

“REMOVED FROM OUR LAND FOR DEFENDING IT”

CRIMINALIZATION, INTIMIDATION

AND HARASSMENT OF

WET’SUWET’EN LAND DEFENDERS

**AMNESTY
INTERNATIONAL**



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ACRONYMS

BC – Province of British Columbia	CRC – United Nations Committee on the Rights of the Child
BC EAO – British Columbia Environmental Assessment Office	FPIC – Free, prior and informed consent
BCPS – British Columbia Prosecution Service	IACHR – Inter-American Commission on Human Rights
BCSC – Supreme Court of British Columbia	IACtHR – Inter-American Court of Human Rights
CEDAW – United Nations Committee on the Elimination of Discrimination against Women	IBA – Impact and Benefit Agreement
CERD – United Nations Committee on the Elimination of all forms of Racial Discrimination	LNG – Liquefied natural gas
CESCR – United Nations Committee on Economic, Social and Cultural Rights	Morice FSR – Morice Forest Service Road
CRCC – Civilian Review and Complaints Commission for the Royal Canadian Mounted Police	OW – Office of the Wet’suwet’en Hereditary Chiefs
CRU – Critical Response Unit of the RCMP (formerly known as the Community-Industry Response Group, C-IRG)	RCMP – Royal Canadian Mounted Police
CGL – Coastal GasLink Pipeline Ltd.	SCC – Supreme Court of Canada
	TRC – Truth and Reconciliation Commission of Canada
	UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples
	UN Guiding Principles – United Nations Guiding Principles on Business and Human Rights

GLOSSARY

'Anuc niwh'it'en or Inuk Nu'at'en – Wet'suwet'en law

Baht'lats – Wet'suwet'en feast system

Band or Indian Band – A governing unit of Indigenous Peoples instituted by the *Indian Act*, 1876 (sometimes referred to as a First Nation band or simply a First Nation). The *Indian Act* defines a “band” as a “body of Indians, (a) for whose use and benefit in common, lands, the legal title to which is vested in the Crown, have been set apart, (b) for whose use and benefit in common, money are held by the Crown, or (c) declared by the Governor in Council to be a band for the purposes of this Act”. Bands are managed by elected councils according to the laws of the *Indian Act*.

Band Council – The body that leads a band, comprised of a chief and councillors, who are elected by band members. Band council structures were intended by the *Indian Act* to replace hereditary leadership with elected chiefs. Some Bands continue to recognize hereditary chiefs whereas some do not. Band councils are responsible for the governance and administration of band affairs, including education, band schools, housing, water and sewer, roads, and other reserve services.

Coastal GasLink Pipeline Ltd. – The company building the pipeline.

Crown – Refers to the government of Canada, as a constitutional monarchy. The term is particularly used when discussing issues related to Indigenous Peoples in Canada, as many of the treaties made with Indigenous Peoples were made on behalf of the ruling monarch.

Crown land – Land owned by the ruling monarch, and administered by the federal, provincial, and territorial governments of Canada.

Exclusion zone – A zone where police are blocking public access. Even without specific authority in a law or from a court, police do have the power to restrict access to certain areas, but this power is confined to certain circumstances and is not a general power.

Forsythe Security – A private security company that provides security services along the Morice FSR under contract with Coastal GasLink Pipeline Ltd.

Hereditary Chief – A traditional clan governance system of some Indigenous Peoples.

Highway of Tears – The Highway of Tears refers to a 724-km length of Yellowhead Highway 16 in British Columbia where many, mostly Indigenous, women have disappeared or been found murdered. The Highway of Tears is part of a larger, national crisis of missing and murdered Indigenous women and girls.

Indian – Refers to the legal identity of a person who is registered or is entitled to be registered under the *Indian Act*. The term should only be used within this legal context. The term Indigenous Peoples includes the First Nations, Inuit and Métis Peoples of Canada.

Injunction – An injunction is a way that a court can order a person to do a particular act or refrain (stop) from doing a particular act. It can include enforcement orders for police. An interlocutory injunction is an injunction granted before the issues in dispute have been decided and it is intended to be an intermediate step in the litigation. An interim injunction is granted for a very short period of time, such as until a hearing for an interlocutory injunction. An interim injunction is usually granted on an *ex parte* basis, while an interlocutory injunction is granted after both parties have had an opportunity to be heard.

LNG Canada – A joint venture company comprised of Shell, PETRONAS, PetroChina, Mitsubishi Corporation and KOGAS (Korean Gas Corporation). LNG Canada is building the LNG export facility in Kitimat, British Columbia, to which the CGL pipeline is meant to deliver liquefied natural gas.

Reserve or reserve lands – According to the *Indian Act*, a reserve is “a tract of land, the legal title to which is vested in the Crown, that has been set apart by the Crown for the use and benefit of a band”. Reserve lands are not strictly “owned” by bands but are held in trust for bands by the Crown.

Tsel Kiy Kwa – Wet'suwet'en name for the place known in English as Lamprey Creek

Unceded lands or territories – Lands or territories that Indigenous Peoples have never ceded/surrendered or legally signed away to the Crown or to Canada. Often refers to lands that are not formally under a treaty; however, there are regions under treaty in Atlantic Canada that encompass lands that have not been surrendered.

Wedzin Kwa – Wet'suwet'en name for the place known in English as the Morice River

Yin'tah – Wet'suwet'en territory

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1 EXECUTIVE SUMMARY

“WHEN WE RISE UP TO DEFEND THE YIN’TAH, WE ARE CRIMINALIZED. CIVIL INJUNCTIONS ARE A COLONIAL LEGAL WEAPON THAT HAS BECOME A MECHANISM FOR THE MILITARIZATION OF OUR COMMUNITY, CRIMINALIZATION OF OUR PEOPLE, AND FOR COMPANIES TO CARRY OUT DESTRUCTIVE EXTRACTION WITHOUT INDIGENOUS CONSENT. THE ONGOING CRIMINALIZATION OF WET’SUWET’EN PEOPLE IS NOT THE WAY TO RECONCILIATION.” – WET’SUWET’EN LAND DEFENDERS

The Wet’suwet’en Nation, under the governance of its Hereditary Chiefs, is defending its ancestral, unceded territory against the construction of the Coastal GasLink (CGL) pipeline. The pipeline, owned by Coastal GasLink Pipeline Ltd. and TC Energy Corporation (formerly TransCanada), is meant to transport natural gas extracted from the Dawson Creek area in British Columbia (B.C.) to a liquefied natural gas (LNG) export facility near Kitimat, B.C. If construction of the 670-kilometre-long pipeline is completed, it will divide Wet’suwet’en territory into two.

Amnesty International considers that, in order to situate what is happening to the Wet’suwet’en Nation today, it is fundamental to have in mind the centuries of Canadian government policies whose aim has been to remove Indigenous Peoples from their ancestral lands and assimilate them into settler society. These policies and practises include forced evictions, relocation and dispossession, residential schools, Indian registration rules, mass incarceration, forced sterilization, the Sixties Scoop, the child welfare system and *Indian Act* rules, among others.

The rights of Indigenous Peoples are currently protected in Canadian legislation in several ways, including section 35 of the *Constitution Act*, 1982. In November 2019, the B.C. government passed the *Declaration on the Rights of Indigenous Peoples Act*. On 21 June 2021, the federal government passed the *United Nations Declaration on the Rights of Indigenous Peoples Act*, which requires Canada to harmonize its legislation, including the *Indian Act*, with the rights set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). On 21 June 2023, the Government of Canada released the UN Declaration Act Action Plan.

The Wet’suwet’en have never sold, surrendered or in any way relinquished their collective title to their territories. The Wet’suwet’en Hereditary Chiefs—the ancestral authorities of the Nation according to Wet’suwet’en law - oppose the pipeline’s construction. For over a decade, Wet’suwet’en land defenders have been constructing what they refer to as “re-occupation sites” across the *Yin’tah* (Wet’suwet’en territory) as a way of re-affirming their authority over it, as well as to protect it from environmentally destructive projects and industries.

The Wet’suwet’en Hereditary Chiefs have also implemented a free, prior and informed consent (FPIC) protocol that requires any visitors to the territory to seek their permission in order to enter. Land defenders shared with Amnesty International that CGL has never received this permission nor consent to operate on Wet’suwet’en territory. In February 2019, Wet’suwet’en Hereditary Chiefs called for a stop work order on the CGL pipeline. They issued eviction notices to CGL in January 2020 and reaffirmed the eviction in November 2021.

Amnesty International considers that the consultation process regarding the CGL pipeline did not meet the criteria developed by international human rights law and standards, breaching the Wet’suwet’en Nation’s collective right to consultation in order to obtain their free, prior and informed consent. CGL failed to adequately consult with the Wet’suwet’en Nation in violation of the Nation’s human rights. According to international law and standards, Indigenous Peoples are entitled to give or withhold their consent to project proposals that affect them. The Wet’suwet’en Hereditary Chiefs, on behalf of their clans, have consistently withheld their consent for the CGL pipeline project. Nevertheless, construction of the pipeline is proceeding without their free, prior and informed consent.

In December 2019, the British Columbia Supreme Court granted CGL an interlocutory injunction which prevents Wet’suwet’en land defenders and their supporters from blockading the Morice Forest Service Road to attempt to stop the construction of the pipeline in Wet’suwet’en territory. The injunction includes enforcement provisions under which Wet’suwet’en land defenders can be arrested for approaching pipeline construction sites and blockading the road, even though these sites are located on the Nation’s unceded territory. Based on its research, Amnesty International considers that the injunction order’s terms are overbroad in scope and impact, and that it unduly restricts the rights of the Wet’suwet’en Nation to self-governance and to control their territories, as well as their human rights to freedom of peaceful assembly and freedom of movement insofar as it aims at preventing their actions to defend their territory in a disproportionate manner. Further, the injunction has permitted CGL to proceed with construction of the pipeline without adequate consultation and without the Wet’suwet’en Nation’s free, prior and informed consent.

Amnesty International has observed that, operating under the injunction, the Royal Canadian Mounted Police (RCMP), its Critical Response Unit (CRU) and CGL's private security firm, Forsythe Security, intimidate, harass and unlawfully surveil Wet'suwet'en land defenders. Members of the Wet'suwet'en Nation shared with the organization that the CGL pipeline project has fundamentally altered their ancestral territory and their way of life. Significant police and private security presence has resulted in a profound imposition of heavy, unlawful surveillance and control over their daily lives. Amnesty International's research has found that Wet'suwet'en land defenders are regularly followed, filmed and photographed by the RCMP and Forsythe Security.

From January 2019 to March 2023, the RCMP undertook four large-scale police operations against Wet'suwet'en land defenders and their supporters on Wet'suwet'en territory as a way of enforcing the injunction. During these raids, the RCMP were equipped with semi-automatic weapons, helicopters and dog units. Over 75 land defenders were arbitrarily arrested and detained, solely for exercising their Indigenous rights and their rights to freedom of expression and peaceful assembly.

In June and July 2022, the B.C. Prosecution Service decided to prosecute 20 land defenders with criminal contempt for allegedly disobeying the injunction order to stay away from pipeline construction sites, even though these sites are located on Wet'suwet'en territory. Five out of the 20 land defenders pled guilty in December 2022 because of their bail conditions, which prohibited them from being on the Wet'suwet'en Nation's territory and any other frontline resistance against extractive projects across Canada, as well as the psychological and financial impacts that the criminal trial process was having on them. Five others had the charges dropped against them, and three are awaiting next steps. Several land defenders have already started trial in May and October 2023, or will go on trial in January 2024. If found guilty, they could be sentenced to prison.

Amnesty International considers that the aforementioned actions form part of a concerted effort by the State to remove Wet'suwet'en land defenders from their ancestral territory to allow pipeline construction to proceed. These actions have also resulted, and continue to result, in ongoing violations of the human rights of Wet'suwet'en land defenders and their supporters, including the right to life, liberty, security of the person, privacy, family life, non-discrimination, culture and their collective rights as Indigenous Peoples. Women Wet'suwet'en land defenders have experienced both threats and acts of gender-based violence and discrimination. Wet'suwet'en and other Indigenous land defenders have experienced racial discrimination. Amnesty International also considers that CGL, and its private security company Forsythe Security, have played a role in the unlawful surveillance, intimidation, and harassment of Wet'suwet'en land defenders and therefore, have failed to respect their human rights.

The research findings and recommendations made by Amnesty International compliment those already made by international human rights mechanisms, including the United Nations Committee on the Elimination of Racial Discrimination (CERD) and the UN Special Rapporteur on the rights of Indigenous Peoples.

Taking into consideration the opinions of members of the Wet'suwet'en Nation, as well as Canada's obligations under international law and in line with recommendations issued by other international human rights bodies, at the end of this report, Amnesty International makes a series of recommendations to the Governments of Canada and British Columbia; the Royal Canadian Mounted Police and its Critical Response Unit; Coastal GasLink Pipeline Ltd. and TC Energy; Forsythe Security; and the international community. The organization calls on the Governments of Canada and British Columbia to immediately halt the construction and use of the CGL pipeline, fully and adequately discharge the duty to consult with the Wet'suwet'en in accordance with international human rights standards, and not proceed with the project unless they give their free, prior and informed consent. Amnesty International calls on both governments to immediately drop the criminal contempt charges against Wet'suwet'en and other land defenders. The organization also calls on the RCMP, CRU and Forsythe Security to immediately halt the harassment, intimidation and unlawful surveillance of Wet'suwet'en land defenders and withdraw from the Wet'suwet'en Nation's territory.

2. METHODOLOGY

2 METHODOLOGY

This report examines the human rights violations committed against Wet'suwet'en land defenders and their supporters as they defend ancestral, unceded Wet'suwet'en territory against the construction of the Coastal GasLink (CGL) pipeline. The following public and private actors are involved:

- **Royal Canadian Mounted Police (RCMP) and its Critical Response Unit (CRU, formerly known as the Community-Industry Response Group, C-IRG);¹**
- **Coastal GasLink Pipeline Ltd. and TC Energy;**
- **CGL's private security company, Forsythe Security.**

To produce this report, Amnesty International undertook an initial scoping mission to Wet'suwet'en territory in July 2022 to assess allegations of human rights violations associated with the construction of the CGL pipeline. During this visit, Amnesty International met with members of the Wet'suwet'en Nation. After this initial preliminary mission, it became evident that a more in-depth investigation was necessary to examine the human rights violations experienced by the Wet'suwet'en land defenders. Amnesty International subsequently undertook a comprehensive research trip to Wet'suwet'en territory in May-June 2023 where it documented the human rights situation, met with members of the Wet'suwet'en Nation and other Indigenous communities, and visited the sites of the four large-scale police raids. During both trips, the organization received information about the unlawful surveillance and intimidation of Wet'suwet'en land defenders and their supporters, RCMP operations against Wet'suwet'en land defenders, including arrests, and environmental impacts caused by pipeline construction.

As part of this research, Amnesty International interviewed 22 members of the Wet'suwet'en Nation, including Hereditary Chiefs, matriarchs and criminalized land defenders, five land defenders from other Indigenous Nations in Canada and one supporter of the Nation. Interviews were conducted in-person and remotely, from May to September 2023.

Amnesty International reviewed court documents related to both the injunction proceedings, as well as the criminal proceedings against Wet'suwet'en land defenders. Furthermore, Amnesty International examined UN reports, publications, media releases and other secondary data source. During both research trips to Wet'suwet'en territory, Amnesty International's researchers were followed, filmed and photographed by RCMP officials and Forsythe Security employees.

Amnesty International sent formal interview requests and questions to a series of Canadian federal and provincial authorities as part of its research, including RCMP, CRU, RCMP Commissioner, B.C. Attorney General, Premier of B.C., B.C. Prosecution Service, B.C. Ministry of Indigenous Relations and Reconciliation, B.C. Energy Regulator and B.C. Ministry of Public Safety and Solicitor General. While all of the authorities declined to meet with Amnesty International, written responses were only received from the RCMP, the Premier of B.C. and the B.C. Energy Regulator. Amnesty International met with and received written information from representatives of CGL/TC Energy. A formal interview request and questions were also sent to Forsythe Security, but no response was received. These written responses, as well as the meeting with CGL/TC Energy, were taken into account in research development and production of this research. Amnesty International provided these actors with an opportunity to respond to the findings of this research and the responses that were received were incorporated into this report.

Amnesty International also contacted the Witsset First Nation, Wet'suwet'en First Nation, Hagwilget Village Council, Ts'il Kaz Koh First Nation, Skin Tyee Band and Nee Tahi Buhn Band for meetings.² The Nee Tahi Buhn Band declined to speak with the organization. The other band councils did not respond.

Amnesty International would like to offer special thanks to members of the Wet'suwet'en Nation and their supporters who spoke to the organization as part of this research. Due to constant police and private security presence on Wet'suwet'en territory, as well as ongoing criminal trials, many were in precarious situations at the time of the interviews yet took the time to entrust their testimony to the organization.

¹ In 2023, C-IRG changed its name to the Critical Response Unit (CRU). The Community-Industry Response Group (C-IRG), located within the "E" Division of the RCMP in British Columbia, was created in 2017 to "provide oversight addressing energy industry incidents and related public order, national security and crime issues". C-IRG "operates under the Gold Silver Bronze command structure, which is a framework for delivering strategic, tactical and operational response to an incident, operation or event." On 9 March 2023, the Civilian Review and Complaints Commission for the RCMP (CRCC) initiated a systemic investigation into the activities and operations of C-IRG. This investigation is ongoing. Royal Canadian Mounted Police, "Community-Industry Response Group (C-IRG)", 22 October 2020, bc-cb-rcmp-grc.gc.ca/ViewPage.action?siteNodeId=23&languageId=1&contentId=66492; Civilian Review and Complaints Commission for the RCMP, "CRCC Launches Systemic Investigation of the RCMP "E" Division Community-Industry Response Group (C-IRG)", 9 March 2023, [crcc-ccetp.gc.ca/en/newsroom/crcc-launches-systemic-investigation-rcmp-e-division-community-industry-response-group-cirg](https://www.ccrcc-ccetp.gc.ca/en/newsroom/crcc-launches-systemic-investigation-rcmp-e-division-community-industry-response-group-cirg).

² These are Wet'suwet'en bands instituted by the *Indian Act*, 1876. Refer to glossary section for definition.

3. THE WET'SUWET'EN NATION

3 THE WET'SUWET'EN NATION

3.1 WET'SUWET'EN GOVERNANCE STRUCTURE

The Wet'suwet'en Nation has over 5000 members organized in five clans: Gil_seyhu (Big Frog), Laksilyu (Small Frog), Gidimt'en (Wolf/Bear), Laksamshu (Fireweed) and Tsayu (Beaver). These clans are made up of thirteen matrilineal house groups.³ Each house group has a House Chief and supporting wing chiefs who hold advisory roles and assist in decision making. House Chiefs represent their houses. The various House Chiefs within a clan collectively represent the entire clan.⁴ Under '*Anuc niwh'it'en* (Wet'suwet'en law), each clan has the responsibility and authority to control access to their territories.⁵



Wet'suwet'en decision-making requires the collective House Group Chiefs to discuss important matters and come to consensus. All decisions are made through and ratified in the feast system (*baht'lats*).⁶ Chiefs are given their titles and associated authority over the territory at feasts. The Chiefs use the authority vested in them in the feast hall to settle disputes and breaches of Wet'suwet'en law.⁷ Despite past concerted and systematic efforts by the Canadian government and its agents to displace the feast from the life of Wet'suwet'en Peoples, today the feast system remains a central part of Wet'suwet'en governance, social structure and worldview.⁸

³ Office of the Wet'suwet'en (OW), "Our Territory", wetsuweten.com/territory/; "Clan System", wetsuweten.com/culture/clan-system/; "House Groups", wetsuweten.com/culture/house-groups/; "Wet'suwet'en Hereditary Chiefs House / Clan", wetsuweten.com/files/Chiefs_org_chart.pdf.

⁴ Gidimt'en Checkpoint, "History and Timeline", yintahaccess.com/historyandtimeline.

⁵ OW, Wet'suwet'en Title & Rights and Coastal GasLink, Submission to BC EAO and Coastal GasLink Pipeline, 2014, wetsuweten.com/files/Wetsuweten_Title_and_Rights_report_to_EAO_for_Coastal_Gas-Link_Application.pdf, paras. 5-6, 36, 71.

⁶ OW, "Governance", wetsuweten.com/culture/governance; Gidimt'en Checkpoint, "History and Timeline", yintahaccess.com/historyandtimeline; OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), paras. 70, 441-443. The Wet'suwet'en word for feast "denii ne'aas" means "people coming together", although the word Potlatch is also used.

⁷ OW, "Governance", wetsuweten.com/culture/governance; Gidimt'en Checkpoint, "History and Timeline", yintahaccess.com/historyandtimeline; OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), para. 70.

⁸ OW, "Governance", wetsuweten.com/culture/governance. The Criminal Code of Canada prohibited Indigenous feast ceremonies until 1951. Supreme Court of Canada, *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010, 11 December 1997, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1569/index.do>, p. 1032.

Wet'suwet'en Hereditary Chiefs have had continuous authority over Wet'suwet'en territory since time immemorial.⁹ The Supreme Court of Canada's 1997 *Delgamuukw-Gisday'wa* decision affirmed the Wet'suwet'en's hereditary governance structure.¹⁰ The Office of the Wet'suwet'en (OW) is the administrative arm of the Hereditary Chiefs.¹¹

The Wet'suwet'en Nation has never signed a formal treaty with the Crown. On 24 May 2020, the Wet'suwet'en Hereditary Chiefs signed a memorandum of understanding with the governments of Canada and B.C., recognizing Wet'suwet'en aboriginal rights and title throughout the *Yin'tah* and that these rights and title are held by Wet'suwet'en Houses under their system of governance.¹²

“WE, THE WET'SUWET'EN PEOPLE, HAVE NEVER SOLD, SURRENDERED, OR IN ANY WAY RELINQUISHED OUR COLLECTIVE TITLE TO WET'SUWET'EN LAND. WE HAVE CONTINUED TO EXERCISE OUR UNBROKEN, UNEXTINGUISHED, AND UNCEDED RIGHT TO GOVERN AND OCCUPY OUR LANDS BY CONTINUING AND EMPOWERING OUR 'ANUC NIWH'IT'EN (WET'SUWET'EN LAW) AND CLAN-BASED FEAST GOVERNANCE SYSTEMS TO GOVERN OUR PEOPLE AND OUR LANDS.”¹³

⁹ Gidimt'en Checkpoint, “History and Timeline”, yintahaccess.com/historyandtimeline; OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), paras. 128 & 432.

¹⁰ SCC, *Delgamuukw v. British Columbia* (previously cited).

¹¹ OW, wetsuweten.com/. Since May 2010, Yex T'sa wil_k'us (Dark House) has chosen to operate independently from the Office of the Wet'suwet'en, including for consultation purposes.

¹² Government of Canada, Memorandum of Understanding Between Canada, British Columbia and Wet'suwet'en as agreed on February 29, 2020, 14 May 2020, rcaanc-cirnac.gc.ca/eng/1589478905863/1589478945624.

¹³ Submission by Gidimt'en Land Defenders, Wet'suwet'en Nation, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations, 7 February 2022, <https://static1.squarespace.com/static/5c51ebf73e2d0957ca117eb5/t/620058664c6ee459921ddd70/1644189799141/Expert+Mechanism+on+the+Rights+of+Indigenous+Peoples+Wet%27suwet%27en+Submission+Jan+2022.pdf>, para. 11.

3.2 THE YIN'TAH

The *Yin'tah* (Wet'suwet'en territory) is central to the Wet'suwet'en Nation's culture, way of life and worldview. The *Yin'tah* is the way in which the Nation protects their unique identity and way of life.¹⁴ Chief Woos shared that, for the Wet'suwet'en, being on the land is how they speak their language and maintain their culture because both are intrinsically connected to the surrounding environment.¹⁵

“In Wet'suwet'en, the word for the land is Yin'tah. Yin'tah incorporates not only the physical environment, animals, plants, water, geography, but the human world as well. Yin'tah understands all parts of the territories as interconnected and related to a greater whole. If the physical territories are harmed, then the Wet'suwet'en social world is harmed as well.”¹⁶

Members of the Wet'suwet'en Nation shared that their ancestors inhabited and safeguarded the *Yin'tah* for generations. The wisdom of their ancestors serves as a guiding force for the Nation. By being on the territory and maintaining a connection to it, the Wet'suwet'en cultivate meaningful bonds with their ancestors. Several Wet'suwet'en land defenders describe their connection to the land as follows:



“Our ancestors defended and protected the land so we could be here and enjoy the benefit of the rich resources and clean water. The land and the environment are everything to us.”¹⁷

“The land gives me a huge sense of belonging. Not growing up with my grandparents. Not having that connection to extended family. It just fills that void. I feel like I have such a connection to my ancestors on the territory, because they're still around; the same trees are here on the trails that they've walked. Having that sense of belonging and connection has been really important to me.”¹⁸

¹⁴ In-person interviews with Wet'suwet'en land defenders, June 2023, B.C.

¹⁵ In-person interview with Chief Woos, 31 May 2023, Gidimt'en Checkpoint.

¹⁶ OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), para. 78.

¹⁷ In-person with Brenda Michell (Chief Geltiy), 30 May 2023, Unist'ot'en.

¹⁸ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

Similarly, many Wet’suwet’en land defenders expressed that living on the territory brings a meaningful connection between themselves and the land. This connection serves as a foundation for learning important skills such as harvesting, berry picking, trapping, fishing, hunting and gathering medicinal plants. The land is an integral part of the ways in which generations of wisdom and knowledge are passed down from elders to the younger generations. Without the land, this knowledge transfer would not be possible.¹⁹

For some members of the Wet’suwet’en Nation, this bond with the land takes on a much deeper role. It serves as a means of healing fractured family relationships, overcoming struggles with drug abuse and alcoholism, fostering personal well-being and healing from the cruel effects of colonialism.

“We’re healing the land with the people. And we’re healing the people with the land. It’s symbiotic. It’s not one or the other. And this land has done this over and over and over and over. And it’s gonna continue to do that.”²⁰

“Out here [on the land] ... is probably the happiest I’ve been in years.”²¹

The *Yin’tah* is essential for the survival of the Wet’suwet’en as an Indigenous Peoples.



“Without a land, you can’t sustain a people. Our leadership has to be the protectors. They have to ensure that the land remains intact and is actually able to sustain people. Without the land, there is nothing.”²²

“We’re not only here for a little while, but we’re also gonna be here forever. Our kids and grandchildren, great grandchildren need our territory.”²³

“This environment, this land, it nourishes us. It’s our society. Our culture is matrilineal, so we follow the mother. But this land is the mother at the bottom of everything, that gave birth to the trees, that gave birth to the animals, that gave birth to us ultimately.”²⁴

Article 25 of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognizes Indigenous Peoples’ spiritual relationship with the land and waters that they have traditionally possessed and the responsibilities that they bear to future generations.²⁵ The Inter-American Court of Human Rights (IACtHR) has ruled that the concepts of land and territory are part of the social, ancestral and spiritual essence of Indigenous Peoples, and are a necessary source for the continuation of their life and cultural identity.²⁶ Territory goes well beyond specific villages or settlements and includes lands that are used for hunting, fishing, gathering, transport, culture and other purposes.²⁷

¹⁹ In-person interviews with Wet’suwet’en land defenders, June 2023, B.C.

²⁰ In-person interview with Travis Pete, Patience Muldoc and Jesse Stoeppler, 31 May 2023, Gidimt’en Checkpoint.

²¹ In-person interview with Jocelyn Alec, 1 June 2023, Gidimt’en Checkpoint.

²² In-person interview with Antoinette Austin, 29 May 2023, Smithers, B.C.

²³ In-person interview with Virginia Pierre, 29 May 2023, Smithers, B.C.

²⁴ In-person interview with Travis Pete, Patience Muldoc and Jesse Stoeppler, 31 May 2023, Gidimt’en Checkpoint.

²⁵ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2 October 2007, Article 25.

²⁶ Inter-American Court of Human Rights (IACtHR), Case of the Saramaka People v. Suriname, 28 November 2007, Series C No. 172, corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf, para. 82; IACtHR, Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, 24 November 2020, Series C No. 420, corteidh.or.cr/docs/casos/articulos/seriec_420_ing.pdf.

²⁷ Inter-American Commission on Human Rights (IACHR), Indigenous and Tribal People’s Rights Over Their Ancestral Lands and Natural Resources, 30 December 2009, OEA/Ser.L/V/II, oas.org/en/iachr/indigenous/docs/pdf/ancestralands.pdf, para. 40.

4. COLONIAL GOVERNANCE AND INDIGENOUS PEOPLES' RIGHTS IN CANADA

4 COLONIAL GOVERNANCE AND INDIGENOUS PEOPLES' RIGHTS IN CANADA

The dynamics described in this report fit neatly into a pattern of Canada's colonial behaviour in relation to Indigenous Peoples stretching back centuries. Since colonization, Indigenous Peoples in Canada have been subjected to an array of government policies aimed at dispossessing them from their territories and assimilating them into settler society.²⁸ These policies and practises include forced eviction, relocation and dispossession, residential schools, Indian registration rules, mass incarceration, forced sterilization, the Sixties Scoop,²⁹ the child welfare system and *Indian Act* rules, among others.³⁰ The Truth and Reconciliation Commission of Canada found that, "For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada."³¹

The Royal Proclamation of 1763, issued by King George III of England, lays out strict rules that make it illegal for Indigenous Peoples to sell land to third parties unless they are first ceded to the Crown.³² Indigenous Peoples subsequently began to negotiate treaties with representatives of the British Crown, and then with the successor state of Canada, with an understanding that these treaties were "sacred and honourable agreements that did not include the possibility of surrender [of territory]".³³ However, this has not been the case. Over time, these treaty territories have been interpreted by Canadian law as "alienated lands under the jurisdiction of the provinces" (commonly referred to as Crown lands).³⁴ At the same time, Indigenous Peoples who did not sign treaties "have also been presumed to live under Canadian law on Crown lands, despite the fact that they did not 'alienate' their lands under the provisions of the *Royal Proclamation*."³⁵ According to the Yellowhead Institute,³⁶ "As Canada gradually formed into a national state, the mythologies of Crown Land solidified. To this day the 'Crown' –an entity that has changed radically since first contact (both in Britain and Canada)–presumes to hold underlying title to all lands in the country."³⁷ Consequently, over time, Indigenous Peoples' authority over both treaty and non-treaty lands has been compromised, which has paved the way for extractive projects.³⁸

In 1876, the Canadian government passed the *Indian Act* which further aimed to dispossess Indigenous Peoples from their territories and assimilate them into settler society.³⁹ The *Act* determines who is eligible for "Indian" status in Canada.⁴⁰ Its provisions narrowly define and heavily regulate land rights, succession rules, political organization and economic opportunities.⁴¹

The *Indian Act* created the "reserve system" whose purpose was to control Indigenous Peoples' territory and contain them to specific pieces of land.⁴² Reserves, however, only represent a tiny portion of each Nation's ancestral territory. Despite federal control over the administration of reserves, the territory surrounding them is under provincial jurisdiction.⁴³ Provinces also assert jurisdiction over natural resources.⁴⁴ Indigenous Peoples must therefore manoeuvre between both federal and provincial governments to protect their territory.

28 Amnesty International, Climate emergency in Innu territory: Innu-aitun at risk, (Index: AMR 20/6175/2022), 3 November 2022, [amnistie.ca/sites/default/files/2022-11/AICFR-Rapport_Pessamit.pdf](https://www.amnesty.ca/sites/default/files/2022-11/AICFR-Rapport_Pessamit.pdf); Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper, October 2019, yellowheadinstitute.org/resources/land-back-a-yellowhead-institute-red-paper/, p. 16.

29 Canadian Encyclopedia, "Sixties Scoop", 13 November 2020, [thecanadianencyclopedia.ca/en/article/sixties-scoop](https://www.thecanadianencyclopedia.ca/en/article/sixties-scoop).

30 Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (previously cited), p. 16.

31 Truth and Reconciliation Commission of Canada (TRC), Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada, 2015, ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf, p. 1.

32 Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (previously cited), p. 17.

33 Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (previously cited), p. 17; TRC, Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada (previously cited), p. 1.

34 Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (previously cited), p. 17; SCC, *St. Catharines Milling and Lumber Co. v. R*, [1887] 13 SCR 577, canlii.org/en/ca/scc/doc/1887/1887canlii3/1887canlii3.html; SCC, *Grassy Narrows First Nation v. Ontario (Natural Resources)*, [2014] 2 SCR 447, canlii.org/en/ca/scc/doc/2014/2014scc48/2014scc48.html; UNGA, Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/54/31/Add.2, 24 July 2023, undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F54%2F31%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False, para. 51.

35 Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (previously cited), p. 17.

36 The Yellowhead Institute is an Indigenous-led research and education centre based in the Faculty of Arts at Toronto Metropolitan University. Yellowhead Institute, yellowheadinstitute.org/.

37 Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (previously cited), p. 24. In British Columbia, 94 percent of the province is claimed as Crown Land.

38 Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (previously cited), p. 17.

39 Canada, *Indian Act*, 1985, laws-lois.justice.gc.ca/eng/acts/i-5/; Canadian Encyclopedia, "*Indian Act*", 23 September 2022, [thecanadianencyclopedia.ca/en/article/indian-act-plain-language-summary](https://www.thecanadianencyclopedia.ca/en/article/indian-act-plain-language-summary); Special Rapporteur on the rights of Indigenous Peoples, James Anaya, The situation of Indigenous Peoples in Canada, A/HRC/27/52/Add.2, 4 July 2014, documents-dds-ny.un.org/doc/UNDOC/GEN/G14/075/08/PDF/G1407508.pdf?OpenElement, para. 4.

40 Canada, *Indian Act* (previously cited).

41 Canada, *Indian Act* (previously cited); UNGA, Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, A/HRC/54/31/Add.2, 24 July 2023, undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F54%2F31%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False, para. 40; Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach, A/HRC/39/62, 10 August 2018, documents-dds-ny.un.org/doc/UNDOC/GEN/G18/245/94/PDF/G1824594.pdf?OpenElement, para. 9.

42 Canada, *Indian Act* (previously cited), ss. 3(6), 4-10, 11, 25, 26; TRC, Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada (previously cited), p. 1.

43 Canada, Constitution Act, 1867, laws-lois.justice.gc.ca/PDF/CONST_TRD.pdf, ss. 91(24), 92(5) & 92(10); Special Rapporteur on the rights of Indigenous Peoples, James Anaya, The situation of Indigenous Peoples in Canada (previously cited), paras. 8 & 10.

