

# **The Militarization of Indigenous Land: A Human Rights Focus**

**Submission to:**

**UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)**

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## RECOMMENDATIONS OF THE UNION OF BC INDIAN CHIEFS

1. UN bodies must work with Wet'suwet'en hereditary leadership to arrange a field visit to Wet'suwet'en land in the Province of British Columbia to 1) witness the ongoing dispute between Indigenous land defenders and Coastal Gaslink/law enforcement; 2) understand the full scope of the militarization of Wet'suwet'en land and its impacts on and implications for B.C. First Nations Title and Rights; 3) provide presence of solidarity that will help bring global attention to the issue; and 4) exert pressure on B.C. and Canada to fulfill their obligations under the *UN Declaration*, address human rights violations, and honour the Supreme Court of Canada's precedent-setting *Delgamuukw-Gisday'wa* case which confirmed Wet'suwet'en and Gitxsan Title and Rights have never been extinguished.
2. Implementation of the *UN Declaration* must be full and meaningful, not selectively actioned when it is politically convenient and fiscally beneficial; States and industry must meaningfully recognize and respect the right of Indigenous Peoples to give or withhold their free, prior and informed consent (FPIC) regarding the approval of any project affecting their lands or territories or other resources, especially through their own representative institutions. There is a State obligation to support the exercise of FPIC by working with Indigenous peoples to establish appropriate processes and recourse mechanisms (Art. 27, *UN Declaration*).
3. States must end the criminalization of Indigenous peoples for exercising their rights as they protect their lands, territories, and resources from forced industrialization and militarization. States must also provide access to an effective remedy regarding human rights violations by authorities, non-state actors and political entities, along with access to financial and human resources support.
4. As the militarization of Indigenous land and criminalization of Indigenous land defenders are vested in the legal fictions of state sovereignty, States must respect the distinct legal orders, land rights, and jurisdiction of Indigenous people and decolonize legal processes that impose "final authority" over matters that fall within Indigenous Nations' territorial jurisdiction, and that force Indigenous land defenders to conform to domestic State laws which do not respect Indigenous rights to self-determination, FPIC, and sovereignty.
5. States must have the appropriate mechanisms in place to allow each Indigenous Nation to make their own decisions and to speak for themselves, freely and without prejudice (Art. 18, *UN Declaration*). States often use agreements with one Indigenous Nation as an excuse for ignoring the opposition of another and continuing with violent military and policing activities, thereby continuing colonial 'divide and conquer' practices that coerce Indigenous Nations that do not have agreements with the State government.
6. States and industry, in full partnership with Indigenous peoples, must draft and implement action plans to ensure that military activities do not take place on the lands of Indigenous peoples (unless agreed upon or requested by Indigenous peoples) and that consultation procedures are in place so that Indigenous peoples can make decisions as proper Title and Rights Holders, including through their representative institutions, on decisions regarding the use of their lands territories for military activities. (Art. 30, *UN Declaration*).
7. States and industry must respect the self-determination, jurisdiction, and rights of Indigenous peoples to ensure they are fully resourced, meaningfully engaged, and provided with appropriate and respectful timelines in negotiations to ensure that their Title and Rights interests are understood and incorporated in natural resource extraction agreements and any agreements regarding the use of their lands and territories for military activities.
8. State and industry actions to implement the recommendations, processes, and institutions outlined above must not limit the participation and application of Indigenous engagement to non-Indigenous norms of participation, and must allow for Indigenous peoples' traditional ecological knowledge, legal traditions, and Indigenous ways of knowing without prejudice.

## INTRODUCTION

The forced militarization of Indigenous lands in the area of Kanáta (Canada) on Turtle Island is an ongoing, violent process of colonization and oppression by which historical and contemporary colonial forces have attempted to violate, disempower, and subjugate the critical and sacred relationships Indigenous peoples have held with their lands and waters since time immemorial. Damaging and specious doctrines tied to Canada's history of settler colonialism continue to underlie and influence the militarization of Indigenous land today: just as European settlers used the Doctrine of Discovery and *terra nullius* to justify the forceful dispossession of Indigenous peoples from their lands in the 1400s, the Crown-military complex in Canada continues to advance a nullifying perspective that Indigenous Title and Rights are conditional and that lands can be wrested from Indigenous possession, divested of their cultural and spiritual ties to Indigenous peoples, and treated as a commodity to be exploited and industrialized for monetary profit. With the militarization of Indigenous land also comes a militarized environment in which different forms of violence, surveillance, and oppression, particularly against Indigenous women, girls, and two-spirit people, lead to serious human rights violations that are inadequately addressed and redressed by the Crown's legal and justice systems.

