

JOINT SUBMISSION TO THE EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

Under the call for submissions on “The Militarization of Indigenous Lands: A
Human Rights Focus”

Feb 7, 2022

Prepared by:

Zoe Craig-Sparrow, MA (Human Rights, London), David Suzuki Fellow
Annabel Webb, MA (UBC) MSt (International Human Rights Law, Oxon), David Suzuki Fellow
Pamela Palmater, Mi’kmaq Lawyer and Chair in Indigenous Governance, Ryerson University
Shelagh Day, CM, Human Rights Committee Chair, FAFIA
Shivangi Misra, LLM, Senior Manager of Human Rights, FAFIA
Kathleen Maloney, MA (Stanford) MSt (International Human Rights Law, Oxon) JD (Arizona)



Justice for Girls (JFG)

JFG is a Canadian non-governmental organization based in Vancouver, British Columbia (BC) that advocates for intergenerational, social, environmental, and indigenous justice for girls. Since 1999, JFG has worked locally, nationally, and internationally to promote and protect the health, wellbeing and human rights of teenage girls who face poverty, violence, colonization and environmental injustices. JFG has maintained consultative status with the UN Economic and Social Council since 2009.



Canadian Feminist Alliance for International Action (FAFIA)

FAFIA is an alliance of women's equality-seeking organizations committed to making international human rights agreements a reality in women's everyday lives in Canada. FAFIA provides a forum for women from across Canada to work together to ensure a better quality of life for all women. FAFIA's membership spans a diverse array of organizations ranging from research institutes to service providers. FAFIA's membership is also regionally diverse, with members from 10 Provinces and Territories, as well as many national member organizations.



Just Planet

Just Planet is an international NGO headquartered in Geneva, with a broad range of expertise, on-the-ground experience and a global network of human rights experts and activists. It advances human rights, recognizing the indivisibility of all human rights across past, present, and future generations, and the interdependence of humanity and the planet. It promotes and defends human rights worldwide by identifying contemporary and emerging human rights challenges and responding to human rights violations. Its work is guided by international human rights law, international criminal law and international humanitarian law. Just Planet was granted consultative status with the UN Economic and Social Council in 2021.

Introduction - Women and Girls

We urge the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to give special consideration to the situation and fundamental rights of indigenous women and girls. Indigenous women and girls are disproportionately impacted by militarization of indigenous lands due to their role as the primary land defenders and the persistent inequality, discrimination, and violence that characterizes their lived realities across the globe. States Parties need special guidance on how to implement obligations to respect, protect and fulfill the rights of indigenous women and girls in relation to militarization of indigenous lands. These obligations must go beyond simply tacking “and women” onto a gender-neutral framework, or “and girls” onto an adult women’s human rights framework. Instead, it is essential to delineate women’s rights and girls’ rights with the accuracy and specificity of their agency, lived experiences, and vulnerabilities.

Articles 21 and 22 of UN Declaration on the Rights of Indigenous Peoples (UNDRIP) emphasize non-discrimination and the rights of indigenous women and children, including special measures to ensure full protection against all forms of violence and discrimination.

The Committee on the Elimination of Discrimination Against Women (CEDAW) has specifically discussed the impact of militarization and related activities on indigenous women,

The loss of territory as a consequence of situations such as armed conflicts, militarization, the execution of mega development projects, extractive industries, mass tourism and, in some cases, the declaration of territories as heritage of Humanity or conservation areas can seriously harm indigenous women and place them in a situation of great vulnerability, being forced to leave their land, and to migrate to cities, often in situations of extreme poverty and vulnerability, leaving them with multiple discriminations to contend with. They might be forced to integrate into other cultures and more individualistic economic systems that threaten their identity.¹

As children, indigenous girls face vulnerabilities associated with not only their indigeneity and gender, but also their age. CEDAW, together with the Convention on the Rights of the Child (CRC)² and UNDRIP constitutes an essential legal framework to promote and protect the rights of indigenous girls. International norms and treaties that specifically recognize the rights of the girl-child provide the backdrop to the EMRIP’s interpretation of these rights.³ The CRC has emphasized ‘the right of the child to freedom from *all forms of violence*’.⁴ Regionally, obligations to protect the girl-child are specifically enumerated in the African Charter of the Rights and Welfare of the Child⁵ and Maputo Protocol, which protects against all acts which,⁶

...cause or could cause [women] physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.⁷

Further, Security Council resolution 1325 imposes obligations to prevent sexualized military violence against indigenous women and girls.⁸

¹ Concept Note, CEDAW Day of General Discussion on the rights of indigenous women and girls (24 June 2021).