44 Canada, Constitution Act (previously cited), s. 92(5).

Under the *Indian Act*, the federal government “replaced existing forms of Indigenous government with relatively powerless band councils whose decisions it could override and whose leaders it could depose”.⁴⁵ According to the Truth and Reconciliation Commission of Canada, “in the process, it disempowered Aboriginal women, who had held significant influence and powerful roles” in many Indigenous Nations.⁴⁶ The federal government maintains jurisdiction over band councils. While the band councils’ responsibilities are vast, ranging from social development to health, public safety and education, their authority is limited by the restrictions imposed on them by the federal government.⁴⁷

“Canada denied the right to participate fully in Canadian political, economic and social life to those Aboriginal people who refused to abandon their Aboriginal identity. Canada outlawed Aboriginal spiritual practises, jailed Aboriginal spiritual leaders and confiscated sacred objects.”⁴⁸
-The Truth and Reconciliation Commission of Canada

Despite changes to the *Indian Act* over time, its implementation has scarred generations, broken families and prevented the transmission of cultural practises and legacies. It also led to the establishment of 139 residential schools, forcibly attended by 150,000 Indigenous children, with the aim of “break[ing] their link to their culture and identity.”⁴⁹ In its final report, the Truth and Reconciliation Commission of Canada concluded that,

“The Canadian government pursued this policy of cultural genocide because it wished to divest itself of its legal and financial obligations to Aboriginal people and gain control over their land and resources. If every Aboriginal person had been ‘absorbed into the body politic,’ there would be no reserves, no Treaties, and no Aboriginal rights.”⁵⁰

Residential schools left their mark on generations of Indigenous children, who were forcibly removed from their families, subjected to physical and sexual abuse, scientific experimentation, health problems, malnutrition, and inadequate academic training.⁵¹ The schools also had profound impacts on the children’s families and Indigenous Nations as a whole. On their return to their villages, many children could no longer speak their own language, breaking off communication with their loved ones, and creating intergenerational traumas that are still felt today. One of the reasons that the transmission of Indigenous knowledge is so important is that it is a way to survive, to heal the family wounds left by the residential schools, and to regain possession of the culture and territory that were torn from them.⁵²

Changes to the *Indian Act* in 1951 gave the provinces jurisdiction over Indigenous child welfare. Referred to as the “Sixties Scoop”, this resulted in the forced, large-scale removal of Indigenous children from their families, homes and communities, and their placement into child welfare services and adoption into predominately settler, non-Indigenous families.⁵³ During his March 2023 visit to Canada, the UN Special Rapporteur on the rights of Indigenous Peoples observed that,

“The forced removal of Indigenous children from their families continues, as children are placed in foster care or adopted, often off-reserve, reproducing the negative impacts of residential schools. Despite comprising 7.7 percent of the Canadian population, 53.8 percent of children in foster care are Indigenous.”⁵⁴

⁴⁵ TRC, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (previously cited), p. 1; Canada, *Indian Act* (previously cited), ss. 3(1), 61-62.

⁴⁶ TRC, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (previously cited), pp. 1-2.

⁴⁷ Canada, *Constitution Act* (previously cited), s. 91(24); Canada, *Indian Act* (previously cited).

⁴⁸ TRC, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (previously cited), p. 2.

⁴⁹ TRC, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (previously cited), pp. 2-3; Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay (previously cited), paras. 23-25. According to the TRC: “Roman Catholic, Anglican, United, Methodist, and Presbyterian churches were the major denominations involved in the administration of the residential school system. The government’s partnership with the churches remained in place until 1969, and, although most of the schools had closed by the 1980s, the last federally supported residential schools remained in operation until the late 1990s.”

⁵⁰ TRC, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (previously cited), p. 3.

⁵¹ TRC, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (previously cited), pp. 3-4; CEDAW, General recommendation No. 39 (2022) on the rights of Indigenous women and girls, CEDAW/C/GC/39, 31 October 2022, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGC%2f39&Lang=en, para. 12.

⁵² Amnesty International, *Climate emergency in Innu territory: Innu-aitun at risk* (previously cited), p. 6.

⁵³ Canadian Encyclopedia, “Sixties Scoop”, 13 November 2020, [thecanadianencyclopedia.ca/en/article/sixties-scoop](https://www.thecanadianencyclopedia.ca/en/article/sixties-scoop).

⁵⁴ Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay (previously cited), para. 31.

Many Wet'suwet'en land defenders shared with Amnesty International the impacts that residential schools and the Sixties Scoop had on their families, which resulted in them growing up disconnected from their culture and traditional way of life, far away from their ancestral territory.

“The residential schools and Sixties Scoop are designed to get rid of the ‘Indian problem’. For the people that didn’t die in residential schools, a lot of them have died outside because of the impacts, because of that disconnection from the land. Same with the Sixties Scoop. Half of my mom’s siblings aren’t alive anymore because they went to residential school or because they were part of the Sixties Scoop, and they couldn’t survive the aftermath of that. The intergenerational impact of that is that people have grown up disconnected from their families, from their communities, from their Nation and from their land. Those people are lost in the world; they don’t know where they belong, they don’t have that connection. We’re still feeling the effects of that. We’re also still trying to heal from all of the intergenerational trauma and the collective trauma that has come out of those systems.”⁵⁵

Gender-based violence against Indigenous women has also contributed to and exacerbated intergenerational trauma. According to the Native Women’s Association of Canada, at least 4,000 Indigenous women have been murdered or disappeared since the 1970s.⁵⁶ Many of these women have been disappeared or murdered along the “Highway of Tears”, a 724-kilometre stretch of the Yellowhead Highway 16 in British Columbia, a part of which passes through Wet’suwet’en territory.⁵⁷

The rights of Indigenous Peoples are currently protected in Canadian legislation in several ways. Section 35 of the *Constitution Act*, 1982 states that “the existing Aboriginal and treaty rights of the Aboriginal Peoples of Canada are hereby recognized and affirmed.”⁵⁸ In November 2019, the B.C. government passed the *Declaration on the Rights of Indigenous Peoples Act*.⁵⁹ On 21 June 2021, the federal government passed the *United Nations Declaration on the Rights of Indigenous Peoples Act*, which requires Canada to harmonize its legislation, including the *Indian Act*, with the rights set out in UNDRIP.⁶⁰ On 21 June 2023, the Government of Canada released the UN Declaration Act Action Plan.⁶¹



⁵⁵ In-person Interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

⁵⁶ Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay (previously cited), para. 36; UNGA, Visit to Canada, Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/41/42/Add.1, 4 November 2019, documents-dds-ny.un.org/doc/UNDOC/GEN/G19/317/19/PDF/G1931719.pdf?OpenElement, para. 75.

⁵⁷ Canadian Encyclopedia, “Highway of Tears”, 2019, thecanadianencyclopedia.ca/en/article/highway-of-tears.

⁵⁸ Canada, Constitution Act, 1982, laws-lois.justice.gc.ca/eng/const/page-12.html#h-39, s. 35.

⁵⁹ British Columbia, Declaration on the Rights of Indigenous Peoples Act, 2019, bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044.

⁶⁰ Canada, United Nations Declaration on the Rights of Indigenous Peoples Act, 2021, laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html.

⁶¹ Canada, United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan, 21 June 2023, justice.gc.ca/eng/declaration/ap-pa/ah/pdf/unda-action-plan-digital-eng.pdf. According to the UN Special Rapporteur on the Rights of Indigenous People, “the action plan has been criticized by Indigenous Peoples in Canada, who expressed the view that insufficient time had been provided for consultations, and that it lacked detailed implementation measures”. Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay (previously cited), para. 12.

**5. THE CGL PIPELINE AND
THE WET'SUWET'EN NATION'S
DEFENCE OF THE *YIN'TAH***

5 THE CGL PIPELINE AND THE WET'SUWET'EN NATION'S DEFENCE OF THE YIN'TAH

The persistence of Canada's colonial dynamics limits the ability of Indigenous Nations to protect and control their territories, and in turn, preserve their culture and ways of life.

The CGL pipeline is meant to deliver natural gas extracted from the Dawson Creek area in British Columbia to a liquified natural gas (LNG) export facility near Kitimat, B.C. that will export gas to Asian markets.⁶² This facility, which is currently under construction, is owned by LNG Canada, a joint venture comprised of five major global energy companies – Shell, PETRONAS, PetroChina, Mitsubishi Corporation and KOGAS.⁶³ Once LNG Canada receives natural gas, it will prepare it for export by converting the gas to a liquified state, known as LNG, which is a fossil fuel.⁶⁴

In 2012, LNG Canada selected TC Energy Corporation (formerly TransCanada Pipelines Ltd.) to design, build and operate the CGL pipeline. In 2016, the B.C. Oil and Gas Commission (now the B.C. Energy Regulator) approved the final permits for the pipeline project.⁶⁵



The 670-kilometre-long pipeline will pass through the territories of more than 30 Indigenous communities.⁶⁶ About 190 kilometres of it will pass through Wet'suwet'en territory.⁶⁷ If construction of the pipeline is completed, the pipeline will divide Wet'suwet'en territory into two, and is expected to be in operation for more than 30 years.⁶⁸

62 TransCanada, Coastal GasLink Pipeline Project – Project Description, TransCanada Document CGL-4703-TER-PM-SD-001, 30 October 2012, projects.eao.gov.bc.ca/api/public/document/58868fb1e-036fb0105768600/download/Project%20Description%20for%20the%20Coastal%20GasLink%20%28TransCanada%29%20Pipeline%20October%202012.pdf.

63 LNG Canada, "Joint Venture Participants", lngcanada.ca/who-we-are/joint-venture-participants/.

64 TC Energy, "Coastal GasLink", tcenergy.com/operations/natural-gas/coastal-gaslink/.

65 TC Energy, "Coastal GasLink Pipeline Project receives all remaining BC Oil and Gas Commission construction permits", 2016, tcenergy.com/announcements/2016/2016-05-05coastal-gaslink-pipeline-project-receives-all-remaining-bc-oil-and-gas-commission-construction-permits/; Coastal GasLink, "About Coastal GasLink", coastalgaslink.com/about/.

66 TransCanada, Coastal GasLink Pipeline Project – Project Description (previously cited), s. 3.0.

67 OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), paras. 104, 107-121, 194.

68 OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), para. 4; TransCanada, Coastal GasLink Pipeline Project – Project Description (previously cited).

According to the Wet'suwet'en Hereditary Chiefs, the Wet'suwet'en “have never relinquished or surrendered [their] title and rights to the lands and resources within [their] territory.”⁶⁹ All five Wet'suwet'en clans oppose the construction of the CGL pipeline.⁷⁰ In 2009, the Wet'suwet'en Hereditary Chiefs invoked a protocol for all private sector companies proposing projects on their territory.⁷¹

“The Wet'suwet'en are stewards of the land. They are here to protect their traditional territories and to ensure that future generations of Wet'suwet'en are able to live and benefit from all that their ancestral land provides. The Wet'suwet'en are not opposed to commercial and economic development on their traditional territories as long as the proper cultural protocol is followed, and respect given. The Wet'suwet'en insist that every effort is made to ensure the protection of their traditional territories from environmental damage.”⁷²

Wet'suwet'en land defenders shared with Amnesty International that “the Wet'suwet'en struggle is a frontline to protect the inherent rights of Indigenous Peoples and to prevent climate change.”⁷³ Since 2009, Wet'suwet'en land defenders have been constructing what they refer to as “re-occupation sites” across the *Yin'tah* as a way of re-affirming their authority over it. These sites are populated by Wet'suwet'en families, elders and children, and include residential cabins, pithouses, bunkhouses, healing lodges, a feast hall, and hunting and cultural camps.⁷⁴



“We’re living up here, and it’s to make sure that they understood that this is our land. We’ve never given approval for this project to happen.”⁷⁵

In 2009, Unist’ot’en land defender Freda Huson and her family built a home and healing centre at the 66-kilometre mark of the Morice Forest Service Road (Morice FSR).⁷⁶ They also set up a gate on the bridge at the 66-kilometre mark and began implementing a free, prior and informed consent (FPIC) protocol to control access to Unist’ot’en ancestral territories.⁷⁷

⁶⁹ OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), para. 9.

⁷⁰ Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 2.

⁷¹ OW, “Natural Resource Project Development Protocol”, wetsuweten.com/territory/mining/.

⁷² OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), paras. 2 & 164.

⁷³ Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 3.

⁷⁴ Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 3.

⁷⁵ In-person interview with Chief Na'Moks, 30 May 2023, Smithers, B.C.

⁷⁶ In-person interview with Freda Huson (Chief Howihkat), 30 May 2023, Unist'ot'en. Unist'ot'en is affiliated with Yex T'sa wil_ k'us (Dark House) of the Gil_seyhu Clan. Dr. Karla Tait & Anne Spice, An Injunction Against the Unist'ot'en Camp: An Embodiment of Healing Faces Eviction, Yellowhead Institute, Policy Brief Issue 19, 12 December 2018, yellowheadinstitute.org/wp-content/uploads/2018/12/unis-toten-brief-k-tait-a-spice.pdf, p. 1.

⁷⁷ Unist'ot'en, “Free, Prior and Informed Consent Protocol”, unistoten.camp/come-to-camp/fpic/#:~:text=The%20Free%20Prior%20and%20Informed,hosts%2C%20as%20our%20ancestors%20did. The Wedzin Kwa is the dividing line between the Gidimt'en Clan and Gil_seyhu Clan within Wet'suwet'en territory.

“We decided to build this healing centre to bring our own people out here and bring healing to them, spiritually, mentally, physically and use this space to make our people strong. Like the residential schools were used to take the Indian out of the child we want to use this facility to put the Indian back in our children, meaning our culture. If our people have our culture, they’ll be strong, and they’ll be able to stand on their own two feet. And we’ll have a strong Nation to learn to take care of ourselves and take care of our resources and take care of the land. And if we take care of the land then the land will take care of us.”⁷⁸

“We all decided, as a House Group (family) and as a Nation really, through our Hereditary Chiefs, that we would uphold our laws and reassert the fact that they didn’t have consent to access our territory.”⁷⁹

On 20 April 2013, Hereditary Chief Na’Moks hosted a *baht’lats* at the Morice town Feast Hall, during which it was decided to follow the previous decision of the Unist’ot’en clan and not allow pipelines on Wet’suwet’en Tsayu territory.⁸⁰ The Hereditary Chiefs later expanded this decision to cover the entirety of the Nation’s ancestral territory.⁸¹

In 2018, the Wet’suwet’en Nation announced the creation of the Gidimt’en Checkpoint in a *baht’lats*. The Gidimt’en Checkpoint controls access to Cas Yikh House territory within the larger Gidimt’en Clan territory at the 44.5-kilometre mark on the Morice FSR.⁸² Members of the Gidimt’en Clan have been re-establishing a historical village, known as Lamprey Village, located around the 44-kilometre mark in the vicinity of *Tsel Kiy Kwa* (Lamprey Creek) since 2021.⁸³ Both the Gidimt’en Checkpoint and Lamprey Village re-establish the Gidimt’en Clan’s occupancy on territory inhabited by their ancestors for thousands of years. The sites serve as bases from which Nation members engage in a variety of cultural practises including hunting, trapping, berry picking, fishing and hide tanning.⁸⁴ The Clan also constructed a Feast Hall at Lamprey Village which is the first feast hall on Gidimt’en territory since the criminalization of this cultural practise ended.⁸⁵

The Wet’suwet’en have implemented a free, prior and informed consent (FPIC) protocol that “requires any visitors to the territory to seek permission from the Hereditary Chiefs to enter.”⁸⁶ Land defenders shared with Amnesty International that CGL has never received this permission nor consent to operate on Wet’suwet’en territory. In February 2019, Wet’suwet’en Hereditary Chiefs called for a stop work order on the CGL pipeline. They issued eviction notices to CGL on 4 January 2020 and reaffirmed the eviction on 14 November 2021.⁸⁷

The construction of the pipeline will have significant impacts on the land and waterways that make up Wet’suwet’en territory.⁸⁸ This, in turn, will impact the Nation’s governance, traditional practices such as hunting and gathering, and the passing of traditional knowledge to future generations.⁸⁹ Amnesty International heard directly from Wet’suwet’en land defenders the importance of the *Yin’tah* to them and the reasons why they are defending it.

⁷⁸ Dr. Karla Tait & Anne Spice, *An Injunction Against the Unist’ot’en Camp: An Embodiment of Healing Faces Eviction* (previously cited), p. 1.

⁷⁹ In-person interview with Dr. Karla Tait, 30 May 2023, Unist’ot’en.

⁸⁰ Tsayu (Beaver Clan) is one of the five Wet’suwet’en Clans.

⁸¹ OW, *Wet’suwet’en Title & Rights and Coastal GasLink* (previously cited), para. 140.

⁸² Gidimt’en Land Defenders, *Militarization of Wet’suwet’en Lands and Canada’s Ongoing Violations* (previously cited), para. 12.

⁸³ BCSC, *Notice of Civil Claim*, S-2250557, 22 June 2022, static1.squarespace.com/static/5c51ebf73e2d0957ca117eb5/t/62b373cffe86a654d231cbca/1655927921659/2022-06-22+Notice+of+Civil+Claim+++filed.pdf, para. 16.

⁸⁴ BCSC, *Notice of Civil Claim* (previously cited), paras. 16, 35 & 44.

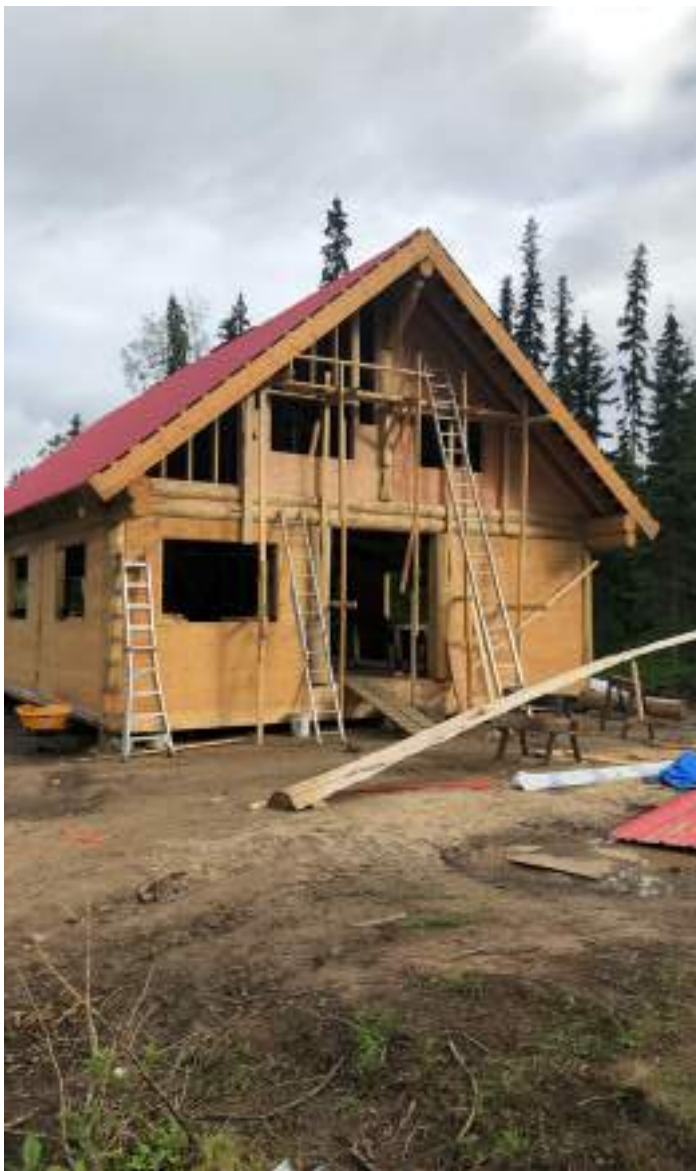
⁸⁵ BCSC, *Notice of Civil Claim* (previously cited), para. 49.

⁸⁶ Gidimt’en Land Defenders, *Militarization of Wet’suwet’en Lands and Canada’s Ongoing Violations* (previously cited), para. 3.

⁸⁷ Gidimt’en Checkpoint, “Gidimt’en Evict Coastal GasLink from Wet’suwet’en Territory”, 14 November 2021, static1.squarespace.com/static/5c51ebf73e2d0957ca117eb5/t/619168973821566fa355db65/1636919447456/PressReleaseDay50.pdf; Gidimt’en Land Defenders, *Militarization of Wet’suwet’en Lands and Canada’s Ongoing Violations* (previously cited), paras. 3 & 19.

⁸⁸ British Columbia, “Coastal GasLink project fined more than \$340,000 for non-compliance,” 21 September 2023, news.gov.bc.ca/releases/2023ENV0058-001481; B.C. EAO, “Warning Letter to Coastal GasLink,” 8 August 2023, projects.eao.gov.bc.ca/api/document/64e392d0f9c02400223ced2d/fetch/Coastal%20GasLink_Warning%20Letter%2020230054_WN001.pdf; British Columbia, “Third Fine Issued for Coastal GasLink Project,” 25 July 2023, [news.gov.bc.ca/releases/2023ENV0004-000088#:~:text=\(CGL\)%20for%20non%2Dcompliance,pipeline%20construction%20in%20February%202022](https://news.gov.bc.ca/releases/2023ENV0004-000088#:~:text=(CGL)%20for%20non%2Dcompliance,pipeline%20construction%20in%20February%202022); British Columbia, “Fine Issued for Coastal GasLink Project,” 9 May 2022, news.gov.bc.ca/releases/2022ENV0026-000731; Supreme Court of British Columbia, *Wet’suwet’en Treaty Office Society v. British Columbia* (Environmental Assessment Office), 2021 BCSC 717, canlii.org/en/bc/bcsc/doc/2021/2021bcsc717/2021bcsc717.html, para. 65; STAND.earth, *Coastal GasLink: A dangerous project that blatantly violates Indigenous rights*, 22 March 2022, stand.earth/resources/coastal-gaslink-dangerous-project-violates-indigenous-rights/, p. 4; The Narwhal, “The last 33 Caribou: Fighting for the Survival of a Wet’suwet’en herd,” 17 May 2023, thenarwhal.ca/caribou-telkwa-herd-wetsuweten/; The Tyee, “RCMP, Pipeline Firm Spill Fuel on Wet’suwet’en Territory”, 4 June 2020, theyee.ca/News/2020/06/04/Pipeline-Spill-Wetsuweten-Territory/; OW, *Wet’suwet’en Title & Rights and Coastal GasLink* (previously cited).

⁸⁹ OW, *Wet’suwet’en Title & Rights and Coastal GasLink* (previously cited), paras. 70.



“We always tell people this isn’t just about us; we aren’t doing this for us. We’re not doing this for us as individuals. It’s for kids, everybody downstream, the community. We’re fighting like hell, so that we have salmon in 20 years or 50 years. I think that the importance of the woods and Wedzin Kwa, our river system and our water, it’s so much more than an environmental catastrophe. It just really gets to the core of who we are, what our ancestors fought so hard for, so that we could have. And if we didn’t fight just as hard, what kind of ancestors are we being for future generations?”⁹⁰

“I’m not a protester. I’m a land defender. I’m doing this for not even just our children. It’s for everybody’s children. We’re doing this for everybody, not just us. For future generations.”⁹¹

“As an Unist’ot’en woman, who comes from a matrilineal people, it is so essential to preserve the integrity of our land to provide for our future generations.”⁹²

“The reason we’re here, why we’re fighting so hard for our rights, our land, our water, our animals, our salmon, the air, everything. It’s the necessity of our life. The way we live our life is off the land, and they’re destroying it all. They’re ripping it all apart and it’s not going to stop.”⁹³

Wet’suwet’en land defenders shared that the fight is not just about Indigenous Peoples and their territories, but it is about everyone whose lives will be affected by the environmental degradation and destruction that the pipeline is, and will, cause.⁹⁴ The right to conserve and protect the environment is set out in Article 29 of UNDRIP. This right has a special relationship with the defence of land and territory. Land defenders strive to protect and promote human rights related to the environment, including water, air, land, flora and fauna.⁹⁵ They play a fundamental role in defending the rights of their communities to a safe and healthy environment, to a future with dignity and respect, and to their ancestral lands and livelihoods. At the same time, land defenders protect the environment for society as a whole. The UN Special Rapporteur on the situation of human rights defenders has stated that “environmental human rights defenders are at the heart of our future and the future of our planet.”⁹⁶

⁹⁰ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

⁹¹ In-person interview with Anna-Marie Holland and Shaylee-Marie Holland, 31 May 2023, Gidimt’en Checkpoint.

⁹² In-person interview with Dr. Karla Tait, 30 May 2023, Unist’ot’en.

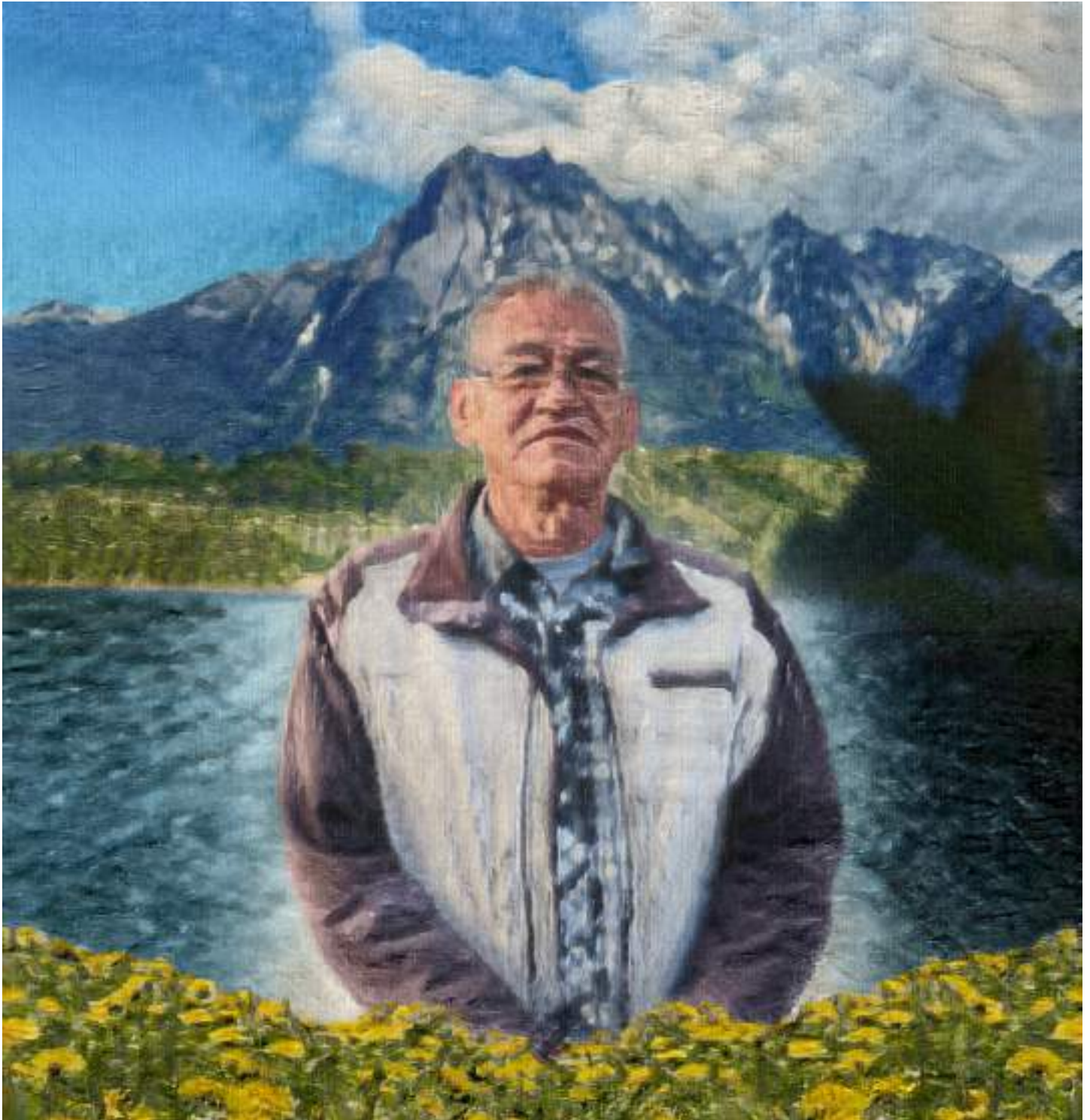
⁹³ In-person interview with Janet Williams and Lawrence Bazil, 31 May 2023, Gidimt’en Checkpoint.

⁹⁴ In-person interview with Antoinette Austin, 29 May 2023, Smithers, B.C.

⁹⁵ Report of the Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders, A/71/281, 3 August 2016, documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement, paras. 7-8.

⁹⁶ Report of the Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders (previously cited), para. 92; Amnesty International, Stop burning our rights! What governments and corporations must do to protect humanity from the climate crisis, (Index: POL 30/3476/2021), June 2021, amnesty.org/en/documents/pol30/3476/2021/en/.

Around the world, land defenders increasingly face violence and violations of their rights on a daily basis. Indigenous land defenders find themselves in particularly vulnerable situations, especially those who live in rural and remote areas.⁹⁷ Structural discrimination and racism are also a source of increased risks for Indigenous land defenders.⁹⁸ Both States and corporations must respect the rights of everyone to promote and protect the environment. States must protect those who defend the environment from both State and non-State actors.⁹⁹



⁹⁷ Report of the Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders (previously cited), paras. 31 & 53.

⁹⁸ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, Ecological crisis, climate justice and racial justice, A/77/549, 25 October 2022, documents-dds-ny.un.org/doc/UNDOC/GEN/N22/651/88/PDF/N2265188.pdf?OpenElement, para. 54.

⁹⁹ Report of the Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders (previously cited), para. 3.

**6. THE CONSULTATION
PROCESS AND VIOLATIONS OF
THE WET'SUWET'EN NATION'S
RIGHT TO FREE, PRIOR AND
INFORMED CONSENT**

6 THE CONSULTATION PROCESS AND VIOLATIONS OF THE WET’SUWET’EN NATION’S RIGHT TO FREE, PRIOR AND INFORMED CONSENT

6.1 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

As informed by UNDRIP and other international human rights instruments, the *Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples* affirm that Indigenous Peoples in Canada have a unique connection to and constitutionally protected interest in their lands, including decision-making, governance, jurisdiction, legal traditions, and fiscal relations associated with those lands.¹⁰⁰ Canada recognizes that the inherent right of self-government is an existing aboriginal right under the Constitution which includes the rights of Indigenous Peoples to govern themselves in matters that are internal to their communities or integral to their unique cultures, identities, traditions, languages and institutions, and regarding their unique relationship with their land and their resources.¹⁰¹ Canada also recognizes that “meaningful engagement with Indigenous Peoples aims to secure their free, prior and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.”¹⁰² Since *Haida Nation v. British Columbia (2004)*, federal and provincial governments have been subject to a formal duty to consult Indigenous Peoples and accommodate their interests whenever their asserted or established aboriginal or treaty rights may be affected by government conduct.¹⁰³

Article 32.2 of UNDRIP establishes that “States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”¹⁰⁴ In addition, the Inter-American Court of Human Rights has recognized the special bond that Indigenous Peoples have with the land and territory, which “must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity and their economic survival”.¹⁰⁵ States have an obligation, among others, to guarantee the rights to self-determination, to consult in order to obtain free, prior and informed consent, and to carry out a prior environmental and social impact assessment.¹⁰⁶

Free, prior and informed consent is a human rights norm grounded in the fundamental rights to self-determination, self-governance and to be free from racial discrimination guaranteed by the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁰⁷ As stated by the UN Expert Mechanism on the Rights of Indigenous Peoples, “the provisions of [UNDRIP], including those referring to free, prior and informed consent, do not create new rights for Indigenous Peoples, but rather provide a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of Indigenous Peoples.”¹⁰⁸ In this sense, it is important to emphasize that Canada’s obligation to obtain the free, prior and informed consent of Indigenous Peoples with regards to projects on their territories existed prior to it enacting the UNDRIP Act in 2021.

The duty to consult must be operationalized through prior consultations, conducted in good faith, with the objective of obtaining free, prior and informed consent. At any point in the process, the Indigenous People may reject the proposal; the extent to which the State is obligated to respect that decision depends on the degree of human rights harm that will result; the greater the human rights harm, the more the expectation to respect the People’s decision hardens into an absolute obligation.¹⁰⁹ The evaluation of that harm “requires consideration of the nature, scale, duration and long-term impact of the action, such as damage to a Peoples’ lands or harm to the Peoples’ cultural integrity.”¹¹⁰

¹⁰⁰ Canada, Constitution Act, 1867 (previously cited), s. 35; Department of Justice Canada, *Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples*, 2018, justice.gc.ca/eng/csj-sjc/principles.pdf, p. 3.

¹⁰¹ Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya, *The situation of Indigenous Peoples in Canada* (previously cited), para. 9.

¹⁰² Department of Justice Canada, *Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples* (previously cited), p. 12.

¹⁰³ SCC, *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 18 November 2004, scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do.

¹⁰⁴ UNDRIP, Article 32.2. In November 2019, British Columbia passed the Declaration on the Rights of Indigenous Peoples Act into law. On 21 June 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act came into force, which requires Canada to harmonize its legislation with the rights set out in the Declaration. British Columbia, *Declaration on the Rights of Indigenous Peoples Act*; Canada, *United Nations Declaration on the Rights of Indigenous Peoples Act*.

¹⁰⁵ IACHR, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 31 August 2001, corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf, para. 149.

¹⁰⁶ IACHR, *Case of the Garifuna Community of Punta Piedra and its Members v. Honduras*, 8 October 2015, corteidh.or.cr/docs/casos/articulos/seriec_304_ing.pdf, para. 215.

¹⁰⁷ Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based approach* (previously cited), para. 3.

¹⁰⁸ Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based approach* (previously cited), paras. 3, 6-8.

¹⁰⁹ Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based approach* (previously cited), paras. 14-23.

¹¹⁰ Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based approach* (previously cited), paras. 35.

Consultation should be a process of dialogue and negotiation over the course of a project, from the earliest stages of project planning to implementation and follow-up.¹¹¹ Information must be provided about the project and its risks, including environmental and health risks. Consultation procedures should be culturally appropriate, taking into account Indigenous Peoples' customs, traditions and their traditional methods of decision-making.¹¹² Further, Indigenous Peoples should be consulted through their own representative institutions and in accordance with their own procedures.¹¹³ They should also exert sufficient control over the process and should not feel compelled to get involved or continue with the process.¹¹⁴ While a State may delegate the consultation process to a non-State actor, such as a corporation, the State is ultimately responsible for ensuring that adequate consultation takes place.¹¹⁵ Only by following these principles can free, prior and informed consent be obtained.¹¹⁶

Additionally, the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) set out that corporations must respect human rights, including the right to defend environmental and land rights. The UN Guiding Principles require that corporations “identify and assess any actual or potential adverse human rights impacts through meaningful consultation with potentially affected groups, as an integral part of their responsibility to protect human rights.”¹¹⁷



111 Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 15.

