil and Political Rights (ICCPR) and Article 28 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) proclaim that “the provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”<sup>6</sup>

Referring to public transportation as a human right recognizes the role of the government in respecting, protecting, and fulfilling a legal obligation. International human rights law is a potentially useful tool that rights holders can use to hold duty bearers accountable to the legal entitlements of Indigenous women and Two-Spirit people accessing transportation. When enforced and adjudicated, it can provide rights holders with access to justice. Indeed, the National Inquiry recognizes the importance of human rights in addressing the violence committed against Indigenous women, girls, and 2SLGBTQQIA people; they note how a human rights-based approach:

...can play a role in the discussion on the rights guaranteed in the areas of culture, health, security, and justice through the promotion of new policies and principles, and the genuine commitment of all levels of government to addressing the (...)

(...) problem of violence and the violation of basic human rights, not only in words, but in actions.<sup>7</sup>

Understanding public transportation as a human right upholds the role of the different levels of government in facilitating various modes of transportation options for everyone. However, we have seen the disproportionate effects and consequences of an inadequate public transportation system on marginalized communities in Manitoba, especially Indigenous women and gender-diverse people. In the lack of access to public transportation, Indigenous community members experience the most extreme human rights violations involving deaths and disappearances.<sup>8</sup> How can international human rights law respect and protect Indigenous women and gender-diverse people in the context of public transportation?

*“The absence of a specific article dedicated to transportation does not entail the absence of a responsibility to ensure the availability, accessibility, acceptability, and adaptability of public transportation.”*

There is no verbatim “right to public transportation” under international human rights law. Since there is no specific article under the two twin covenants that explicitly outlines States Parties’ obligations to the right to transportation, does the State have no responsibility to fulfill public transportation? The absence of a specific article dedicated to transportation does not entail the absence of a responsibility to ensure the availability, accessibility,

acceptability, and adaptability of public transportation. The State is responsible for providing different modes of public transportation for rights holders (availability). There are certain standards attached to the provision. Everyone should have access to public transportation with concentrated efforts to provide options for marginalized groups (accessibility), and it cannot actively discriminate against specific populations or communities (acceptability). The facilitation of public transportation must also address emerging issues (adaptability). In short, available, accessible, acceptable, and adaptable public transportation provides access to human rights, such as those outlined below.

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**Economic, Social, and Cultural Rights.** The CHRR emphasizes the fundamental necessity of public transportation in accessing the human rights of Indigenous women and Two-Spirit Plus people. They stress how public transportation allows rights holders access to services benefitting human rights, including educational institutions, healthcare, and work.<sup>9</sup> Of course, public transportation cannot literally educate or provide medicine to rights holders as ways to fulfill human rights. However, the government’s responsibility to respect, protect, and fulfill economic, social, and cultural rights extends beyond building educational institutions, hospitals, and

housing. The government’s obligation includes upholding standards of accessibility, adaptability, acceptability, and adequacy. Indeed, the World Bank has pointed out that public transportation is necessary to ensure physical accessibility to health (Article 12), education (Article 13), and work (Article 6).<sup>10</sup> Limited access to or the absence of public transportation prevents rights holders from travelling to educational institutions. It prevents them from participating in the labour force. Public transportation is also critical when a rights holder’s physical accessibility to a health facility is a life-threatening circumstance. In this instance, it not only potentially violates the right to health but also the right to life.

**Civil and Political Rights.** We are already seeing violations of Indigenous women and Two-Spirit Plus people’s civil and political rights due to the failure of the public transportation system. Canada’s crisis of Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA+ persons is an ongoing result of policy choices that fail to facilitate accessible, adaptable, acceptable, and adequate modes of public transportation that can ensure the safety of Indigenous persons. In the most extreme yet common situations, the absence or inadequacy of public transportation leads to the violation of the right to life (Article 6). The Human Rights Committee refers to the right to life as the “supreme right.” They clarify that the right to life “concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.”<sup>11</sup> The lives taken away at the Highway of Tears and during Starlight Tours are outcomes of public

transportation policies that failed to protect Indigenous women and Two-Spirit Plus people.

**United Nations Declaration on the Rights of Indigenous Peoples** (UNDRIP). In addition to the twin covenants, UNDRIP recognizes and affirms the human rights of Indigenous peoples. The preamble of the Declaration recognizes and reaffirms that “Indigenous individuals are entitled without discrimination to all human rights recognized in international law...”<sup>12</sup> Included in the Declaration are the civil, political, economic, social, and cultural rights earlier stated. While UNDRIP is not legally binding on States compared to the two twin covenants, its significant political weight and influence must be acknowledged.