² Article 2 UN Committee on the Rights of the Child (CRC) , CRC/C/GC/11 (12 February 2009).

³ UN *Beijing Declaration and Platform of Action, adopted at Fourth World Conference on Women*, 27 October 1995.

⁴ CRC Article 19; UN Committee on the Rights of the Child (CRC), *General Comment No. 13 (18 April 2011)*.

⁵ African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49.

⁶ Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (adopted 11 July 2003) AU, Article 1(k).

⁷ *Ibid* art 1(j).

⁸ UN Security Council, *Security Council resolution 1325 S/RES/1325* (31 October 2000).

The rights of indigenous women and girls are especially important in the context of resource extraction and climate change, which are often linked to militarization of indigenous lands.⁹ The climate crisis—extreme weather disasters, profound ecological degradation, and armed conflicts over increasingly scarce natural resources—disproportionately harms indigenous women and girls due to their land-based subsistence and culture, and economic and social vulnerability due to colonization.

Significance of Land to Indigenous Peoples & Rights

We urge EMRIP to emphasize the indivisible relationship between land rights and other indigenous rights. Indigenous peoples, especially women, have a unique, reciprocal relationship to land in which their deep cultural connection between land, water, culture, language, and traditions includes a responsibility to protect the land. It is important to note that indigenous territories hold an estimated 80% of earth's biodiversity.¹⁰

CRC General Comment No. 11 guides the implementation of indigenous children's rights, highlighting States' obligations to, "closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival and development to the maximum extent possible."

The UN Special Rapporteur (SR) on the rights of indigenous peoples, noted that violations of the right to self-determination, including denigration and non-recognition of customary laws and practices that strip indigenous peoples of autonomy over land and natural resources, "have been highly detrimental to the advancement of the rights of indigenous women and girls."¹¹

This unique relationship to the land is further affirmed by CEDAW, who identified that,

*Infringements on land rights is one of the situations that most severely impacts indigenous women. The women play a very important role in their communities as food providers, administrators of natural resources, conservators of sacred places, transmitters of their traditions and producers of art, among others. All of these aspects have forged the identity of indigenous women and nurtured their profound knowledge, intimately linked to the land and natural resources.*¹²

It is essential to recognize the role of indigenous women and girls as agents of environmental conservation.¹³ The UN Inter-Agency Support Group identified that indigenous women and girls, *Contribute to the strength, resilience and maintenance of community vitality and wellbeing – playing essential roles as keepers of cultural identity, traditional guardians of the natural environment. A violation of their human rights therefore constitutes a violation of the sanctity of the ecological, spiritual and cultural identity of indigenous peoples as whole.*¹⁴

Relationship between Extractive Industries and Militarization of Indigenous Lands

We urge EMRIP to emphasize the central role of extractive industries in causing climate change, environmental degradation, and militarization of Indigenous territories. Extractive economies, especially those governed by colonial regimes, threaten indigenous women's and girls' rights, territories, and ability

⁹ CEDAW General Recommendation No. 37 (CEDAW/C/GC/37).

¹⁰ World Bank, *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners* (2008), p.xii.

¹¹ A/HRC/30/41 para 12. Available at: <https://www.undocs.org/A/HRC/30/41>.

¹² Concept Note, CEDAW Day of General Discussion on the rights of indigenous women and girls (24 June 2021).

¹³ World Bank, *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners* (2008); Etchart, L. The role of indigenous peoples in combating climate change. *Palgrave Commun* 3, 17085 (2017).

¹⁴ United Nations IASG on Indigenous Issues, "Thematic Paper on the Elimination and Responses to Violence, Exploitation and Abuse of Indigenous Girls, Adolescents and Young Women" (June 2014). Available [here](#).

to live on their ancestral lands. Extractive projects, without consent, occupy and toxify indigenous lands, forcing indigenous people to defend their ancestral territories against environmental destruction, toxification, and impacts of climate change.

The SR on the Rights of indigenous Peoples, identified natural resource extraction and other development projects on or near indigenous territories as, “one of the foremost concerns of indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights.”¹⁵

EMRIP has long recognized the relationship between violence against indigenous women and girls, militarization, and extractive industries:

*Violence against indigenous women and girls by State and non-State actors and corporate actors in the public domain [includes]: “militarization and the activities of multinational corporations and extractive industries that operate with impunity on indigenous peoples” territories. Those actors and their activities have a detrimental impact on indigenous women and girls, which manifests itself in sexual assault, sex trafficking, prostitution, bonded labour, the exploitation of overseas contract workers, the internal displacement of women and environmental violence”.*¹⁶