112 UNDRIP, Article 18; IACtHR, Case of the Saramaka People. Vs. Suriname, 28 November 2007, para. 133.

113 UNDRIP, Articles 18, 19 & 32; Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 23.

114 Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 20(d).

115 Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 56.

116 Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited).

117 Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (UN Guiding Principles), A/HRC/17/31, 21 March 2011, documents-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement, paras. 6 & 44.

6.2 THE CGL PIPELINE CONSULTATION PROCESS

In 2012, CGL announced its plans to construct the CGL pipeline and began the process of obtaining the required provincial permits and authorizations, including an environmental assessment certificate from the B.C. Environmental Assessment Office (B.C. EAO).¹¹⁸ According to the company, “Aboriginal groups were formally notified of the project in June 2012.”¹¹⁹

For the pipeline to be approved, the project needed to be issued an environmental assessment certificate. In accordance with its international human rights obligations, Canada had the duty to consult with Indigenous Peoples who may be impacted by the pipeline and obtain their free, prior and informed consent regarding its construction. The province of B.C. has included the duty to consult as part of the process for obtaining an environmental assessment certificate. By way of a Section 11 Order under the Environmental Assessment Act, the province prepares a list of Indigenous Peoples that a company must consult with. In the case of the CGL pipeline, the Section 11 Order prepared by the B.C. EAO included the Office of the Wet’suwet’en Hereditary Chiefs and Dark House, as well as five Wet’suwet’en *Indian Act* band councils that are located close to the proposed pipeline route (Wet’suwet’en First Nation, Skin Tye Band, Witsset First Nation, Ts’il Kaz Koh First Nation and Nee Tahi Buhn Band).¹²⁰ The CGL pipeline’s proposed route passes through the Wet’suwet’en Nation’s ancestral territory and passes close to five Wet’suwet’en *Indian Act* reserves (which are managed by the above-named band councils), but not through them.¹²¹

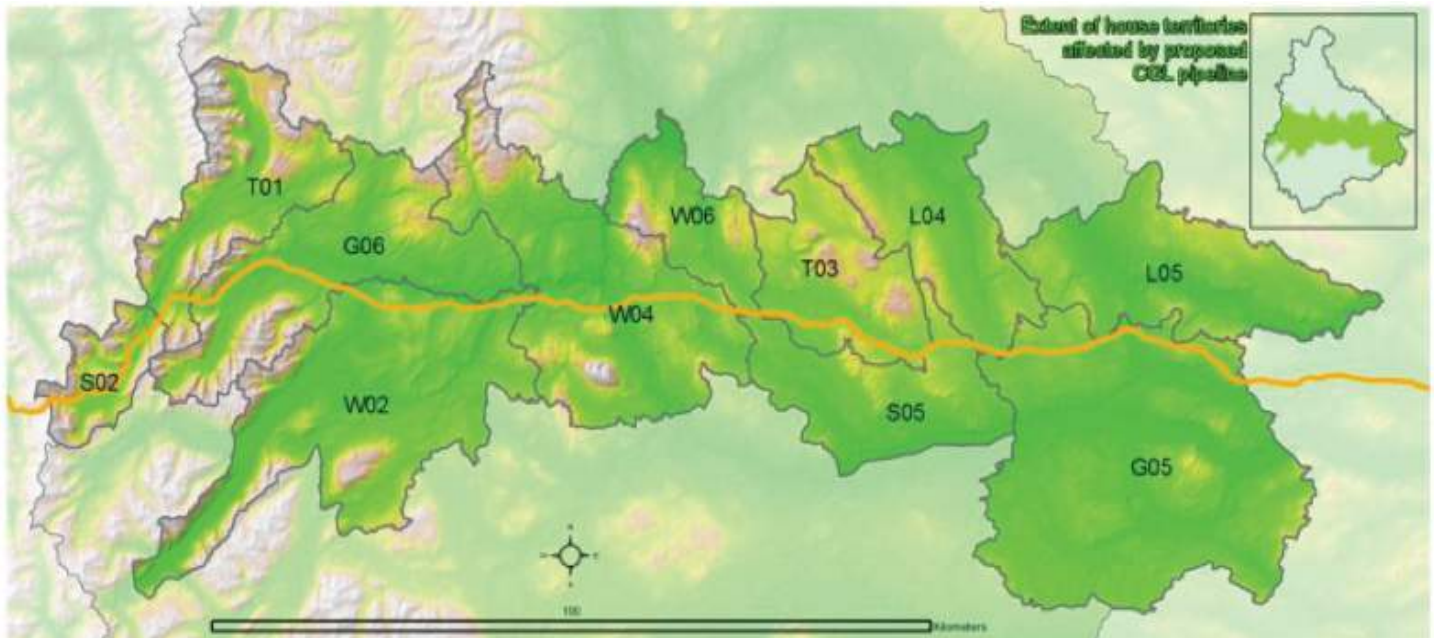


Figure 1. Wet’suwet’en Territory in relation to the proposed pipeline

¹¹⁸ BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264, 31 December 2019, canlii.org/en/bc/bcsc/doc/2019/2019bcsc2264/2019bcsc2264.html?searchUrlHash=AAAAQAOMjAxOSBCQ1NDIDl-yNjQAAAAAQ&resultIndex=1, para. 22; TransCanada, Coastal GasLink Pipeline Project – Project Description (previously cited).

¹¹⁹ TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Plan, CGL4703-CGP-AB-PLN-003, 26 April 2013, projects.eao.gov.bc.ca/api/public/document/5e41a0d074d1830021b67b16/download/CGL%20-%20Indigenous%20Group%20Consultation%20Plan%20-%202020130426.pdf, p. 9.

¹²⁰ B.C. EAO, In the matter of the Environmental Assessment Act, S.B.C. 2002, c. 43 (Act) and an environmental assessment of the proposed Coastal GasLink pipeline project (proposed project), Order under Section 11, 8 March 2013, projects.eao.gov.bc.ca/api/public/document/58868fb2e036fb0105768609/download/Section%2011%20Order%20for%20the%20proposed%20Coastal%20GasLink%20Pipeline%20Project.pdf.

¹²¹ Yellowhead Institute, An Analysis of Coastal GasLink’s Notice of Application for Injunction, 2019, redpaper.yellowheadinstitute.org/wp-content/uploads/2019/11/coastal-gaslink-injunction-analysis.pdf, para. 8; Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay (previously cited), para. 64; TransCanada, Coastal GasLink Pipeline Project – Project Description (previously cited), p. 41.

In accordance with the Section 11 Order, CGL prepared a consultation plan.¹²² As part of the consultation process, representatives of CGL shared with Amnesty International that the company engaged in consultation with the Office of the Wet'suwet'en Hereditary Chiefs and Dark House through email communication, in-person meetings and other interactions.¹²³ Documents shared by the company show that, between June 2012 and May 2014, CGL held two meetings with Dark House and 21 meetings with the Office of the Wet'suwet'en Hereditary Chiefs.¹²⁴ The company subsequently sent three consultation reports to the B.C. EAO as part of the environmental assessment certificate application process.¹²⁵

Amnesty International heard from members of the Wet'suwet'en Nation about the consultation process. One stated:¹²⁶

“It’s really corrupt, the whole thing. Every time they did something, they’d have big, massive door prizes, like big TVs and people just come in droves to get the door prize.”¹²⁷

The Office of the Wet'suwet'en participated in the B.C. EAO's Working Group for the CGL pipeline project and actively proposed an alternate McDonnell Lake route for the pipeline. However, the company rejected this proposition citing various reasons including increased cost, inappropriateness for the diameter for the pipeline, desire to avoid urban areas and environmental impacts.¹²⁸

In 2014, as part of the environmental assessment certificate process and in response to the consultations undertaken by CGL, the Office of the Wet'suwet'en shared with the B.C. EAO its serious concerns about the CGL pipeline due to the potential significant impacts the pipeline would have on Wet'suwet'en territory.¹²⁹ The Wet'suwet'en Hereditary Chiefs considered that CGL's environmental assessment certificate application lacked a comprehensive environmental impact analysis which impeded them from being able to fully understand and assess the potential impacts of the pipeline project, or proposed mitigation measures.¹³⁰ They considered that key elements of the application were in conflict with core Wet'suwet'en laws and values.¹³¹ They also stated that both CGL and the province of B.C. did not take in account recommendations made by the Hereditary Chiefs throughout the consultation process.¹³²

Based on this, the Hereditary Chiefs did not provide their consent for pipeline construction.¹³³

“The decisions about this project happened over years of consultation with our community members. We had clan meetings. We had professionals come in and talk to us about the risks. We listened to all the project plans, we made decisions collectively, stood up in our Feast Hall and declared every clan that we wouldn't allow any pipelines in our territory, because we know that the risk is too great to our salmon, to our people.”¹³⁴

¹²² TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Plan (previously cited).

¹²³ Virtual meeting with TC Energy representatives, 22 June 2023.

¹²⁴ TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Report 3, CGL4703-CGP-AB-RP-005, 9 July 2014, projects.eao.gov.bc.ca/api/document/58868fc9e036fb0105768731/fetch/Aboriginal%20Consultation%20Report%20%233.pdf, pp. 72 & 232.

¹²⁵ TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Plan (previously cited); TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Report 1, CGL4703-CGP-AB-RP-002, 3 May 2013, projects.eao.gov.bc.ca/api/document/5e41a91e74d1830021b687d7/fetch/CGL%20-%20Indigenous%20Group%20Consultation%20Report%2001%20-%202021030503.pdf; TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Report 2, CGL4703-CGP-AB-RP-004, April 2014, projects.eao.gov.bc.ca/api/document/58868fc2e036fb01057686dc/fetch/Coastal%20GasLink%20Pipeline%20Ltd%20Aboriginal%20Consultation%20Report%20%232.pdf, p. 21; TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Report 3 (previously cited), p. 72.

¹²⁶ In-person interviews with members of the Wet'suwet'en Nation, June 2023, Smithers, B.C.

¹²⁷ In-person interview with Chief Dtsa'hl (Adam Gagnon), 29 May 2023, Smithers, B.C.

¹²⁸ OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), para. 51; BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264, (previously cited), paras. 59 & 91.

¹²⁹ OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), paras. 33, 45 & 66.

¹³⁰ OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), paras. 33, 45 & 66.

¹³¹ OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), para. 82.

¹³² OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), para. 84.

¹³³ OW, Submission to: British Columbia Environmental Assessment Office regarding the TransCanada Coastal GasLink Application, September 2014, <https://projects.eao.gov.bc.ca/api/public/document/58868fd7e036fb010576878d/download/Office%20of%20the%20Wetsuweten%20-%20EAO%20Process%20Report%20for%20CGL%2C%20September%202014..pdf>, paras. 84-89; OW, Wet'suwet'en Title & Rights and Coastal GasLink (previously cited), para. 84.

¹³⁴ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

“The proposed pipeline must be considered in terms of the cumulative social, cultural, health, and economic impacts to the Wet’suwet’en people. The Wet’suwet’en are a people strongly rebuilding and reclaiming our identity following over a century of colonial abuses and industrial development on our lands. Like other aboriginal peoples of Canada, the Wet’suwet’en have been forced off their traditional territories and onto reserves, governed not by their former system of clans and chiefs but by the state imposed Indian and Northern Affairs (INAC). Our people have been killed by epidemic and disease. Our language has been taken from us, cultural practices have been made criminal, and our children have been sent to residential schools. We have been and continue to be the target of racism and physical, sexual, and emotional abuse. Though recent years have seen successes in some land claims and rights negotiation, non-natives and the government are still reluctant to address longstanding inequalities resulting from these violent histories. It is the Wet’suwet’en position that the current consideration of the Coastal GasLink project be made in light of these cumulative social and cultural impacts.”¹³⁵

Office of the Wet’suwet’en (October 2014)

Nevertheless, on 23 October 2014, the B.C. EAO issued CGL an environmental assessment certificate for the pipeline.¹³⁶ *Oil and Gas Activities Act* permits were issued between May 2015 and April 2018.¹³⁷ However, during this time, construction of the pipeline remained on hold because no final decision had been made regarding the construction of the LNG facility in Kitimat.¹³⁸

Throughout the environmental assessment certificate consultation process, CGL signed community and project agreements with the 20 *Indian Act* band councils along the pipeline route, including five Wet’suwet’en *Indian Act* band councils.¹³⁹ Between December 2014 and March 2015, the B.C. provincial government also entered into natural gas pipeline agreements with the five Wet’suwet’en *Indian Act* band councils (Wet’suwet’en First Nation, Skin Tyee Band, Witsset First Nation, Ts’il Kaz Koh First Nation and Nee Tahi Buhn Band) located close to the pipeline’s route.¹⁴⁰ While the agreements signed between CGL and the band councils are not publicly available,¹⁴¹ the agreements signed with the province indicate that one of their purposes is to secure the band councils’ support for the pipeline project and they include clauses in which the Band agrees to not participate in acts that oppose the pipeline’s construction.¹⁴²

Members of the Wet’suwet’en Nation interviewed by Amnesty International shared that the consultation process and ongoing construction of the pipeline has created divisions between the Wet’suwet’en Hereditary Chiefs and their clan members, and Wet’suwet’en *Indian Act* Band Councils. Consultation and consent processes should be consistent with and supportive of customary and formalized systems of governance and must not contribute to their division, erosion or marginalization.¹⁴³ Nevertheless, once the Hereditary Chiefs made their opposition to the pipeline project known, the B.C. Government and CGL began relying on and emphasizing the band councils’ support for the project, as opposed to continuing consultation efforts with the Hereditary Chiefs in order to obtain their free, prior and informed consent.¹⁴⁴

¹³⁵ OW, Wet’suwet’en Title & Rights and Coastal GasLink (previously cited), paras. 506-507.

¹³⁶ B.C. EAO, Environmental Assessment Certificate # E14-03, 23 October 2014, projects.eao.gov.bc.ca/api/public/document/58868fd3e036fb010576876e/download/Environmental%20Assessment%20Certificate%20%23E14-03%20for%20the%20CGL%20Project%20dated%20October%202014.pdf.

¹³⁷ B.C. EAO, In the matter of the Environmental Assessment Act S.B.C. 2002, c. 43 (Act) and In the matter of an Application for an Environmental Assessment Certificate (Application) by Coastal GasLink Pipeline Ltd. (Proponent) for the Coastal GasLink Pipeline Project (Project), Reasons for Minister’s Decision, 23 October 2014, projects.eao.gov.bc.ca/api/document/58868fd4e036fb0105768774/fetch/Reasons%20for%20Ministers%20Decision%20for%20the%20CGL%20Project%20dated%20October%202014..pdf.

¹³⁸ BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264, (previously cited), para. 22.

¹³⁹ TC Energy, “Coastal GasLink signs agreements with 100 per cent of B.C. elected Indigenous bands along the pipeline route”, 13 September 2018, tcenergy.com/announcements/2018/2018-09-13coastal-gaslink-signs-agreements-with-100-per-cent-of-b.c.-elected-indigenous-bands-along-the-pipeline-route/; BCSC, Coastal GasLink Pipeline Ltd. v Huson, 2018 BCSC 2343, canlii.org/en/bc/bcsc/doc/2018/2018bcsc2343/2018bcsc2343.html?resultIndex=1, para. 18; BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited), para. 66.

¹⁴⁰ British Columbia, “Natural Gas Benefits Agreements”, gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/natural-gas-pipeline-benefits-agreements.

¹⁴¹ Amnesty International asked CGL/TC Energy to share copies of the agreements for the purposes of this research, however, the company did not provide them.

¹⁴² B.C. and Moricetown, Coastal GasLink Pipeline Project – Natural Gas Pipeline Benefits Agreement, 23 January 2015, gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/moricetown_band_pba_cgl_signed_bcr.pdf, Clause 5.4; B.C. and Wet’suwet’en First Nation, Coastal GasLink Pipeline Project – Natural Gas Pipeline Benefits Agreement, 10 December 2014, gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/wetsuweten_first_nation_pba_cgl_signed_bcr_-_jan_2015.pdf, Clause 5.4; B.C. and Skin Tyee First Nation, Coastal GasLink Pipeline Project – Natural Gas Pipeline Benefits Agreement, 1 December 2014, gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/skin_tyee_natural_gas_pipeline_benefits_agreement_-_dec_1_2014_-_signed.pdf, Clause 5.4; B.C. and Ts’il Kaz Koh First Nation, Coastal GasLink Pipeline Project – Natural Gas Pipeline Benefits Agreement, 31 March 2015, gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/tsil_kaz_koh_burns_lake_first_nation_-_cgl_pba_-_signed.pdf, Clause 5.4; B.C. and Nee-Tahi-Buhn Indian Band, Coastal GasLink Pipeline Project – Natural Gas Pipeline Benefits Agreement, 1 December 2014, gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/nee-tahi-buhn_midstream_natural_gas_pipeline_benefits_agreement_-_dec_1_2014_-_signed.pdf, Clause 5.4.

¹⁴³ Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 17.

¹⁴⁴ CGL, “Coastal GasLink signs agreements with 100 per cent of B.C. elected Indigenous bands along the pipeline route”, 13 September 2018, coastalgaslink.com/whats-new/news-stories/2018/2018-09-13coastal-gaslink-signs-agreements-with-100-per-cent-of-b.c.-elected-indigenous-bands-along-the-pipeline-route/.

“There’s all the evidence there that for decades [the province] was clearly recognizing the Wet’suwet’en Hereditary Chiefs. And then as soon as the Hereditary Chiefs became an impediment to this major project, this whole narrative of the Band Councils came up and all these narratives that attack the legitimacy of the Wet’suwet’en Hereditary Chiefs began to emerge.”¹⁴⁵

When asked about the agreements and alleged divisions created within the community, CGL representatives stated that, “Our work is lawful, authorized, fully permitted and has the unprecedented support of local and Indigenous communities and agreements in place with all 20 elected First Nation councils across the 670 km route. These agreements include elected Wet’suwet’en Nation communities who are benefiting from training, employment and contracting opportunities.”¹⁴⁶

On 1 October 2018, the LNG Canada Joint Venture participants announced their decision to build the Kitimat export facility. The following day, CGL announced that it would proceed with construction of the pipeline, beginning in January 2019.¹⁴⁷

Pursuant to the terms of the environmental assessment certificate, CGL was required to “substantially start” the pipeline project by 23 October 2019.¹⁴⁸ In April 2019, CGL applied to the B.C. EAO for an extension of this start deadline.¹⁴⁹ As a result, in June 2019, the B.C. EAO contacted groups that were previously consulted about the CGL pipeline project regarding the extension application. Between June and September 2019, the Office of the Wet’suwet’en, CGL and the B.C. EAO exchanged numerous letters and submissions. In these exchanges, the Office of the Wet’suwet’en inquired with the B.C. EAO about the environmental impacts of the pipeline project, as well as CGL’s operations including whether CGL had been given authority to exclusively control the forest service roads, and to destroy cultural heritage and camp sites being used by Wet’suwet’en. Specifically, the Office of the Wet’suwet’en told the B.C. EAO that, “we are bringing [the B.C. EAO] information repeatedly to show that CGL’s activities are impacting our interests in ways that were not considered in the initial assessment”, to which the B.C. EAO responded “The EAO’s draft extension report has been shared with OW for comment. All information provided by OW will be referenced in the draft report to the decision maker.”¹⁵⁰ The Office of the Wet’suwet’en also raised concerns with CGL about environmental and cultural impacts, interference with Wet’suwet’en culture and way of life, and the disruption of heritage sites.¹⁵¹ Dark House also raised concerns with the B.C. EAO and CGL about environmental and cultural impacts associated with the pipeline project, reiterating that “Dark House expects individuals and companies to seek our consent in accordance with Wet’suwet’en law prior to accessing the territory for any purpose.”¹⁵² The documents reviewed by Amnesty International indicate that CGL’s response to the Office of the Wet’suwet’en and Dark House mainly refers them to documents submitted by the company to the B.C. EAO.¹⁵³ The Wet’suwet’en Hereditary Chiefs ultimately objected to the extension of the Environmental Assessment Certificate.¹⁵⁴ Nevertheless, the extension was granted by the B.C. EAO on 15 October 2019.¹⁵⁵



¹⁴⁵ In-person interview with Kolin Sutherland-Wilson, 29 May 2023, Smithers, B.C.

¹⁴⁶ CGL/TC Energy, Communication to Amnesty International, 30 August & 6 December 2023.

¹⁴⁷ BCSC, Coastal GasLink Pipeline Ltd. v Huson, 2018 BCSC 2343 (previously cited), para. 12; BCSC, Coastal GasLink Pipeline Ltd. v Huson, 2019 BCSC 2264 (previously cited), para. 24.

¹⁴⁸ B.C. EAO, Environmental Assessment Certificate # E14-03, 23 October 2014, projects.eao.gov.bc.ca/api/public/document/58868fd3e036fb010576876e/download/Environmental%20Assessment%20Certificate%20%23E14-03%20for%20the%20CGL%20Project%20dated%20October%202014.pdf; BCSC, Wet’suwet’en Treaty Office Society v. British Columbia (Environmental Assessment Office) (previously cited), para. 21.

¹⁴⁹ B.C. EAO, In the matter of the Environmental Assessment Act S.B.C. 2002, c.43 (Act) and an application to extend environmental assessment certificate E14-03 (Certificate) held by Coastal GasLink Pipeline Ltd. for the Coastal GasLink Pipeline Project (CGL Project), Extension under Section 18, 15 October 2019, projects.eao.gov.bc.ca/api/public/document/5da9f96d5cbf70021017040/download/CGL%20Section%2018%20Order_Signed.pdf.

¹⁵⁰ B.C. EAO, “EAO responses to OW questions of August 20, 2019”, 4 October 2019, projects.eao.gov.bc.ca/api/public/document/5dadde555cbf70021019089/download/EAO_OW%20Qs_Aug%2020%2C%202019.pdf.

¹⁵¹ “CGL Response to Office of the Wet’suwet’en Comments - Condition 1 Report 02”, 19 November 2019, projects.eao.gov.bc.ca/api/public/document/5dd58b718b5f4700209e79e6/download/OW_CGL_Response_Condition1_Report2.pdf.

¹⁵² “Letter from Dark House - Condition 1 - Dec 20, 2019”, 20 December 2019, projects.eao.gov.bc.ca/api/public/document/5e7b7e89bd1578001a11da4b/download/2019-12-20-%20Ltr-%20Dark%20House%20to%20EAO.pdf.

¹⁵³ TC Energy, Letter dated 19 November 2019, projects.eao.gov.bc.ca/api/public/document/5dd58b708b5f4700209e79d1/download/Dark%20House%20Condition%201%20-%20Engagement%20Summary.pdf; TC Energy, Letter dated 19 November 2019, projects.eao.gov.bc.ca/api/public/document/5dd58b708b5f4700209e79e0/download/OW%20Condition%201%20-%20Engagement%20Summary.pdf.

¹⁵⁴ BCSC, Wet’suwet’en Treaty Office Society v. British Columbia (Environmental Assessment Office) (previously cited), para. 22.

¹⁵⁵ BCSC, Wet’suwet’en Treaty Office Society v. British Columbia (Environmental Assessment Office) (previously cited), para. 27.

6.3 VIOLATIONS OF THE WET'SUWET'EN NATION'S COLLECTIVE RIGHT TO CONSULTATION IN ORDER TO OBTAIN ITS FREE, PRIOR AND INFORMED CONSENT

Amnesty International observes that the consultation process regarding the CGL pipeline did not begin at the earliest stage of project planning. As set out above, the B.C. Government and CGL only began to consult with the Indigenous Peoples affected by the pipeline once CGL was in the environmental assessment certificate application process.¹⁵⁶ Further, as evidenced by CGL's project description document, consultation plan and consultation reports, Amnesty International notes that throughout consultations with Indigenous Peoples, the company's focus was not on obtaining their free, prior and informed consent. Rather, according to the company, consultations ignored the consent component, focusing on "build[ing] and maintain[ing] positive long-term relationships with Aboriginal groups potentially affected by the project; ensur[ing] that Aboriginal community input and concerns are gathered, understood and integrated into project design and execution, as appropriate; and, ensur[ing] that concerns and issues with respect to environmental or socio-economic effects related to Aboriginal communities are addressed, as appropriate."¹⁵⁷ None of the pipeline project documents or consultation reports accessed and reviewed by Amnesty International make reference to free, prior and informed consent as the goal of the process.¹⁵⁸ Further, CGL's Aboriginal Consultation Plan states that "during the initial consultation and pre-application consultation stages, Coastal GasLink will focus on project-specific goals and objectives and look forward to the construction and eventual operations of the gas pipeline, while continuing to maintain positive relationships with the Aboriginal communities involved in the project."¹⁵⁹ The same plan indicates that, engagement activities after filing the environmental assessment application include: "having discussions with respect to appropriate mitigation as part of the application review process; developing a monitoring program for the construction phase of the project, which will be focused on the effective implementation of the environmental management plan; seeking input from Indigenous Peoples regarding reclamation activities; and, implementing measures to optimize Indigenous contracting opportunities."¹⁶⁰ This information suggests that, from the outset, CGL planned on proceeding with the pipeline, regardless of the outcomes of its consultations with the potentially affected Indigenous communities. In this same sense, CGL's engagements with Indigenous Peoples during the consultation process seem to focus on providing financial benefits to these groups and gathering information about possible mitigation efforts, as opposed to obtaining their free, prior and informed consent to proceed with the project.¹⁶¹

Former Special Rapporteur on the rights of Indigenous Peoples, James Anaya, underscored that "[UNDRIP] suggests a heightened emphasis on consultations that are in the nature of negotiations towards mutually acceptable arrangements prior to decisions on proposed measures, rather than mechanisms for providing indigenous peoples with information about decisions already made or in the making, without allowing them genuinely to influence the decision-making process."¹⁶²

The Wet'suwet'en Hereditary Chiefs rejection of the CGL pipeline project was based on the potential serious impacts to Wet'suwet'en territory and the fact that CGL did not provide sufficient, detailed information for the Nation to adequately analyze these impacts.¹⁶³ The "informed" element of the free, prior and informed consent principle means that the information made available should be both sufficiently quantitative and qualitative, as well as objective, accurate and clear.¹⁶⁴ When asked about the consultation process, CGL only stated:

¹⁵⁶ TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Plan (previously cited), p. 9.

¹⁵⁷ TransCanada, Coastal GasLink Pipeline Project – Project Description (previously cited), s. 5.0.

¹⁵⁸ B.C. EAO, "Coastal GasLink Pipeline", projects.eao.gov.bc.ca/p/588511c4aaecd9001b825604/project-details.

¹⁵⁹ TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Plan (previously cited), pp. 12-13.

¹⁶⁰ TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Plan (previously cited), p. 13.

¹⁶¹ TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Plan (previously cited); TransCanada, Coastal GasLink Pipeline Project – Aboriginal Consultation Report 2 (previously cited), p. 13.

¹⁶² Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 16; Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, James Anaya, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/12/34, 15 July 2009, documents-dds-ny.un.org/doc/UNDOC/GEN/G09/145/82/PDF/G0914582.pdf?OpenElement, para. 46.

¹⁶³ O W, Submission to: British Columbia Environmental Assessment Office regarding the TransCanada Coastal GasLink Application, September 2014, projects.eao.gov.bc.ca/api/public/document/58868fd7e036fb010576878d/download/Office%20of%20the%20Wetsuweten%20-%20EAO%20Process%20Report%20for%20CGL%2C%20September%202014..pdf, para. 4.

¹⁶⁴ Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), paras. 22(a)-(b).

“Over 12 years ago Coastal GasLink respectfully approached more than 20 Indigenous groups along our then proposed project corridor in accordance with Canadian law, and consistent with the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its principles. We signed project agreements with all 20 elected First Nations governments along the approved route. This includes agreements with five of the six elected Wet’suwet’en Nations (the 6th is outside the project area). In addition to the elected councils, we have proactively engaged with the hereditary system through their organizing body, the Office of the Wet’suwet’en. Since 2019, the team has had more than 2,800 engagements or interactions with the Office of the Wet’suwet’en and Hereditary House groups. We continue to seek a collaborative approach to addressing issues and concerns raised by some Wet’suwet’en people.”¹⁶⁵

Further, following the Wet’suwet’en Hereditary Chiefs informing the B.C. EAO in September 2014 of their rejection of the pipeline project based on the potential serious impacts to Wet’suwet’en territory and the fact that CGL did not provide sufficient information for the Nation to adequately analyze these impacts, the B.C. EAO did not continue consultations with the Hereditary Chiefs, but instead issued the environmental assessment certificate on 23 October 2014. According to CGL, since the issuance of the environmental assessment certificate, the company “has had more than 2,800 engagements or interactions with the Office of the Wet’suwet’en and Hereditary House groups, including meetings, site visits, information sessions, emails, phone calls and more.”¹⁶⁶ However, the company did not provide details about the content of these “engagements or interactions”. Based on documents reviewed by Amnesty International and interviews with members of the Wet’suwet’en Nation, CGL’s interactions with the Wet’suwet’en Hereditary Chiefs since the issuance of the environmental assessment certificate continued to focus on providing financial benefits, gathering information about possible mitigation efforts and providing updates on the pipeline project’s progress, as opposed to obtaining the Wet’suwet’en Nation’s free, prior and informed consent.¹⁶⁷ Human rights due diligence should be ongoing and continuous throughout the duration of a project.

Where States delegate consultation processes or where Indigenous Peoples choose to engage with a private company, the State retains ultimate responsibility for ensuring that human rights are protected. The State remains responsible for ensuring adequate consultation, in order to obtain the free, prior and informed consent of impacted Indigenous Peoples. In the event of inadequate consultation, the State is expected to act to correct the process or reject the proposed project.¹⁶⁸ During its mission to Canada in 2018, the UN Working Group on the issue of human rights and transnational corporations and other business enterprises learned that “consultations about business operations and development projects are delegated to and carried out by the business enterprises involved, with limited oversight.”¹⁶⁹ Amnesty International requested information from the Premier of B.C. on the concrete measures that have been taken by the province to consult with the Wet’suwet’en and obtain their free, prior and informed consent regarding the construction of the CGL pipeline.¹⁷⁰ However, the Premier’s answer did not respond to Amnesty International’s questions nor request to meet, and did also not refer to the pipeline project. It only indicated that,

“[O]ur government is committed to the ongoing work of reconciliation. We are proud to have been the first jurisdiction in Canada to implement the UN Declaration on the Rights of Indigenous Peoples through legislation, and we continue to work in consultation and co-operation with Indigenous Peoples to align laws with the UN Declaration.”¹⁷¹

According to international law and standards, Indigenous Peoples are entitled to give or withhold their consent to project proposals that affect them.¹⁷² Further, if a project is likely to have a significant, direct impact on Indigenous Peoples’ lives or land, territories or

¹⁶⁵ CGL/TC Energy, Communication to Amnesty International, 30 August 2023.

¹⁶⁶ CGL/TC Energy communication to Amnesty International, 6 December 2023.

¹⁶⁷ B.C. EAO, “Coastal GasLink Pipeline” (previously cited).

¹⁶⁸ Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 56; Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples, James Anaya, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (previously cited), para. 54.

¹⁶⁹ UNGA, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada, A/HRC/38/48/Add.1, 23 April 2018, documents-dds-ny.un.org/doc/UNDOC/GEN/G18/116/38/PDF/G1811638.pdf?OpenElement, para. 53.

¹⁷⁰ Amnesty International communications to B.C. Premier David Eby, 12 May 2023, 25 May 2023 & 17 July 2023.

¹⁷¹ B.C. Premier David Eby communication to Amnesty International, 29 June 2023.

¹⁷² Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), paras. 25-26.

resources, then consent is required.¹⁷³ The former UN Special Rapporteur on the rights of Indigenous Peoples, James Anaya, has indicated that even in situations where a valid public purpose can be established for the limitation of rights related to Indigenous territories, the requirement that the limitation be necessary and proportional will “generally be difficult to meet for extractive industries that are carried out within the territories of Indigenous Peoples without their consent . . . reinforcing the general rule of Indigenous consent to extractive activities within Indigenous territories.”¹⁷⁴

The Wet’suwet’en Hereditary Chiefs, on behalf of their clans, have consistently withheld their consent for the CGL pipeline project. When Indigenous Peoples withhold their consent, this is “expected to convince” the other party not to take the risk of proceeding with the project.¹⁷⁵ The United Nations Global Compact’s *Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples* advises companies not to proceed with a project after the withholding of consent by Indigenous Peoples.¹⁷⁶ The UN Expert Mechanism on the Rights of Indigenous Peoples adds that “a State or stakeholder that decides to proceed after consent is withheld by indigenous peoples, moves into a legal grey area and exposes itself to judicial review and other types of recourse mechanisms, potentially including international, regional and national tribunals, and by Indigenous Peoples’ own institutions.”¹⁷⁷ CGL and the province of B.C. decided to proceed with construction of the pipeline even though the Wet’suwet’en Hereditary Chiefs did not provide their free, prior and informed consent.

Canada has stated before human rights mechanisms its view that “the duty to consult guarantees a process, not a particular result. There is no duty to reach agreement, but there must be good faith efforts and a commitment to a meaningful process by both the government and the Indigenous group whose rights may be adversely impacted and must always include consideration of accommodation measures.”¹⁷⁸ CERD has noted that Canada misunderstands the free, prior and informed consent principle.¹⁷⁹ The State’s interpretation is not in accordance with international human rights standards on the duty to consult and to obtain the free, prior and informed consent of affected Indigenous Peoples.¹⁸⁰

Based on the foregoing, Amnesty International considers that the consultation process regarding the CGL pipeline did not meet the criteria developed by international human rights law and standards, breaching the Wet’suwet’en Nation’s collective right to consultation in order to obtain their free, prior and informed consent.

CGL claims that, more than 10 years ago, it “approached more than 20 Indigenous groups along [its] then proposed project corridor in accordance with Canadian law, and consistent with the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its guiding principles.”¹⁸¹ The company claims that its consultation efforts formed the foundation of attaining free, prior and informed consent where this was achievable.¹⁸²

As part of its Early Warning and Urgent Actions Procedures, CERD called on Canada in December 2019 to suspend all permits and approvals for the construction of the CGL pipeline until the free, prior and informed consent of the Wet’suwet’en people is obtained, following the full and adequate discharge of the duty to consult.¹⁸³ However, Amnesty International is not aware that Canada has taken measures to comply with this recommendation. As of date of publication of this report, the construction of the CGL pipeline continues.

¹⁷³ Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 35.

¹⁷⁴ Special Rapporteur on the rights of Indigenous Peoples, Extractive industries and Indigenous Peoples, A/HRC/24/41, 1 July 2013, undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F24%2F41&Language=E&DeviceType=Desktop&LangRequested=False, para. 36.