## RECOMMENDATIONS

The violence that Indigenous women and gender-diverse people experience because of the absence of reliable public transportation violates human rights that the City of Winnipeg is supposedly committed to protecting. As a human rights city committed to the National Inquiry’s 231 Calls for Justice, the Truth and Reconciliation Commission of Canada’s Calls to Action, and UNDRIP, respecting, protecting, and fulfilling the right to transportation requires policies that are accessible, adaptable, acceptable, and adequate. So, how can the City of Winnipeg create or develop current modes of public transportation that facilitate improved human rights realization of Indigenous women and Two-Spirit Plus people? From a human rights perspective, policies undertaken by the municipal government must include five principles: participation; accountability; non-discrimination; empowerment; and legality.<sup>13</sup>

**Participation.** It must be continuously reiterated that the participation of Indigenous women and Two-Spirit Plus people is essential to policies related to public transportation. To start, the City of Winnipeg’s Safe Transportation (MMIWG2S+) Session provided five actionable recommendations regarding cultural training for bus drivers, public education on the legal rights of the passenger, a clear code of conduct, emergency procedures in public and private transportation, and more resources for social services in the city. Alexandra Nychuk et al. also recommended steps that the municipal government can take to respond to Call for Justice 4.8 in *Improving the Intercommunity Mobility of First Nation Peoples in Canada: A Response to Call for Justice 4.8*.<sup>14</sup>

**Accountability.** Respecting, protecting, and fulfilling the right to public transportation includes creating accountability mechanisms for policymakers. There must be committees or bodies that rights holders can communicate with when their right to public transportation is violated. Duty bearers must develop laws and policies that improve access to transportation. Finally, the City of Winnipeg must continue to monitor and evaluate Indigenous women and Two-Spirit people’s access to transportation.

**Non-discrimination.** There must be disaggregated data on the impact of Winnipeg’s public transportation on marginalized groups, especially Indigenous community members. The City of Winnipeg must ensure that policies reflect the needs of Indigenous women and Two-Spirit Plus people.

**Empowerment.** Engagement with Indigenous women and gender-diverse people must be ongoing, sustained, and meaningful to ensure that their right to transportation is realized. The City of Winnipeg must ensure that invitations to participate in policy decisions are open and targeted towards populations that experience inequity. There must be public education efforts explaining the rights

of Indigenous women and Two-Spirit people to public transportation.

**Legality.** Understand how the absence of public transportation affects the legal human rights (civil, political, economic, social, and cultural rights) of Indigenous women and Two-Spirit Plus people by looking into international human rights standard.

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#### ENDNOTES

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- 5 Rachel Sansregret, “Submission - Rachel Sansregret,” Decision Making Information System (blog), April 5, 2022, <https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=21732&SectionId=&InitUrl=>.
- 6 See International Covenant on Civil and Political Rights art. 50, Dec. 16, 1966, 999 U.N.T.S. 171 and International Covenant on Economic, Social, and Cultural Rights art. 28, Dec. 16, 1966, 993 U.N.T.S. 3.
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- 9 Adele Perry, Jocelyn Thorpe, and Karine Duhamel, “Missing the Bus: Indigenous Women and Two-Spirit Plus People and Public Transit in Western Canada” (Winnipeg: Centre for Human Rights Research, 2022).
- 10 Karla Domínguez González, Nato Kurshitashvili, Muneeza Mehmood Alam, Karla González Carvajal, Veronica Hinestroza Arenas, Juan Carlos Arjona Estevez. 2022. “The Role of Transport in Supporting Women to Exercise Their Rights to Work, Health and Education.” World Bank, Washington, DC.
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- 12 United Nations, Declaration on the Rights of Indigenous Peoples, A/61/L.67, September 13, 2007.
- 13 Scottish Human Rights Commission, “Human Rights Based-Approach: A Self-Assessment Tool” (Scottish Human Rights Commission, December 2018), [https://www.scottishhumanrights.com/media/1814/shrc\\_panel\\_self-assessment\\_tool\\_vfinal.pdf](https://www.scottishhumanrights.com/media/1814/shrc_panel_self-assessment_tool_vfinal.pdf).
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