

**REQUEST FOR EARLY WARNING & URGENT ACTION**

**PROCEDURES**

Submitted to: United Nations Committee On The Elimination Of Racial Discrimination  
for consideration at its 105th Session (November 15, 2021- December 3, 2021)

In relation to:

UPDATE ON THE IMMINENT THREAT TO INDIGENOUS PEOPLE AND TERRITORIES

IN BRITISH COLUMBIA, CANADA

23 November 2021

This submission is made with the Endorsement of the Wet'suwet'en Land Defenders.

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## INTRODUCTION

1. This submission is made with the endorsement of the Wet'suwet'en land defenders.
2. This submission is an urgent update to previous and extensive work of the Committee on the Elimination of Racial Discrimination (the "Committee") under its Early Warning and Urgent Action Procedure ("EWUAP") on Canada's violations of the rights of Indigenous peoples in relation to environmentally destructive industrial projects in British Columbia.<sup>1</sup> In particular, we draw your attention to CERD/EWUAP Decision 1(100) (13 December 2019).<sup>2</sup>
3. We make this submission based on the following indicator for EWUAP:

Encroachment on the traditional territories of Indigenous peoples and forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources.<sup>3</sup>
4. We draw the Committee's urgent attention to a rapidly developing situation involving forced removal of Wet'suwet'en land defenders in British Columbia, Canada's most westerly province.
5. **Canada continues to violate the rights of Wet'suwet'en people, showing disregard for obligations under the Convention and CERD Decision 1(100).<sup>4</sup> On 18-21st November 2021, Canada used paramilitary Royal Canadian Mounted Police ("RCMP") forces to remove Wet'suwet'en land defenders, including Hereditary Chiefs and matriarchs, from unceded, ancestral, and traditional territories of the Wet'suwet'en people. Approximately 20 have been arrested and detained. RCMP also arrested and detained several members of the media.**
6. The RCMP forcibly removed Wet'suwet'en land defenders under an injunction granted to Coastal GasLink, a pipeline company involved in fossil fuel infrastructure expansion.<sup>5</sup> RCMP deployment was supported by the BC Ministry of Public Safety & Solicitor

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<sup>1</sup>CERD/EWUAP/102nd session/2020/MJ/CS/ks (24 November 2020); CERD/EWUAP/CERD Decision 1(100) (13 December 2019); CERD/EWUAP/99th session/Canada/JP/ks (29 August 2019); CERD/EWUAP/ 98th session/Canada (Trans Mountain Pipeline Project)/JP/ks (10 May 2019); CERD/EWUAP/Canada-Trans Mountain Pipeline/2018/JP/ks (14 December 2018); CERD/EWUAP/Canada-Site C dam/2018/JP/ks (14 Dec 2018). See also (CERD/C/CAN/CO/21-23).

<sup>2</sup> CERD/EWUAP/CERD Decision 1(100) (13 December 2019).

<sup>3</sup> Guidelines for the Early Warning and Urgent Action Procedures, Annual report UN doc A/62/18, Annexes, Chapter III.

<sup>4</sup> CERD/EWUAP/CERD Decision 1(100) (13 December 2019).

<sup>5</sup> Pursuant to a court injunction obtained by Coastal Gaslink in BC Supreme Court in 31 Dec 2019 (almost 2 years ago) in furtherance of private interests which run counter to constitutionally protected rights of Wet'suwet'en; *Coastal GasLink Pipeline Ltd. v. Huson*, 2019 BCSC 2264.

General.<sup>6</sup> This is the third time since 2019 that the State party has forcibly removed peaceful Wet'suwet'en land defenders .<sup>7</sup>

7. Compounding this situation, Canada has engaged in these serious human rights violations in the midst of a severe and immediate climate emergency, so declared by the Province of British Columbia.<sup>8</sup> Large sections of the province are flooded, towns have been evacuated, and central transport facilities and infrastructure are impassable. These violations are also occurring against the backdrop of genocide and a federally declared desire for reconciliation between the Government of Canada and Indigenous peoples.<sup>9</sup>
8. **We urge the Committee to take further urgent action in response to these current and ongoing human rights violations against Wet'suwet'en land defenders, including police violence,<sup>10</sup> forcible removal/forced eviction, and industrial destruction of lands and artifacts causing irreparable harm to Wet'suwet'en people, culture, lands and water.**
9. The geographic location of the Wet'suwet'en people is isolated and remote, making it difficult for human rights observers and media to monitor.<sup>11</sup> This situation poses grave danger to Wet'suwet'en people, territories and culture and it is made worse by the arrests of both legal observers and the media.

## **NEED FOR URGENT ACTION: FORCIBLE REMOVAL AND POLICE VIOLENCE**

10. The 18 & 19 November 2021 forced eviction of Wet'suwet'en people occurred at the Gidimt'en checkpoint and Coyote Camp, where Wet'suwet'en peoples are currently living on their ancestral territory located in a remote area of British Columbia (See Appendix B for map). The Wet'suwet'en have been forcibly evicted, arrested and detained for asserting their ancestral jurisdiction and defending their unceded, traditional, and ancestral territory--lands and waters--against destruction by Coastal GasLink.