¹⁷⁵ Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 26(a).

¹⁷⁶ United Nations Global Compact, Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples, 2013, d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fhuman_rights%2FIndigenousPeoples%2FBusinessGuide.pdf, p. 70.

¹⁷⁷ Expert Mechanism on the Rights of Indigenous Peoples, Free, prior and informed consent: a human rights-based approach (previously cited), para. 28; Special Rapporteur on the rights of Indigenous Peoples, Extractive industries and Indigenous Peoples (previously cited), paras. 37-40.

¹⁷⁸ Canada, Government of Canada input to the United Nations Expert Mechanism on the Rights of Indigenous Peoples – Call for submissions on free, prior and informed consent, 2018, ohchr.org/sites/default/files/Documents/Issues/Peoples/EMRIP/FPIC/Canada.pdf, p. 4.

¹⁷⁹ CERD, Communication to Canada, 24 November 2020, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/ALE/CAN/9296&Lang=en.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/ALE/CAN/9296&Lang=en.

¹⁸⁰ CERD, Communication to Canada, 24 November 2020 (previously cited).

¹⁸¹ CGL/TC Energy communication to Amnesty International, 6 December 2023.

¹⁸² CGL/TC Energy communication to Amnesty International, 6 December 2023.

¹⁸³ CERD, Prevention of Racial Discrimination, including Early Warning and Urgent Action Procedure, Decision 1 (100), 13 December 2019, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/EWU/CAN/9026&Lang=en; CERD, Communication to Canada, 29 April 2022, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FALE%2FCAN%2F9554&Lang=en, p. 2; Expert Mechanism on the Rights of Indigenous Peoples, Impact of militarization on the rights of Indigenous Peoples, A/HRC/54/52, 8 August 2023, undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F54%2F52&Language=E&DeviceType=Desktop&LangRequested=False, para. 38.

7. THE USE OF INJUNCTIONS TO OVERRIDE THE WET'SUWET'EN NATION'S RIGHTS

7 THE USE OF INJUNCTIONS TO OVERRIDE THE WET'SUWET'EN NATION'S RIGHTS

Following the Wet'suwet'en Hereditary Chiefs' decision on behalf of the Wet'suwet'en Nation to not consent to the CGL pipeline in 2014, CGL sought a court injunction that would enable the company to proceed with pipeline construction.¹⁸⁴ On 26 November 2018, CGL filed an application before the Supreme Court of British Columbia (BCSC) against Wet'suwet'en land defenders Freda Huson (Chief Howilhkát) and Warner Naziel (Laksamshu Hereditary Chief Smogelgem¹⁸⁵) seeking an interlocutory injunction order to stop land defenders from “blockading the Morice FSR at the Morice River Bridge and preventing access to the area to the west of that area.”¹⁸⁶

Chief Howilhkát and Hereditary Chief Smogelgem were served with approximately 2,400 pages of material on 27 November 2018. The trial on the injunction application began merely two weeks later, on 14 December 2018.¹⁸⁷ Chief Howilhkát shared with Amnesty International the challenges that they faced in being able to properly respond to the injunction application, including hiring legal representation,

“We got issued papers and said we had to go to court. They didn’t even give us enough time to hire a lawyer. From the time that we got notified about the injunction, the period was so short that we couldn’t even find a lawyer. ... it might have been a week. We managed to get one lawyer. We couldn’t even have much ready in time and [CGL] had binders and binders of stuff.”¹⁸⁸

At trial, the judge agreed to adjourn the proceedings so that the Wet'suwet'en land defenders would have more time to review CGL's materials and prepare a response (CGL opposed the adjournment).¹⁸⁹ However, the judge granted an interim injunction that would be in place until the hearing on the interlocutory injunction application (which should have been held no later than 1 May 2019).¹⁹⁰ The injunction, which included enforcement provisions, prevented Wet'suwet'en land defenders and their supporters from blockading the Morice FSR in Wet'suwet'en territory.¹⁹¹ While recognizing the land defenders' arguments that “they are fully in accord with Wet'suwet'en law and the Wet'suwet'en legal process”, the judge concluded that,

“[T]here is evidence of irreparable harm if [CGL] is unable to access the area beyond the blockade and complete construction activities that must be commenced in January 2019 ... any delays to the construction schedule could jeopardize the entire project, causing losses to [CGL] and the various joint venture participants and contractors in the range of several hundred million dollars.”¹⁹²

On 21 December 2018, the interim injunction was expanded to include all of the Morice FSR.¹⁹³ On 10 June 2019, Chief Howilhkát and Hereditary Chief Smogelgem filed an application seeking to declare the interim injunction order invalid, however, this application was dismissed by the BCSC.¹⁹⁴

¹⁸⁴ Yellowhead Institute, *The UN Declaration on the Rights of Indigenous Peoples in Canada: Lessons from B.C.*, December 2020, yellowheadinstitute.org/wp-content/uploads/2020/12/yellowhead-institute-bc-undrip-report-12.20-compressed.pdf, p. 19.

¹⁸⁵ Laksamshu (Fireweed and Owl Clan) is one of the five Wet'suwet'en clans. Hereditary Chief Smogelgem is House Chief of Tsaiyex (Sun House). OW, “Wet'suwet'en Hereditary Chiefs House / Clan”, wetsuweten.com/files/Chiefs_org_chart.pdf.

¹⁸⁶ In-person interview with Freda Huson (Chief Howilhkát), 30 May 2023, Unist'ot'en; BCSC, *Coastal GasLink Pipeline Ltd. v Huson*, 2018 BCSC 2343 (previously cited), para. 3.

¹⁸⁷ BCSC, *Coastal GasLink Pipeline Ltd. v Huson*, 2018 BCSC 2343 (previously cited), para. 21; Yellowhead Institute, *An Analysis of Coastal GasLink's Notice of Application for Injunction*, 2019, [redpaper.yellowheadinstitute.org/wp-content/uploads/2019/11/coastal-gaslink-injunction-analysis.pdf](https://yellowheadinstitute.org/wp-content/uploads/2019/11/coastal-gaslink-injunction-analysis.pdf), para. 2.

¹⁸⁸ In-person interview with Freda Huson (Chief Howilhkát), 30 May 2023, Unist'ot'en.

¹⁸⁹ BCSC, *Coastal GasLink Pipeline Ltd. v Huson*, 2018 BCSC 2343 (previously cited), paras. 22-23.

¹⁹⁰ BCSC, *Coastal GasLink Pipeline Ltd. v Huson*, 2018 BCSC 2343 (previously cited), para. 34.

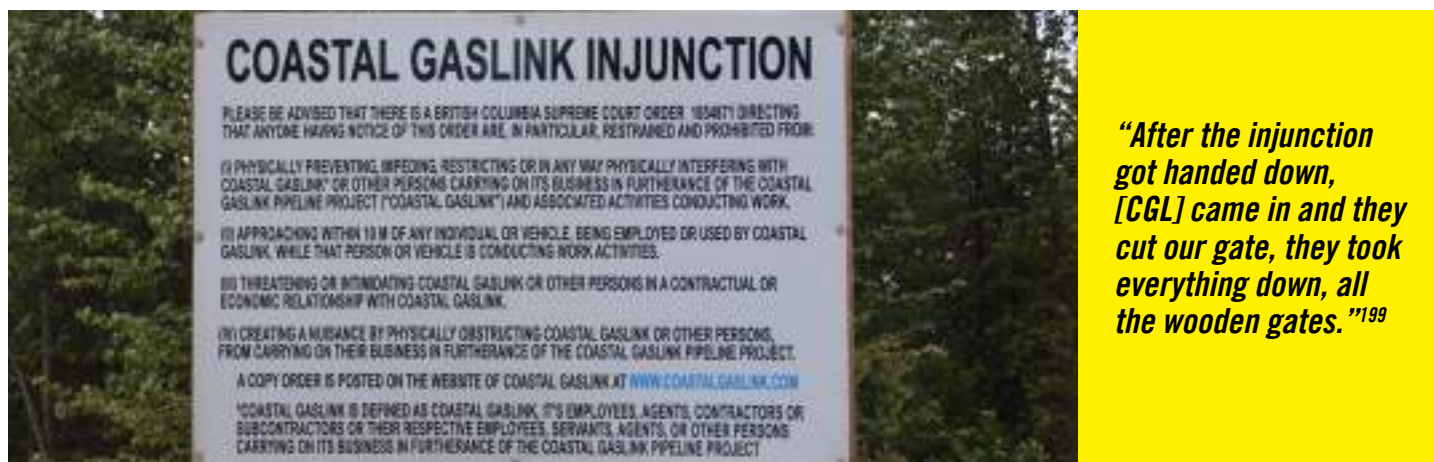
¹⁹¹ BCSC, *Coastal GasLink Pipeline Ltd. v Huson*, 2018 BCSC 2343 (previously cited), paras. 25, 34-35.

¹⁹² BCSC, *Coastal GasLink Pipeline Ltd. v Huson*, 2018 BCSC 2343 (previously cited), para. 31.

¹⁹³ BCSC, *Coastal GasLink Pipeline Ltd. v Huson*, 2019 BCSC 2264 (previously cited), para. 4.

¹⁹⁴ BCSC, *Coastal GasLink Pipeline Ltd. v Huson*, 2019 BCSC 2264 (previously cited), paras. 8, 89-101.

At the interlocutory injunction hearing, Chief Howihkat and Hereditary Chief Smogelgem argued that Wet’suwet’en authorization is required in order for CGL to proceed on Wet’suwet’en territories and that since this authorization had not been obtained, their land defence actions were justified under Wet’suwet’en law.¹⁹⁵ Nevertheless, the judge ultimately determined that the public interest weighed in favour of building the pipeline.¹⁹⁶ On 31 December 2019, the BCSC granted CGL an interlocutory injunction order which prevents anyone from interfering with CGL’s work and applies to “the vicinity of the area in and around the Morice River Bridge or any of the areas accessed by Morice Forest Service Road (Morice FSR 4656, Road Section 01), including the areas accessed by the following other forestry roads (and areas and roads accessed by those roads): the Morice West Forest Service Road, Shea Creek FSR, CP 571 and CP 573”, all within unceded Wet’suwet’en territory and not necessarily close to pipeline construction sites.¹⁹⁷ The injunction includes an enforcement clause that “authorizes the RCMP to arrest any person that they have reasonable and probable grounds to believe is contravening the injunction.”¹⁹⁸ This injunction remains in force at the time of publication of this report.



The UN Special Rapporteur on the situation of human rights defenders has observed that “legal forums are increasingly being used to silence [land] defenders, particularly those who oppose large-scale development projects and the actions of companies.”²⁰⁰ The Yellowhead Institute has conducted extensive research into the use of injunctions by companies and government authorities in Canada to “override the lack of consent by Indigenous Peoples to development on their lands” and to “expedite the use of force against First Nations.”²⁰¹ In a comprehensive study, the Institute analyzed over 100 cases of injunctions served against Indigenous Peoples, as well as injunctions brought by Indigenous Peoples against companies or the government. The Institute found that while 76% of injunctions filed against Indigenous Peoples by corporations were granted, 81% of injunctions filed against corporations by Indigenous Peoples and 82% of those filed by Indigenous Peoples against the government, were denied.²⁰² Likhts’asmisyu Hereditary Chief Dtsa’hyl told Amnesty International that, “they ended up using the injunction as a battering ram to go through our lands, without any consultation with the Hereditary Chiefs.”²⁰³

¹⁹⁵ BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited), paras. 124-125, 142.

¹⁹⁶ BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited), para. 222.

¹⁹⁷ BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited); BCSC, Injunction Order, 31 December 2019, coastalgaslink.com/siteassets/pdfs/about/regulatory/2020-01-07-order-re-interlocutory-injunction.pdf.

¹⁹⁸ BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited). Public Safety Canada, “Coastal GasLink Pipeline Protests”, 5 May 2022, publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20211207/14-en.aspx; The interlocutory injunction prohibits anyone with notice of the order from “(i) physically preventing, impeding, restricting or in any way physically interfering with, any person or vehicle travelling to or accessing the vicinity of the area in and around the Morice River Bridge (being the bridge over the Morice River on the Morice West Forest Service Road) or any of the areas accessed by Morice Forest Service Road (also known as the Morice FSR 4656, Road Section 01), including the areas accessed by the following other forestry roads (and areas and roads accessed by those roads): the Morice West Forest Service Road, Shea Creek FSR, CP 571 and CP 573 (the “blockaded area”); (ii) physically preventing, impeding, restricting or in any way physically interfering with, or counselling others to prevent, impede, restrict or physically interfere with, CGL, its employees, agents, contractors or subcontractors carrying on its business in furtherance of the CGL pipeline project, and in particular pre-construction activities and construction of the project in the blockaded area; (iii) approaching within 10 metres of any individual vehicle, being employed or used by CGL, its contractors or subcontractors, or their respective employees, servants, agents or other persons in a contractual or economic relationship with CGL, while that person or vehicle is activity working on pre-construction activities or construction of the project, in the blockaded area; (iv) threatening or intimidating CGL, its contractors or subcontractors and their respective employees, servants, agents or other persons in a contractual or economic relationship with CGL; (v) physically interfering with or counselling others to physically interfere with the performance by CGL of its contractual relations with its employees, servants, agents or other persons in a contractual or economic relationship with CGL; (vi) physically interfering with or counselling others to physically interfere with the performance by CGL’s contractors or subcontractors of their contractual relations with CGL; and (vii) creating a nuisance by physically obstructing CGL, its contractors or subcontractors from carrying on their business”. The court also ordered “that any peace officer be and is hereby ordered to enforce the injunction”.

¹⁹⁹ In-person interview with Freda Huson (Chief Howihkat), 30 May 2023, Unist’ot’en.

²⁰⁰ Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders (previously cited), para. 64.

²⁰¹ Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (previously cited), pp. 25, 29-30; Yellowhead Institute, The UN Declaration on the Rights of Indigenous Peoples in Canada: Lessons from B.C. (previously cited), pp. 18-19; In-person interview with Kolin Sutherland-Wilson, 29 May 2023, Smithers, B.C.

²⁰² Yellowhead Institute, Land Back: A Yellowhead Institute Red Paper (previously cited), pp. 10 & 30; Marc Kruse & Carrie Robinson, Yellowhead Institute, Injunctions by First Nations: Results of a National Study, Policy Brief Issue 43, 14 November 2019, yellowheadinstitute.org/wp-content/uploads/2019/11/injunction-brief.pdf, p. 2; Yellowhead Institute, “A review of over 100 injunction cases involving First Nations across Canada found the following”, 2019, redpaper.yellowheadinstitute.org/wp-content/uploads/2019/11/injunction-infographics.pdf.

²⁰³ In-person interview with Chief Dtsa’hyl (Adam Gagnon), 29 May 2023, Smithers, B.C.

The Yellowhead Institute's research also found that "Indigenous law justifications are not persuasive in injunction cases."²⁰⁴ As mentioned above, Freda and Chief Hereditary Smogelgem's justification that the blockades were erected in accordance with Wet'suwet'en law did not compel the judge to deny the injunction."²⁰⁵

"Injunctions are specifically set up for industry and government because they know if it's unceded land, even in their own laws, they know we have the right to be here, and that they need our consent. Injunction is the government and industry's way of ignoring our rights and ignoring that we have every right to be here, so they've created something to benefit themselves. The injunction as I see it is a legal means for government and industry to push through projects, ignore us, push us out or criminalize us."²⁰⁶

Amnesty International observes several tactics used by CGL in the litigation of the injunction application against the Wet'suwet'en land defenders. First, the company chose to only name Chief Howilhat and Hereditary Chief Smogelgem as the parties, not Unist'ot'en, Dark House or any of the other Wet'suwet'en house groups or clans that oppose the pipeline and whose territory the pipeline would pass through. According to the Yellowhead Institute, "[b]y naming Freda and Smogelgem as individuals, CGL identifies them to the court as blockaders. They are represented as individuals whose actions are taken in opposition to an industrial project rather than as people protecting their *Yin'tah*, or territory."²⁰⁷ Second, CGL filed the injunction application on 26 November 2018, and it was heard less than three weeks later, on 14 December 2018. During this time, Chief Howilhat and Hereditary Chief Smogelgem had to find a lawyer to represent them and work through over a thousand pages of documents.²⁰⁸ Lastly, CGL filed the injunction application in Prince George which is approximately five hours away from the Unist'ot'en.²⁰⁹ These litigation tactics are consistent with the practices of businesses and other actors protecting business' interests, of using judicial means with the intention of harassing, intimidating, exhausting and/or depleting the resources, both financial and psychological, of human rights, land and environmental defenders.²¹⁰

When Amnesty International asked CGL about the injunction, representatives of the company stated that "the court found that Coastal GasLink established that refusing to grant an injunction would cause Coastal GasLink and many others serious and irreparable harm", adding that "the current order is enforceable and facilitates Coastal GasLink's continued safe access in the area."²¹¹

CGL failed to obtain the free, prior and informed consent of the Wet'suwet'en Hereditary Chiefs for the CGL pipeline project. Nevertheless, the company is proceeding with pipeline construction in violation of the Wet'suwet'en Nation's rights to self-governance and to control their territories. The construction of the pipeline in violation of these rights has resulted in Wet'suwet'en land defenders exercising their collective Indigenous rights and adopting peaceful land defence actions, specifically blocking the Morice FSR on three occasions and a CGL drill pad on one occasion, in order to protect their territory. The actions of the Wet'suwet'en land defenders in expressing their dissent and opposing the pipeline construction, are in exercise of their Indigenous rights and rights to freedom of expression of peaceful assembly, as protected by international human rights law and standards, which are binding for Canadian authorities.

²⁰⁴ Marc Kruse & Carrie Robinson, Yellowhead Institute, *Injunctions by First Nations: Results of a National Study* (previously cited), pp. 2-3. According to the Yellowhead Institute, "A review of the case law suggests that First Nations in injunction cases have a difficult time overcoming the 'irreparable harm' portion of the test [for injunctions] given their pleadings are not based on property rights but on sacred duties to protect the land".

²⁰⁵ Marc Kruse & Carrie Robinson, Yellowhead Institute, *Injunctions by First Nations: Results of a National Study* (previously cited), p. 2; Yellowhead Institute, *The UN Declaration on the Rights of Indigenous Peoples in Canada: Lessons from B.C.* (previously cited), pp. 21-23.

²⁰⁶ In-person interview with Freda Huson (Chief Howilhat), 30 May 2023, Unist'ot'en.

²⁰⁷ Yellowhead Institute, *An Analysis of Coastal GasLink's Notice of Application for Injunction* (previously cited), para. 1; Dr. Karla Tait & Anne Spice, *An Injunction Against the Unist'ot'en Camp: An Embodiment of Healing Faces Eviction* (previously cited), p. 3.

²⁰⁸ Yellowhead Institute, *An Analysis of Coastal GasLink's Notice of Application for Injunction* (previously cited), para. 2.

²⁰⁹ Yellowhead Institute, *An Analysis of Coastal GasLink's Notice of Application for Injunction* (previously cited), para. 3.

²¹⁰ Business and Human Rights Information Centre, *SLAPPs in Latin America: Strategic lawsuits against public participation in the context of business and human rights*, February 2022, media.business-humanrights.org/media/documents/2022_SLAPPs_in_LatAm_EN_v7.pdf, pp. 2-3.

²¹¹ CGL/TC Energy, *Communication to Amnesty International*, 30 August 2023.

In this regard, the United National Human Rights Committee has clarified that assembly rights are “a valuable tool that can and has been used to recognize and realize a wide range of other rights, including economic, social and cultural rights” and that “it is of particular importance to marginalized individuals and groups.”²¹² The Human Rights Committee has emphasized that the onus is on the authorities to justify any restrictions on case-by-case basis and show that any such restrictions meet the requirement of legality, and are also both necessary for and proportionate – the least intrusive measures – to at least one of the permissible grounds for restrictions.²¹³ Moreover, the Committee has also stressed that “the imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it” and in relation to any restrictions on the time, place and manner of assemblies, that authorities must allow, as far as possible, participants to “assemble within sight and sound of their target audience, or at whatever site is otherwise important to their purpose”.²¹⁴ In granting the injunction, which was requested by CGL, the authorities have failed to comply with their human rights obligation to respect, protect and facilitate the human rights of the Wet’suwet’en land defenders and have imposed restrictions on such rights that are disproportionate. The injunction permits CGL to proceed with pipeline construction because its enforcement clause authorizes the RCMP to arrest any person they believe is contravening the injunction’s terms.

Amnesty International considers that the injunction order unduly restricts the rights of the Wet’suwet’en Nation to self-governance and to control their territories. Since 21 December 2018, the injunction has applied to the entire Morice FSR, which is over 60 kilometres long and the majority of which is not located close to pipeline construction sites. While Wet’suwet’en land defenders and their supporters have taken specific actions to block the Morice FSR and a CGL drill pad on three occasions, during the majority of the time that the injunction has been in place, Wet’suwet’en land defenders have not actively impeded pipeline construction. The Gidimt’en Checkpoint, Lamprey Village and Unist’oten Healing Centre, for example, in no way impede the access of CGL employees to pipeline construction sites. Further, Wet’suwet’en land defenders and their supporters permanently live at these sites, as well as at other residences within Wet’suwet’en territory. Nevertheless, these areas are covered by the injunction’s geographical scope. The injunction has led to an increased and permanent RCMP and private security presence on Wet’suwet’en territory, which has resulted in the ongoing harassment, unlawful surveillance and intimidation of members of the Wet’suwet’en Nation, which will be discussed in more detail below. This permanent RCMP presence, along with the injunction’s overbroad enforcement provisions and geographical application means that members of the Wet’suwet’en Nation run the risk of being arbitrarily arrested just for being present on the *Yin’tah*.²¹⁵ This is especially significant because the Wet’suwet’en are Indigenous Peoples who have an important connection to their ancestral territory.

Based on the abovementioned reasons, Amnesty International considers that the injunction’s terms are overbroad in scope and impact, and that it breaches the human rights of members of the Wet’suwet’en Nation to self-governance and to control their territories, as well as their human rights to freedom of peaceful assembly and freedom of movement insofar as it aims at preventing their actions to defend their territory in a disproportionate manner. Further, the injunction order allows CGL to proceed with pipeline construction without the Wet’suwet’en Nation’s free, prior and informed consent, constituting an ongoing infringement of its rights to self-governance.

²¹² UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Art. 21), 17 September 2020, CCPR/C/GC/37, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>, para. 2.

²¹³ HRC, General Comment 37 (previously cited), para. 36; ICCPR, Article 21.

²¹⁴ HRC, General Comment 37 (previously cited), paras. 36 & 53.

²¹⁵ United Nations Special Procedures, Communication to Canada, AL CAN 2/2022, 13 January 2023, spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27260, p. 3; Gidimt’en Land Defenders, Militarization of Wet’suwet’en Lands and Canada’s Ongoing Violations (previously cited), para. 5; Yellowhead Institute, An Analysis of Coastal GasLink’s Notice of Application for Injunction (previously cited), para. 21; Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay (previously cited), para. 64.

**8. VIOLATIONS OF
WET'SUWET'EN LAND
DEFENDERS' HUMAN RIGHTS**

8 VIOLATIONS OF WET'SUWET'EN LAND DEFENDERS' HUMAN RIGHTS

The construction of the CGL pipeline, proceeding without the Wet'suwet'en Hereditary Chief's free, prior and informed consent, the injunction and the corresponding increased RCMP and private security presence on their territory, has resulted in multiple violations of Wet'suwet'en land defenders' human rights, which all stem from violations of the Nation's rights to self-governance, to decide what economic development takes place on their ancestral territory and to free, prior and informed consent.

As indicated above, the injunction's enforcement provisions permit law enforcement officers to arrest any individual with notice of the order who is physically preventing, impeding restricting or interfering with CGL, its employees, agents, contractors or subcontractors and/or pipeline construction activities.

8.1 INTIMIDATION, HARASSMENT AND UNLAWFUL SURVEILLANCE

Amnesty International has documented that, since pipeline construction activities began, the RCMP, CRU and employees of Forsythe Security (the private security firm hired by CGL), have subjected Wet'suwet'en land defenders within their territory to intrusive and aggressive surveillance, harassment and intimidation.²¹⁶ Some actions by the RCMP appear to be discriminatory, degrading and highly culturally insensitive. This represents disproportionate use of police powers aimed at intimidating Wet'suwet'en land defenders and preventing their land defence activities. Wet'suwet'en land defenders shared with Amnesty International that they believe the RCMP and Forsythe Security are trying to force land defenders off the territory so that CGL can proceed with pipeline construction. They also shared that, on several occasions, they were told by RCMP officers that the Gidimt'en Checkpoint was not their home and that they were on Crown land.²¹⁷

The RCMP, Forsythe Security and CGL employees are identifiable by their uniforms and the fact that their vehicles' license plates indicate their affiliation.

Patrols and incursions into Wet'suwet'en Territory

The RCMP, CRU and Forsythe Security have a constant presence along the Morice FSR. Their presence is not limited to areas close to pipeline construction sites; it is throughout the *Yin'tah*, including outside of land defenders' homes. Members of the Wet'suwet'en Nation believe that they are targeted and profiled for being Indigenous and for being land defenders. During its visits to Wet'suwet'en territory in July 2022 and May-June 2023, Amnesty International observed the ongoing presence of these actors along the Morice FSR, as well as outside of the Gidimt'en Checkpoint and the Unist'ot'en Healing Centre (which are the permanent residences of several land defenders).

Wet'suwet'en land defenders interviewed by Amnesty International indicated that they have near daily encounters with the RCMP and CRU which they deemed to be intimidatory, invasive and excessive. For example, between February and June 2022, members of the Gidimt'en Clan documented near constant RCMP patrols at the Gidimt'en Checkpoint and Lamprey Village, and that RCMP officers entered the Gidimt'en Checkpoint and Lamprey Village approximately 94 times in March, approximately 97 times in April and approximately 78 times in May.²¹⁸ RCMP officers often refused to provide reasons for their constant incursions into the two sites. However, they sometimes read those present the terms of the injunction before entering. It is important to note that these police actions were targeted against members of the Wet'suwet'en Nation who were going about their daily lives on their ancestral territory; they were not undertaking actions which could violate the terms of the injunction.²¹⁹ Further, Gidimt'en Checkpoint and Lamprey Village do not block the Morice FSR road in any way and are kilometres away from pipeline construction sites.

Documents reviewed by Amnesty International, including a civil claim lodged by members of the Wet'suwet'en Nation before the B.C. Supreme Court, and interviews with land defenders demonstrate that acts of intimidation and harassment by the RCMP against Wet'suwet'en land defenders and their supporters include near daily entries into the Gidimt'en Checkpoint and Lamprey Village, often without providing any reason for doing so; shining high-beams and spotlights into the homes and buildings that make up the Gidimt'en Checkpoint and Lamprey Village throughout the night; seizing equipment and property from both sites, including locks and chains;

²¹⁶ Amnesty International asked CGL/TC Energy for a copy of the contract signed between CGL and Forsythe Security. CGL/TC Energy did not provide it. Amnesty International asked Forsythe Security about these allegations, however, Forsythe Security did not respond.

²¹⁷ BCSC, Notice of Civil Claim (previously cited), paras. 96-97, 111.

²¹⁸ BCSC, Notice of Civil Claim (previously cited), para. 65; Gidimt'en Checkpoint, "Gidimt'en Civil Suit", yintahaccess.com/news/2022/7/13/gidimten-civil-suit. This documentation was done as evidence for a civil claim filed by Wet'suwet'en land defenders against the RCMP, CGL and Forsythe Security.

²¹⁹ BCSC, Notice of Civil Claim (previously cited).

interrupting the construction of the Feast Hall; demanding photo identification from people travelling down the Morice FSR; demanding identification from members of the Wet'suwet'en Nation even when their identity is already known to the officer; threatening to arrest land defenders and their supporters; demanding that individuals who were previously arrested on the territory provide the terms of their conditions of release from jail; and, taking pictures and filming land defenders living at the Gidimt'en Checkpoint.²²⁰ On several occasions, RCMP officers have interrupted cultural activities at the Gidimt'en Checkpoint including drumming and fire ceremonies.²²¹ On another occasion, RCMP officers interrupted a ceremony being held to grieve the death of a community member, even after what was happening was explained to them and they were asked not to enter.²²²

Amnesty International asked the RCMP and CRU about these allegations.²²³ The RCMP responded that "it would be improper to comment on the content of [Amnesty International's] letter(s)" and noted that, in spring 2023, the Chairperson of the Civilian Review and Complaints Commission for the RCMP (CRCC) initiated an investigation into the activities and operations of CRU.²²⁴

Wet'suwet'en land defenders interviewed by Amnesty International indicated that they also have near daily encounters with employees of Forsythe Security. As a private security company contracted by a company to protect its facilities, worksites and personnel, Forsythe Security does not have and should not exercise policing powers.²²⁵ However, in practice, Forsythe Security has consistently acted well outside its permitted duties and its area of operation, proactively seeking out, unlawfully surveilling and intimidating Wet'suwet'en land defenders. The organization has documented that acts of intimidation and harassment by employees of Forsythe Security against Wet'suwet'en land defenders and their supporters include permanently stationing themselves along the Morice FSR; stationing themselves directly outside the Gidimt'en Checkpoint, Lamprey Village and the Unist'ot'en Healing Centre, and monitoring all activity, including cultural activities; filming Wet'suwet'en land defenders who live on the territory and visitors to the territory, including children; and, routinely following Wet'suwet'en land defenders and other members of the Nation in vehicles along the Morice FSR to and from the Gidimt'en Checkpoint, Lamprey Village, the Unist'ot'en Healing Centre, land defenders' homes, and sometimes for up to 50 kilometers into the nearby townships.²²⁶

Amnesty International asked Forsythe Security and CGL about these incidents.²²⁷ Forsythe Security did not respond. CGL responded, "Coastal GasLink security is not and has never been armed. Coastal GasLink has an obligation to control access to its worksites to ensure the safety of both the public and its workers, however we always keep the lines of communication open to help facilitate access for members of Indigenous communities when it is safe to do so."²²⁸ The company also stated, "A number of different regulatory approvals, industry codes and standards and internal plans and policies require Coastal GasLink or its contractors to take actions to maintain safety and security of the project and its workforce, including through provision of 24 hour on-site security and controlled access to worksite and workforce lodging facilities."²²⁹

Random police stops and questioning

Wet'suwet'en land defenders interviewed by Amnesty International shared that they are constantly pulled over by RCMP officers while travelling on the Morice FSR, as well as in nearby cities including Houston and Smithers, all of which are located within Wet'suwet'en territory. According to Wet'suwet'en land defenders, these encounters ranged from random stops under the pretense of "safety inspections", stops to monitor drinking and driving, and stops resulting in fines due to allegedly dirty license plates. Numerous members of the Wet'suwet'en Nation also shared that they feel that RCMP officers target them because they are Indigenous and because they are land defenders, and that these "random" police stops are a means of intimidating them. During Amnesty International's research trip to Wet'suwet'en territory in July 2022, Amnesty International witnessed a Wet'suwet'en land defender being stopped by the RCMP on the Morice FSR and asked to show her identification.

²²⁰ BCSC, Notice of Civil Claim (previously cited), paras. 66-171.

²²¹ BCSC, Notice of Civil Claim (previously cited), para. 106. A fire ceremony involves building and lighting a small, controlled sacred fire for wellness, healing and gatherings.

²²² BCSC, Notice of Civil Claim (previously cited), para. 119.

²²³ Amnesty International communications to the RCMP (17 May, 11 July & 20 November 2023) and CRU (18 May and 11 July 2023).

²²⁴ RCMP communications to Amnesty International, 18 July & 21 November 2023.

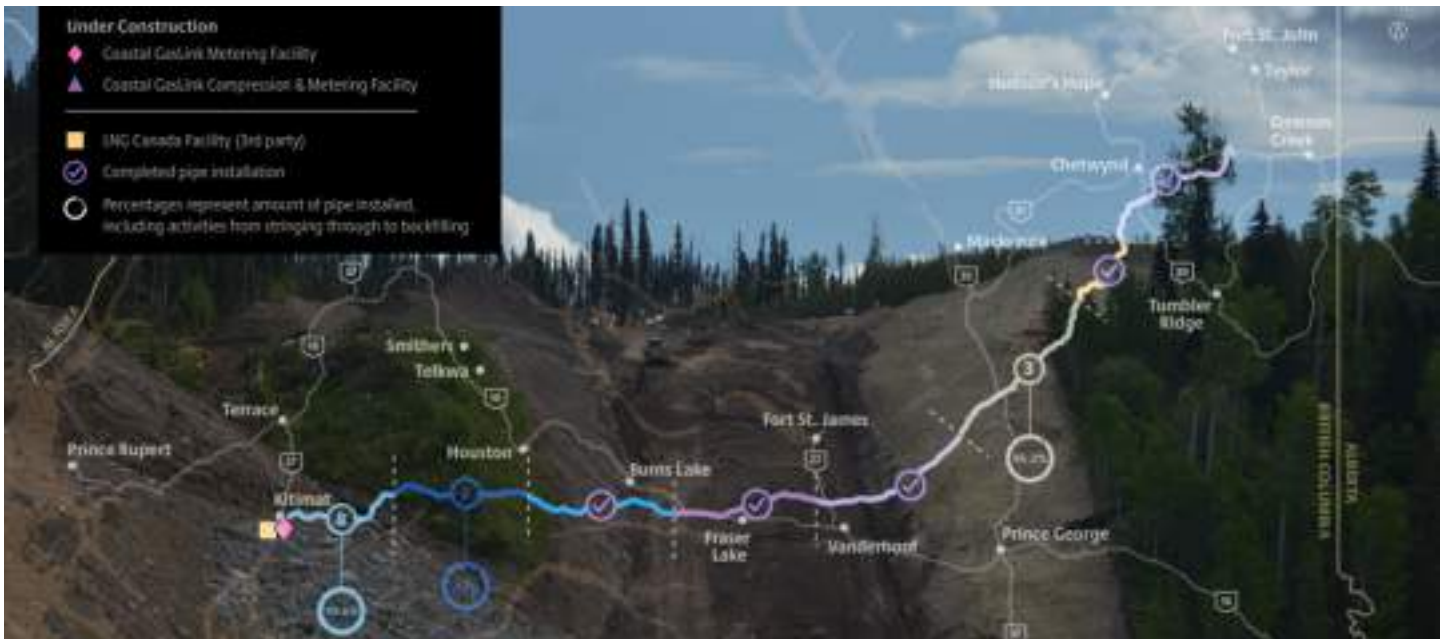
²²⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the right to life and the use of force by private security providers in law enforcement contexts, A/HRC/32/39, 6 May 2016, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F32%2F39&Language=E&DeviceType=Desktop&LangRequested=False>, para. 73.