Extractive projects increase violence against indigenous women and girls.¹⁷ The influx of a transient male workforces and ‘man camps’ (where male workers live in close quarters for weeks or months at a time) to indigenous territories is linked to sexual violence, trafficking, and murder of indigenous women and girls.¹⁸

Indigenous land defenders, many of whom are women and girls, are the first line of defense against ecological destruction and climate change. According to the Indigenous Environmental Network, over the past decade, indigenous land defenders in North America have prevented nearly 1.6 billion tons of annual greenhouse gas emissions.¹⁹ However, Indigenous land defenders face criminalization, arrest, detention, and forced removal/eviction²⁰ from their lands by State actors on behalf of private oil & gas companies. Indigenous women and girls who defend their territories face intimidation, surveillance, sexual violence, criminalisation and murder. According to Global Witness, killings of environmental land defenders is on the rise; with a third of fatal attacks targeting indigenous people (despite indigenous peoples only making up 5% of the world’s population).²¹ Ten percent of those killed were female activists.²² The targeting of women employs sex-specific tactics and violence,

Women who stand up for their rights to land and a healthy environment face specific explicit sexist or sexual content. Sexual violence, much of which is underreported, is also used as a tactic to silence women defenders. Women who do gain leadership positions are often stigmatised for

¹⁵A/HRC/18/35 (11 July 2011) para 57.

¹⁶E/C.19/2012/6 (28 Feb. 2012) para. 21.

¹⁷Statement by the UN SR on the Rights of Indigenous Peoples, James Anaya, to the International Expert Group Meeting on sexual health and reproductive rights (15 January 2014); M Taggart and M Jean, ‘#AmINext? A Discussion on the Sexual Violence and Trafficking of Aboriginal Women in Canada and the Link to Domestic Extractive Industries’ (University of California Santa Barbara 2015); R Kohut and T Prior, ‘Overlooking a Regional Crux of Vulnerability: Missing Women in the Arctic’ (2016) *Arctic Yearbook* 298.

¹⁸ UN Permanent Forum on Indigenous Issues Session 7th & 8th Meeting (19 April 2018), see press release: <https://www.un.org/press/en/2018/hr5390.doc.htm>; https://www.colorado.edu/program/fpw/2019/03/14/new-report-finds-increase-violence-coincides-oil-boom;RECLAIMING_POWER_AND_PLACE; https://www.colorado.edu/program/fpw/2020/01/29/violence-extractive-industry-man-campsendangers-indigenous-women-and-children;Moving_More_than_Oil.

¹⁹ See also, <https://www.nrdc.org/experts/jennifer-skene/indigenous-land-rights-climate-solution>

²⁰ UN Doc A/74/183 (17 July 2019); E/CN.4/RES/1993/77 (10 March 1993); OHCHR [Forced Evictions](#).

²¹ Global Witness recorded 227 lethal attacks in 2020, see: Global Witness, “Last line of defense” (September 2021) available at: www.globalwitness.org.

²² Ibid.

*going against traditional gender roles.*²³

The prevalence of indigenous girls in youth climate litigation, their leadership in land defense, and their role in the global uprising of children against climate change demonstrates the critical role indigenous girls play in defending the environment, their territories, and land rights. Indigenous girls experience the same land-related human rights violations that indigenous women face, but with the barriers and vulnerabilities associated with their age. Indigenous girls who defend their land and rights do so at the expense of their education, leisure, and freedom/liberty; indigenous girls fight to protect their rights to culture, language, land, and water at the expense of their other rights.

Militarized forcible removal of indigenous women and girls from their territories for resource extraction projects is common.²⁴ While Article 10 of UNDRIP protects against forcible removal, a 2013 report by UNICEF et al. found that forced dispossession of indigenous peoples from ancestral lands is a risk for increased violence against women and girls.²⁵ Once removed from their territories, women and girls are often forced to migrate from rural communities to urban centers, where they experience extreme poverty, state apprehension, violence, and exploitation, including human trafficking.²⁶ These violations of their rights to peace and security, including freedom from all forms of genocide and violence, are committed globally with near-impunity, highlighting the urgency of requiring States to fulfill their legal duty to protect women and girls, especially in rural and isolated areas, against such violence.²⁷

Impact and Role of Colonization

Colonization provides context for militarization of indigenous lands. Current militarization is a corollary of historical colonial invasions and force against indigenous peoples. We urge EMRIP to include reference to the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, which emphasizes the dangers of continued colonialism to social, cultural, and economic development and peace. The Declaration states,

*All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.*²⁸

In a time of climate emergency, colonial policies amplify indigenous peoples' economic, social, and cultural vulnerability. The ecological stresses, disasters and shortages of climate change intensify the intergenerational harms of colonization and genocide by compounding the deprivations of widespread poverty. This further dislocates indigenous peoples from their lands and territories, increasing loss of language and culture through loss of biodiversity and traditional plants and animals, and fueling the epidemic of racialized violence including widespread disappearances, murders, and trafficking of indigenous women and girls.