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<sup>6</sup> Prior to arrest and recent RCMP actions against Wet'suwet'en land defenders, the BC Ministry of Public Safety & Solicitor General authorized a re-deployment of police services, transporting RCMP officers and tactical equipment to the remote area. This redeployment is possible under article 9.1 of the Province of BC Provincial Police Service Agreement, which allows the government to redeploy and fund police services if the Minister believes it is reasonably necessary to maintain law and order, keep the peace and protect the safety of persons, property or communities. See [Memorandum of Understanding between the Government of Canada and the Province of British Columbia - Provincial Police Service Ag.](#)

<sup>7</sup> Previous forced evictions were in January 2019 and February 2020.

<sup>8</sup> See BC Government press release, [Provincial state of emergency declared | BC Gov News.](#)

<sup>9</sup> See Government of Canada, [Principles respecting the Government of Canada's relationship with Indigenous peoples](#)

<sup>10</sup> RCMP violence is of particular concern; they have been found to be racist, misogynist, homophobic, and have committed sexualized violence against its own female RCMP officers. See former Supreme Court of Canada Justice Michel Bastarache's report [Broken Dreams, Broken Lives: The Devastating Effects of Sexual Harassment on Women in the RCMP](#) and the Human Rights Watch report [Those Who Take Us Away](#)

<sup>11</sup> See Appendix B for maps and information on geographic location.

11. On 21 November 2021, the RCMP violently arrested two Gitxsan land defenders, peacefully protesting in their traditional territory in solidarity with the Wet'suwet'en.<sup>12</sup> The Gitxsan and Wet'suwet'en have ancient alliances between their nations and a history that dates back millennia.<sup>13</sup>
12. Facilitated by the Government of British Columbia,<sup>14</sup> the RCMP committed the following human rights violations during the course of the forced eviction of Wet'suwet'en land defenders at Gidimt'en Checkpoint and Coyote Camp:<sup>15</sup>
  - a. **Forced eviction<sup>16</sup> from ancestral territories and arbitrary detention<sup>17</sup> of Indigenous peoples** - The RCMP unreasonably and unnecessarily used militarized force to remove peaceful Indigenous land defenders from their ancestral lands and took them into police custody.<sup>18</sup> This use of force and arbitrary detention was used in violation of Wet'suwet'en, Canadian, and International law. As of 23 November, 10 Indigenous land defenders remain in police custody for the 5th day. Reports from those released yesterday cite lack of food, restricted access to legal representation, and poor treatment by RCMP.<sup>19</sup> Coastal GasLink has asked the court to apply release conditions that may include a requirement for land defenders to prove their Indigenous identity, on the basis that they are not registered with the federal government as "Wet'suwet'en", despite the presence of Hereditary Chiefs in the courtroom to confirm their

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<sup>12</sup> Video of arrest available online: [https://twitter.com/kris\\_statnyk/status/1462550454148091911?s=21](https://twitter.com/kris_statnyk/status/1462550454148091911?s=21)

<sup>13</sup> See The Tyee, '[We Have to Stand Together: A Tale of Two Nations](#)' and Video Interview of land defender Kolin Sutherland explaining the relationship available online: <https://twitter.com/i/status/1462223454023786501>.

<sup>14</sup> The BC Minister of Public Safety & Solicitor General authorized a re-deployment of police services, transporting RCMP officers and tactical equipment to the remote area. This redeployment was authorized under article 9.1 of the Province of BC Provincial Police Service Agreement, which allows the government to redeploy and fund police services if the Minister believes it is reasonably necessary to maintain law and order, keep the peace and protect the safety of persons, property or communities. See [Memorandum of Understanding between the Government of Canada and the Province of British Columbia - Provincial Police Service Ag.](#)

<sup>15</sup> Information gathered from the Gidimt'en Checkpoint and Unist'ot'en official twitter feeds, which are used by land defenders to communicate to the public from their remote location. See <https://twitter.com/unistotencamp> and <https://twitter.com/Gidimten>.

<sup>16</sup> See the Report of the UN Special Rapporteur on the right to Adequate Housing, 'Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context' (17 July 2019) UN Doc A/74/183; UN Commission on Human Rights, *Forced evictions*, 10 March 1993, E/CN.4/RES/1993/77; See also OHCHR [Forced Evictions](#).

<sup>17</sup> Resolution 1997/50 considers that deprivation of liberty is not arbitrary if it results from a final decision taken by a domestic judicial instance and which is (a) in accordance with domestic law; and (b) in accordance with other relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned.

<sup>18</sup> [Arrests reported as RCMP move to clear Wet'suwet'en pipeline resistance in BC for 3rd time](#) CBC news.

<sup>19</sup> See the post-release [video of Indigenous Land Defender Cody Merriman](#) and [twitter statements by member of the press Michael Toledano](#).

ancestry. According to reports from courtroom observers, conditions of release include a prohibition on their return to their own territory and the “exclusion zone”.