²²⁶ BCSC, Notice of Civil Claim (previously cited), paras. 172-77. In-person interviews with Wet'suwet'en land defenders, June 2023, Gidimt'en Checkpoint, Unist'ot'en & Smithers, B.C.;

²²⁷ Amnesty International communications to CGL (17 May, 17 July & November 23, 2023) and Forsythe Security (9 October & 23 November 2023); Amnesty International virtual meeting with CGL/TC Energy representatives, 22 June 2023.

²²⁸ CGL/TC Energy, Ccommunication to Amnesty International, 30 August 2023.

²²⁹ CGL/TC Energy communication to Amnesty International, 6 December 2023.



“Ever since C-IRG came to the Wet’suwet’en territories, it’s felt like a police state all along that road, all around Houston, B.C. You know, I pulled over to take a nap at the rest stop in Houston. I wake up and there’s police trucks all around me, knocking on my doors and asking me completely irrelevant questions, just blatant harassment.”²³⁰

“When I encounter them, the implication is right away that I broke the law, that I’m a criminal, without having ever done any crime. I get pulled over on these roads when I travel here. And it’s usually by multiple officers demanding this, demanding that, under threat of arrest. I have encountered militarized RCMP on my own territory.”²³¹

“Sometimes they’ll issue tickets or fines to try to make life difficult for you.”²³²

“You get treated like a criminal. We ended up getting a fine for having a dirty license plate. When I turned around the officer that signed the ticket had a license plate that was dirtier than mine.”²³³



²³⁰ In-person interview with Kolin Sutherland-Wilson, 29 May 2023, Smithers, B.C.
²³¹ In-person interview with Travis Pete, Patience Muldoc and Jesse Stoepler, 31 May 2023, Gidimt'en Checkpoint.
²³² In-person interview with Dr. Karla Tait, 30 May 2023, Unist'ot'en.
²³³ In-person interview with Travis Pete, Patience Muldoc and Jesse Stoepler, 31 May 2023, Gidimt'en Checkpoint.

Others shared that they are commonly pulled over under the suspicion of drinking and driving. Once again, they feel that they targeted because they are Indigenous, which may show racist undertones. Virginia Pierre, a Wet'suwet'en matriarch, told Amnesty International about being subjected to two police stops in one day while on the highway under the pretext of sobriety checks. The first encounter occurred in the morning and was particularly distressing due to the nature of the questioning. Virginia was later stopped by a different officer near Houston on the grounds of a perceived failure to signal while turning, once again leading to accusations of intoxication. She believes that these repeated stops are used to provoke and intimidate Indigenous Peoples.²³⁴

“They also do random safety checks on the Forest Service Road in which they only stop non-industry vehicles. They’ll say, ‘Oh, this is a safety check. We’re just making sure folks aren’t drinking on the roads or making sure folks have their driver’s licences and are driving safe.’”²³⁵

As one example, on one occasion, Wet'suwet'en land defenders Sleydo' and Auntie Janet Williams reported travelling down the Morice FSR to be with a family member after learning of a death in the family. They were pulled over by six RCMP vehicles and the officers asked to check their licenses. At the same time, other vehicles, including CGL vehicles, were allowed to pass without being stopped.

“We can’t even grieve without being filmed and harassed by the police and private security.”²³⁶

These near constant encounters with the RCMP make it difficult for members of the Wet'suwet'en Nation to freely move about their ancestral territory and they significantly disrupt their daily lives.

Being surveilled and followed

RCMP and CRU officers, and Forsythe Security employees, follow members of the Wet'suwet'en Nation travelling through their territory along the Morice FSR, as well as in nearby cities. They also photograph and record members of the Nation. Amnesty International observed these tactics during its visits to Wet'suwet'en territory in July 2022 and May-June 2023. Members of the organization's research team were also followed, photographed and filmed by the RCMP and Forsythe Security on multiple occasions. When Amnesty International shared this with CGL and asked the company about Forsythe Security's mandate, CGL representatives only responded that Forsythe Security monitors the road “to control access to its worksites to ensure the safety of both the public and its workers” and that they “want to know where people are.”²³⁷ However, these incidents occur all along the Morice FSR, not only in the vicinity of worksites. For example, Amnesty International's research team was photographed, filmed and followed over 20 kilometres away from pipeline worksites. The organization also asked Forsythe Security about these allegations but did not receive a response.

“There’s constant surveillance by CGL since they started construction on the drill pad underneath Wedzin Kwa, which is only a kilometre upstream from us here at the Healing Centre. They’ve positioned their security guard right across the river, initially with their headlights shining onto our Healing Centre door for the first couple of months.”²³⁸

Wet'suwet'en land defenders shared with Amnesty International numerous incidents of being followed by the RCMP and Forsythe Security while moving about and living on their ancestral territory. Sleydo' shared that, on one occasion, she was travelling along the Morice FSR with her family when she was stopped by a RCMP vehicle and asked for her license and registration. Just four kilometres down the road, she was pulled over again by two RCMP officers and threatened with various traffic offences.²³⁹

“Some [Forsythe] security people follow us when we go out. It’s very invasive. They’re parked out there. They can see everything that we do.”²⁴⁰

²³⁴ In-person interview with Virginia Pierre, 29 May 2023, Smithers, B.C.

²³⁵ In-person interview with Dr. Karla Tait, 30 May 2023, Unist'ot'en.

²³⁶ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

²³⁷ Virtual interview with CGL/TC Energy representatives, 22 June 2023.

²³⁸ In-person interview with Dr. Karla Tait, 30 May 2023, Unist'ot'en.

²³⁹ BCSC, Notice of Civil Claim (previously cited), para. 137.

²⁴⁰ In-person with Brenda Michell (Chief Geltiy), 30 May 2023, Unist'ot'en.

“We were gonna go somewhere to go to the bathroom and [Forsythe Security] was following us everywhere. We went way off the road. Usually, they just wait on the road. But this guy followed us right off the road. Like he got out of the car and followed us.”²⁴¹

Land defenders also shared countless instances of being filmed and photographed while on their territory. Many of these incidents occurred in places located kilometres away from pipeline worksites.

“[Forsythe Security] park right outside of the camps with a camera in their truck. They follow people not just in their car but outside of their cars off road as well.”²⁴²

“[Forsythe Security] are videoing us and following us everywhere we go”²⁴³

According to members of the Wet’suwet’en Nation, given that the Morice FSR is an unpaved, single-lane road, along with the remoteness of the territory and surrounding villages, the RCMP and Forsythe Security know who they are, and it is easy for them to monitor their whereabouts. Further, some land defenders shared with Amnesty International instances in which they perceived that both the RCMP and Forsythe Security were tracking them. Unist’ot’en land defender Freda Huson shared that, on one occasion, she was travelling back to Unist’ot’en from Houston when she heard over the radio Forsythe Security personnel discussing her movements on the same radio channel, saying that she was approaching a specific kilometre on the Morice FSR.²⁴⁴

Wet’suwet’en land defenders shared that they believe that the RCMP uses drones to monitor their homes and camps, and indicated that they have only noticed drones since pipeline construction began.²⁴⁵

“Almost any given night, there’s a few different drones positioned around our Healing Centre. It’s just kind of a sad reality.”²⁴⁶

The RCMP and Forsythe Security do not only surveil, film and photograph the Wet’suwet’en land defenders but also their family members, including children.

“There was a time when Forsythe was sitting right outside camp here. They could see inside, and they are filming our kids, like on their personal phones. We have no control over what they’re doing with that footage.”²⁴⁷

The ongoing unlawful surveillance and intimidation by the RCMP and Forsythe Security, from the time that pipeline construction activities began to the time of publication of this report, has severe impacts on Wet’suwet’en land defenders’ ability to be and feel safe on their territory. Members of the Gidimt’en Clan shared, “Many elders are so terrified and scared of this harassment that they no longer engage in some land-based activities, which further harms our intergenerational knowledge transfer.”²⁴⁸ The actions of the RCMP and Forsythe Security also affect Wet’suwet’en land defenders’ rights to hunt, trap, fish, gather and conduct ceremonies on their territory by making them feel uncomfortable and afraid and therefore limiting their ability to enjoy and move around the *Yin’tah*.

241 In-person with Freda Huson (Chief Howihkat), 30 May 2023, Unist’ot’en.

242 In-person with Brenda Michell (Chief Geltiy), 30 May 2023, Unist’ot’en.

243 In-person with Brenda Michell (Chief Geltiy), 30 May 2023, Unist’ot’en.

244 In-person with Freda Huson (Chief Howihkat), 30 May 2023, Unist’ot’en.

245 Vice News, “RCMP Admits It’s Monitoring Wet’suwet’en Camps by Air Now”, 22 January 2020, [vice.com/en/article/bvgmjw/rcmp-admits-its-monitoring-wetsuweten-camps-by-air-now](https://www.vice.com/en/article/bvgmjw/rcmp-admits-its-monitoring-wetsuweten-camps-by-air-now).

246 In-person interview with Dr. Karla Tait, 30 May 2023, Unist’ot’en.

247 In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

248 Gidimt’en Checkpoint, “Gidimt’en Civil Suit” (previously cited).

“We’ve given you absolutely no cause or reason to continue surveilling us. It’s making our elders, youth and everybody else uncomfortable that you have a stranger watching our front door. And they just don’t care. CGL feels entitled to surveil us in that way.”²⁴⁹

“My family all used to come out here. Now they’re hardly coming out. Nobody likes to drive this road. Even myself. I don’t like coming up and down this road.”²⁵⁰

In a communication sent by CERD to Canada in April 2022, the Committee called on Canada to “prevent and duly investigate the allegations of surveillance measures against ... Wet’suwet’en Peoples, by the RCMP, CRU and private security firms.”²⁵¹ Amnesty International is not aware that Canada has responded to this communication nor taken steps to comply with CERD’s recommendations. In June 2022, members of the Gidimt’en Clan filed a notice of civil claim in the BCSC against the RCMP and CRU, Minister of Justice of British Columbia, CGL and Forsythe Security in relation to these ongoing acts of intimidation, harassment and unlawful surveillance.²⁵²

Human rights considerations

The UN Special Rapporteur on the situation of human rights defenders has observed that Indigenous land defenders face multiple forms of aggression and violence that is often compounded by institutionalized racism and stigmatization that deny these communities’ rights. Corporate actors and law enforcement agencies have been regularly observed to commit abuses against Indigenous land defenders.²⁵³ Indigenous land defenders cannot properly defend Indigenous environmental-related rights without exercising their own rights to participation in decision-making, access to information, freedom of expression, peaceful assembly and association, and guarantees of non-discrimination.²⁵⁴

Everyone has the right to life, physical and mental integrity, security of the person, privacy and family life.²⁵⁵ According to the Human Rights Committee, States must respond appropriately to patterns of violence such as intimidation against land and human rights defenders and protect people against abuses by private security forces.²⁵⁶ In this same sense, the duty to protect the right to life implies that States should take appropriate measures to address situations that may prevent individuals from enjoying their right to life with dignity, including the deprivation of Indigenous Peoples’ land, territories and resources, and environmental degradation.²⁵⁷ Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.²⁵⁸ The right to privacy provides people with protection from arbitrary or unlawful interference with their privacy, family and home.²⁵⁹ Further, “in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.”²⁶⁰

Amnesty International’s research reveals that members of the Wet’suwet’en Nation are unlawfully surveilled, harassed and intimidated on their ancestral territory by the RCMP and Forsythe Security on a regular basis. These incidents regularly occur outside of land defenders’ residences and places where they undertake cultural activities, mainly the Gidimt’en Checkpoint, Lamprey Village and the Unist’ot’en Healing Centre. Further, members of the Nation, including children, are followed, filmed and photographed from the moment they turn on to the Morice FSR, which is at least 20 kilometres away from CGL worksites, as well as all along the road, which is the only way to travel by vehicle through the *Yin’tah*. Amnesty International considers that the incidents experienced by members of the Wet’suwet’en Nation show strong indications of disproportionate, discriminatory and intimidatory use of surveillance techniques which appear to go well beyond enforcing the injunction and which amount to a violation of the right to privacy and freedom of movement. In this same sense, the actions of the RCMP seem disproportionate to the power that they have been given to enforce the injunction and therefore amount to discriminatory over-policing and harassment.

²⁴⁹ In-person interview with Dr. Karla Tait, 30 May 2023, Unist’ot’en.

²⁵⁰ In-person interview with Freda Huson (Chief Howihkat), 30 May 2023, Unist’ot’en.

²⁵¹ CERD, Communication to Canada, 29 April 2022 (previously cited).

²⁵² BCSC, Notice of Civil Claim (previously cited); Gidimt’en Checkpoint, “Gidimt’en Civil Suit” (previously cited).

²⁵³ Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders (previously cited), para. 56.

²⁵⁴ Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders (previously cited), para. 93.

²⁵⁵ International Covenant on Civil and Political Rights, 16 December 1966, Arts. 6, 9 & 17; American Declaration on the Rights and Duties of Man, 1948, Arts. I & V; UNDRIP, Art. 7.

²⁵⁶ Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, [tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F35&Lang=en](https://www.unhcr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F35&Lang=en), para. 9.

²⁵⁷ Human Rights Committee, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 2019, [documents-dds-ny.un.org/doc/UNDOC/GEN/G19/26/15/PDF/G1926115.pdf?OpenElement](https://www.unhcr.org/doc/UNDOC/GEN/G19/26/15/PDF/G1926115.pdf?OpenElement), para. 26.

²⁵⁸ Human Rights Committee, General comment No. 36 (previously cited), para. 62.

²⁵⁹ ICCPR, Art. 17.

²⁶⁰ UN Code of Conduct for Law Enforcement Officials, Art 2.

The actions of the RCMP and Forsythe Security do not seem reasonable or proportionate and unduly infringe the human rights of members of the Wet’suwet’en Nation.

Further, Amnesty International considers the incidents in which RCMP officers interrupted cultural ceremonies and activities, even after they were told that a ceremony was taking place, were culturally insensitive and unlawfully interfered with highly cultural significant activities of the Wet’suwet’en Nation undermining the right to human dignity.

Amnesty International requested information from the RCMP, CRU, CGL and Forsythe Security about these incidents.²⁶¹ While the RCMP indicated that it “takes harassment, sexualized violence and gender-based violence very seriously, and thoroughly investigates any allegations with a trauma-informed approach”, its response did not specifically address the incidents set out in this section.²⁶² CGL’s response stated that the company is committed to working in a respectful manner, that it “believes that enforcement of the injunction has been necessary to protect workers and public safety,” and that it cannot speak further on matters before the BCSC due to the civil action.²⁶³ CRU and Forsythe Security did not respond.



²⁶¹ Amnesty International communications to the RCMP (11 July & 20 November 2023), CRU (11 July 2023), CGL/TC Energy (17 July & 23 November 2023) and Forsythe Security (9 October & 23 November 2023).

²⁶² RCMP communication to Amnesty International, 21 November 2023.

²⁶³ CGL/TC Energy communication to Amnesty International, 6 December 2023.

8.2 THREATS AND ACTS OF GENDER-BASED VIOLENCE AND DISCRIMINATION

The majority of Wet'suwet'en land defenders on the frontline of resistance against the CGL pipeline are women. Indigenous women often have profound relationships with their lands and culture. At the same time, they play an essential role as leaders, knowledge-bearers and transmitters of culture among their families, Peoples, Nations and society as a whole.²⁶⁴ While Indigenous women land defenders find themselves at the forefront of local, national and international struggles to advance their land and territorial rights, and protect the environment, they are also at particular risk and are more likely to face gender specific violence.²⁶⁵ According to the Committee on the Elimination of Discrimination against Women (CEDAW), Indigenous women land defenders face killings, threats, harassment, arbitrary detentions, criminalization, stigmatization and the discrediting of their work, with root causes and impacts resulting from gender and intersectional discrimination.²⁶⁶

Women Wet'suwet'en land defenders shared with Amnesty International information about multiple instances of threats and acts of gender-based discrimination and violence that have been committed against them by the RCMP, Forsythe Security and CGL employees. Several shared various incidents of being threatened over the radio, whose use is required by provincial law while travelling along the Morice FSR, specifically to inform others about the kilometre marker that you are driving past.²⁶⁷ Others shared incidents of Forsythe Security employees being condescending and making sexist remarks towards them.²⁶⁸

“Sometimes [employees of CGL and Forsythe Security] are aggressive on the radios, trying to tell you how you’re supposed to be calling on the radio or being suggestive. Like one of them spoke to me after I drove my mom and a supporter [to the emergency room] in the middle of the night. I radioed our kilometre number, and his response was ‘Are you hot?’. To be a woman, you know, who could have been travelling alone in the middle of the night and have some strange man, like a pipeline worker, comment about that, right after you’ve shared your kilometre number doesn’t feel safe.”²⁶⁹

The introduction of CGL man-camps on Wet'suwet'en territory, which house predominantly non-Indigenous male workers, has contributed to increases in threats and acts of gender-based violence against Indigenous women.²⁷⁰

“There’s also people that don’t feel safe to come out here because of all the man-camps.”²⁷¹

“The ways [employees of CGL and Forsythe Security] interact with us, in aggressive, intimidating or suggestive ways, make us feel unsafe.”²⁷²

²⁶⁴ CEDAW, General recommendation No. 39 (2022) on the rights of Indigenous women and girls, CEDAW/C/GC/39, 31 October 2022, tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F39&Lang=en, paras. 2-3.

²⁶⁵ CEDAW, General recommendation No. 39 (2022) (previously cited) para. 7; Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders (previously cited), para. 54.

²⁶⁶ CEDAW, General recommendation No. 39 (2022) (previously cited), paras. 7 & 45.

²⁶⁷ B.C., Forest Service Road Use Regulation, 70/2004, 27 February 2004, bclaws.gov.bc.ca/civix/document/id/complete/statreg/15_70_2004, s. 5(1): Drivers on a forest service road must use a 2-way radio to communicate their position with other drivers along the road.

²⁶⁸ In-person interviews with Wet'suwet'en land defenders, June 2023, B.C.

²⁶⁹ In-person interview with Dr. Karla Tait, 30 May 2023, Unist'ot'en.

²⁷⁰ National Inquiry into Missing and Murdered Indigenous Women and Girls, Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a, June 2019, mniwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf, pp. 584-86; Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 23; Unist'ot'en, "Unist'ot'en Do Not Consent to Man Camps Increasing Violence Against Our Women", unistoten.camp/mancamps/; Amnesty International, Out of Sight, Out of Mind: Gender, Indigenous Rights and Energy Development in Northeast British Columbia, Canada, 2016, AMR 20/4872/2016, amnesty.ca/sites/amnesty/files/Out%20of%20Sight%20Out%20of%20Mind%20EN%20FINAL%20web.pdf; Firelight Group with Lake Babine Nation and Nak'azdlii Whut'en, Indigenous Communities and Industrial Camps: Promoting Healthy Communities in Settings of Industrial Change, 2017, quakerservice.ca/wp-content/uploads/2017/02/Firelight-work-camps-Feb-8-2017_FINAL.pdf; CBC, "Former chef at Coastal GasLink pipeline camp sues for sexual battery, failure to warn of protests", 31 May 2022, cbc.ca/news/canada/british-columbia/coastal-gaslink-lawsuit-camp-1.6471178; Al Jazeera, "Hunted: How Indigenous women are disappearing in Canada", 29 November 2021, aljazeera.com/features/longform/2021/11/29/hunted-how-indigenous-women-are-disappearing-in-canada; The Narwhal, "B.C. failed to consider links between 'man camps,' violence against Indigenous women, Wet'suwet'en argue", 8 February 2020, thenarwhal.ca/b-c-failed-to-consider-links-between-man-camps-violence-against-indigenous-women-wetsuweten-argue/.

²⁷¹ In-person interview with Sleydo' (Molly Wickham) on 1 June 2023, Gidimt'en Checkpoint.

²⁷² In-person interview with Dr. Karla Tait, 30 May 2023, Unist'ot'en.

“This happens at the bars all the time. Pipeliners they’re there all the time. It’s like some of them kind of prowl for Indigenous women. Like they buy them drinks, they get touchy, they make you super uncomfortable. Then they kind of make racist remarks.”²⁷³

“Women have reached out to us and told us that they are constantly being threatened to be murdered by workers at the man-camp. They’re threatened to be raped by the workers. Their employers won’t do anything. CGL won’t do anything. So, they reach out to us hoping that we can help them and we’re like, we’re in the same boat. We’re being threatened by workers. We’re being harassed by workers. We don’t let people walk back and forth by themselves, especially the Indigenous woman. It’s not safe to walk, even from there to here, which is like 300 metres.”²⁷⁴

Many women Wet’suwet’en land defenders also emphasized their proximity to the Highway of Tears, as well as the high rates of missing and murdered Indigenous women and allegations of the involvement of law enforcement officers in these disappearances and murders.²⁷⁵ All of these elements, in addition to direct threats and acts of gender-based violence, make them feel unsafe while travelling within and living on their ancestral territory.

“We’re on the Highway of Tears where a lot of Indigenous women went missing and murdered. That’s the scary part. I fear for others. I wouldn’t walk alone at night.”²⁷⁶

Sleydo’ shared that, following a fire ceremony at the Gidimt’en Checkpoint, which was interrupted by the RCMP, she was followed by the RCMP as she returned to her home on the territory with her young daughter. It was late at night and the RCMP officer wanted her to pull over, however, she did not feel safe to do so, especially because she was in a remote location. The next day, two RCMP vehicles arrived at Sleydo’s house and gave her two traffic tickets for failing to stop for police, driving without care and speeding.²⁷⁷

International human rights law and standards prohibit discrimination against women, which includes gender-based violence. According to CEDAW, “intersectional discrimination against Indigenous women and girls must be understood in the context of the multifaceted nature of their identity.”²⁷⁸ The Committee has noted that Indigenous women face widespread forms of discrimination and gender-based violence that is frequently committed by State and non-State actors and are often treated with impunity.²⁷⁹ Violations of the rights of Indigenous women to self-determination, consultation and access to and the integrity of their lands, resources, culture and environment constitute discrimination.²⁸⁰ According to CEDAW, “These underlying causes of discrimination are reflected directly and indirectly in laws and policies that impede the access of Indigenous women and girls to land use and ownership, the exercise of their rights over their territories, natural and economic resources, and their access to credit, financial services and income-generating opportunities.”²⁸¹

States have the “obligation to ensure that State actors and business enterprises take measures without delay to guarantee a clean, healthy and sustainable environment and planetary system, including the prevention of foreseeable loss and damage, socioeconomic and environmental violence, and all forms of violence against Indigenous women, who are environmental human rights defenders, and their communities and territories.”²⁸²

²⁷³ In-person interview with Anna-Marie Holland and Shaylee-Marie Holland, 31 May 2023, Gidimt’en Checkpoint.

²⁷⁴ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

²⁷⁵ National Inquiry into Missing and Murdered Indigenous Women and Girls, Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a (previously cited); Human Rights Watch, Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada, 2013, hrw.org/sites/default/files/reports/canada0213webwcover_0.pdf; Gidimt’en Land Defenders, Militarization of Wet’suwet’en Lands and Canada’s Ongoing Violations (previously cited); IACHR, Missing and Murdered Indigenous Women in British Columbia, Canada, OEA/Ser.L/V/II. Doc. 30/14, 21 December 2014, oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf; Al Jazeera, “Hunted: How Indigenous women are disappearing in Canada” (previously cited); The Narwhal, “B.C. failed to consider links between ‘man camps,’ violence against Indigenous women, Wet’suwet’en argue” (previously cited).

²⁷⁶ In-person interview with Jocelyn Alec, 1 June 2023, Gidimt’en Checkpoint.

²⁷⁷ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

²⁷⁸ CEDAW, General recommendation No. 39 (2022) (previously cited) paras. 3 & 5; CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 26 July 2017, documents-dds-ny.un.org/doc/UNDOC/GEN/N17/231/54/PDF/N1723154.pdf?OpenElement, para. 12.

²⁷⁹ CEDAW, General recommendation No. 39 (2022) (previously cited) para. 3.

²⁸⁰ CEDAW, General recommendation No. 39 (2022) (previously cited) paras. 3, 11 & 18.

²⁸¹ CEDAW, General recommendation No. 39 (2022) (previously cited) para. 20.

²⁸² CEDAW, General recommendation No. 39 (2022) (previously cited) para. 7; Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, Art. 2; CEDAW, General recommendation No. 35 (previously cited), para. 24(b).

As stated above, the majority of Wet'suwet'en land defenders on the frontline of resistance against the CGL pipeline self-identify as women. The unlawful surveillance, harassment and intimidation of land defenders has affected women in particular and in different ways from male land defenders. Indigenous women land defenders have been the victims of acts and threats of gender-based violence and discrimination, including being threatened with rape.

“I remember there’s a big group of [RCMP officers], just talking. And then me and my friend, who is also female, we both looked at the group and then they were pointing at us. And they started making rape jokes. Like rape jokes about us.”²⁸³

Amnesty International asked the RCMP, CGL and Forsythe Security about these incidents.²⁸⁴ The organization also asked CGL about whether it has conducted a gender-based analysis or assessment to understand the potential impacts of man-camps on the safety and security of Indigenous women and girls.²⁸⁵ CGL’s response stated that it “has not received complaints consistent with the allegations, but would take such complaints seriously.”²⁸⁶ While the RCMP indicated that it “takes harassment, sexualized violence and gender-based violence very seriously”, its response did not address the incidents set out in this section.²⁸⁷

²⁸³ In-person interview with Jocelyn Alec, 1 June 2023, Gidimt'en Checkpoint.

²⁸⁴ Amnesty International communications to the RCMP (11 July & 20 November 2023), CRU (11 July 2023), CGL/TC Energy (17 July & 23 November 2023) and Forsythe Security (9 October & 23 November 2023).

²⁸⁵ Amnesty International, Communication to CGL/TC Energy, 17 July 2023.

²⁸⁶ CGL/TC Energy communication to Amnesty International, 6 December 2023.

²⁸⁷ RCMP communication to Amnesty International, 21 November 2023.

8.3 CRIMINALIZATION OF WET'SUWET'EN LAND DEFENDERS

8.3.1 LARGE-SCALE RCMP RAIDS ON WET'SUWET'EN TERRITORY



Amnesty International has documented that the RCMP has criminalized land defenders through large-scale policing operations on Wet'suwet'en territory during which Wet'suwet'en land defenders and their supporters have been arrested for allegedly violating the terms of the injunction order. Amnesty International considers that those arrested solely for exercising their Indigenous rights and right to freedom of peaceful assembly were arbitrarily arrested. This report focuses on the arbitrary arrests and criminalization of those arrested in October and November 2021, as they are the land defenders that the British Columbia Prosecution Service (BCPS) decided to press criminal charges against, and will be discussed in more detail below.

From January 2019 to March 2023, the RCMP and CRU have undertaken four large-scale police operations against Wet'suwet'en land defenders and their supporters on Wet'suwet'en territory. According to the RCMP, the January 2019, February 2020 and November 2021 police operations were in response to instances in which Wet'suwet'en land defenders and their supporters took peaceful land defence and assembly actions to impede pipeline construction by blocking the Morice FSR or, in November 2021, access to a pipeline construction site.²⁸⁸ The RCMP has justified its actions as enforcing the terms of the injunction order which prohibit individuals from taking actions that impede pipeline construction on the Morice FSR. The RCMP indicated to Amnesty International that it "is responsible for enforcing the [B.C.] Supreme Court Injunction in the Morice area but only takes enforcement action when protester activities are no longer peaceful, lawful or safe. Enforcement actions are limited to the arrest of contemnors for breaching the Injunction, or for any Criminal Code offences they've committed, and their safe removal from obstructions."²⁸⁹

Amnesty International considers it paramount to recall that the actions taken by Wet'suwet'en land defenders are an exercise of their collective rights as Indigenous Peoples to self-government and to control their traditional territories.²⁹⁰ Further, the actions taken by Wet'suwet'en land defenders and their supporters fall under the human rights protections afforded by the right to freedom of peaceful assembly.²⁹¹

²⁸⁸ RCMP, "Rescue and enforcement operation underway near Houston, BC", 18 November 2021, bc-cb.rcmp-grc.gc.ca/ViewPage.action?siteNodId=2100&langueId=1&contentId=72141; RCMP, "Update on rescue and enforcement operation near Houston, BC", 18 November 2021, bc-cb.rcmp-grc.gc.ca/ViewPage.action?siteNodId=2100&langueId=1&contentId=72172.

²⁸⁹ RCMP communication to Amnesty International, 21 November 2023.

²⁹⁰ UNDRIP, Arts. 4 & 26.

²⁹¹ ICCPR, Art. 22.

Amnesty International heard from land defenders that the RCMP's actions during the raids were characterized by both violence and fear. According to information shared with Amnesty International, despite the fact that Wet'suwet'en land defenders were unarmed and non-violent, during these operations, RCMP officers were equipped with semi-automatic weapons, dog units and helicopters.

“The police are trying to scare us, to drive us away and intimidate us, harass us, until we leave. The reason why I stayed, this is my home, my territory. I’m not gonna let a bunch of police officers drag me away.”²⁹²

“The whole purpose of criminalizing us is to try and deter us from upholding our law and protecting our territory.”²⁹³

“I had this moment of I’m not going to let them win. This was intentional. This trauma of police violence is meant to quiet us and meant to make sure we don’t show up at the next one and we don’t show up and we don’t speak out and we don’t do the interviews and we don’t do the publicity and we keep our mouth shut because we’re afraid.”²⁹⁴

First RCMP Raid – January 2019

Following the granting of the interim injunction on 14 December 2018, Wet'suwet'en land defenders and their supporters set up the “Gidimt'en Access Point”, a peaceful land defence action, that blocked the Morice FSR at kilometre 44.²⁹⁵

On 7 January 2019, the RCMP and CRU conducted a large-scale, heavy-handed police operation on the Gidimt'en Access Point to remove the land defenders in enforcement of the injunction.²⁹⁶ Amnesty International heard from Wet'suwet'en land defenders that the RCMP deployed about 50 officers, including an Emergency Response Team (ERT),²⁹⁷ in 20 vehicles, a helicopter and drones.²⁹⁸ The RCMP cut radio communications in the area, which prevented Wet'suwet'en land defenders from being able to speak amongst themselves.

“I was standing on the bridge. They had one [officer with a sniper rifle] on either side of the bridge. And they had their guns up and they were looking through the scope. They were talking to each other and radioing, and I kept looking back, because I was so worried about what they were doing. Like why were they pointing their guns at people behind me?”²⁹⁹

“[The RCMP] were, you know, assaulting people and jumping on people and making arrests. And they were just haphazardly like flying over the gate with their semi-automatic guns. We had never seen anything like that before. It was horrifying.”³⁰⁰

RCMP officers forced their way through the Gidimt'en Access Point and arrested 14 land defenders under the argument that they were allegedly violating the terms of the interim injunction, and forcibly removed them from the *Yin'tah*.³⁰¹ The land defenders were later released on specific conditions to comply with the terms of the interim injunction and the civil contempt charges against them were stayed.³⁰²

²⁹² In-person interview with Savannah, 1 June 2023, Gidimt'en Checkpoint.

²⁹³ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

²⁹⁴ Virtual interview with Layla Staats, 17 August 2023.

²⁹⁵ BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited), para. 3.

²⁹⁶ Expert Mechanism on the Rights of Indigenous Peoples, Impact of militarization on the rights of Indigenous Peoples (previously cited), para. 33; Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 12; BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited), para. 35; CBC, “14 arrested as RCMP break gate at Gidimt'en camp checkpoint set up to stop pipeline company access”, 7 January 2019, cbc.ca/news/indigenous/rcmp-injunction-gidimten-checkpoint-bc-1.4968391.

²⁹⁷ RCMP, “Emergency Response Team”, 13 January 2020, rcmp-grc.gc.ca/ert-gti/index-eng.htm. RCMP Emergency Response Team (ERT) police officers use tactics, specialized weapons and equipment to resolve high-risk situations. ERT duties include: resolving armed and barricaded persons incidents; air and marine interventions; high-risk searches and arrests; and protective policing.

²⁹⁸ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

²⁹⁹ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

³⁰⁰ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

³⁰¹ UN Expert Mechanism on the Rights of Indigenous Peoples, Impact of militarization on the rights of Indigenous Peoples (previously cited), para. 33; Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 12; BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited), para. 35; CBC, “14 arrested as RCMP break gate at Gidimt'en camp checkpoint set up to stop pipeline company access” (previously cited).

³⁰² In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint; BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited), para. 35; CBC, “Contempt charges dropped against 14 protesters blocking B.C. pipeline project”, 15 April 2019, cbc.ca/news/canada/british-columbia/14-unist-ot-en-supporters-leave-court-1.5098760.

Following the raid, both the Guardian and CBC reported that they had accessed notes from a RCMP strategy session for the raid during which the RCMP allegedly argued that “lethal overwatch is req’d” and officers were instructed to “use as much violence toward the gate as you want”. According to the media outlets, these same documents allegedly indicated that land defenders were not armed.³⁰³

In December 2019, CERD, as part of its Early Warning and Urgent Actions Procedures, urged Canada to guarantee that no force or lethal weapons will be used against Wet’suwet’en Peoples, and withdraw the RCMP and private security forces from their territory.³⁰⁴ Amnesty International is not aware that Canada has adopted measures to comply with the Committee’s recommendations.

Second RCMP Raids – February 2020

On 31 December 2019, the BCSC vacated the interim injunction and replaced it with an interlocutory injunction.³⁰⁵ On 4 January 2020, the Wet’suwet’en Hereditary Chiefs issued an eviction notice to CGL which applied to the company’s Camp 9A on Dark House territory.³⁰⁶

“This notice is to inform you that all Coastal GasLink staff and contractors currently trespassing on unceded Wet’suwet’en territory must vacate our territory immediately, as directed by the Wet’suwet’en Hereditary Chiefs with authority to protect these lands. Over the past year, Coastal GasLink has operated on our territories despite our opposition to the project, which was confirmed in the Bahlats by all five clans. Coastal GasLink is in violation of Wet’suwet’en law, and it is our responsibility now to uphold Wet’suwet’en law to maintain the integrity of our territories for future generations.

The Coastal GasLink project has never received consent through our hereditary governance system, our Bahlats, to proceed ... We must re-assert our jurisdiction over these lands, our right to determine access and prevent trespass under Wet’suwet’en law, and the right to Free, Prior and Informed Consent as guaranteed by the UN Declaration on the Rights of Indigenous Peoples. The denial of these rights has resulted in irreparable harm to the land and our people. Moving forward, we insist that you respect our human rights, our rights as Indigenous People, and our authority as Wet’suwet’en Hereditary Chiefs.