Canada example

In Canada, a colonial State, militarized State police forces have repeatedly forcibly removed indigenous peoples from their traditional territories for the sake of extractive projects. The Wet'suwet'en people in British Columbia (BC) are a key example; their Hereditary Chiefs have not given their free, prior, and

²³ Ibid, p.30.

²⁴ Report of the UN Special Rapporteur on the right to adequate housing, [A/74/183](#) (17 July 2019).

²⁵ UNICEF et al Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women, Available [here](#), (See p. 34-35).

²⁶ APWLD and others, Defending the Rights of Indigenous Women in Asia Pacific: Towards an Inclusive and Violence-free Future, 15-16 October, 2008 p. 27-28.

²⁷ UN CEDAW, *GR No. 19 (11th session, 1992)*(paras. 13-16 re: Art. 6, para. 21 re: Art. 14, para. 24 (g, h, i, k, o, q, t)).

²⁸ OHCHR, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, General Assembly resolution 1514 (XV), 14 December 1960.

informed consent (FPIC) for the construction of a natural gas pipeline through their traditional, unceded territories.²⁹ The Royal Canadian Mounted Police (RCMP), armed and in tactical military gear have invaded, arrested, and forcibly removed Wet'suwet'en³⁰ people from their ancestral territories three times in support of the pipeline.³¹

The RCMP, acting on behalf of the pipeline company and assisted by the BC government, failed to comply with the rule of law; in particular, Wet'suwet'en traditional/customary law,³² indigenous rights set out under section 35 of the Canadian Constitution and confirmed by the Supreme Court in *Delgamuukw*,³³ and international human rights law to which Canada is a signatory. These rights violations continue despite multiple interventions by the Committee on the Elimination of Racial Discrimination (CERD). CERD Decision 1(100) called on Canada to immediately withdraw police and security forces and cease natural resource projects until they have obtained FPIC.³⁴ CERD followed this decision with a letter citing Canada's failure to fully understand their FPIC obligations.³⁵

The BC government denied their responsibility for police actions, citing constitutional division of powers, and claiming FPIC obligations had been met. Provincial governments have constitutional jurisdiction over the administration of justice, including responsibility for policing, and legal authority (and responsibility) to establish priorities, goals, and objectives for RCMP law enforcement in the province.³⁶ We urge EMRIP to identify the framework through which colonial states manipulate the rule of law to justify militarization of indigenous lands. Canada has a history of engaging specious jurisdictional arguments to evade human rights obligations to indigenous peoples.³⁷

Conclusion

In conclusion, we urge EMRIP to emphasize the specific, disproportionate, harmful impacts of militarization of indigenous lands on indigenous women and girls, highlighting the special and indivisible relationship between indigenous land rights and the full realization of human rights. Further, we urge EMRIP to expose the connection between militarization of indigenous lands and the violence and exploitation of extractive industries, ongoing colonialism, and the ecological disaster of climate change. We offer Canada as an illustrative example.

²⁹ A/HRC/EMRIP/2012/2 (30 April 2012) para 37. Available online [here](#).

³⁰ <https://www.ienearth.org/for-immediate-release-militarized-rcmp-enforcement-violent-arrests-continue-on-gidimten-land-defenders/>

³¹ See: <https://www.yintahaccess.com/news/wetsuwetenresistance> .

³² For discussion of Indigenous customary law in Canada, see Borrows, John. "Report for the Law Commission of Canada." *Ottawa, ON: Law Commission of Canada* (2006); Borrows, John. "Indigenous legal traditions in Canada." *Wash. UJL & Pol'y* 19 (2005): 167.

³³ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 [*Delgamuukw*].

³⁴ CERD Decision 1 (100) at its Hundredth session 25 November -13 December 2019.

³⁵ CERD/EWUAP/102 nd session/2020/MJ/CS/ks (24 November 2020).

³⁶ In Canada, the relationship between the police and the government is of key constitutional significance. Though RCMP is under federal jurisdiction, they operate as a contract provincial police force in BC via a federal-provincial service agreement. That agreement, and relevant provincial statute law, state that the BC government has legal authority (and responsibility) to establish priorities, goals, and objectives for RCMP law enforcement in the province.

³⁷ See for example: [E/C.12/CAN/CO/6 \(CESCR 2016\)](#) , para 19.