Our submission will outline the current context of the militarization of Indigenous lands in the Province of British Columbia (B.C.) – including the ongoing forced industrialization and police militarization of Wet'suwet'en lands – and will discuss how the militarization of Indigenous land in B.C. is ultimately a colonial tool used to:

- enable and protect State-backed industrialization, including resource extraction activities and projects that States and industries have vested interests in advancing over environmental risks and human rights concerns;
- violate human and Indigenous rights, de-legitimize Indigenous title, and criminalize Indigenous land defenders by creating a militarized environment of fear, surveillance, intimidation, and violence;
- enforce colonial “divide and conquer” tactics that exacerbate and exploit divisions between and within Indigenous Nations; and
- implement and strengthen State laws and practices that weaken Indigenous peoples' claims to their unceded, ancestral lands and their rights to self-determination and governance

### About UBCIC

The Union of British Columbia Indian Chiefs' (UBCIC) mandate is to pursue the implementation, exercise, and recognition of our inherent Title, Rights, and Treaty Rights, and to protect our Lands and Waters through the exercise of our laws and jurisdiction. The UBCIC strengthens Indigenous Nations' assertions of their Aboriginal Title, Rights, Treaty Rights and Right of Self Determination as Peoples, working collectively among Indigenous Nations in British Columbia (BC) as a cohesive advocacy body. UBCIC supports Indigenous Nations and communities to promote and protect Sovereignty within their traditional territories

## CONTEXT OF MILITARIZATION AND INDUSTRIALIZATION OF INDIGENOUS LAND IN BRITISH COLUMBIA

### Resource Extraction and Colonization:

The lands and waters of B.C. have sustained First Nations and their cultures, traditions, and ways of life since time immemorial. However, the province's diverse bioregions and multitude of natural resources historically

drove colonization and the dispossession of First Nations peoples from their lands and waters. From gold to timber, fresh water to coal, furs to fish, fossil fuels to hydroelectricity, resource extraction and industrialization maps the history of colonization across the province. Consequently, the militarization of Indigenous land in the context of B.C. must be examined closely alongside industrialization and can be principally characterized as *the deployment of military or armed police forces within the unceded, ancestral, traditional lands and territories of Indigenous Nations for the purposes of advancing and protecting resource extraction and industrial development projects that serve Crown and industry interests. Militarized forces trespass upon Indigenous lands and use legitimized acts of violence against Indigenous peoples for the purposes of enforcing colonial law and de-legitimizing Indigenous Titles and Rights and the sacred relationship they hold with the land. These acts of violence also exacerbate pre-existing institutionalized racism, forms of discrimination, and violations of their fundamental human rights.*

Due to B.C.'s abundance of natural resources and biodiversity, there are currently multiple ongoing industrial and resource extraction projects that have the potential to spark the militarization of Indigenous lands or already have ongoing disputes between armed police forces and Indigenous Nations and land defenders. Some of these projects and their associated locations include:

- **Bitumen** (including pipelines; shipping terminal; tank farm; and tankers): Trans Mountain Expansion Project from Alberta across B.C., including across numerous traditional territories and 15 First Nation Reserves, and terminating in Vancouver for shipping
- **Old growth forestry**: logging of old growth across B.C., including the Fairy Creek watershed in Pacheedaht First Nation Territory on Vancouver Island
- **Liquified Natural Gas** (including hydraulic fracturing, or fracking; tankers; and pipelines): Coastal GasLink across northern B.C. and in Wet'suwet'en First Nation lands
- **Aquaculture (fish farms, hatcheries)**: along coastal BC and in the traditional waters of various First Nations
- **Hydroelectric Mega Dams**: Site C, near Fort St. John on Treaty 8 First Nations territories

