



International Indian Treaty Council
Consejo Internacional de Tratados Indios

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Re: Submission for the Report on the Militarization of Indigenous Land: A Human Rights Focus

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Emphasizing the contribution of the demilitarization of the lands, and territories of indigenous peoples and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world
-- Preamble, UN Declaration on the Rights of Indigenous Peoples

Around the world, extractive industries, agri-business and other private companies, conservations and other interested parties utilize hired private security, often coordinating closely with local, state/provincial and national law enforcement and military to engage in intimidation, criminalization and violence against Indigenous Peoples to "free up land" and undermine legitimate Indigenous protests against imposed development. They often use counter-insurgency methods used to combat international terrorism and, in addition, used weapons against unarmed civilians considered "non-lethal," such as tear and pepper gas, which are prohibited for use in international combat. They also are known to use sexual violence as an overt strategy to intimidate, terrorize and punish Indigenous communities for resisting imposed development.

The cases presented in this brief submission illustrate situations consistently faced by many Indigenous Peoples in a number of countries. In our view, they should be emphasized prominently in the EMRIP's study. They also represent issues that have not received adequate attention by the United Nation Human Rights system, in particular regarding their impacts on the rights of indigenous Peoples in many countries.

IITC also recommends that the ERMIP's report highlights that the distinction between State and non-state military actors is blurry at best and non-existent at worst. Examples presented below, and many others, illustrate how these entities often act in cooperation and partnership. In addition, State justice systems also often turn a blind eye or fail to hold private militia

accountable for human rights violations. In this way both States and multi-national corporations continue to collaborate with the militarization of Indigenous lands and abuses of Indigenous Human, Treaty and Environmental Rights defenders on the ground, while keeping up the appearance of compliance with their human rights obligations.

1. Militarism on Indigenous Lands divided by International Borders

The Tohono O'odham Nation homeland is divided by the current international border between Arizona United States and Sonora Mexico. The reservation encompasses 2.8 million acres in Arizona, a land base the size of Connecticut. It is currently housing three "Forward Operating Bases/ Law Enforcement Centers" for the United States Border Patrol, US Customs and Tohono O'odham Police Department for purposes of border security.

The Tohono O'odham Nation is essentially a militarized zone, with roving patrols of over 300 – 400 federal agents on the reservation in a daily basis. 2 military-style checkpoints at both ends of the reservation, forcing tribal Nation citizens as well as those in transit across to stop and present status of US citizenship and report their place of origin and destinations. Today inspection with dogs and x-rays are carried out at will. Many cases of intimidation of elders and children, and even deaths of tribal members at the hands of these federal agents have been reported, although no agents have been convicted of these or other human rights violations. Restrictions of freedom of religion and denials of access to traditional sacred and ceremonial sites for Tohono O'odham Nation members from both sides of the border are ongoing.

Aside from these governmental agencies, there are private armed "militias" that operate with impunity just outside the boundaries of the Tohono O'odham Nation reservation, based in border towns such as Three Points, Patagonia, Sasabe, Arivaca, Why, Ajo, Stanfield and Casa Grande.

The US Mexico Border lies along 75 miles of the southern boundary of the Tohono O'odham Nation, with the Lukeville Port of Entry to the West and Sasabe Port of Entry to the East. Many of the private militia, such as the "Veterans on Patrol" led by Michael "Lewis Arthur" Meyer have members that are themselves retired US military personnel and/or are well known white supremacists.

Human Rights, Migrant Rights and Tohono O'odham community organizations have been very vocal about these militias who engage in purportedly illegal efforts to hunt migrants, detain them and turn them over to Border Patrol in the name of "protecting the US border". In other instances, they also conduct surveillance and turn the intel over to Border Patrol as was documented in the article by the Southern Poverty Law Center on July 29, 2021, "In eight of the 15 instances where militias intercepted migrants, Border Patrol agents appear to have responded to calls from Meyer and his allies. The nature of their relationship appears to be one

where militia members have made it their job to intercept, detain and eventually call on Border Patrol to apprehend intercepted migrants.”¹

Amy Juan, Tohono O’odham Tribal member, founder/spokesperson, Hemajkam Rights Network provided the following statement to IITC on January 28, 2022:

Even though there is no data because of the lack of visitor check-in process on the reservation, Tribal members and human rights groups suspect that Border Patrol and other law enforcement entities play host to militia members interested in seeing the inner working of the US Border Patrol by hosting tours of their “Forward Operating Bases” and ride-along’s. The close relationship between the Border Patrol and the militia groups requires much more scrutiny.

The following testimony submitted to IITC illustrates the continued intimidation of Tribal members and the close ties between state and non-state actors involved in border patrol:

On March 27, 2021, two O’odham women were traveling to Quitoboquito Springs/A’al Waippa within the Organ Pipe National Monument Park to conduct route mapping for a prayer run that would take place in April, where a 30 ft. high piece of Border Wall was constructed by the Trump Administration in 2019-2020. The dirt roads that lead to the spring run parallel to the border and at times intersect roads with the border near the border that These roads were considered closed to the public, but with prior permission from the Organ Pipe National Monument Park and notification to the US Border Patrol Tribal Liaison, the two women traveled the roads to map the route for the prayer run.