- b. **Denial of access to health** - The RCMP denied a Wet’suwet’en elder access to essential heart medication. The Wet’suwet’en matriarch was arrested and later taken by ambulance to hospital, suffering chest pains. (See Appendix A for photo of elder’s arrest);
- c. **Denial of public right to information and media access** - The RCMP denied the public access to information by declaring a “media exclusion zone” around the forcible removal area. A recent BC Supreme Court judge ruled the RCMP’s practice of employing vast “exclusion zones” illegal.<sup>20</sup>
- d. **Arrest and detention of media representatives** - The RCMP also arrested multiple media representatives,<sup>21</sup> despite clearly identifying themselves as media, including presenting media identification, assignment letters, and a relevant court ruling guaranteeing media access to protest sites.<sup>22</sup> On 19 November, the RCMP refused to release Amber Bracken and Michael Toledano, accredited media, from custody, stating they would be held until a bail hearing on 22 November 2021. The RCMP would not disclose the details of why they were detaining the two journalists.<sup>23</sup> The journalists were released on 22 November with conditions to reappear in court on February 14th. They report punitive and targeted arrest and detention by RCMP.<sup>24</sup>
- e. **Violation of the rights of human rights defenders** - The RCMP denied access, arrested, and detained human rights defenders, including Indigenous land defenders--especially women land defenders<sup>25</sup>--and legal observers. The RCMP obstructed the key role of these human rights defenders in the realization of the human rights enshrined in the UN Declaration on the Rights of Indigenous

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<sup>20</sup> [Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2021 BCSC 1554](#); see also Canadian Association of Journalists [Open letter to the RCMP about press freedom concerns in Wet’suwet’en territory](#).

<sup>21</sup> [RCMP arrest photojournalist Amber Bracken and 14 others during pipeline protest in Wet’suwet’en territory](#).

<sup>22</sup> See: Committee to Protect Journalists (20 November 2021) media release, [CPJ calls on Canadian police to release detained journalists](#); [RCMP arrest photojournalist Amber Bracken and 14 others during pipeline protest in Wet’suwet’en territory](#); [Two Canadian journalists covering Wet’suwet’en land defenders in B.C. among 15 people arrested by RCMP](#).

<sup>23</sup> [“RCMP arrest journalists, matriarchs and land defenders following Gidim’ en eviction of Coastal GasLink.”](#) Matt Simmons, *The Narwhal*, 20 Nov. 2021

<sup>24</sup> See [Michael Toledano’s statement](#) and a [22 November Article by the Narwhal](#) finding that RCMP tracked photojournalist Amber Bracken and Michael Toledano in an active investigations database.

<sup>25</sup> Indigenous women land defenders are known to be pivotal actors globally at the forefront of social and environmental justice movements towards genuine social changes and environmental protection that benefits everyone.

Peoples,<sup>26</sup> the Canadian Constitution,<sup>27</sup> the Convention and other relevant legally binding treaties to which Canada is a signatory;<sup>28</sup>

- f. **Violation of the rule of law** - The RCMP, acting on behalf of Coastal GasLink and assisted by the BC government, is failing to comply with the rule of law; in particular, Wet'suwet'en traditional/customary law,<sup>29</sup> Indigenous rights set out under section 35 of the Canadian Constitution and confirmed by the Supreme Court in *Delgamuukw*,<sup>30</sup> and international human rights to which Canada is a signatory, including the Convention.
  - g. **Unlawful RCMP blockades** - Similar exclusion zoning, checkpoints, media exclusions, and blockades by RCMP in relation to another part of the province were ruled illegal, not authorized by ancillary common law powers necessary to enforce the injunction order.<sup>31</sup>
13. There are many harrowing descriptions of the RCMP invasion and forced eviction of Wet'suwet'en people. A social media post by the official Gidimt'en Checkpoint described the scene this way:

*A charter plane full of RCMP has landed at the Smithers airport, with between 30 and 50 officers equipped with camo[flage] duffel bags. Police loaded onto two buses and unmarked, rental pick-up trucks and headed out towards the yintah.<sup>32</sup> An RCMP helicopter is reported to be heading to the area. Throughout today, helicopters have circled over our camps, conducting low, deliberate flights for surveillance. The road into our yintah remains blocked by RCMP at 28km, with Hereditary Chiefs, food, and medical supplies being turned away. In the middle of a climate emergency, as highways and roads are being washed away and entire*

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<sup>26</sup> Under UNDRIP (which has now been implemented into both Canadian Federal and BC Provincial law) Canada has violated Indigenous peoples' rights to govern their territories, to FPIC, to freedom from violence; and to conservation and protection of the environment on their lands including *inter alia* Articles 2, 7, 8, 10, 12 (1), 18, 22, 24, 25, 26, 27, 29, 30, 32, 33, 37 & 40 (See A/RES/61/295).

<sup>27</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11, ss. 2, 7, 9 and 15; see also Canada's guide to human rights defenders [Voices at risk: Canada's guidelines on supporting human rights defenders](#).