As the Coastal GasLink CEO and Aboriginal Lead, you are responsible to notify your staff and contractors to leave our territory immediately. Be advised that we will allow for peaceful, timely departure to collect personal belongings and vehicles to drive out of our territory. If departure is not immediate, the road will be closed to vehicle traffic ... We expect that all CGL staff and contractors will vacate the following clan territories and will not re-enter unless the express permission of the following chiefs: Dark House territory, Chief Knedebeas; Tsayu territory, Chief Namox; Cass Yikh territory, Chief Woos; Sun House territory, Chief Smogelgem.”³⁰⁷

That same day, CGL complied with the eviction notice and left Camp 9A.³⁰⁸ However, information reviewed by Amnesty International indicates that CGL planned on returning workers to Camp 9A by helicopter. On 7 January 2020, the Wet’suwet’en Hereditary Chiefs sent a letter to the company in which they asserted that “The eviction notice delivered to CGL on January 4, 2020 is now in effect, and there will be no access granted to CGL staff without the free, prior and informed consent of Wet’suwet’en Hereditary Chiefs.”³⁰⁹ The following day, CGL posted notice of the injunction order at kilometre 39 of the Morice FSR.³¹⁰ That same day, CGL published a press release in which it stated that the blockades set up by Wet’suwet’en land defenders and their supporters were “extremely disappointing”.³¹¹ Interestingly, the press release does not mention the Hereditary Chief’s eviction notice nor that the company had complied with it days before.

³⁰³ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint; Expert Mechanism on the Rights of Indigenous Peoples, Impact of militarization on the rights of Indigenous Peoples (previously cited), para. 33; Gidimt’en Land Defenders, Militarization of Wet’suwet’en Lands and Canada’s Ongoing Violations (previously cited), para. 14; The Guardian, “Canada Police Prepared to shoot Indigenous Activists: Documents Show”, 20 December 2019, [theguardian.com/world/2019/dec/20/canada-indigenous-land-defenders-police-documents](https://www.theguardian.com/world/2019/dec/20/canada-indigenous-land-defenders-police-documents); CBC, “RCMP Arrests 14, Clear Road on Wet’suwet’en Territory in Ongoing Disputes over Land Rights, Pipeline”, 18 November 2021, [cbc.ca/news/canada/british-columbia/rcmp-wet-suwet-en-pipeline-resistance-1.6254245](https://www.cbc.ca/news/canada/british-columbia/rcmp-wet-suwet-en-pipeline-resistance-1.6254245).

³⁰⁴ CERD, Decision 1 (100) (previously cited).

³⁰⁵ BCSC, Coastal GasLink Pipeline Ltd. v. Huson, 2019 BCSC 2264 (previously cited).

³⁰⁶ Unist’ot’en, “Wet’suwet’en Hereditary Chiefs Evict Coastal GasLink from Territory”, 4 January 2020, unistoten.camp/wetsuweten-hereditary-chiefs-evict-coastal-gaslink-from-territory/.

³⁰⁷ Unist’ot’en, “Wet’suwet’en Hereditary Chiefs Evict Coastal GasLink from Territory” (previously cited).

³⁰⁸ Unist’ot’en, “Wet’suwet’en Hereditary Chiefs: No Access Without Consent”, 7 January 2020, unistoten.camp/wetsuweten-hereditary-chiefs-no-access-without-consent/.

³⁰⁹ Wet’suwet’en Hereditary Chiefs communication to CGL, 7 January 2020, unistoten.camp/wp-content/uploads/2020/01/letter-to-CGL-Jan7.pdf.

³¹⁰ Unist’ot’en, “CGL Posts Injunction Notice, RCMP Threatens Helicopter Companies, Trespassers Heard Building Trail Toward Gidimt’en Checkpoint”, 8 January 2020, unistoten.camp/jan82020/.

³¹¹ Coastal GasLink, “Statement – RCMP Criminal Investigation”, 9 January 2020, coastalgaslink.com/whats-new/news-stories/2020/coastal-gaslink-statement-on-rcmp-criminal-investigation/.

On 12 January 2020, the Hereditary Chiefs “granted CGL 6-8 hours access for a work crew to winterize their personnel accommodations and equipment at site 9A ... to avoid damages to CGL assets and the surrounding environment.” CGL confirmed in writing that the company would leave Dark House territory after winterizing Camp 9A.³¹²

On 13 January 2020, the RCMP set up an “exclusion zone” at 27km of the Morice FSR.³¹³ A complaint submitted by the B.C. Civil Liberties Association (BCCLA) to the Civilian Review and Complaints Commission for the RCMP expressed,

“serious concerns about the overbroad scope as well as inconsistent and arbitrary exercise of RCMP discretion in Wet’suwet’en territories. The RCMP implementation and enforcement of the exclusion zone criminalizes and impedes the movement of Wet’suwet’en people, invited guests of the Wet’suwet’en, media, legal counsel as well as food and medical supplies. RCMP interference with individual liberty is significant, arbitrary, and disproportionate to achieving the stated goal of public safety.”³¹⁴

The BCCLA’s complaint included eight accounts of individuals denied access or turned away by the RCMP including those trying to bring food, medicine and other supplies to the Gidimt’en Checkpoint.³¹⁵

On 6 February, the RCMP began a large-scale police operation on Wet’suwet’en territory which lasted until 10 February. The RCMP sought to enforce the injunction and remove Wet’suwet’en land defenders and their supporters who were exercising their Indigenous rights undertaking peaceful land defence actions at Unist’ot’en and kilometre 44 and 39 of the Morice FSR. The site at kilometre 39 was set up to bring supplies into the other camps and was not blocking the road.

Documents reviewed by Amnesty International indicate that the RCMP deployed over 50 officers, including an ERT, armed with semi-automatic sniper rifles, dogs, bulldozers and helicopters.³¹⁶ During the operations, RCMP officers wore masks to cover their faces and refused to identify themselves or give names or badge numbers to legal observers that were present.³¹⁷

On 6 February, RCMP officers raided the 39-kilometre mark and arrested 6 land defenders.³¹⁸

The following day, 7 February, the RCMP moved the “exclusion zone” to the 4-kilometre mark of the Morice FSR.³¹⁹ RCMP officers then raided the Gidimt’en Checkpoint (44km). According to Wet’suwet’en land defenders, the officers used a chainsaw to breach the gate and arrested four land defenders.³²⁰

“We’re just sitting around the fire chit chatting, you know, and the army comes in. They’ve got people around the periphery of the cabin, snipers, so people couldn’t even go and use the bathroom because they might be watched. They came in. I wouldn’t even be able to count how many of them. They came in like an army. They marched in front of the cabin. And they all stood, arms crossed.”³²¹

³¹² Unist’ot’en, “Wet’suwet’en Hereditary Chiefs Grant CGL One-Time Access to Shut Down Camp 9A”, 12 January 2020, unistoten.camp/jan12/.

³¹³ Unist’ot’en, “URGENT UPDATE: RCMP Set Up Exclusion Zone at 27km”, 31 January 2020, unistoten.camp/jan13/.

³¹⁴ BCCLA, “Re: Policy Complaint Concerning RCMP Checkpoint on Morice West Forest Service Road”, 29 January 2020, bccla.org/wp-content/uploads/2020/01/RCMP-Complaint-Public.pdf.

³¹⁵ BCCLA, “Re: Policy Complaint Concerning RCMP Checkpoint on Morice West Forest Service Road” (previously cited), pp. 4-8.

³¹⁶ CERD, Decision 1 (100) (previously cited); United Nations Special Procedures, Communication to Canada, AL CAN 2/2022 (previously cited), p. 3; Gidimt’en Land Defenders, Militarization of Wet’suwet’en Lands and Canada’s Ongoing Violations (previously cited), para. 15.

³¹⁷ Unist’ot’en, “Unist’ot’en Matriarchs Arrested. Stand with Unist’ot’en Now!”, 10 February 2020, unistoten.camp/unistoten-matriarchs-arrested-stand-with-unistoten-now/; Unist’ot’en, “ALL EYES ON UNIST’OT’EN: February 10, 2020”, 10 February 2020, unistoten.camp/feb10/; Unist’ot’en, “RCMP Convoy Advances on Wet’suwet’en Territories (Breaking updates: Feb. 7, 2020)”, 7 February 2020, unistoten.camp/feb7/; Unist’ot’en, “Breaking: Pre-Dawn RCMP Arrests on Wet’suwet’en Territories”, 6 February 2020, unistoten.camp/feb6/.

³¹⁸ Unist’ot’en, “Breaking: Pre-Dawn RCMP Arrests on Wet’suwet’en Territories” (previously cited).

³¹⁹ BCCLA, Letter to the Civilian Review and Complaints Commission for the RCMP, 9 February 2020, bccla.org/wp-content/uploads/2020/02/Policy-Complaint-Update-RCMP-Operations-in-Wetsuweten-2020.pdf#:~:text=On%20January%2029%2C%202020%2C%20the%20British%20Columbia%20Civil,Service%20Road%20%28%E2%80%9CMorice%20West%20FSR%E2%80%9D%29%20in%20Wet%E2%80%99suwet%E2%80%99en%20territory,; The Supreme Court of British Columbia has found the use of exclusion zones by the RCMP to be unlawful: BCSC, Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2021 BCSC 1554, 9 August 2021, canlii.org/en/bc/bcsc/doc/2021/2021bcsc1554/2021bcsc1554.html?searchUrlHash=AAAAQAOMjAyMSBCQ1INDIDE1NTQAAAAAQ&resultIndex=1.

³²⁰ Unist’ot’en, “RCMP Convoy Advances on Wet’suwet’en Territories (Breaking updates: Feb. 7, 2020)”, 7 February 2020, unistoten.camp/feb7/.

³²¹ In-person interview with Chief Dtsa’hyI (Adam Gagnon), 29 May 2023, Smithers, B.C.

According to Wet'suwet'en land defenders present at the time, CGL employees appear to have been present during the raid.³²² Amnesty International received information that Wet'suwet'en Hereditary Chiefs, including Gidimt'en Hereditary Chief Woos, were prevented from accessing their territory by the RCMP.³²³ The RCMP also impounded the vehicles of Wet'suwet'en supporters at 27km, leaving many of them stranded on the Morice FSR.³²⁴

On 8 February, RCMP officers raided the 27-kilometre mark support camp and arrested 11 land defenders and legal observers.³²⁵ The Unist'ot'en stated that, during this time, Wet'suwet'en Hereditary Chiefs continued to be denied entry to their territory by the RCMP.³²⁶

On February 10, RCMP officers raided Unist'ot'en, chainsawing the gate. Unist'ot'en matriarchs Freda Huson (Chief Howihkat), Brenda Michell (Chief Geltiy), and Dr. Karla Tait were arrested while they were holding a ceremony, drumming on the bridge and making offerings to the ancestors in the *Wedzin Kwa*.³²⁷ Four other land defenders were also arrested at Unist'ot'en.³²⁸ Unist'ot'en land defenders shared with Amnesty International that CGL workers were present and several of them extinguished a sacred fire that had been lit by land defenders, even though it was small, controlled and presented no risk. They also shared that RCMP officers threatened journalists and legal observers present with arrest.³²⁹

Information reviewed by Amnesty International indicates that, over the five-day long raid, the RCMP prohibited Hereditary Chiefs and other members of the Wet'suwet'en Nation, journalists, legal observers and a provincial Member of Parliament from entering the area to observe the arrests.³³⁰ From 6 to 10 February, approximately 28 land defenders were arrested for defying the terms of the interlocutory injunction and forcibly removed from the *Yin'tah*. The BCPS decided not to press charges against them.³³¹

Third RCMP Raid – November 2021

In September 2021, Gidimt'en land defenders reoccupied Lhudis Bin territory, building a clan cabin, known as Coyote Camp, on the drill pad site in order to stop CGL from drilling under the *Wedzin Kwa*.³³² In a letter sent to members of the Wet'suwet'en Nation, CGL expressed its concern about "protest activities" and stated:

"We recognize that we have more to learn. We are actively seeking to foster a renewed and respectful dialogue that will improve communications and help us understand how we may continue to more substantively take action to address concerns of the Hereditary Chiefs. Through such dialogue, it is our desire to create a more positive relationship aimed at healing divisions and working collaboratively through the remainder of the construction and operation of the Project."³³³

On 27 October 2021, Likhts'amisyu Wing Chief Dtsa'hyl was arrested and forcibly removed from his territory, along with another Indigenous land defender from the neighbouring Gitksan Nation.³³⁴

³²² Unist'ot'en, "Unist'ot'en Matriarchs Arrested. Stand with Unist'ot'en Now!" (previously cited); Unist'ot'en, "ALL EYES ON UNIST'OT'EN: February 10, 2020" (previously cited).

³²³ Unist'ot'en, "RCMP Convoy Advances on Wet'suwet'en Territories (Breaking updates: Feb. 7, 2020)" (previously cited).

³²⁴ In-person interview with Antoinette Austin, 29 May 2023, Smithers, B.C.

³²⁵ Unist'ot'en, "Wet'suwet'en Yintah Invasion: Day 4", 9 February 2020, unistoten.camp/wetsuweten-yintah-invasion-day-4/.

³²⁶ Unist'ot'en, "Unist'ot'en Responds to Illegal Raid of Gidimt'en Camps & Calls for Protection of Healing Centre", 8 February 2020, unistoten.camp/unistoten-responds-to-illegal-raid-of-gidimten-camps-calls-for-protection-of-healing-centre/.

³²⁷ In-person interviews with Freda Huson (Chief Howihkat), Brenda Michell (Chief Geltiy) and Dr. Karla Tait, 30 May 2023, Unist'ot'en; Unist'ot'en, "Unist'ot'en Matriarchs Arrested. Stand with Unist'ot'en Now!" (previously cited); Unist'ot'en, "ALL EYES ON UNIST'OT'EN: February 10, 2020" (previously cited).

³²⁸ Unist'ot'en, "Unist'ot'en Matriarchs Arrested. Stand with Unist'ot'en Now!" (previously cited); Unist'ot'en, "ALL EYES ON UNIST'OT'EN: February 10, 2020" (previously cited).

³²⁹ Unist'ot'en, "Unist'ot'en Matriarchs Arrested. Stand with Unist'ot'en Now!" (previously cited); Unist'ot'en, "ALL EYES ON UNIST'OT'EN: February 10, 2020" (previously cited).

³³⁰ United Nations Special Procedures, Communication to Canada, AL CAN 2/2022 (previously cited), p. 3; Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 16.

³³¹ United Nations Special Procedures, Communication to Canada, AL CAN 2/2022 (previously cited), p. 3.

³³² Gidimt'en Checkpoint, "2021 Recap", yintahaccess.com/news/wetsuwetenresistance#:~:text=The%20Wet%27suwet%27en%20enforced,righ%20violations%20to%20Indigenous%20peoples.

³³³ CGL Letter, 9 November 2021, coastalgaslink.com/siteassets/pdfs/whats-new/coastal-gaslink---letter-to-wetsuweten-community-members.pdf.

³³⁴ Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 19.

On 14 November 2021, Gidimt'en Hereditary Chief Woos issued an eviction enforcement order to CGL —upholding Wet'suwet'en trespass laws and the eviction notice first served to the company in 2020 — wherein CGL employees were given 8 hours to peacefully leave the territory. After this time, the Morice FSR would be closed.³³⁵ The eviction enforcement order was read repeatedly over all radio channels on the Morice FSR throughout the 8-hour period.³³⁶

“The Wet'suwet'en hereditary chiefs have never ceded, surrendered, or lost in war, title to this territory. That means that what they say goes. The eviction order from January 4th, 2020 says that CGL has to remove themselves from the territory and not return. They have been violating this law for too long.”³³⁷

CGL did not remove all of its employees from the territory and the Morice FSR was closed.³³⁸ Various media outlets later reported that CGL did not inform their workers of the eviction order, as well as allegations that workers were not permitted to leave.³³⁹ That same day, the company published a press release in which it stated “Early this morning, Coastal GasLink was informed by the Gidimt'en Checkpoint that they intend to evict Coastal GasLink from areas around the Morice River and block public forest service roads. An enforceable B.C. Supreme Court injunction is in place, allowing Coastal GasLink continued safe access in the area ... Our primary concern continues to be for the safety of our workforce and the public.”³⁴⁰ None of the statements released by CGL in response to the situation appear to make reference to the Wet'suwet'en land defenders Indigenous rights (they are referred to as protestors) or the fact that the Hereditary Chiefs have not provided their free, prior and informed consent for the construction of the pipeline.

On November 15, the RCMP set up an “exclusion zone” at kilometre 27.5 of the Morice FSR to prevent Wet'suwet'en people and their supporters from accessing the territory.³⁴¹ On 18 November, the RCMP began a third large-scale raid on Wet'suwet'en territory to remove Wet'suwet'en land defenders and their supporters who were undertaking peaceful land defence actions at the Gidimt'en Checkpoint and Coyote Camp.³⁴² According to information reviewed by Amnesty International, from November 18 to 21, the RCMP deployed approximately 100 officers, equipped with semi-automatic sniper rifles, dogs and helicopters.³⁴³

Wet'suwet'en land defenders shared that, on 18 November, heavily armed RCMP officers raided the Gidimt'en Checkpoint and arrested 14 land defenders, as well as legal observers and journalists.³⁴⁴ One of the elders who was arrested, Auntie Janet Williams, was denied medication by the RCMP and was later taken to the hospital due to chest pains.³⁴⁵ The other arrested defenders were transported to the Houston RCMP station for processing and were held overnight in custody.³⁴⁶

“They came and arrested everybody. They were pulling the Indigenous men's hair. They piled on two of the Indigenous men really hard; were like kicking them and punching them in the head.”³⁴⁷

³³⁵ Gidimt'en Checkpoint, “Gidimt'en Evict Coastal GasLink from Wet'suwet'en Territory” (previously cited); Gidimt'en Checkpoint, “Wet'suwet'en Resistance”, yintahaccess.com/news/wetsuwetenresistance; CBC, “Wet'suwet'en clan members say they are enforcing eviction of Coastal GasLink from territories”, 15 November 2021, cbc.ca/news/canada/british-columbia/wetsuweten-nation-eviction-coastal-gas-link-1.6249030.

³³⁶ Gidimt'en Checkpoint, “Wet'suwet'en Resistance” (previously cited).

³³⁷ Gidimt'en Checkpoint, “Gidimt'en Evict Coastal GasLink from Wet'suwet'en Territory” (previously cited).

³³⁸ Gidimt'en Checkpoint, “Wet'suwet'en Resistance” (previously cited).

³³⁹ Gidimt'en Checkpoint, “Wet'suwet'en Resistance” (previously cited); The Ytee, “Coastal GasLink Failed to Warn Camp Employees about Blockade, Workers Say”, 18 November 2021, theytee.ca/News/2021/11/18/Coastal-GasLink-Failed-Warn-Camp-Employees-About-Blockade-Worker/.

³⁴⁰ Coastal GasLink, “Updated: Nov. 14, 2021 – 3:45 p.m. PST”, coastalgaslink.com/whats-new/news-stories/2021/coastal-gaslink-statement-on-worksite-access/.

³⁴¹ RCMP, “Rescue and enforcement operation underway near Houston, BC”, 18 November 2021, bc-cb.rcmp-grc.gc.ca/ViewPage.action?siteNodId=2087&languageId=1&contentId=72141; The Narwhal, “Land defenders arrested on Wet'suwet'en territory as RCMP enforces Coastal GasLink injunction”, 18 November 2021, thenarwhal.ca/rcmp-arrests-wetsuweten-coastal-gaslink/.

³⁴² In-person interviews with Jocelyn Alec (1 June 2023, Gidimt'en Checkpoint), Sleydo' (1 June 2023, Gidimt'en Checkpoint), Janet Williams and Lawrence Bazil (31 May 2023, Gidimt'en Checkpoint); Virtual interviews with Layla Staats (17 August 2023), Corey (Jayohcee) Jocko (15 August 2023), Logan Staats (6 September 2023); Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 20; The Narwhal, “Land defenders arrested on Wet'suwet'en territory as RCMP enforces Coastal GasLink injunction” (previously cited).

³⁴³ Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 20; RCMP, “Update on rescue and enforcement operation near Houston, BC”, 18 November 2021, bc-cb.rcmp-grc.gc.ca/ViewPage.action?siteNodId=2087&languageId=1&contentId=72172; The Narwhal, “Land defenders arrested on Wet'suwet'en territory as RCMP enforces Coastal GasLink injunction” (previously cited).

³⁴⁴ RCMP, “Update on rescue and enforcement operation near Houston, BC” (previously cited).

³⁴⁵ In-person interview with Janet Williams and Lawrence Bazil, 31 May 2023, Gidimt'en Checkpoint; In-person interview with Anna-Marie Holland and Shaylee-Marie Holland, 31 May 2023, Gidimt'en Checkpoint.

³⁴⁶ RCMP, “Update on rescue and enforcement operation near Houston, BC” (previously cited).

³⁴⁷ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

“[The dogs] were snarling and barking so loud and like pulling on their chains. I was standing there thinking, holding my drum, these dogs have no idea that I’m a good person, they have no idea that I love dogs. They just do what they’re told, and they look like they’re gonna tear my face off.”³⁴⁸

“The supporters just surrounded us to protect us. Then [the RCMP] pull them off, one by one, like rag dolls and throw them on the ground. Treated them so rough. I cried when they just shoved everybody to the ground.”³⁴⁹

“We were at Coyote [camp] and they, it was either CGL or the [RCMP], played this really creepy song over the radio. It was from a horror film. The Shining, it was from The Shining. They played it on the radio twice to us. The song goes, it’s like a little girl singing, ‘I’m gonna get you. I know where you are’. And then she sings Ring Around the Rosey. They played that to us over the radio the night before the raid.”³⁵⁰

According to Wet’suwet’en land defenders, on 19 November, RCMP raided Coyote Camp, located near the 2-kilometre mark of the Marten Forest Service Road.³⁵¹ Amnesty International was told that the RCMP cut the camp’s internet line, which was their only form of communication.³⁵² RCMP officers, with dogs, broke down the cabin’s door with an axe and then a chainsaw and forcibly removed and arrested 11 Wet’suwet’en land defenders and their supporters.³⁵³ Two journalists were also arrested even though they identified themselves as members of the media to the RCMP.³⁵⁴

“Then we noticed that there’s two snipers on us. They had a canine too. Then it just happened so fast. They started busting down the door with an axe, maybe threatened to chainsaw the door down, or chainsaw through the cabin. So, we all just got into the middle because we didn’t know if they’re going to do it or not. We got on our knees, hands up. They finally got the door down. They first pointed the gun at me. And I was just telling them that we are unarmed.”³⁵⁵

“There were multiple tactical teams, [Emergency Response Teams], with semi-automatic weapons behind every structure. They would poke their heads out and show us their guns and then hide back behind the structures. There were dog teams. You could hear the dogs snarling and barking and trying to get off their leashes. Then eventually they started axing down the door, like in The Shining. They took one of our chainsaws and chainsawed the door down. Then they held me, held us up at gunpoint. I was in the front. Then they came in and arrested everybody.”³⁵⁶

“My friend got arrested first. [The RCMP] ended up punching him, shoved his face in the ice.”³⁵⁷

³⁴⁸ Virtual interview with Layla Staats, 17 August 2023.

³⁴⁹ In-person interview with Janet Williams and Lawrence Bazil, 31 May 2023, Gidimt’en Checkpoint.

³⁵⁰ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

³⁵¹ In-person interviews with Jocelyn Alec (1 June 2023, Gidimt’en Checkpoint), Sleydo’ (1 June 2023, Gidimt’en Checkpoint); Virtual interview with Corey (Jayohcee) Jocko (15 August 2023).

³⁵² In-person interviews with Jocelyn Alec (1 June 2023, Gidimt’en Checkpoint), Sleydo’ (1 June 2023, Gidimt’en Checkpoint); Virtual interview with Corey (Jayohcee) Jocko (15 August 2023).

³⁵³ Gidimt’en Land Defenders, Militarization of Wet’suwet’en Lands and Canada’s Ongoing Violations (previously cited), para. 20; RCMP, “Update#2: Enforcement operation continues near Houston, BC”, 19 November 2021, bc-cb.rcmp-grc.gc.ca/ViewPage.action?siteNodeid=2136&languageid=1&contentid=72197.

³⁵⁴ RCMP, “Update#2: Enforcement operation continues near Houston, BC” (previously cited); Canadian Association of Journalists, “CAJ calls for immediate release of arrested journalists reporting from Wet’suwet’en”, 2021, caj.ca/caj-calls-for-immediate-release-of-arrested-journalists-reporting-from-wetsuweten/; Canadian Association of Journalists, “Arrested Canadian journalists: CAJ letter to Canada’s Public Safety Minister”, 2021, caj.ca/arrested-canadian-journalists-caj-letter-to-canadas-public-safety-minister/.

³⁵⁵ In-person interview with Jocelyn Alec, 1 June 2023, Gidimt’en Checkpoint.

³⁵⁶ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

³⁵⁷ In-person interview with Jocelyn Alec, 1 June 2023, Gidimt’en Checkpoint.

Four land defenders were also arrested at the Gidimt'en Checkpoint on 19 November 2022.³⁵⁸ The land defenders were transported to the Houston RCMP detachment for processing and were held in custody prior to their bail hearings.³⁵⁹

Wet'suwet'en land defenders shared with Amnesty International that the RCMP destroyed cabins and other structures at both the Gidimt'en Checkpoint and Coyote Camp, as well as taking land defenders' equipment and belongings.³⁶⁰

“They totally destroyed everything that we had built. There was like huge wall tents that were donated, that we had built floors. It was like a living quarters. There were multiple of those that were destroyed.”³⁶¹

Over two days, around 29 people were arrested.³⁶² Even after the raids were over, the RCMP kept the exclusion zone at the 27.5-kilometre mark of the Morice FSR in place, along with an enhanced police presence and roving police patrols of Wet'suwet'en territory.³⁶³



³⁵⁸ RCMP, “Update#2: Enforcement operation continues near Houston, BC” (previously cited).

³⁵⁹ In-person interviews with Jocelyn Alec (1 June 2023, Gidimt'en Checkpoint), Sleydo' (1 June 2023, Gidimt'en Checkpoint); RCMP, “Update#2: Enforcement operation continues near Houston, BC” (previously cited).

³⁶⁰ In-person interviews with Jocelyn Alec (1 June 2023, Gidimt'en Checkpoint), Sleydo' (1 June 2023, Gidimt'en Checkpoint), Janet Williams and Lawrence Bazil (31 May 2023, Gidimt'en Checkpoint); Virtual interviews with Layla Staats (17 August 2023), Corey (Jayohcee) Jocko (15 August 2023), Logan Staats (6 September 2023).

³⁶¹ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

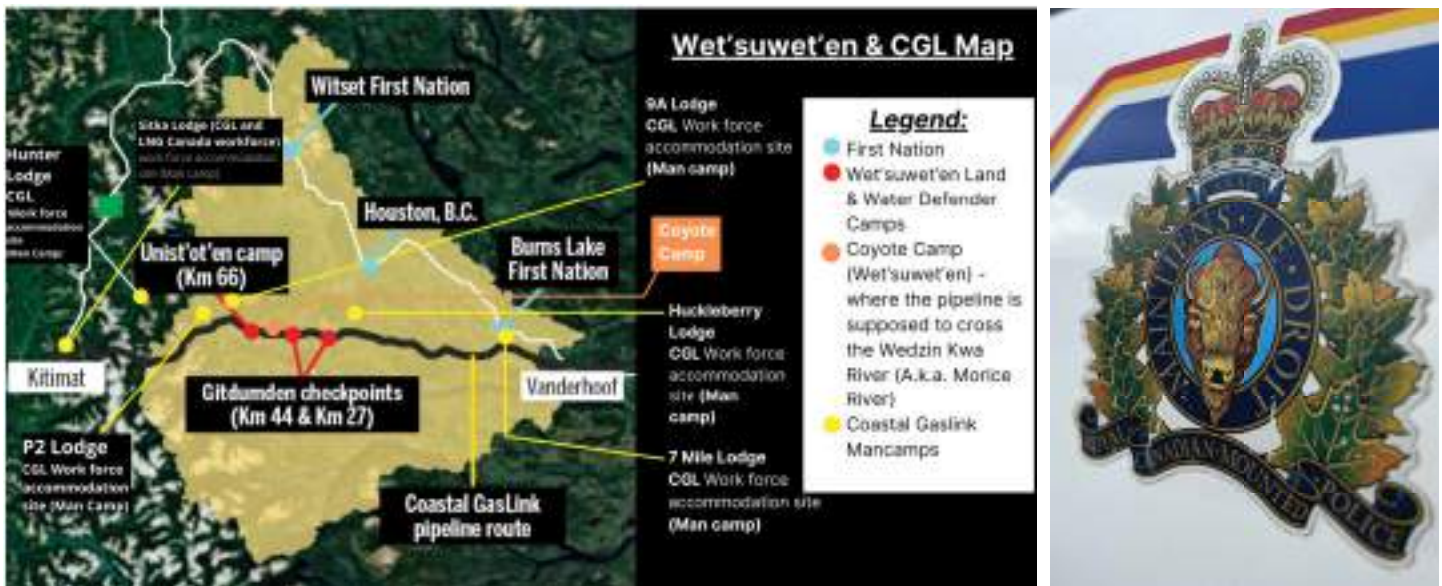
³⁶² Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 20

³⁶³ RCMP, “Update#2: Enforcement operation continues near Houston, BC” (previously cited).

Fourth RCMP Raid – March 2023

On 29 March 2023, more than a dozen RCMP officers raided the Gidimt'en Checkpoint under the pretext that CGL had reported a stolen chainsaw from a pipeline construction site. Five land defenders were arrested and charged with criminal contempt.³⁶⁴ They have not yet had their first court appearance.

In response to the raid, the B.C. Union of Indian Chiefs expressed its outrage that “these arrests continue the troubling pattern of police intimidation of Indigenous People asserting their rights to access their own territories and rejecting fossil fuel extraction.”³⁶⁵



Inadequate police action

In the performance of their duty, law enforcement officials must at all times fulfil their duty to serve the community and protect all persons against illegal acts, and to respect and protect human dignity and maintain and uphold the human rights of all persons.³⁶⁶ The use of force by law enforcement should be exceptional and only used to the minimum extent possible and only when strictly necessary.³⁶⁷ Further, law enforcement officials may not use greater force than is proportionate to the legitimate objective of either dispersing an assembly or effecting or assisting in the lawful arrest of suspected offenders.³⁶⁸ Indigenous land defenders regularly face disproportionate use of force by law enforcement officers during mass arrests, especially in response to camps and other resistance tactics that they take in struggles against development projects.³⁶⁹

During the four large-scale raids, the RCMP was equipped with semi-automatic sniper rifles, helicopters and dogs. Amnesty International is not aware of any allegations that Wet'suwet'en land defenders or their supporters were armed or acted violently. According to land defenders interviewed by Amnesty International and media reports, while being arrested, the RCMP used force, including beating, hitting, punching and pushing land defenders, even though they were acting peacefully. Further, the CBC and the Guardian reported allegations that the RCMP was prepared to use lethal force during the raid in January 2019.³⁷⁰

³⁶⁴ Amnesty International, “RCMP Raid of Wet'suwet'en Territory a 'Flagrant attack' on Indigenous Rights”, 31 March 2023, [amnesty.ca/human-rights-news/rcmp-raid-wetsuweten-territory/](https://www.amnesty.ca/human-rights-news/rcmp-raid-wetsuweten-territory/).

³⁶⁵ UBCIC, “UBCIC Stands with Wet'suwet'en as Gidimt'en Checkpoint Defending the Land from Fracking is Raided by RCMP”, 19 March 2023, [ubcic.bc.ca/ubcic_stands_with_wet_suwet_en_as_gidimt_en_checkpoint](https://www.ubcic.bc.ca/ubcic_stands_with_wet_suwet_en_as_gidimt_en_checkpoint).

³⁶⁶ UN Code of Conduct for Law Enforcement Officials, Arts. 1 & 2.

³⁶⁷ UN Code of Conduct for Law Enforcement Officials, Arts. 2 & 3.

³⁶⁸ Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), CCPR/C/GC/37, 17 September 2020, [documents-dds-ny.un.org/doc/UNDOC/GEN/G20/232/15/PDF/G2023215.pdf?OpenElement](https://www.unhcr.org/doc/UNDOC/GEN/G20/232/15/PDF/G2023215.pdf?OpenElement), para. 79.

³⁶⁹ Human Rights Committee, Concluding observations on the sixth periodic report of Canada, CCPR/C/CAN/CO/6, 13 August 2015, [documents-dds-ny.un.org/doc/UNDOC/GEN/G15/179/99/PDF/G1517999.pdf?OpenElement](https://www.unhcr.org/doc/UNDOC/GEN/G15/179/99/PDF/G1517999.pdf?OpenElement), para. 11; IACHR, Protest and Human Rights, 2019, OEA/Ser.L/V/II, [oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf](https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf), paras. 143-44.

³⁷⁰ Expert Mechanism on the Rights of Indigenous Peoples, Impact of militarization on the rights of Indigenous Peoples (previously cited), para. 33; Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 14; The Guardian, “Canada Police Prepared to shoot Indigenous Activists: Documents Show”, 20 December 2019, [theguardian.com/world/2019/dec/20/canada-indigenous-land-defenders-police-documents](https://www.theguardian.com/world/2019/dec/20/canada-indigenous-land-defenders-police-documents); CBC, “RCMP Arrests 14, Clear Road on Wet'suwet'en Territory in Ongoing Disputes over Land Rights, Pipeline”, 18 November 2021, [cbc.ca/news/canada/british-columbia/rcmp-wet-suwet-en-pipeline-resistance-1.6254245](https://www.cbc.ca/news/canada/british-columbia/rcmp-wet-suwet-en-pipeline-resistance-1.6254245).

“These are the guys with like, attack dogs and assault rifles and sniper guns on me. And I’m like, I’ve got a drum here.”³⁷¹

“[The RCMP] were all being deployed for what, maybe 30 of us, you know, they had us outnumbered probably four to one, just for all the land defenders. Their main goal was to provoke us, to provoke us into violence. So, they get to annihilate us. But we wouldn’t give them the benefit.”³⁷²

Amnesty International considers that the nature of the tactics employed by the RCMP during these large-scale police operations were not proportionate to the situation they were responding to, as there are no reports that land defenders were using violence or represented a threat. During the January 2019, February 2020 and November 2021 raids, the RCMP deployed large numbers of officers including Emergency Response Teams (who use tactics, specialized weapons and equipment to resolve high-risk situations). RCMP officers were armed with sniper rifles and used helicopters and dog units. There are allegations that during the January 2019 and November 2021 raids, the RCMP cut radio and internet communications, respectively, meaning that land defenders were unable to communicate amongst themselves. Further, the RCMP used “exclusion zones” during the February 2020 and November 2021 raids as a means of prohibiting members of the Wet’suwet’en Nation, legal observers and journalists from accessing the sites where the raids were occurring in order to observe the police operations. A recent court decision found the use of “exclusion zones” by the RCMP to be unlawful.³⁷³ Allegations that the RCMP were encouraged to use force, including being explicitly permitted to use lethal force ahead of the raids in January 2019 without any reasonable grounds to assume that Wet’suwet’en land defenders or others present were armed or posed a risk, underline the inappropriately militarized nature of the operation. Firearms may only be used as a last resort (i.e. only when less extreme means are insufficient) and when strictly necessary to protect themselves or others against the imminent threat of death or serious injury; the intentional lethal use of firearms is only permissible if strictly unavoidable in order to protect life. The RCMP also damaged Wet’suwet’en buildings and structures during the raids.