#### A Militarized Environment: Criminalization of Land Defenders, Gender Violence, and Human Rights Abuses

The militarization of Indigenous land as a means of advancing resource extraction, protecting industry and State interests, and invalidating Indigenous Title and Rights creates a volatile environment primed for violence and oppression against Indigenous peoples. The interplay of colonial forces, imbalanced power dynamics, discrimination, and gendered violence is at the crux of this environment: to further the Crown's two-fold project of controlling lands and resources and undermining Indigenous Title, Rights, and sovereignty, armed forces invade Indigenous lands and target, criminalize, and disempower Indigenous land defenders, especially Indigenous women and girls. The de-legitimization and violation of Indigenous women and girls' rights, a practice used since colonial times to disenfranchise and dispossess Indigenous peoples of their lands and resources, is especially prevalent in a militarized environment that supports and corroborates with hyper-violent, hyper-masculine structures and institutions.

For example, the Tiny House Warriors (THW) are a group of Secwepemc land defenders protesting the ongoing expansion of the Trans Mountain Pipeline (TMX). The THW camp is located in the Blue River region of the North Thompson River Valley, B.C., and on July 23, 2021, the camp was invaded by people believed to be Trans Mountain Corporation workers and private security personnel who dismantled THW security barricades and installed steel fences and concrete barriers that limit the THW's access to water and other resources. Consistent

with the Canada's long history of using intimidation tactics on Indigenous peoples in their own lands, [24/7 surveillance technology was also installed](#), including towers with cameras and automated sensors. The THW and other land defenders in B.C. continue to face state and corporate surveillance, misogyny, racism, harassment, and violence for their opposition to the TMX and its associated work camps that imperil the safety of Indigenous women and girls. These work camps, also known as "man camps," are temporary housing facilities made for predominantly male employees working in various resource extraction industries. [Research and reports](#) have proven and shown there is a direct correlation between these encampments and violence against women. In a militarized environment, these camps support a culture that is emblematic of the systemic violence that fuels the national Missing and Murdered Indigenous Women and Girls (MMIWG2S+) crisis. Man camps serve the colonial project of land dispossession and resource extraction and highlight how Canada has long created and supported militarized environments in which structures and forces that operate through coercion and violence against Indigenous land defenders and communities are allowed.

Ultimately, the militarization of Indigenous land is linked to criminalization of Indigenous land defenders and the systemic violations of their human rights. In exercising their right to protect the environment within their territories from climate change impacts and environmentally destructive industrial projects – in alignment with articles 29, 32 and 23 of the UN Declaration – Indigenous land defenders face the brunt of militant police tactics; undergo state surveillance and scrutiny in their travels; confront coercive methods by state and non-state actors to create division amongst Indigenous communities; endure vilification, hate speech, blackmail, harassment, and racist attacks; and experience a systemic lack of access to justice while land dispossession continues. Recently, the [B.C. Civil Liberties Association](#) (BCCLA) [won](#) a precedent-setting lawsuit against the Royal Canadian Mountain Police (RCMP) Commissioner for [their failure to address and respond to a complaint stemming from 2014](#) that the RCMP were spying on Indigenous land defenders and climate activists opposed to the now defunct Northern Gateway pipeline project. The RCMP Commissioner's startling lack of accountability and extreme delay in responding to the complaint of police misconduct points to the overarching issue of how police in Canada still operate as colonial agents that hinder the recognition and implementation of Indigenous Title and Rights.