<sup>28</sup> UN General Assembly, *Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* : resolution / adopted by the General Assembly, 10 February 2016, A/RES/70/161; UN Declaration on human rights Defenders, General Assembly Resolution [A/RES/53/144](#).

<sup>29</sup> For discussion of Indigenous customary law in Canada, see [First Nations have their own legal authority to regulate their fishing rights](#); Friedland, Hadley. "Waniska: Reimagining the Future with Indigenous Legal Traditions." *Windsor YB Access Just.* 33 (2016): 85; 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. See also McNeil, Kent. "Indigenous Law and the Common Law." *Osgoode Legal Studies Research Paper Forthcoming* (2021).

<sup>30</sup> *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 [*Delgamuukw*].

<sup>31</sup> [Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2021 BCSC 1554](#) .

<sup>32</sup> Yintah is the Wet'suwet'en word for traditional territory.

*communities are being flooded and evacuated, the Province has chosen to send busloads of police to criminalize Wet'suwet'en water protectors and to work as a mercenary force for oil and gas.*

14. In a series of subsequent posts on Gidimt'en official social media, Wet'suwet'en describe heavily armed RCMP using axes and a chainsaw, along with canine units, forcibly entering the residence of peaceful women land defenders at the Coyote Camp. In a media release 20 November 2021, Wet'suwet'en land defenders described multiple, serious human rights violations,

*Police were deployed in military garb, armed with assault weapons and dog teams, and enforced a media and communications blackout at the site. First, a cabin was breached with an axe and dog unit. Moments later, a separate cabin built on Coastal GasLink's proposed drill pad site was breached with a chainsaw and snipers aimed guns at the door. RCMP did not have warrants required to enter either dwelling. After raiding Coyote Camp, police swept through Gidimt'en Checkpoint and made four more arrests, including Sleydo's partner, Cody Merriman (Haida nation), legal observers and accredited journalists who were there to witness the events.*

*On Thursday, November 18, the RCMP carried out a similar militarized raid on the Gidimt'en Checkpoint at 44km, arresting 17 people including legal observers, an accredited journalist, two Haudenosaunee allies, and two Wet'suwet'en elders. The total number of confirmed arrests over the two day siege is 32 people.<sup>33</sup>*

15. Allied Gitksan land defenders were also subjected to violent arrest during solidarity protests in Gitksan territory.<sup>34</sup> The following is a witness description,

*[RCMP] proceeded to get quite violent, quite quickly. I witnessed one police officer grab him by the cuff on the back of his neck and twisted. And he started choking him while the other one jumped on him and put his knee on the back of his neck. And he started screaming 'I can't breathe!' [...] they hyper-extended his shoulders with cuffs on. They were really trying to prove a point with their violence and trying to scare people.<sup>35</sup>*

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<sup>33</sup> Available on Gidimt'en official social media at:

<https://www.facebook.com/wetsuwetenstrong/photos/a.212802696332191/970501397228980/?type=3&theater>.

<sup>34</sup> The Gitksan are an Indigenous peoples whose traditional, ancestral and unceded territories is located in Northern BC, sharing a border with the Wet'suwet'en.

<sup>35</sup> Video description of RCMP arrest of Gitksan land warrior & a supporter available online: <https://twitter.com/i/status/1462558700535570432>.

16. In the last week, a broad range of Indigenous and civil society groups have issued public statements of solidarity and alarm at these human rights violations.<sup>36</sup> Amnesty International (Canada) expressed grave concern about police actions in an open letter to the BC government.<sup>37</sup> Grand Chief Stewart Philip, of the Union of British Columbia Indian Chiefs called for a peaceful resolution through open dialogue and the respecting of Wet'suwet'en authority and laws.<sup>38</sup> Following the armed RCMP invasion, the Grand Chief stated, "We are absolutely outraged that the Province of BC authorized a military-style raid on peaceful land defenders in order to allow Coastal GasLink to build their Liquefied Natural Gas (LNG) pipeline, while much of the Province is suffering from life-threatening, catastrophic flooding related events".<sup>39</sup>
17. The Canadian Association of Journalists ("CAJ") is demanding immediate release of two members of the press arrested by the RCMP and who RCMP say will remain in police custody until 22 November 2021.<sup>40</sup> A day prior to the arrests, the Association issued a letter to the RCMP expressing concerns over the violation of press freedoms and reiterating RCMP legal obligations to "take account of the media's special role in a free and democratic society and the necessity of avoiding undue and unnecessary interference with the journalistic function" when enforcing injunction orders.<sup>41</sup>
18. The BC Human Rights Commissioner also expressed deep concern about the militarized use of force by RCMP and arrests of elders, journalists and legal observers.<sup>42</sup> The BC Civil Liberties Association condemned the RCMP for its use of an illegal exclusion zone and identified RCMP presence in Wet'suwet'en territory as, "a violation of the rule of law, Wet'suwet'en law, Indigenous rights and responsibilities, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)."<sup>43</sup>

<sup>36</sup>For example, [Amnesty International Open Letter](#); [Statement by Feminist Alliance For International Action](#); [Statement by Union of BC Indian Chiefs](#); [Haida Nation Statement](#); [Statement by Kanién'kehá:ka Nation at Kahnawà:ke](#); [BC Civil Liberties Association 19 November 2021 Open letter](#); [Dogwood Initiative: Petition and Statement](#); [Canadian doctors express solidarity with Wet'suwet'en: concern for the impacts of restricted access and arrests on health - CAPE](#). See also [Haudenosaunee Confederacy Letter of Support](#). See also, NDP Statement on the situation on Wet'suwet'en territory.