Amnesty International requested information from the RCMP and CRU about the raids and arrests of Wet’suwet’en land defenders.³⁷⁴ CRU did not reply. The RCMP responded that it “continues to support and participate in the investigations by the Civilian Review and Complaints Commission for the RCMP (CRCC) with respect to the allegations made against our members during the enforcement of various [B.C.] Supreme Court Injunctions” but did not provide further details.³⁷⁵ The CRCC’s investigation is ongoing.

8.3.2 ARBITRARY ARRESTS

Over the four large-scale police raids, the RCMP arrested approximately 77 land defenders. Amnesty International considers that those arrested solely for exercising their Indigenous rights and right to freedom of peaceful assembly were arbitrarily arrested. For the purposes of this report, the organization is focusing on the arbitrary arrests and detention conditions of those arrested in October and November 2021 as they are the land defenders against who the BCPS decided to press criminal charges.

Land defenders were arrested in November 2021 that were interviewed by Amnesty International stated that they were mistreated during their arrests and while in detention. Sleydo’ shared that, after being arrested in November 2021, while she was being driven past the Gidimt’en Checkpoint by the RCMP, “the police officers said to us, ‘take a good look, ladies, this is the last time you’re ever gonna see this place.’ And so, I was thinking immediately, they’re gonna destroy everything. This is the last time I’m gonna see it.”³⁷⁶

³⁷¹ Virtual interview with Layla Staats, 17 August 2023.

³⁷² In-person interview with Chief Dtsa’hl (Adam Gagnon), 29 May 2023, Smithers, B.C.

³⁷³ BCSC, Teal Cedar Products Ltd. v. Rainforest Flying Squad (previously cited), paras. 1-2.

³⁷⁴ Amnesty International letters to RCMP “E” Division, 17 May 2023, 25 May 2023 & 11 July 2023; Amnesty International letter to Gold Commander, C-IRG, 18 May 2023, 25 May 2023, 11 July 2023 & 21 August 2023.

³⁷⁵ RCMP communications to Amnesty International, 21 August & 21 November 2023. Government of Canada, Civilian Review and Complaints Commission for the RCMP, “CRCC Launches Systemic Investigation of the RCMP “E” Division Community-Industry Response Group (C-IRG)”, 9 March 2023, [ccrc-ccetp.gc.ca/en/newsroom/crcc-launches-systemic-investigation-rcmp-e-division-community-industry-response-group-cirg](https://www.ccrcc-ccetp.gc.ca/en/newsroom/crcc-launches-systemic-investigation-rcmp-e-division-community-industry-response-group-cirg).

³⁷⁶ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

The majority of the land defenders arrested by the RCMP on 18 and 19 November 2021, were taken first to Houston, then to Smithers and then to Prince George, which is over four hours away from Wet'suwet'en territory.³⁷⁷ At least two Indigenous land defenders were transported from Houston to Smithers in steel dog crates in the back of a RCMP SUV.

“It was like these SUVs with these steel dog cages in the back and some people were put in the back seat of the SUV. And then some people were put in the dog cages in the back. And so, Skylar Williams and I were. It really felt like it was intentional, you know, like making examples of us for being there, for traveling there, like to make an example of the Mohawks.”³⁷⁸

During the large-scale police operations, land defenders were arrested for undertaking peaceful land defence actions in exercise of their right to self-governance. The RCMP's justification for the land defenders' arrests is that they were allegedly violating the terms of the injunction by impeding pipeline construction. As stated above, Amnesty International considers that the terms of the injunction do not fulfil the requirements of necessity and proportionality, and therefore, unduly restrict the land defenders' human rights. The arrested land defenders were not committing any criminal offenses and were not causing any harm. Indigenous land defenders should not be criminalized simply for exercising their Indigenous rights, right to peaceful assembly and taking peaceful actions to defend their territory. Moreover, land defenders who were present on the territory but were not actively blocking the Morice FSR were also arrested. Amnesty International considers that all Wet'suwet'en land defenders were arbitrarily arrested, in some instances because there was no legal basis and in others because their arrest was incompatible with international human rights standards.

The actions adopted by land defenders to protect the *Yin'tah* against pipeline construction are also protected by the right to freedom of peaceful assembly.³⁷⁹ Indigenous Peoples have the right to oppose and actively express opposition to extractive projects, including by organizing and engaging in peaceful acts of protest and land defence.³⁸⁰ States must ensure that Indigenous Peoples exercising their rights to freedom of peaceful assembly in support of land defence and climate justice are not subjected to attacks, harassment, threats and intimidation.³⁸¹ The former UN Special Rapporteur on the rights of Indigenous Peoples, James Anaya, has stated that “criminal prosecution of Indigenous individuals for acts of protest should not be employed as a method of suppressing Indigenous expression and should proceed only in cases of clear evidence of genuine criminal acts.”³⁸² At the same time, law enforcement officials must respect and ensure the exercise of the right of freedom of peaceful assembly.³⁸³

Assemblies may only be dispersed in exceptional cases, such as if the assembly is no longer peaceful. The information reviewed by Amnesty International indicates that there are no reports that land defenders were using violence or represented a threat while undertaking land defence actions. Consequently, the organization considers that the land defenders were arbitrarily arrested.

Additionally, during the November 2021 police operation, the RCMP arrested at least two members of the media, despite clearly identifying themselves as journalists prior to being arrested. The role of journalists in reporting on assemblies is of particular importance for the full enjoyment of the right to peaceful assembly, and they must not be prohibited from exercising these functions, including monitoring the actions of law enforcement officials.³⁸⁴

³⁷⁷ In-person interviews with Jocelyn Alec (1 June 2023, Gidimt'en Checkpoint), Sleydo' (1 June 2023, Gidimt'en Checkpoint); Virtual interview with Layla Staats (17 August 2023).

³⁷⁸ Virtual interview with Layla Staats, 17 August 2023.

³⁷⁹ ICCPR, Art. 22; Human Rights Committee, General comment No. 37 (2020) (previously cited).

³⁸⁰ Special Rapporteur on the rights of Indigenous Peoples, Extractive industries and indigenous peoples (previously cited), para. 19.

³⁸¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyatetsossi Voule, Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, A/76/222, 23 July 2021, documents-dds-ny.un.org/doc/UNDOC/GEN/N21/203/78/PDF/N2120378.pdf?OpenElement, para. 90(b).

³⁸² Special Rapporteur on the rights of Indigenous Peoples, Extractive industries and indigenous peoples (previously cited), para. 21.

³⁸³ Human Rights Committee, General comment No. 37 (2020) (previously cited), para. 74.

³⁸⁴ Human Rights Committee, General comment No. 37 (2020) (previously cited), para. 30.

8.3.3 DETENTION CONDITIONS

The land defenders arbitrarily arrested in November 2021 were held in custody for 4 to 5 days prior to their bail hearings.³⁸⁵ Those interviewed by Amnesty International stated that, while in detention, they were not given sufficient food or water, they were denied medicine, and they had limited access to legal counsel.³⁸⁶ They were also not given masks or soap even though they were detained during the Covid-19 pandemic. Sleydo' had several cultural items, including a medicine bag and bracelet, violently removed from her at the jail in Prince George.³⁸⁷

“I was wearing some of my sacred, cultural, like my ceremonial items, like a medicine bag and a bracelet. They started telling me that I have to remove everything. And I’m like, I’m not taking off my cultural items. I have a right to keep these on me. And so, they forcefully were ripping off my bracelet. Three of them that were holding me down, taking off my cultural items.”³⁸⁸

Any person arrested or detained must be brought promptly before a judge. The Human Rights Committee considers that 48 hours is ordinarily sufficient and that any delay longer than 48 hours must remain as an absolute exception and be justified under the circumstances.³⁸⁹ Some of the Wet’suwet’en and other land defenders who were arrested during the November 2021 police raids were held in custody for four to five days before appearing before a judge.

Several land defenders shared with Amnesty International that during their arrests and while they were detained, Wet’suwet’en and other Indigenous land defenders were treated more severely than non-Indigenous land defenders who were also arrested. Chief Na’Moks noted that, “Only the Indigenous were in shackles, not the media or anybody else. They just had handcuffs. But they had all the Indigenous ... in shackles in their underwear appearing in front of the judge like that.”³⁹⁰

“They ankle shackled me, so I had ankle shackles and wrist shackles. I was taken into court. I was still in my long johns. It was hard to deal with because you felt that hint of racism. It was very distinctive and just knowing how degraded I felt in that courtroom. Like who decides who gets ankle cuffs, who decides who goes in the back in a dog cage, and why are those decisions made against Indigenous People and singled out in that way? The instance of just how I was brought into court, how I was transported to jail. I kind of felt degraded as a woman. There was a very distinctive singling out of the Indigenous land defenders.”³⁹¹

“It was just so dehumanizing ... we got to the courthouse, and they shackled us all up. And I’m looking at everyone else and it’s just me and my sister and the Indigenous folks in court that are shackled up. No one else is shackled. And they made me go into court in my britches. The same with my sister. So, we’re sitting there in our underwear, you know, at the court. It was just so embarrassing. It’s so embarrassing to go through that, to go through this violent arrest and then be taken and paraded in front of all of these people. It was only the Indigenous People that were shackled up, you know, and anybody that was not Indigenous, they weren’t treated that way.”³⁹²

³⁸⁵ In-person interviews with Jocelyn Alec (1 June 2023, Gidimt’en Checkpoint), Sleydo’ (1 June 2023, Gidimt’en Checkpoint); RCMP, “Update#2: Enforcement operation continues near Houston, BC” (previously cited).

³⁸⁶ In-person interviews with Sleydo’ (1 June 2023, Gidimt’en Checkpoint), Jocelyn Alec (1 June 2023, Gidimt’en Checkpoint); Virtual interviews with Logan Staats (6 September 2023), Layla Staats (17 August 2023), Corey (Jayohcee) Jocko (15 August 2023); Justice for Girls et al, Request for Early Warning & Urgent Action Procedures, CERD, Update on the Imminent Threat to Indigenous Peoples and Territories in British Columbia, Canada, 23 November 2021, [fafai-afai.org/wp-content/uploads/2022/05/Urgent-Submission-to-UN-CERD-Nov-2021-1.pdf](https://www.fafia-afai.org/wp-content/uploads/2022/05/Urgent-Submission-to-UN-CERD-Nov-2021-1.pdf), para. 12.a.

³⁸⁷ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

³⁸⁸ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

³⁸⁹ Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, [tbinternet.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F35&Lang=en](https://www.tbinternet.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F35&Lang=en), paras. 32-33; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988, Principle 12.

³⁹⁰ In-person interview with Chief Na’Moks, 30 May 2023, Smithers, B.C.

³⁹¹ Virtual interview with Layla Staats, 17 August 2023.

³⁹² Virtual interview with Logan Staats, 6 September 2023.

The Inter-American Court of Human Rights has found that exhibiting detained individuals in “degrading garments”, such as prison stripes, constitutes a form of cruel, inhuman or degrading treatment.³⁹³ Amnesty International considers that this constitutes gender-based violence, as well as cruel, inhuman or degrading treatment or punishment.

All of the land defenders were eventually released from detention with conditions that severely impacted their ability to exercise their Indigenous rights.³⁹⁴ Wet’suwet’en land defenders who were arrested were released on conditions “permitting them within the ‘exclusion zone’, defined as the Morice FSR or any other areas accessed by the Morice River FSR, for the purposes of hunting, trapping, fishing or cultural purposes, to the extent that these activities do not take place within 10 meters of a CGL worksite and do not interfere with or obstruct CGL workers.” In Sleydo’s case, a 75-metre restriction was imposed.³⁹⁵ Amnesty International observes that Sleydo’, who lives permanently on Wet’suwet’en territory, was given more serious conditions than other land defenders. She stated, “I wasn’t allowed anywhere within the exclusion zone except to drive to my home or unless I was engaged in a cultural activity. I can’t freely be on my territory.”³⁹⁶ Wet’suwet’en land defender Jocey Alec shared, “So right near the end of the day they finally gave us like conditions to sign. I remember sitting there just looking at that one specific condition to not return [to the territory]. Then I started crying.”³⁹⁷ Because of these conditions, Jocey was forced to remain away from her territory for around eight to nine months, until the criminal charges were finally dropped against her.³⁹⁸ These conditions remain in place for those land defenders that have ongoing court cases. Considering that the land defenders’ arrests were arbitrary, these conditions of release are unfounded and severely impact their rights as Indigenous Peoples to access their lands and their cultural rights connected to their lands.

Land defenders who were arrested who are not members of the Wet’suwet’en Nation were released on conditions which prohibited them from being present on Wet’suwet’en territory.³⁹⁹ Haudenosaunee land defender Corey (Jayohcee) Jocko shared, “We weren’t allowed on the territory. I lost everything. Like almost 7 to 8 months of suffering, not being able to go back out there where everybody else is. It was draining and hard.”⁴⁰⁰

8.3.4 CRIMINAL CHARGES AND ONGOING TRIALS

As set out above, the land defenders arrested prior to 2021 ultimately did not have charges pressed against them by the BCPS. However, in June and July 2022, the BCPS charged 20 land defenders arrested in October and November 2021 with criminal contempt, for allegedly disobeying the injunction order to stay away from pipeline construction sites, even though these sites are situated on the Nation’s unceded, ancestral territory.⁴⁰¹

Five out of those 20 land defenders pled guilty in December 2022 because of their bail conditions, which prohibited them from being on the Wet’suwet’en Nation’s territory and any other frontline resistance against extractive projects across Canada. They also pled guilty because of the psychological and financial impacts that the criminal trial process was having on them. This resulted in fines of \$500 CAD for three of the defenders and 25 hours of community service for the other two.⁴⁰²

Five others had the charges dropped against them, and one is awaiting next steps.⁴⁰³

³⁹³ IACtHR, Case of Loayza-Tamayo v. Peru, 17 September 1997, corteidh.or.cr/docs/casos/articulos/seriec_33_ing.pdf, para. 58.

³⁹⁴ In-person interviews with Sleydo’ (1 June 2023, Gidimt’en Checkpoint), Jocelyn Alec (1 June 2023, Gidimt’en Checkpoint); Virtual interviews with Logan Staats (6 September 2023), Layla Staats (17 August 2023), Corey (Jayohcee) Jocko (15 August 2023); Justice for Girls et al, Update on the Imminent Threat to Indigenous Peoples and Territories in British Columbia, Canada (previously cited), para. 12.a.

³⁹⁵ BCSC, Notice of Civil Claim (previously cited), para. 55.

³⁹⁶ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

³⁹⁷ In-person interview with Jocelyn Alec, 1 June 2023, Gidimt’en Checkpoint.

³⁹⁸ In-person interview with Jocelyn Alec, 1 June 2023, Gidimt’en Checkpoint.

³⁹⁹ BCSC, Notice of Civil Claim (previously cited), para. 56.

⁴⁰⁰ Virtual interview with Corey (Jayohcee) Jocko, 15 August 2023.

⁴⁰¹ United Nations Special Procedures, Communication to Canada, AL CAN 2/2022 (previously cited), p. 4; The Yee, “More Criminal Charges in Gas Pipeline Conflict”, 7 July 2022, theyee.ca/News/2022/07/07/More-Criminal-Charges-Gas-Pipeline-Conflict/.

⁴⁰² Court documents reviewed by Amnesty International; PBI, “Land defenders receive \$500 fine and 25 hours of community service for support of Wet’suwet’en struggle against CGL pipeline”, 13 December 2022, pbicanada.org/2022/12/13/land-defenders-receive-500-fine-and-25-hours-of-community-service-for-support-of-wetsuweten-struggle-against-cgl-pipeline/.

⁴⁰³ The charges were dropped against these five land defenders likely based on the way in which the RCMP read the injunction to them. Supreme Court of British Columbia, Teal Cedar Products Ltd. v. Rainforest Flying Squad, BCSC 701, 12 April 2022, bccourts.ca/jdb-txt/sc/22/07/2022BCSC0701.htm.

Several land defenders have already started trial in May and October 2023, or will go on trial in January 2024. If found guilty, they could be sentenced to prison.⁴⁰⁴ On 29 November 2023, one of the land defenders arbitrarily arrested on 18 November 2021 was found not guilty of criminal contempt by the BCSC.⁴⁰⁵

The land defenders were charged with criminal contempt for alleged violations of the injunction order. As set out above, Amnesty International considers that the injunction is not a permissible restriction on the land defenders' human rights because it applies to the Wet'suwet'en Nation's unceded territory in an overbroad manner and does not fulfil the requirements of necessity and proportionality. The organization also considers that the land defenders arrests were arbitrary. Consequently, there is no basis for the criminal contempt charges. Amnesty International calls for these charges to be dropped immediately. Based on the foregoing, Amnesty International considers that the arbitrariness of the land defenders' arrests, their detention conditions and that the criminal charges being brought against them have no basis, constitute violations of their rights to liberty and security of the person.⁴⁰⁶

In its 2019 decision and subsequent follow-up communication to Canada in April 2022, CERD requested that the State prevent and duly investigate the allegations of practises of arbitrary detention and instances of excessive use of force against the Wet'suwet'en, as well as guarantee their right to assembly.⁴⁰⁷ Amnesty International is not aware that Canada has provided this information or adopted measures to comply with CERD's recommendations.

8.4 RACIAL DISCRIMINATION

Everyone has the right to be free from racial discrimination.⁴⁰⁸ States must prohibit and eliminate racial discrimination including with regards to the right to equal treatment before the law and the right to security of the person and protection against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.⁴⁰⁹ Wet'suwet'en land defenders appear to be profiled and targeted by the RCMP because they are Indigenous. The RCMP also targets members of the Wet'suwet'en Nation with random traffic stops, on many occasions to supposedly check if the individual was drinking and driving, an assumption which has racist undertones.

“[The RCMP] were making racist comments because Shaylynn and I had painted red handprints on [our faces] and we were wearing red dresses. They were making comments about how we were orcs from like, the Lord of the Rings. Racist stuff like that.”⁴¹⁰

After being arrested in November 2021, two Indigenous land defenders were transported from Houston to Smithers in steel dog crates in the back of a RCMP SUV vehicles. Moreover, during their court appearances after being arrested in November 2021, Indigenous land defenders were brought into court in shackles, while non-Indigenous land defenders were not. Amnesty International observes that Indigenous land defenders were treated differently and more severely than non-Indigenous land defenders.

Amnesty International observes that one of the underlying factors in how Wet'suwet'en land defenders' human rights are being violated is entangled with their Indigenous origin and the predominance of an extractivist model that is being imposed without recognizing their right to free, prior and informed consent. Additionally, several reports of how many of them are and were treated during several distinct events, including during interactions with the RCMP, during their arrests, and while detained, represent the discriminatory bias enshrined in Canadian authorities' behaviour that is not in line with Canada's human rights obligations. Amnesty International considers that the treatment experienced by Wet'suwet'en land defenders amounts to racial discrimination.

⁴⁰⁴ Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay (previously cited), para. 64.

⁴⁰⁵ CBC, “Women arrested during Wet'suwet'en pipeline blockade found not guilty”, 29 November 2023, [cbc.ca/news/indigenous/wet-suwet-en-coastal-gaslink-court-1.7044494](https://www.cbc.ca/news/indigenous/wet-suwet-en-coastal-gaslink-court-1.7044494).

⁴⁰⁶ ICCPR, Arts. 9; American Declaration, Art. I.

⁴⁰⁷ CERD, Decision 1 (100) (previously cited); CERD, Communication to Canada, 29 April 2022 (previously cited).

⁴⁰⁸ ICCPR, Art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5.

⁴⁰⁹ International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5 (a) & (b).

⁴¹⁰ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

8.5 COLLECTIVE RIGHTS OF INDIGENOUS PEOPLES

The collective rights of Indigenous Peoples to lands, territories and resources are firmly embedded in UNDRIP.⁴¹¹ Moreover, everyone has the right to culture and cultural life.⁴¹² Culture manifests itself in many different ways. In the case of Indigenous Peoples, it includes particular ways of life associated with the use of land resources, as well as traditional activities such as fishing or hunting.⁴¹³ The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has stated that the “strong communal dimension of Indigenous Peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the rights to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”⁴¹⁴ States must take measures to protect the cultural rights of Indigenous Peoples that are associated with their ancestral lands and their relationship with nature, in order to prevent the degradation of their ways of life, including their means of subsistence, the loss of their natural resources and their cultural identity.⁴¹⁵ Further, with regards to Indigenous children whose communities maintain their traditional lifestyle, the Committee on the Rights of the Child has stated that, “the use of traditional land is of significant importance to their development and enjoyment of culture” and that “State parties should 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.”⁴¹⁶

Members of the Wet’suwet’en Nation shared with Amnesty International that the CGL pipeline project and associated violence against land defenders has resulted in people losing a connection to the territory, which in turn has negatively impacted the Nation’s ability to continue its cultural practises and traditional way of life.

“All of those pieces are preventing our people from engaging in those activities, which connects them to the land, gives them a sense of belonging. Just like being able to access the territory is a huge thing.”⁴¹⁷

“[Forsythe Security] follows us around when we’re trying to go pick medicines, pick berries. They follow us around everywhere we go. We can’t even hunt back there no more. We can’t even go pick berries. Even when we took the elders to go pick medicines, the police were following us around.”⁴¹⁸

“It’s been really hard. It’s had lots of impacts on other people in the community, being able to be out on their land. You know, there was an elders medicine gathering camp, and the elders were followed everywhere during the whole time. They were filmed harvesting their medicines. We’re talking about elders, in their 80s, that couldn’t go out and harvest medicines on their own territories.”⁴¹⁹

Amnesty International considers that the collective rights of the Wet’suwet’en Nation to its lands and territories, as well as its cultural rights, are being violated.

⁴¹¹ UNDRIP, Arts. 3 & 26.

⁴¹² ICCPR, Art. 27; ICESCR, Art. 15.

⁴¹³ Human Rights Committee, General Comment No. 23 (50), CCPR/C/21/Rev.1/Add.5, 26 April 1994, documents-dds-ny.un.org/doc/UNDOC/GEN/G94/162/61/PDF/G9416261.pdf?OpenElement, para. 7; CEDAW, General recommendation No. 39 (2022) (previously cited), para. 53.

⁴¹⁴ CESCR, General comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21, 21 December 2009, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F21&Lang=en, para. 36.

⁴¹⁵ CESCR, General comment No. 21 (previously cited), para. 36; UNDRIP, Arts. 20 & 33; Human Rights Committee, General Comment No. 23 (50) (previously cited), paras. 7-9.

⁴¹⁶ CRC, General Comment No. 11 (2009) Indigenous children and their rights under the Convention, CRC/C/GC/11, 2009, [ohchr.org/english/bodies/crc/docs/gc.11_indigenous_new.pdf](https://www.ohchr.org/english/bodies/crc/docs/gc.11_indigenous_new.pdf), para. 35.

⁴¹⁷ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

⁴¹⁸ In-person interview with Freda Huson (Chief Howihkat), 30 May 2023, Unist’ot’en.

⁴¹⁹ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

8.6 CANADA'S LACK OF IMPLEMENTATION OF RECOMMENDATIONS FROM INTERNATIONAL HUMAN RIGHTS MECHANISMS

Numerous UN human rights treaty bodies, expert mechanisms and special procedures have expressed their deep concern with Canada's treatment and criminalization of Wet'suwet'en land defenders and their supporters.⁴²⁰ CERD, as part of its Early Warning and Urgent Actions Procedures, has called on Canada to guarantee that no force will be used against Wet'suwet'en peoples, and to withdraw the RCMP and associated security and policing services from Wet'suwet'en territory.⁴²¹

In a follow-up communication sent to the State in April 2022, CERD reiterated that Canada had not taken measures to implement its 2019 decision and called on the State to engage in negotiations and consultations with the Wet'suwet'en peoples affected by the CGL pipeline, as well as to prevent and duly investigate the allegations of surveillance measures, practises of arbitrary detention and instances of excessive use of force against Wet'suwet'en land defenders by the RCMP, CRU and private security firms.⁴²² In January 2023, eight UN human rights experts and a UN working group in a communication to Canada, expressed their serious concern regarding the criminalization and use of excessive force against Wet'suwet'en land defenders.⁴²³ Subsequently, following his March 2023 visit to Canada, the UN Special Rapporteur on the rights of Indigenous Peoples called on Canada to halt the criminalization of Wet'suwet'en land defenders.⁴²⁴

Nevertheless, at a public thematic hearing convened by the Inter-American Commission on Human Rights (IAHCR) in July 2023, Canada stated that it was unaware of the allegations of human rights violations being committed against the Wet'suwet'en Nation in relation to the construction of the CGL pipeline.⁴²⁵

Both CERD and the nine UN human rights mandates requested that Canada provide information on concrete steps taken to protect the human rights of Wet'suwet'en land defenders. Amnesty International is not aware that Canada has provided this information. Further, none of the State authorities which were contacted by Amnesty International provided detailed information on any steps taken to protect the human rights of the Wet'suwet'en Nation.⁴²⁶

Amnesty International observes that not only is Canada violating the human rights of Wet'suwet'en land defenders, but it is also failing to respond to and effectively implement numerous recommendations made by human rights mechanisms on this issue.

“By deploying legal, political and economic tactics to violate our rights, Canada and B.C. are contravening the spirit of reconciliation, as well as their binding obligations to Indigenous law, Canadian constitutional law, the UNDRIP and international law.”⁴²⁷

⁴²⁰ CERD, Decision 1 (100) (previously cited); CERD, Communication to Canada, 24 November 2020 (previously cited); CERD, Communication to Canada, 29 April 2022 (previously cited); United Nations Special Procedures, Communication to Canada, AL CAN 2/2022 (previously cited); Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay (previously cited).

⁴²¹ CERD, Decision 1 (100) (previously cited).

⁴²² CERD, Communication to Canada, 29 April 2022 (previously cited).

⁴²³ United Nations Special Procedures, Communication to Canada, AL CAN 2/2022 (previously cited), p. 6. The communication was sent by the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous Peoples; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on violence against women and girls, its causes and consequences.

⁴²⁴ Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay (previously cited), para. 96(k).

⁴²⁵ IACHR, “Human rights situation of Wet'suwet'en Indigenous Peoples in Canada”, 10 July 2023, oas.org/en/iachr/sessions/hearings.asp.

⁴²⁶ Amnesty International contacted the RCMP, CRU, RCMP Commissioner, B.C. Attorney General, Premier of B.C., B.C. Prosecution Service, B.C. Ministry of Indigenous Relations and Reconciliation, B.C. Energy Regulator, B.C. Ministry of Public Safety and Solicitor General, and the B.C. Environmental Assessment Office.

⁴²⁷ Gidimt'en Land Defenders, Militarization of Wet'suwet'en Lands and Canada's Ongoing Violations (previously cited), para. 7.

**9. CGL, TC ENERGY AND THE
CORPORATE RESPONSIBILITY
TO RESPECT HUMAN RIGHTS**

9 CGL, TC ENERGY AND THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) were endorsed by the UN Human Rights Council on 16 June 2011 through a unanimous resolution. They are a key internationally recognized standard for both States and corporate actors to observe in the context of business-related human rights abuses. In accordance with the UN Guiding Principles, States have a duty to protect against human rights abuses by corporations within their territory and may breach their international human rights obligations where they fail to take appropriate steps to prevent, investigate and redress human rights abuses committed by companies.⁴²⁸

Amnesty International considers that Canada has failed to fulfill its duty to protect human rights by allowing the CGL pipeline to proceed even though the project is resulting in multiple violations and abuses of the Wet'suwet'en Nation's human rights. Additionally, Amnesty International has documented how CGL's failure to adequately consult with the Wet'suwet'en Nation constitutes a violation to the right to self-governance, and has contributed to a pattern of criminalization where the right to non-discrimination, freedom of expression, and peaceful assembly, among other rights, have been violated. Likewise, this report shows how Forsythe Security has played a role in unlawful surveillance, intimidation and harassment of Wet'suwet'en land defenders, thereby also contributing to violations of the right to privacy and security of the person.

The UN Guiding Principles clearly establish that business enterprises should respect human rights wherever they operate and throughout their operations.⁴²⁹ This requires that corporations operate in a way that does not interfere or have an adverse impact on human rights, and exists independent of a State's own compliance with human rights obligations and exists above compliance with national laws and obligations. This corporate accountability to protect human rights involves not "causing or contributing to adverse human rights impacts through their [companies] own activities and address such impacts when they occur." It also requires that companies "prevent or mitigate adverse human rights impacts that are directly linked to their operations, even if they have not contributed to those impacts."⁴³⁰ In order to identify, prevent, mitigate and account for their adverse human rights impacts, corporate actors should carry out human rights due diligence throughout its business relationships in a proactive manner and on an ongoing basis. If effective due diligence is carried out, impacts can be prevented or mitigated before escalating into serious harm or can be remediated before damage becomes irreparable.

When conducting human rights due diligence, a company may identify that it could cause or contribute to—or may already be causing or contributing to—human rights abuse. In these cases, companies must cease or prevent the adverse human rights impacts.⁴³¹ When human rights violations occur, international law also requires that the perpetrator be held to account and the victim receive an effective remedy. The right to an effective remedy encompasses the victim's right to equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered, and access to relevant information concerning violations and reparation mechanisms.

Drawing upon the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises (OECD Guidelines) provide practical guidance for multinational corporations on how to implement their responsibility to respect human rights, including on how they should carry out human rights due diligence.⁴³² As an OECD member, Canada is one of 51 countries that recommends the observance of multinational enterprises operating in or from their territories and claims that it is committed to promote and further the effectiveness of the OECD Guidelines.⁴³³

It is particularly important to note that the 2023 updated version OECD Guidelines explicitly call for greater recognition of the rights of Indigenous Peoples. The Guidelines note that companies should avoid causing or contributing the harms to Indigenous Peoples' rights and carry out due diligence in a way that takes into account the distinct and intersecting risks faced by marginalized groups, including Indigenous Peoples. The Guidelines also state that companies should "engage meaningfully" with impacted Indigenous Peoples. For engagement to be defined as meaningful, it must be ongoing, timely, accessible, appropriate, and safe for indigenous Peoples, as well as involve two-way communication, good faith and responsiveness to Indigenous People's views. Similarly, companies should eliminate barriers to engagement and address and remediate harms when they occur, which includes violations of the right to free, prior and informed consent.⁴³⁴

⁴²⁸ UN Guiding Principles (previously cited), Principle 1.

⁴²⁹ UN Guiding Principles (previously cited), Principle 11.

⁴³⁰ UN Guiding Principles (previously cited), Principle 13.

⁴³¹ UN Guiding Principles (previously cited), Commentary to Principle 19.

⁴³² OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, 2023.

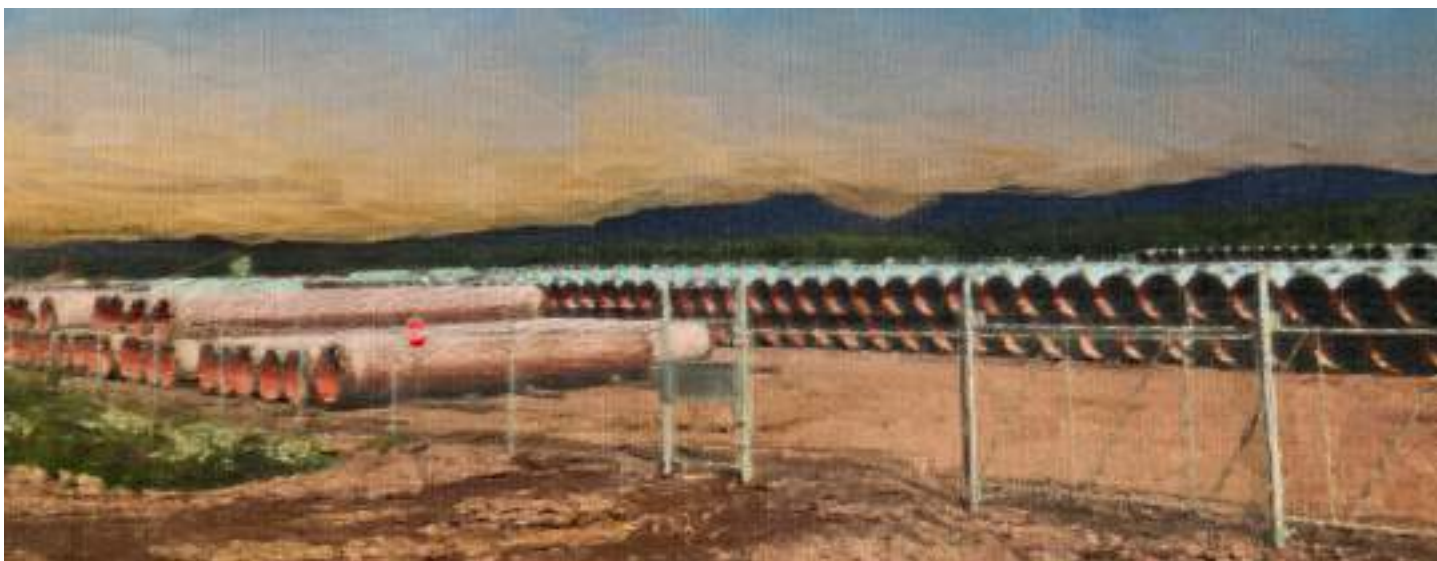
⁴³³ OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, 2023.

⁴³⁴ OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, 2023, Arts. 45, 64 & 72.