## **WET'SUWET'EN AND COASTAL GASLINK DISPUTE: THE MILITARIZATION OF WET'SUWET'EN LAND**

### Coastal Gaslink Pipeline

Coastal GasLink (CGL), a pipeline construction company subsidiary of TC Energy Corporation, is currently developing a 670-km pipeline in northern B.C. that will transport fracked gas to the proposed liquefied natural gas (LNG) Canada processing plant. Under 'Anuc niwh'it'en (Wet'suwet'en law) all five clans of the Wet'suwet'en have opposed all pipeline proposals and any environmentally and culturally destructive industrial activity. Consequently, under the authority of a group of Wet'suwet'en hereditary chiefs, many Wet'suwet'en people are actively exercising their inherent Indigenous Title and Rights to protect the land and pursue their right to self-determination. However, they have been faced with a lack of sustained, respectful consultation and engagement; disregard for the assertion of Wet'suwet'en jurisdiction, Title and Rights, and FPIC; and a lack of clarity and understanding about the constitution and authority of Wet'suwet'en governance. These challenges served to reinvigorate the historical "divide and conquer" tactics so entrenched in Canada's legacy of colonialism, have sparked multiple human and Indigenous rights violations, and increased discrimination from the wider Canadian public in response to the protests that erupted across the country in January 2020.

### RCMP Involvement and Concerns

Although Wet'suwet'en Hereditary Chiefs called for a stop work order on the pipeline February 2019 and handed an eviction notice to CGL on January 2020, Canada has forcibly removed, racially profiled, surveilled, harassed, and jailed peaceful Wet'suwet'en land defenders, Hereditary Chiefs, and matriarchs through militarized police raids on their unceded territories, including launching three large-scale police actions in [2019](#), [2020](#), and [2021](#). The RCMP, Canada's national police force, have carried out these militarized raids, eliciting fear and distrust through their violent intimidatory tactics. Equipped with military assault weapons, helicopters, and dog units, the RCMP has worked with CGL to destroy and burn down buildings and desecrate ceremonial spaces. In violation of Article 26 of the UN Declaration, the RCMP have also implemented unlawful exclusion zones on Wet'suwet'en territory, blocking movement and access of Indigenous peoples, media, and legal observers, as well as undermining Wet'suwet'en law and the freedom of the press enshrined in the Canadian Charter of Freedom and Rights.

### Canada's Breach of International Law Obligations

Critically, the UN Committee on Eliminating Racial Discrimination (CERD) issued its December 13, 2019 [Decision 1\(100\)](#) under the Early Warning and Urgent Action Procedure to express concern about the large-scale projects in Canada that were threatening the safety and freedom of peaceful land defenders. CERD called upon Canada to take several actions to comply with the obligations under the Convention on the Elimination of All Forms of Racial Discrimination, including the directive to "immediately halt the construction of the Coastal GasLink pipeline in the traditional and unceded lands and territories of the Wet'suwet'en people, until they grant their free, prior and informed consent, following the full and adequate discharge of the duty to consult." However, Canada and BC have failed to comply with the Committee's recommendations and the CERD provisions, and on February 6, 2020 UBCIC, BC, BCCLA, and the Wet'suwet'en hereditary leadership [released a letter](#) that revealed that BC Minister of Public Safety and Solicitor General Mike Farnworth authorized additional RCMP resources and redeployment shortly after repeated statements by the provincial government that they lacked jurisdiction or authority over RCMP actions in Wet'suwet'en territories. The government's lack of transparency and refusal to take accountability for their actions has enabled the continued militarization of Wet'suwet'en law and the ongoing violations of Wet'suwet'en law and jurisdiction.

### **CONCLUSION**

The ongoing conflict between the Wet'suwet'en people and CGL starkly illustrates the progression, motivations for, and impacts of the militarization of Indigenous lands and the forced removal of Indigenous peoples from their traditional territories. The dispute between the Wet'suwet'en people and CGL reveals how Canada in violating the rights of Wet'suwet'en people and showing disregard for its international law obligations, continues to collude with industries and companies for the sake of industrializing Indigenous land and exploiting natural resources. It is also critical to note that the militarization of Indigenous lands not only rests upon violence and intersecting forms of discrimination, but colonial divide and conquer tactics that exploit and exacerbate divisions between and within Indigenous Nations that were originally caused by colonial laws. In the case of the Wet'suwet'en, the *Indian Act* which forced the system of elected chief and councils on reserve lands with the goal of taking down ancestral political structures, is responsible for the current division between Wet'suwet'en Hereditary Leadership and Wet'suwet'en elected Chiefs and Council.