<https://www.ndp.ca/news/ndp-statement-situation-wetsuweten-territory>. See also, List of support letters for Wet'suwet'en from 2019-2020, [Letters of support — Gidim't'en Yintah Access](#).

<sup>37</sup> [Open letter: Amnesty International urges federal government, BC and RCMP to protect the rights of Wet'suwet'en land defenders](#).

<sup>38</sup> UBCIC (17 November 2021) [UBCIC Supports Call for Peaceful Evacuation of Coastal GasLink from Wet'suwet'en Territory - UBCIC](#).

<sup>39</sup> UBCIC (18 November 2021) [BC Pours Resources into RCMP Raid on Wet'suwet'en Territory during Provincial Climate Emergency](#).

<sup>40</sup> Communication from S/Sgt Shoihet (E Division) to Ethan Cox, Ricochet media (20 November 2021); See [CAJ calls for immediate release of arrested journalists reporting from Wet'suwet'en](#).

<sup>41</sup>[Open letter to the RCMP about press freedom concerns in Wet'suwet'en territory](#).

<sup>42</sup> Twitter posts, 19 November 2021, available at [https://twitter.com/KasariGovender?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor](https://twitter.com/KasariGovender?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor)

<sup>43</sup> BCCLA statement (19 November 2021) [https://bccla.org/our\\_work/open-letter-from-the-bccla-demanding-that-rcmp-stand-down-vacate-wetsuwet-en-territory/](https://bccla.org/our_work/open-letter-from-the-bccla-demanding-that-rcmp-stand-down-vacate-wetsuwet-en-territory/).

## LEGAL FRAMEWORK FOR POLICING IN BRITISH COLUMBIA

19. The relationship between the police and the government is a matter of key constitutional significance. Provincial governments, including the province of British Columbia, have constitutional jurisdiction over the administration of justice, which includes responsibility for policing. The RCMP is a federal entity, control of which lies within federal jurisdiction. However, section 14 of BC's *Police Act* and section 20 of the federal *Royal Canadian Mounted Police Act*<sup>44</sup> provide for federal and provincial agreements to authorize the RCMP to carry out policing duties in BC. Thus, RCMP operate as a contract provincial police force in BC by virtue of a federal-provincial service agreement.<sup>45</sup> That agreement, as well as relevant provincial statute law, state that the provincial government has legal authority (and responsibility) to establish priorities, goals and objectives for RCMP law enforcement in the province.<sup>46</sup>
20. Further, in January 2020, BC Solicitor General, Mike Farnworth, invoked article 9.1 of the Provincial Police Service Agreement<sup>47</sup> in order to authorize “the internal redeployment of resources within the Provincial Police Service” to assist in potential police enforcement of the injunction obtained by Coastal GasLink.<sup>48</sup>
21. In sum, it is not the case that the police are simply a law unto themselves. In a democracy, coercive state-sponsored force is both restrained by and accountable to government officers with authority over policing and police forces.<sup>49</sup> Equally, then, government officers--in particular those provincial and federal ministers responsible for public safety, the justice system, and human rights observance--are implicated in these paramilitary police manoeuvres against the land defenders.

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<sup>44</sup> R.S.C. 1985, c. R-10.

<sup>45</sup> Schedule A, Province of British Columbia Provincial Police Service Agreement, April 1, 2012, online: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/agreements/police-agreement-provincial-2012.pdf>.

<sup>46</sup> The BC *Police Act*, RSBC 1996 c. 367 states in section 2.1: “The minister may establish priorities, goals and objectives for policing and law enforcement in British Columbia.” Further, Section G of the British Columbia Provincial Police Service Agreement states that the RCMP acting under this Agreement as a Provincial Police Service are to implement policing objectives, priorities and goals as determined by the Provincial Minister. Online:

<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/agreements/police-agreement-provincial-2012.pdf>.

<sup>47</sup> Schedule A, Province of British Columbia Provincial Police Service Agreement, April 1, 2012, online: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/agreements/police-agreement-provincial-2012.pdf>.

<sup>48</sup> Charlie Smith, “Solicitor General Mike Farnworth authorized redeploying RCMP resources in response to Coastal GasLink's injunction,” Georgia Straight, March 5th 2020. Online: <https://www.straight.com/news/1369066/solicitor-general-mike-farnworth-authorized-redeploying-rcmp-resources-response-coastal>.