While traveling back to highway AZ-85 to the Lukeville Port of Entry on the border road, the two women were intercepted on the dirt road by an unmarked truck with a male driver who was dressed in camouflage, had a handkerchief over his face, a beard, and sunglasses. These characteristics are the familiar dress of the private militias, so the women did not pull over. The truck continued to follow them at close range until they reached the highway, where the driver attempted to intercept them forcefully. The women swerved around the truck to try to get the man’s license plate information and then called the National Park Service Law Enforcement, as well as the Sheriff’s Department and the USBP Tribal Liaison to report the vehicle. Each agency denied that the man was associated with them.

¹ <https://www.splcenter.org/hatewatch/2021/07/29/plain-sight-uncovering-border-patrols-relationship-far-right-militias-southern-border>

The two women then went to the Lukeville Port of Entry for safety and to be in a public place and realized they were still being followed. The man parked at a distance behind the border store. After 10 minutes another vehicle approached the truck and took over surveillance and the other truck left.

The two women decided to approach the new vehicle and after some time conversating were told that the two men worked for a private security firm out of California, hired by the United States Border Patrol to patrol and protect the new border wall, and equipment and supplies that were left abruptly after the 2020 elections.”

2) Sexual Violence Against Indigenous Women associated with private security hired by Extractive Industry Companies

Article 22 of the U.N. Declaration on the Rights of Indigenous Peoples affirms that “*States shall take measures, in conjunction with Indigenous Peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.* In some cases, States have failed to enforce and ensure this protection regarding the action of private militia and security guards hired by subsidiaries.

There are more than 250,000 private security agents in Guatemala, a small country of about 16 million inhabitants. They are hired by landowners, mining companies, private” conservation” park owners, plantations, and industrial companies. They commit all kinds of abuses in the Indigenous territories. They intimidate and terrorize the population, burn houses, assassinate leaders and in the worst cases, they commit sexual violations against Indigenous women. These agents are not registered with the Ministry of Labor, the Police Academy, or the Guatemalan Social Security Institute because their work is not legally declared, which is why it is so difficult to quantify them.²

For example, 11 Mayan Q’eqchi’ women from Lote Ocho, Guatemala filed a case in Canadian court in 2011 charging the Toronto-based mining company, Hudbay Mineral, with negligence for a 2007 gang rape committed during a forced eviction in which its local subsidiary’s security guards took part. The civil case is still making its way through the Canadian court and in 2020 the court accepted a motion to add additional women and increased monetary damages.

In another case, eleven women and girls who were raped, gang-raped or violently molested in the Papua New Guinea Highlands reached an out-of-court settlement with [Canadian mining company Barrick Gold], having refused to accept the ‘insulting’ compensation paid to 120

² Testimony of Juan Leon Alvarado, Mayan human rights leader and IITC’s coordinator in Guatemala. The Guatemala IITC is currently preparing a separate submission with more in-depth information regarding State and non-state military activities in Guatemala

fellow victims... In 2015 the Porgera community said that company security guards and mobile police at the mine had raped more than 200 women and girls over the past two decades...³

In this regard, IITC calls attention to the relevant observations of the UN Committee on the Elimination of Racial Discrimination in its review of Canada's 19th and 20th report carried out in March 2012, expressing its concern "that the State has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples outside Canada, in particular in mining activities". The Committee went on to reiterate its previous recommendation to Canada in 2007, "that the State party take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable."⁴ Indigenous Peoples are still waiting for this recommendation from a UN Treaty Body to be implemented.

3. Use of so-called "Non-Lethal" Weapons against Indigenous Water, Land and Human Rights Defenders

The Dakota Access Pipeline (DAPL) construction was in the process of taking place on lands recognized under the 1851 and the 1868 Ft. Laramie Treaties between the "Great Sioux Nation (Očhéthi Šakówin) and the United States without the consent of the Indigenous Treaty Nations as stipulated in the 1868 Treaty, Article 16. This was one of the most well documented instances of militarization of Indigenous lands, with and state condoned violence carried out against out by Lakota, Dakota and Nakota "Water Protectors" and their allies in 2016 by both state and federal law enforcement and private security forces such as TigerSwan. Ms. Sophia Wilansky was injured as a result of deadly force used by Morton County North Dakota Sherriff's Department against water protectors from the Očhéthi Šakówin Standing Rock Camp on the night of November 20th, 2016. Ms. Wilansky's arm was severely injured when she was reportedly struck by a concussion grenade fired at several hundred unarmed water protectors walking across a bridge near the DALP construction site. She required multiple surgeries to save her arm.