<sup>49</sup> Philip Stenning “Someone to Watch over Me: Government Supervision of the RCMP” in Wes Pue ed. Pepper in Our Eyes: The APEC Affair (Vancouver: University of British Columbia Press, 2000) at 113.

## RECENT BACKGROUND

### *Wet'suwet'en eviction of Coastal GasLink*

22. Pursuant to Wet'suwet'en, Canadian and International law, Wet'suwet'en asserted their jurisdiction and territorial rights on 14 November 2021, serving Coastal GasLink with an immediate eviction order and enforcing a previous January 2020 notice of eviction issued by Wet'suwet'en Hereditary Chiefs. Wet'suwet'en were compelled to evict Coastal GasLink on 14 November 2021 due to the company's continued construction and imminent plan to drill beneath sacred Wet'suwet'en headwaters.<sup>50</sup> The eviction order gave Coastal GasLink workers eight hours to leave the ancestral territory. According to Wet'suwet'en Matriarch, Sleydo (Molly Wickham), "Right as the deadline was approaching, the RCMP called Chief Woos and asked for a 2-hour extension which Chief Woos granted to them. So they had 10 hours to leave the territory before the road was closed."<sup>51</sup>
23. A small number of Coastal GasLink workers vacated, while approximately 500 remained in the Coastal GasLink work camps, many unaware of the Wet'suwet'en notice.<sup>52</sup> The Wet'suwet'en took measures to enforce their eviction by decommissioning the Morice Forest Service Road into the work camps. Hereditary Chief Woos made a public video statement clearly explaining the reasons for the Wet'suwet'en eviction of Coastal GasLink and stating unequivocally that Wet'suwet'en are peaceful and have no intention of causing harm to Coastal GasLink workers.<sup>53</sup>

### *BC Government adoption of Coastal GasLink narrative justifies RCMP invasion*

24. In breach of article 4 of the Convention, BC's Minister of Public Safety and Solicitor General issued a press release on 15 November 2021 providing justification for the RCMP to forcefully evict Wet'suwet'en land defenders.<sup>54</sup> The statement claimed "[Wet'suwet'en] *blockades of the Morice River Forest Service Road have put at risk emergency access and the delivery of critical services to more than 500 Coastal GasLink workers*". The Minister framed the Wet'suwet'en people as criminals for peacefully occupying and asserting jurisdiction over their traditional territory, stating, "*The right to*

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<sup>50</sup> See 14 November Gidimt'en Checkpoint media release at:

<https://static1.squarespace.com/static/5c51ebf73e2d0957ca117eb5/t/619168973821566fa355db65/1636919447456/PressReleaseDay50.pdf>.

<sup>51</sup> Democracy Now Independent Global News, [Canadian Police Raid Wet'suwet'en Pipeline Blockade, Arrest 15 Land Defenders](#)

<sup>52</sup> The Tye News, [Coastal GasLink Failed to Warn Camp Employees about Blockade, Worker Says](#).

<sup>53</sup> See Hereditary Chief Woos's video statement, [Chief Woos: We mean no harm to anyone](#); See video interview of matriarchal land defender, Sleydo/Molly Wickham, Democracy Now Independent Global News, [Canadian Police Raid Wet'suwet'en Pipeline Blockade, Arrest 15 Land Defenders](#); The Narwhal, [In photos: inside the Gidimt'en eviction of Coastal GasLink](#); BNN Bloomberg financial news, (video interview) available at <https://twitter.com/BNNBloomberg/status/146071380337778688>.

<sup>54</sup> [Minister's statement on Coastal GasLink project | BC Gov News](#).

*protest does not extend to criminal actions.*” The criminalization of Indigenous land and human rights defenders has already been raised as a human rights violation and serious area of concern by the UN Permanent Forum on Indigenous Issues in 2016.<sup>55</sup>

25. On 18 November 2021, the RCMP invaded the Gidimt'en checkpoint to forcibly remove and arrest Wet'suwet'en land defenders. On 19 November 2021, further RCMP invasions occurred resulting in additional arrests of Wet'suwet'en matriarchs, land defenders, and media.<sup>56</sup>
26. As the actions of the BC Government, Coastal GasLink and the RCMP are contextualized against the larger backdrop of the State party's failures to obtain free, prior and informed consent (“FPIC”), the BC Government's narrative justifying this invasion as a rescue mission breaks down. The incident could have been prevented had the provincial and federal governments fulfilled their obligation to obtain free, prior and informed consent and had they worked with the Hereditary Chiefs in good faith to respect Wet'suwet'en territory and jurisdiction.
27. Dini'ze Woos, Chief of Cas Yikh, explained that the Hereditary Chiefs have not only attempted dialogues with Coastal GasLink, BC's Premier, and Canada's Prime Minister, but also, “[Hereditary Chiefs] offered alternatives, somewhere back about four or five years ago. One alternative was an alternate route. That wasn't taken into consideration. They just instead, literally, bulldozed, signed agreements, and circumvented Hereditary Chiefs again.”<sup>57</sup>

#### *Coastal GasLink failure to inform workers*

28. Coastal GasLink and the BC government is publicly framing this armed invasion as a humanitarian mission to bring aid to pipeline contractors who were allegedly stuck behind a blockade. In reality, Coastal GasLink was first evicted from the territory by all five Wet'suwet'en clans in January 2020, and again with this most recent eviction notice.
29. Further reports from Coastal GasLink workers indicate that Coastal GasLink failed to inform workers in the camp about the Wet'suwet'en eviction notice from 14 November and therefore many did not leave the camp.<sup>58</sup> Coastal GasLink thus endangered their own workers by choosing not to inform them about the eviction, but instead created a public and political narrative that the health and safety of their workers was at risk, which would serve as justification for the RCMP to invade Wet'suwet'en territory. There is no

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<sup>55</sup>The Forum's 2016 report further identified: “The need to combat pervasive violations against indigenous human rights defenders, including criminalization, persecution, violence, imprisonment and killing” See: <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2016/08/Indigenous-Human-Rights-Defenders.pdf>

<sup>56</sup> See: <https://twitter.com/Gidimten/status/1461842991321022464?s=20> and <https://twitter.com/Gidimten/status/1461839509377544197?s=20>.

<sup>57</sup> Video statement by Chief Woos, [Chief Woos: We mean no harm to anyone.](#)

<sup>58</sup> [Coastal GasLink Failed to Warn Camp Employees about Blockade. Worker Says](#) The Tyee News

evidence that Wet'suwet'en land defenders blocked any worker from leaving the territory. Further, Coastal GasLink and the RCMP routinely use air access to monitor and attend the area, so presumably could transport supplies to the work camp by air if needed.

### *State of climate emergency in BC*

30. The BC Minister of Public Safety and Solicitor General's defence of fossil fuel infrastructure coincided with a climate emergency for which this government Minister was the point person in charge of public safety. This climate disaster involved catastrophic flooding and landslides that displaced thousands, destroyed homes and farms, destroyed critical transportation and agricultural infrastructure, drowned thousands of animals, and resulted in human fatalities.<sup>59</sup> The crisis is ongoing, as landslides are continuing to destroy transportation infrastructure. On 17 November 2021, the day before the RCMP invasion of Wet'suwet'en ancestral lands, BC Premier, John Horgan, declared a climate-induced, province-wide state of emergency.<sup>60</sup>
31. This climate-induced state of emergency, which applies to the entire province, is meant to give agencies, such as the Ministry of Transportation and Infrastructure, Emergency Management BC, and the RCMP, the ability to use extraordinary measures to protect people and communities.<sup>61</sup> There have been four confirmed deaths from mudslides on November 15th. Flooding and weather conditions persist, with officials predicting it could take weeks-to-months for the province to recover. Thousands of people are stranded without access to shelter, food, water, and other provisions, including 41 Indigenous communities.<sup>62</sup>
32. On one hand, the BC government has requested assistance from the Canadian Forces, including the Air Force who are aiding in evacuations as a result of the climate-induced emergency. On the other hand, and at the same time, the BC Minister of Public Safety and Solicitor General has aided the RCMP to deploy airplanes, buses and other resources to forcibly remove, arrest, and detain peaceful Wet'suwet'en land defenders.
33. It is worth noting that these climate-induced disasters are directly related to the very fossil fuel and extractive projects, such as the Coastal GasLink pipeline, that Indigenous land and human rights defenders in BC are trying to stop. The Wet'suwet'en's main opposition to the project is its threat to their Wedzin Kwa (River); Gidimt'en

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<sup>59</sup>See [18,000 people stranded after floods and landslides in British Columbia – video](#).

<sup>60</sup> [Provincial state of emergency declared | BC Gov News](#); These floods happened only three months after BC experienced a devastating 'heat dome' in which hundreds of vulnerable people died of heat exposure. During that same period, wildfires ravaged the landscapes and communities, including an entire community burned to the ground. These fires increased vulnerability to catastrophic flooding impacts. See [Intact forests, safe communities: A report on reducing community climate risks through forestry practices reform](#). See also, Human Rights Watch criticism of BC government failures to adequately prepare for climate disaster, [Canada: Disastrous Impact of Extreme Heat](#).

<sup>61</sup> *Emergency Program Act*, RSBC 1996, c 111.

<sup>62</sup> [B.C. First Nations largely cut off due to flooding brace for more rain](#) CTV News.

spokeswoman Sleydo stated “We will never abandon our children to live in a world with no clean water...There will be no pipelines on Wet’suwet’en territory.”<sup>63</sup>

## CANADA’S FAILURE TO RESPOND TO THE COMMITTEE’S 2019 DECISION

34. On December 13, 2019, under its EWUAP, the Committee issued Decision 1(100) calling upon Canada to:

*... immediately halt the construction and suspend all permits and approvals for 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.*<sup>64</sup>

35. The Committee also expressed alarm at the escalating threat of violence against Indigenous peoples, and urged Canada to:

- a. Immediately cease the forcible eviction of Wet’suwet’en people;
- b. Guarantee that no force would be used against Wet’suwet’en peoples; and
- c. Withdraw security and police forces from the Wet’suwet’en territory and prohibit the use of lethal weapons by the RCMP against Indigenous peoples.