In addition to concussion grenades, North Dakota law enforcement also used high pressure water cannons, mace, tear gas and rubber bullets against the water protectors. Many suffered from hypothermia because of cold water directed at them at high velocity in sub-freezing temperatures with potentially life-threatening effects. Reports indicate that over 300 water protectors were injured in this incident, and 27 were taken to hospitals including some with broken bones, head and severe eye injuries from rubber bullets. Photos, videos and eyewitness accounts were widely circulated on social and other media.

³ Sydney Morning Herald, April 4, 2015

⁴ CERD/C/CAN/CO/19-20, paragraph 14

As a result of information and reports submitted by IITC which documented the actions of law enforcement at Standing Rock up to that time, on November 15th, 2016, the UN Special Rapporteur on the Right to Peaceful Assembly, Mr. Maina Kiai, issued a statement, reported in the Washington Post, Indian Country Today and the UN Press, calling the use of the tactics used by *“law enforcement officials, private security firms and the North Dakota National Guard up to that time as ‘unjustified’ and ‘excessive force.’”* However, the tactics used in the November 20th incident in which Ms. Wilansky was severely injured far exceeded those used previously which were addressed by the Rapporteur. These incidents call into question the use by law enforcement of so-called non-lethal weapons against unarmed civilians in the United States and other country that could clearly have lethal consequences and in fact many, such as tear and pepper gas used for “crowd dispersion”, are banned for use in international warfare.

4. State and non-State Military Activities carried out in the establishment and control of “Protected” and “Conservation” Areas

Today militarism is spreading around the world in conjunction with the establishment of “protected” or “conservation areas”, national parks, wildlife preserves, UN REDD programs for mitigation of climate change, and “30 X 30” and “Pledge for Nature” programs which over 90 States and many large conservation NGO’s have endorsed. Violations of Indigenous Peoples’ rights within their traditionally occupied, owned and used territories by “Eco-guards”, private security, local law enforcement and Park Rangers in Thailand, Cameroon, Democratic Republic of Congo, Guam, Tanzania, Uganda, Thailand, Nepal, India, Mexico, Guatemala, Bangladesh and the United States have been reported as a result of the establishment and control of these “protected areas.” These include forced evictions, burning villages, Treaty violations, land confiscations, denial of access to traditionally used food and water sources, desecration of sacred sites, rapes and sexual violence, intimidation, arrests, beatings and killings of Indigenous farmers, hunters, gatherers and pastoralists accused of being poachers or trespassers in their own homelands.

On July 23, 2021, UN human rights experts including Special Rapporteurs on the Rights of Indigenous Peoples, Human Rights and the Environment and Human Rights Defenders issued a public statement calling attention to the numerous human rights violations being carried out by National Park employees against the Indigenous Karen Peoples that reside in the Kaeng Krachan Forest Complex in Thailand. They urged UNESCO to deny Thailand’s petition to have the Kaeng Krachan Forest National Park declared a UNESCO World Heritage Site.⁵ Nevertheless UNESCO, after two denials in past years, granted Thailand’s petition.

The Karen have been struggling to remain on their land since it was declared a National Park in 1981. They have been forcibly evicted and their houses have been burnt. In 2021, 80 Karen

⁵ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27333&LangID=E>

were arrested and 28, including 7 women and 1 child, were criminally charged for “encroachment” on their own traditional lands in the Kaeng Krachan Forest.

In September 2019, “remains of Porlajee “Billy” Rakchongcharoen, a Karen environmental and community rights defender who was disappeared in 2014, was found in an oil drum submerged under the Kaeng Krachan dam suspension bridge in Phetchaburi, Thailand.”⁶ Billy was last seen while being arrested by Kaeng Krachan National Park superintendent Chaiwat Limlikit-aksorn and his officers “for allegedly collective wild honey illegally.”

In Nepal, Indigenous Peoples are also being militarized, criminalized, and removed from their lands in another “protected area”. In July 2020, Raj Kumar Chepang, an Indigenous person that was killed after an altercation with Nepali Army personnel from collecting ghungi (snails) from a national park that has been designated a protected area.⁷

These are two recent examples among many others. Urgent response is needed by the EMRIP, the UN Human Rights Council and its Special Procedures as well as UN Treaty bodies to provide effective oversight and recommend measures to halt violations of Indigenous Peoples’ rights by both state and non-state actors resulting from implementation of programs being carried out in the name of environmental conservation. Implementation of State commitments regarding the legal demarcation and recognition of Indigenous Peoples’ traditional lands and resources, as affirmed in Article 26th of the UN Declaration, would make a significant contribution to the reduction of both State and non-State military activities impacting the rights, lands and survival of Indigenous Peoples around the world.

⁶ <https://news.mongabay.com/2021/03/thailands-indigenous-peoples-fight-for-land-of-our-heart-commentary/>

⁷ <https://www.thethirdpole.net/en/livelihoods/opinion-reform-nepals-conservation-laws-acknowledge-indigenous-rights/>