36. In a 24 November 2020 letter to Canada in follow up to Decision 1(100), the Committee highlighted Canada’s improper interpretation of the obligation of free, prior and informed consent,

*The Committee regrets the State party interprets the free, prior and informed consent principle as well as the duty to consult as a duty to engage in a meaningful and good faith dialogue with indigenous peoples and to guarantee a process, but not a particular result. In this regard, the Committee would like to draw its attention on the Committee’s general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights or interests of indigenous peoples is taken without their informed consent.*<sup>65</sup>

37. Pursuant to General Recommendation No. 23, Canada has obligations to:

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<sup>63</sup> <https://twitter.com/Gidimten/status/1462236682749562880?s=20>

<sup>64</sup> CERD 100th session (25 November - 13 December) Decision 1 (100) Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure.

<sup>65</sup> CERD/EWUAP/102 nd session/2020/MJ/CS/ks.

4. (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.<sup>66</sup> Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.<sup>67</sup>

38. Canada has not submitted its 24th and 25th combined periodic report nor has it updated the Committee on measures taken to address all the issues contained in the CERD Decision 1 (100).<sup>68</sup>

#### **REQUEST FOR MEASURES TO PREVENT OR LIMIT THE SCALE OR NUMBER OF SERIOUS VIOLATIONS OF THE CONVENTION:**

39. We request the Committee address the current situation and adopt another decision under its EWUAP:

- a. Reiterating the Committee's urgent concern, condemning violence against, and the forcible removal of, Indigenous peoples defending their traditional, unceded, ancestral territory against environmentally destructive resource projects taking place without their FPIC;
- b. Responding to Canada's failure to submit the requested information outlined in CERD's 2019 Decision (1)100;
- c. Responding to Canada's failure to comply with the Committee's requests outlined in CERD's 2019 Decision (1)100;
- d. Calling for a fact-finding mission to the area and communication with the State by relevant UN bodies and Special procedures, including but not limited to the UN Special Rapporteur on Indigenous Peoples, UN Special Rapporteur on Human Rights & Environment and UN Special Rapporteur on Human Rights Defenders;
- e. Requesting that Canada cease industrial development that leads to destruction of lands and water and violates the inherent rights of Indigenous peoples;

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<sup>66</sup> Note: the Wet'suwet'en people have never ceded or surrendered their rights or title to their traditional territory (Yintah)

<sup>67</sup> CERD General recommendation No. 23 on the rights of indigenous peoples UN Doc INT\_CERD\_GEC\_7495\_E

<sup>68</sup> The Tye, [Canada Puts Off UN Request for Indigenous Rights Update](#)

- f. Stating concern regarding the persistent discriminatory treatment of Indigenous peoples' assembly and land rights in British Columbia;
  - g. Urging the Canadian government to work together with the Government of British Columbia to halt any activities infringing on the rights of Indigenous Peoples, including those at sites named in the Committee's 2019 decision, in particular:
    - i. Immediately halting construction and suspending all permits and approvals for the construction of the Coastal Gaslink pipeline
    - ii. Withdrawing the RCMP and associated security and policing services from the area;
  - h. Encouraging the State party to consider engaging with the United Nations Expert Mechanism on the Rights of Indigenous Peoples ("EMRIP") that is mandated by the Human Rights Council (resolution 33/25, paragraph 2) to provide States with technical advice on the rights of Indigenous peoples and facilitate dialogue between States, Indigenous peoples, and/or the private sector; and
  - i. Stating that the Committee will continue to track this issue and that there will be a full review of Canada's actions and omissions in relation to this matter under the Convention during the upcoming periodic review of Canada.
40. Given Canada's persistent violations and refusal to provide the Committee with information, we urge the Committee to conduct a field visit to Wet'suwet'en and other territories in connection with the procedure, and to draw the attention of relevant UN bodies to the issue.

## APPENDIX A

### RCMP ARMED INVASION & FORCIBLE REMOVAL- 18-19 November 2021



Caption: Media representative cuffed and showing her press pass (18 November)



Caption: RCMP arresting Indigenous land defender (18 November)



Caption: Armed RCMP Officers onsite to arrest & forcibly remove Indigenous land defenders (18 November)



Caption: Close up of RCMP weapons in armed invasion (18 November)



Armed RCMP (19 November)



Arrest of Indigenous land defenders by RCMP with canines at 44km checkpoint in Gidim'ten territory (19 November)



Arrest of Indigenous land defenders at 44km checkpoint in Gidim'ten territory (19 November)



Caption: Wet'suwet'en Elder Janet Williams is attended to by police while experiencing chest pains during arrests on the Morice West Forest Service Road. Williams was among those arrested in 18 November police action on Wet'suwet'en territory. (18 November)

## APPENDIX B

### Maps & Relevant Locations