Both the UN Guiding Principles and the OECD Guidelines note that the corporate responsibility to respect human rights requires companies to avoid contributing to human rights abuses through their own business activities and to address adverse impacts which they are involved in, including by remediating any actual impacts. An enterprise “contributes to” an impact if “its activities, in combination with the activities of other entities, cause the impact, or if the activities of the enterprise cause, facilitate or incentivize another entity to cause an adverse impact.” Within this context, as part of its due diligence effort, companies should create human rights policies and practices that lay out expectations of staff, business partners and others directly related to their operations, and track the effectiveness of its efforts over time.⁴³⁵

As explained above, in this particular case, CGL and TC Energy should have conducted human rights due diligence to identify human rights risks and mitigation measures around its own operations, as well as those of its hired private security company (Forsythe Security), responsible for securing its pipeline. Amnesty International is not aware that CGL has any code of conduct to ensure human rights due diligence or undertaken human rights due diligence measures as part of the CGL pipeline project. The documents submitted by the company as part of the environmental assessment certificate process make no mention of potential human rights impacts related to the pipeline project. Further, Amnesty International has maintained correspondence with CGL from July 2022 to December 2023, seeking information regarding any measures undertaken that could be considered part of a due diligence effort. When asked about measures taken by the company with regards to the allegations of human rights abuses being committed against the Wet’suwet’en Nation as a result of pipeline construction, representatives of CGL stated that they have not been made aware of any allegations of human rights abuses.⁴³⁶ However, both CGL and Forsythe Security are defendants in the civil claim filed against them by Wet’suwet’en land defenders in 2022, which contains numerous allegations of human rights violations.⁴³⁷ According to CGL, it considers its consultation, accommodation and mitigation follow the approach to understanding and mitigating human rights risks described in the UN Guiding Principles. However, it did not provide further details.⁴³⁸ The company stated “that there are several complain or feedback mechanisms available for those who want to raise concerns with Coastal GasLink” and that it “employs Indigenous relations personnel who have repeatedly provided contact information and invited input regarding the project.”⁴³⁹ CGL stated that it has not received any complaints identifying human rights abuses and that, to the company’s knowledge, the B.C. EAO or B.C. Energy Regulator have not received any complaints about human rights abuses related to the project.⁴⁴⁰

Additionally, companies should adopt policies and practises to ensure that security personnel employed or hired by them to provide service act in accordance with relevant human rights standards, as well as with sensitivity to Indigenous cultural and social patterns.⁴⁴¹ As set out above, Forsythe Security personnel regularly take pictures of and film Wet’suwet’en land defenders, in addition to following them along the Morice FSR and intrusively surveilling land defenders while they are on their territory, even though they are not close to pipeline construction sites. CGL did not provide any information about measures that it has taken to investigate the allegations of human rights abuses being committed by its employees and/or Forsythe Security or to ensure that the private security firm respects the rights of members of the Wet’suwet’en Nation.



⁴³⁵ UN Guiding Principles (previously cited), Principles 17-21; Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders (previously cited), para. 75.

⁴³⁶ Virtual interview with CGL/TC Energy representatives, 22 June 2023.

⁴³⁷ BCSC, Notice of Civil Claim (previously cited).

⁴³⁸ CGL/TC Energy communication to Amnesty International, 6 December 2023.

⁴³⁹ CGL/TC Energy communication to Amnesty International, 6 December 2023.

⁴⁴⁰ CGL/TC Energy communication to Amnesty International, 6 December 2023.

⁴⁴¹ Special Rapporteur on the rights of Indigenous Peoples, Extractive industries and Indigenous Peoples (previously cited), para. 22.

**10. IMPACTS OF THE
INTIMIDATION, HARASSMENT,
UNLAWFUL SURVEILLANCE
AND CRIMINALIZATION
OF WET'SUWET'EN LAND
DEFENDERS**

10 IMPACTS OF THE INTIMIDATION, HARASSMENT, UNLAWFUL SURVEILLANCE AND CRIMINALIZATION OF WET'SUWET'EN LAND DEFENDERS

The construction of the CGL pipeline and the associated intimidation, harassment, unlawful surveillance and criminalization of Wet'suwet'en land defenders and their supporters has both individual and collective impacts.

10.1 INDIVIDUAL IMPACTS

Personal harm and psychological and physical impacts

The right to integrity of the person encompasses the absence of physical, psychological and moral harm.⁴⁴² All of the land defenders interviewed by Amnesty International shared that they have experienced and continue to experience both physical and psychological impacts including stress, anxiety, weight loss and depression. Jocelyn Alec shared that she has scars from the zip ties that the RCMP used on her when she was arrested.⁴⁴³ Those who have continued to live on the territory also fear daily interactions with the RCMP and worry that they could be arrested at any time. Others shared that the situation has caused and continues to cause them feelings of powerlessness, anger, sadness, disappointment, fear and worry.

“We’re all sick. We all are physically sick.”⁴⁴⁴

“It took a severe toll on me as far as my mental health. Even my sobriety for a little while. I was in a dark place. I was scared of cops. I was jumpy in certain situations. I was angry and I was depressed. It’s been hard. But it’s also part of the reason that we do what we do, you know, so that our kids don’t have to do this.”⁴⁴⁵

“I smoke a lot more than I should. I tried to quit smoking then these blockades happened, the confrontation with the cops. There’s lots of unhealthy coping mechanisms that come into play.”⁴⁴⁶

“We’re scared. There was a lot of fear that they would come back. A lot of people were in shock, angry, frustrated, sad and disappointed.”⁴⁴⁷

Amnesty International heard from land defenders that were arrested during the large-scale police raids about anxieties that they now have associated with the tactics used by the RCMP during the raid, specifically related to dogs and helicopters. Others shared feelings of wariness and fear related to law enforcement officers in general.

“When dogs bark at me, I just get such a physiological response. And anytime that I hear helicopters. It was really, really hard. I have lots of PTSD around helicopter sounds.”⁴⁴⁸

“I had really hardcore PTSD after [the arrests], especially with helicopters and dogs. Mostly like growling, barking dogs. It still kind of irks me to hear dogs bark.”⁴⁴⁹

⁴⁴² IACHR, Criminalization of Human Rights Defenders, 31 December 2015, OEA/Ser.L/V/II, oas.org/en/iachr/reports/pdfs/criminalization2016.pdf, para. 214.

⁴⁴³ In-person interview with Jocelyn Alec, 1 June 2023, Gidimt'en Checkpoint.

⁴⁴⁴ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

⁴⁴⁵ Virtual interview with Logan Staats, 6 September 2023.

⁴⁴⁶ In-person interview with Kolin Sutherland-Wilson, 29 May 2023, Smithers, B.C.

⁴⁴⁷ In-person interview with Savannah, 1 June 2023, Gidimt'en Checkpoint.

⁴⁴⁸ In-person interview with Sleydo' (Molly Wickham), 1 June 2023, Gidimt'en Checkpoint.

⁴⁴⁹ In-person interview with Jocelyn Alec, 1 June 2023, Gidimt'en Checkpoint.

“It was a big fear. Being afraid, that left a big impact on me. There’s just that heightened awareness when you know you look at cops and you’re like, ‘wow, OK, there’s six there; there’s four’. You’re just constantly monitoring things to feel safe, and you don’t feel safe.”⁴⁵⁰

“I wanted to share this because it’s ongoing. It’s one thing to experience that kind of trauma. And there’s a certain level of dissociation that has to happen in order to survive. I don’t think any of us have really dealt with any of that. But I think, because of the level of dissociation, it’s really prevented anybody from like, processing? Which has been pretty devastating. I think maybe we could have processed it, if we weren’t still under such attack and under such threat all the time.”⁴⁵¹

Impacts on land defence activities and loss of connection to the *Yin’tah*

Acts of violence and criminalization of land defenders not only affects the individual experiencing the violence, but it also has a chilling effect on other land defenders who, out of fear of being treated in the same way, refrain from exercising their rights. This situation affects society as a whole, given that land defenders play essential roles in demanding human rights guarantees and highlighting violations of these rights. Wet’suwet’en land defenders interviewed by Amnesty International shared that the intimidation, harassment, unlawful surveillance and criminalization that they have experienced has negatively impacted their land defence activities. While they used to feel happy and at home on their territory, it is now in some ways associated with feelings of anxiety and stress.

“As I look back, I feel like all of it was very intentional. It’s made me hesitant at times to speak up. It’s made me hesitant to put myself in the front of a march or the front of a rally, or to get involved with organizing.”⁴⁵²

“[It] cost me everything, my whole life, my children, my family, my friends, and my relationships. It’s not something that you choose to do for any benefit to yourself.”⁴⁵³

“I think just the fact of it can be stressful, even just coming out here. Just driving out here. I always have to pump myself up to come out here. I do.”⁴⁵⁴

“It’s very challenging. When we first moved out onto the territory, I used to be all stressed out in town, and I would come out on the logging road and kilometre by kilometre, I would just start to feel my body relax. And by the time I made it home, I could breathe. I could just be free. Now as soon as I even think about coming out here, I start getting stressed out. When I drive this road, I’m in fight or flight the whole time. My heart’s racing. Just from driving on the road to my house.”⁴⁵⁵

Other Wet’suwet’en land defenders shared that because of their actions to protect the *Yin’tah*, they were forcibly removed from it. Those who were arrested, charged and released under specific conditions that impeded their ability to be present on their territory shared the impacts as follows:

“It was really heartbreaking. It really sucked. I love it up here [at the Gidimt’en Checkpoint]. This is my home. The fact that I couldn’t come up here, it just made me so mad. Just driving to Smithers from Houston, like not being able to like to take that turn.”⁴⁵⁶

450 Virtual interview with Layla Staats, 17 August 2023.

451 In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

452 Virtual interview with Layla Staats, 17 August 2023.

453 In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

454 In-person interview with Anna-Marie Holland and Shaylee-Marie Holland, 31 May 2023, Gidimt’en Checkpoint.

455 In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

456 In-person interview with Jocelyn Alec, 1 June 2023, Gidimt’en Checkpoint.

Impacts on families and interpersonal relationships

Everyone has a right to be protected against arbitrary or unlawful interference with his or her family.⁴⁵⁷ Amnesty International heard from Wet'suwet'en land defenders the ways in which the construction of the pipeline and the associated intimidation, harassment, unlawful surveillance and criminalization has negatively impacted their interpersonal relationships.

“I know for most people, [it’s] cost them their relationships with their partners. It’s caused me not being able to connect with my kids, my family.”⁴⁵⁸

“The impact is trauma, PTSD, by the people that were here. And it’s not only felt by the people that were here, but families and the relatives of those people.”⁴⁵⁹

Several land defenders shared the impacts on their children. Sleydo’ shared that her young children are unable to celebrate their birthdays without their parties being interrupted by the RCMP.

“Same with Liam’s birthday, we always have an outdoor party. Anytime, every time we have anybody coming to our house, the police are there. Oftentimes the [helicopters] will come really circling around my house.”⁴⁶⁰

“I think she understands the injustice of it. We bought her a telescope for her birthday, and we’ve been moon watching, stargazing. Some nights it’s too cloudy, or the light pollution from the drill pad site because they used to keep their lights on all night, it just kind of interferes. But sometimes the brightest things you can see in the sky are drones. Almost any given night, there’s a few different drones positioned around our Healing Centre.”⁴⁶¹

The situation has also impacted the ability of members of the Wet'suwet'en Nation to enjoy and feel safe on the *Yin'tah*.

“I feel less safe now that she plays outside knowing there’s a strange man across the river watching; that there are drones up in the sky. I don’t really let her wander too far, without one of us being near her, which feels really unfortunate, because I’m sure that’s not what my aunt experienced when she came here as a little girl.”⁴⁶²

“That infuriates me, like so much, because this was my safe place. And it was everybody else’s, too; my kids’ safe space and now they can’t even be here. I experience extreme anxiety about their safety, so now they no longer come out here.”⁴⁶³

The consultation process for the pipeline caused divisions within the Wet'suwet'en People.

“There was a lot of conflict within the families. Its just now people are starting to talk to me again. So, it’s impacted us that way. Our families were divided.”⁴⁶⁴

457 IACHR, Criminalization of Human Rights Defenders (previously cited), para. 219.

458 In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

459 In-person interview with Chief Woos, 31 May 2023, Gidimt’en Checkpoint.

460 In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

461 In-person interview with Dr. Karla Tait, 30 May 2023, Unist’ot’en.

462 In-person interview with Dr. Karla Tait, 30 May 2023, Unist’ot’en.

463 In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

464 In-person interview with Freda Huson (Chief Howihkat), 30 May 2023, Unist’ot’en.

“It’s dividing us. Some people are for the pipeline.”⁴⁶⁵

“It’s been hard. It’s created this huge divide in the community.”⁴⁶⁶

“A lot of them were against us. A lot of them called us the land protectors, defenders, and the other ones kind of shun us, meaning push us away. They don’t talk to us. They look away from us. They’re against what we’re fighting for. So, this has divided our community. It’s just ripped our community apart.”⁴⁶⁷



Economic impacts

Financial costs are a direct consequence of legal proceedings. Wet’suwet’en land defenders with criminal charges shared with Amnesty International the heavy financial burden associated with hiring lawyers and travel costs to attend legal proceedings.⁴⁶⁸ Others shared that it is too expensive for them to bring legal challenges, for example, against the injunction or related to the acts of RCMP violence and harassment.

“There’s been thousands and thousands of dollars spent on these court cases and the average Indigenous person can never, would never be able to afford this, would never be able to fight this. It’s just like such a show of the broken system.”⁴⁶⁹

⁴⁶⁵ In-person interview with Timberwolf (Mable Forsythe), 2 June 2023, Smithers, B.C.

⁴⁶⁶ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

⁴⁶⁷ In-person interview with Janet Williams and Lawrence Bazil, 31 May 2023, Gidimt’en Checkpoint.

⁴⁶⁸ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

⁴⁶⁹ Virtual interview with Layla Staats, 17 August 2023.

Other land defenders shared the negative impacts that criminalization has had on their careers.

“It affected my life, my relationship and my whole career.”⁴⁷⁰

10.2 COLLECTIVE IMPACTS

Impacts on the Wet’suwet’en Nation and its way of life

Members of the Wet’suwet’en Nation shared with Amnesty International that the CGL pipeline project has fundamentally altered their ancestral territory and their way of life. Significant police and private security presence has resulted in a profound imposition of heavy-handed unlawful surveillance and control over their daily lives. It has also impacted their ability to continue carrying out their traditional practises and ways of life. Many shared that not only has this affected them both physically and emotionally, but it has also had negative impacts on their connect to the *Yin’tah*.



⁴⁷⁰ Virtual interview with Corey (Jayohcee) Jocko, 15 August 2023.

“One of my elders just wailed and cried when she saw how they devastated the Huckleberry patch, the biggest one, that’s where they built their 9A camp. They wiped out all our soapberries.”⁴⁷¹

“The pipeline shows absolutely no regard for our wildlife, our sacred areas; the desecration of our sites, our trails.”⁴⁷²

“We used to drink clean water year-round. Ever since [CGL] has been here, we get yellow water for a period, and we can’t drink the water.”⁴⁷³

“The fact that we can’t drink the water out of Wedzin Kwa anymore is devastating. Nobody would understand that unless they drank it every day for the last 10 years, or for the last 1000 years, or 10,000 years. And then to not have it changes us physically.”⁴⁷⁴



Amnesty International heard from matriarch Timberwolf that, “It’s really hard for me to take because that’s not the way I seen it in the past.”⁴⁷⁵ The sentiments expressed by members of the Wet’suwet’en Nation collectively underscore the profound anguish and distress they are experiencing which is caused by the consequences of the construction of the CGL pipeline on their territory. The stories they shared with Amnesty International highlight the degradation of and loss of access to the *Yin’tah*, and the desecration of sacred sites and trails.

“There’s tremendous anguish of seeing the destruction of land; the people have been on this land for 11,000 years.”⁴⁷⁶

⁴⁷¹ In-person interview with Freda Huson (Chief Howihkat), 30 May 2023, Unist’ot’en.

⁴⁷² In-person interview with Chief Dtsa’hyl (Adam Gagnon), 29 May 2023, Smithers, B.C.

⁴⁷³ In-person interview with Freda Huson (Chief Howihkat), 30 May 2023, Unist’ot’en.

⁴⁷⁴ In-person interview with Sleydo’ (Molly Wickham), 1 June 2023, Gidimt’en Checkpoint.

⁴⁷⁵ In-person interview with Timberwolf (Mable Forsythe), 2 June 2023, Smithers, B.C.

⁴⁷⁶ In-person interview with Andy Shadrack, 29 May 2023, Smithers, B.C.

11. CONCLUSIONS AND RECOMMENDATIONS

11 CONCLUSIONS AND RECOMMENDATIONS

Amnesty International's research has determined that the Wet'suwet'en Nation's rights to self-governance, free, prior and informed consent, and to make decisions related to their territory and resources has been violated, as Canada did not adequately discharge its duty to consult with the Nation in accordance with international human rights standards in regard to the CGL pipeline project. At the same time, Amnesty International has found that CGL failed to adequately consult with the Wet'suwet'en Nation constituting a violation of the Nation's human rights. Consequently, the construction of the CGL pipeline is proceeding without the free, prior and informed consent of the Wet'suwet'en Nation.

For years, Wet'suwet'en land defenders have been adopting a series of measures, including peaceful land defence actions, to re-affirm their authority over the *Yin'tah*, as well as to protect it from environmentally destructive projects and industry. Amnesty International has observed that, in response to these land reclamations and defence activities, CGL obtained an injunction from the BCSC as a means of removing Wet'suwet'en land defenders and their supporters from the territory and proceeding with pipeline construction. Amnesty International considers the injunction to be overbroad in its terms, enforcement provisions and geographical application, and to constitute a restriction of human rights that is disproportionate and results in a range of violations of the individual and collective rights of the Wet'suwet'en Nation.

Amnesty International has determined that, under the argument of enforcing the injunction, Canada and British Columbia, through the RCMP, have, and continue to, harass, intimidate, unlawfully surveil and criminalize Wet'suwet'en land defenders and their supporters. These actions form part of a concerted effort by the State to remove Wet'suwet'en land defenders from their territory in order for construction of the pipeline to proceed. These actions have also resulted in ongoing violations of the rights of the Wet'suwet'en land defenders and their supporters, including the right to life, security of the person, liberty, privacy, non-discrimination, cultural rights and Indigenous rights. Amnesty International has also observed violations of the rights to be free from racial and gender-based discrimination and violence, as Wet'suwet'en land defenders are targeted because they are Indigenous and because they are women. At the same time, Amnesty International has determined that CGL, and its private security company Forsythe Security, have played a role in the unlawful surveillance, intimidation and harassment of Wet'suwet'en land defenders, thus failing to respect their human rights.

While outside the scope of this research, Amnesty International is also concerned that, due to the violation of the Wet'suwet'en Nation's right to free, prior and informed consent, adverse environmental harms that are potentially being caused by construction of the pipeline. Many members of the Wet'suwet'en Nation shared with Amnesty International their perceptions that pipeline construction is already having negative impacts on wildlife and fish.⁴⁷⁷

Finally, Amnesty International observes that this situation negatively impacts both individual land defenders, as well as the Wet'suwet'en Nation as a whole. The CGL pipeline project itself and the associated harassment, intimidation, unlawful surveillance and criminalization of land defenders, has created an atmosphere of fear and violence that members of the Wet'suwet'en no longer feel safe or secure on the *Yin'tah*, which is resulting in a loss of connection to their ancestral territories and consequently their ancestors, and negatively impacting cultural transmission to future generations.

Taking into consideration the opinions of members of the Wet'suwet'en Nation, as well as Canada's obligations under international law and in line with recommendations issued by other international human rights bodies, Amnesty International makes the following recommendations.

⁴⁷⁷ B.C., "Coastal GasLink project fined more than \$340,000 for non-compliance" (previously cited); B.C. EAO, "Warning Letter to Coastal GasLink" (previously cited); B.C., "Third Fine Issued for Coastal GasLink Project" (previously cited); B.C., "Fine Issued for Coastal GasLink Project" (previously cited); BCSC, *Wet'suwet'en Treaty Office Society v. British Columbia* (Environmental Assessment Office) (previously cited), para. 65; STAND.earth, *Coastal GasLink: A dangerous project that blatantly violates Indigenous rights* (previously cited), p. 4; The Narwhal, "The last 33 Caribou: Fighting for the Survival of a Wet'suwet'en herd" (previously cited); The Tyee, "RCMP, Pipeline Firm Spill Fuel on Wet'suwet'en Territory" (previously cited).

11.1 RECOMMENDATIONS

11.1.1 TO THE GOVERNMENTS OF CANADA AND BRITISH COLUMBIA

Immediately halt the construction and use, and suspend all permits and approvals, for the Coastal GasLink pipeline in the unceded territories of the Wet'suwet'en Nation.

Immediately drop the criminal contempt charges against Wet'suwet'en and other land defenders.

Immediately halt the harassment, intimidation, unlawful surveillance and criminalization of Wet'suwet'en land defenders and withdraw the Royal Canadian Mounted Police and associated security and policing services from the Wet'suwet'en Nation's territory.

Review, in consultation with Indigenous Peoples, the existing legal and institutional frameworks at both the federal and provincial level to ensure that the right to consultation and to obtain free, prior and informed consent is adequately incorporated in domestic legislation in a manner which is in compliance with international human rights obligations and jurisprudence.

Adopt human rights and environmental due diligence legislation to require companies to proactively ensure they do not cause or contribute to human rights violations and abuses, including rights contained in the United Nations Declaration on the Rights of Indigenous Peoples, through their own activities or business relationships.

Adopt measures to ensure that injunctions are not used to infringe the human rights of Indigenous Peoples, including forcibly removing them from their territories.

Review and amend all relevant laws to ensure they align with

Canada's domestic and international obligations towards Indigenous Peoples and remove any existing legal barriers to the effective exercise of Indigenous self-government.

Prevent and duly investigate all allegations of human rights violations and abuses committed against Wet'suwet'en land defenders and their supporters by the RCMP and Forsythe Security, and ensure that robust administrative measures are taken in cases where investigations show that agents have committed violations or abuses.

Ensure that effective administrative, judicial and other appropriate remedy is provided to members of the Wet'suwet'en Nation who have experienced human rights abuses in connection with the CGL pipeline and provide an enabling environment for land defenders to exercise their rights.

Implement the Truth and Reconciliation Commission of Canada's Calls to Action and the Calls for Justice of the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

Fully implement the recommendations received from United Nations treaty bodies, specifically the Committee on the Elimination of Racial Discrimination, related to the situation being experienced by the Wet'suwet'en Nation.

Extend invitations to UN human rights mandates, specifically the Committee on the Elimination of Racial Discrimination and the Expert Mechanism on the Rights of Indigenous Peoples, and to the Inter-American Commission on Human Rights, to undertake official visits to Canada.

11.1.2 TO THE ROYAL CANADIAN MOUNTED POLICE AND ITS CRITICAL RESPONSE UNIT

Immediately halt the harassment, intimidation, unlawful surveillance and criminalization of Wet'suwet'en land defenders and withdraw from the Wet'suwet'en Nation's territory.

Prohibit the use of exclusion zones and ensure that Indigenous Peoples are able to access their territories at all times, regardless of policing operations or any other situation.

Establish prompt, independent and impartial investigations into all allegations of the human rights violations committed against Wet'suwet'en land defenders and their supporters by the RCMP,

and ensure that those responsible are brought to justice in fair trials or administrative proceedings.

Establish a credible, independent review of the RCMP's operational framework used in the actions against Wet'suwet'en land defenders, covering, among other elements, planning, instruction, communication, chain of command responsibilities, supervision, cultural sensitivity, training and the issuing of appropriate equipment, with the aim of ensuring that the RCMP is in future fully human rights compliant in its approach to the policing of public assembly.



Ensure that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials are implemented and fully applied in practice and that police officers are held to account in the event their conduct falls below these standards.

Ensure effective monitoring of RCMP officers' compliance with non-discrimination standards.

Implement Calls for Justice 9.1 to 9.11 of the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

11.1.3 TO COASTAL GASLINK PIPELINE LTD. AND TC ENERGY

Immediately halt the construction and use of the Coastal GasLink pipeline in the unceded territories of the Wet'suwet'en Nation and conduct adequate due diligence with the view of ceasing operations and planning for a responsible disengagement from the territory.

Establish a human rights policy with a code of conduct that clearly lays out expectations of staff, business partners and others directly related to operations, products or services.

Immediately halt the harassment, intimidation and unlawful surveillance of Wet'suwet'en land defenders and withdraw from the Wet'suwet'en Nation's territory.

Create a due diligence mechanism to identify and address (prevent, mitigate, account for) human rights risks and impacts across its operations, products and services, as well as throughout its business operations.

Prevent and duly investigate all allegations of the human rights violations committed against Wet'suwet'en land defenders and their supporters by employees or representatives of CGL and any other business partner such as Forsythe Security, as well as provide effective remedy.

Establish a rights-compatible grievance mechanism to receive and respond to complaints of alleged human rights abuses, in accordance with the UN Guiding Principle 13.

Implement Calls for Justice 13.1 to 13.5 of the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

11.1.4 TO FORSYTHE SECURITY

Immediately halt the harassment, intimidation, and unlawful surveillance of Wet'suwet'en land defenders and withdraw from the Wet'suwet'en Nation's territory.

Prevent and duly investigate all allegations of the human rights violations committed against Wet'suwet'en land defenders and their supporters by employees or representatives of Forsythe Security and any other business partner such as CGL, as well as provide effective remedy.

Establish a human rights policy with a code of conduct that clearly lays out expectations of staff, business partners and others directly related to operations, products or services.

Create a due diligence mechanism to identify and address (prevent, mitigate, account for) human rights risks and impacts across its operations, products and services, as well as throughout its business operations.

Establish a rights-compatible grievance mechanism to receive and respond to complaints of alleged human rights abuses, in accordance with the UN Guiding Principle 13.

11.1.5 TO THE INTERNATIONAL COMMUNITY

Amnesty International calls on United Nations treaty monitoring bodies and other special mechanisms, specifically the Committee on the Elimination of Racial Discrimination and the Expert Mechanism on the Rights of Indigenous Peoples, to incorporate this report in their monitoring of Canada and to request information from the State about this situation.

Amnesty International calls on the Inter-American Commission of Human Rights to incorporate this report in their monitoring of Canada and to request information from the State about this situation.



12. ANNEX

Coastal GasLink Pipeline Ltd. and TC Energy, Letters to Amnesty International in response to right of reply correspondence, 30 August and 6 December 2023.

Information request

Coastal GasLink and Amnesty International meeting follow-up and information request

Following the virtual meeting on June 22, 2023, between Amnesty International and Coastal GasLink, we had committed to sending information regarding the Indigenous consultation, security and injunction for the project.

Coastal GasLink has compiled information that is relevant to your request. This supplement will help to ensure factual information on the project, our engagement and mitigation of impacts is being included in your research and overall report.

Project specific topics include:

- Indigenous consultation and participation
- Project security and community safety
- Injunction and legal involvement

Information and links

Topic	Comments
Indigenous consultation and participation	<ul style="list-style-type: none"> • Over 12 years ago Coastal GasLink respectfully approached more than 20 Indigenous groups along our then proposed project corridor in accordance with Canadian law, and consistent with the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its principles. • We signed project agreements with all 20 elected First Nations governments along the approved route. This includes agreements with five of the six elected Wet'suwet'en Nations (the 6th is outside the project area). • In addition to the elected councils, we have proactively engaged with the hereditary system through their organizing body, the Office of the Wet'suwet'en. • Since 2019, the team has had more than 2,800 engagements or interactions with the Office of the Wet'suwet'en and Hereditary House groups. • We continue to seek a collaborative approach to addressing issues and concerns raised by some Wet'suwet'en people. • Coastal GasLink's Construction Monitoring and Community Liaison (CMCL) program provides a vital link between project construction and Indigenous communities, ensuring that Indigenous values and the environment are protected during construction. Through the CMCL program, Indigenous members are selected by their communities to monitor construction and report back to their communities about what they see. • Coastal GasLink implemented the Construction Workforce Accommodation Advisors program to foster a respectful and safe relationship between workers and the local communities that host them. • Coastal GasLink represents one of the largest contracting opportunities for Indigenous-owned businesses in the history of British Columbia. For example, Kyah Development Corporation and Yinka Dene Economic Development Limited Partnership (each owned by Witset First Nation and Wet'suwet'en First Nation respectively) has agreements with Coastal GasLink and its prime contractors to contribute to construction of the Project in their traditional territory.
Project security and community safety	<ul style="list-style-type: none"> • The safety of our workforce, their families and the indigenous and local communities remains our number one priority. We respect the rights of others to peacefully and lawfully express their point of view and understand that there is opposition to the Project. • In any circumstance where there is illegal activity or if our workforce is being threatened with any type of violence, whether verbal or physical, Coastal GasLink will file a report to the RCMP just like any other citizen can if there has been any incident, violence, etc. • Coastal GasLink security is not and has never been armed. • Coastal GasLink has an obligation to control access to its worksites to ensure the safety of both the public and its workers, however we always keep the lines of communication open to help facilitate access for members of Indigenous communities when it is safe to do so. • It is important to note that there is a history of violence, attacks, blocking access to necessities such as water and verbal abuse that has occurred over the years to our workforce.

	<ul style="list-style-type: none"> • In October 2021, illegal blockades took place on the Morice River forest service road blocking all exits and access to two lodges, threatening the health and safety of more than 500 of our workers, including Wet'suwet'en members, who were trapped unwillingly. • On Feb. 17, 2022, approximately 20 masked and violent attackers wearing camouflage surrounded and attacked Coastal GasLink workers in a highly planned and dangerous unprovoked assault. This coordinated and criminal attack from multiple directions threatened the lives of several workers. More information can be found at the link above and here.
<p>Injunction and legal involvement</p>	<ul style="list-style-type: none"> • The project went through robust provincial regulatory processes where Indigenous groups were consulted, and the potential impact to Indigenous rights, including economic, social, heritage, health effects and other issues and concerns were thoroughly assessed, prior to being granted environmental approvals and permits for construction of the Project. • In November 2018, after Coastal GasLink was physically prevented from conducting preconstruction activities, Coastal GasLink filed an application with the B.C. courts to prohibit others from impeding or physically interfering with Coastal GasLink. • In December 2018, the British Columbia Supreme Court granted an interim injunction allowing Coastal GasLink to access the Morice River bridge, and the forest service roads. The order also stated that Coastal GasLink's pre-construction and construction activities were not to be impeded or physically interfered with including its employees and contractors. A further three-day hearing was held in June 2019, resulting in the British Columbia Supreme Court granting Coastal an interlocutory injunction order with similar conditions. In her Reasons for Judgement, Justice Church stated that injunctive relief is an equitable remedy and that the equities in this case strongly favoured granting Coastal GasLink an injunction. Further, the court found that Coastal GasLink established that refusing to grant an injunction would cause Coastal GasLink and many others serious and irreparable harm. • You can view the court decision here. • The current order is enforceable and facilitates Coastal GasLink's continued safe access in the area. • Our work is lawful, authorized, fully permitted and has the unprecedented support of local and Indigenous communities and agreements in place with all 20 elected First Nation councils across the 670 km route. These agreements include elected Wet'suwet'en Nation communities who are benefiting from training, employment and contracting opportunities.

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December 6th, 2023

Amnesty International Secretariat Office
312 Laurier Avenue East
OTTAWA, ONTARIO
K1N 1H9

[REDACTED]

[REDACTED]

Thank you for providing Amnesty International's draft findings. I am providing this response on behalf of Coastal GasLink's President, Bevin Wirzba. As previously stated in correspondence, respecting human rights is a fundamental operating principle of TC Energy, and by extension, how we have planned, and are building, the Coastal GasLink Project.

We respectfully disagree with many of the draft findings as they are described in the November 23rd letter. Coastal GasLink notes that it has not been provided with the underlying research referenced throughout the excerpts provided from the report. Coastal GasLink has previously provided extensive information to Amnesty International regarding our commitment to respectful relationships with Indigenous and local communities in the areas in which we operate.

Respecting the rights and interests of Indigenous people has been a fundamental principle in developing and building this project. The Province of British Columbia has a robust regulatory process that considers and accommodates Indigenous rights and interests. The project followed the provincial regulatory process in which Indigenous groups, including the Office of the Wet'suwet'en, had the opportunity to participate and identify the potential impact to Indigenous rights. Concerns were examined and addressed or mitigated, where feasible as part of that process, and having considered all of the evidence before it, the Government of British Columbia issued an Environmental Assessment Certificate in 2014. Coastal GasLink's work is lawful, authorized and fully permitted.

We recognize that there continue to be different views of the project, and some fundamentally oppose the project, however the Wet'suwet'en people have both hereditary and elected governance structures. Coastal GasLink engaged with both of these governance structures in an attempt to address issues and concerns regarding the project. The elected leadership chose to negotiate agreements with the project

to ensure that the Wet'suwet'en people as a whole¹ would receive benefit from the project in their territory. In addition, benefits from project-related contracting resulted in economic and employment opportunities for Indigenous communities and their members, including jobs and training in trades that will last beyond the project and provide those individuals with the skills to seek future employment opportunities.

Indigenous people, including Wet'suwet'en, have been instrumental in the construction of Coastal GasLink. Since construction began, hundreds of key roles have been held by local Indigenous people, and over \$1 billion in contracts have been awarded to local Indigenous businesses on the project, such as Kyah Resources, a Wet'suwet'en business that is 100% Indigenous-owned. We would further draw your attention to the fact that 17 of the 20 communities along the project have equity options for ownership interests in the project in place including all five of the Wet'suwet'en communities.

Karen Ogen, a Wet'suwet'en member, and former elected Chief Councillor of the Wet'suwet'en First Nation, said: *"The [Coastal GasLink] pipeline is more than just steel in the ground moving a Canadian product the world needs – it is a symbol of a new era of Indigenous opportunity and Indigenous ownership."*

As a result of the positive and respectful relationships that Coastal GasLink and Indigenous communities have built over the years, we have project agreements with the 20 elected Indigenous communities along the project corridor, including all five of the elected Wet'suwet'en communities. Each of these communities spent considerable time and effort to learn about the project in making their decisions to support the project. These communities' perspectives are valid and should be incorporated in Amnesty International's research and evaluation. We would be pleased to make introductions with Indigenous leaders if Amnesty International will be continuing due diligence research.

Additionally, Coastal GasLink submits, in the Appendix below, its responses to the statements and allegations outlined in the Annex submitted by Amnesty International.

Coastal GasLink would appreciate further updates on the status of the report.

Sincerely,



Joel Forrest

Project Vice-President, External Relations, Coastal GasLink

¹ Both the hereditary system of governance and the elected system of governance represent the same Wet'suwet'en people. The same people who have expressed support for the project through their election of band councils, are also represented by hereditary chiefs.

Appendix – Coastal GasLink Responses to Amnesty International Annex

Amnesty International

Human rights due diligence and CGL/TC Energy's response to alleged human rights abuses

CGL/TC Energy should have conducted human rights due diligence to identify human rights risks and mitigation measures around its own operations, as well as those of its hired private security company (Forsythe Security), responsible for securing its pipeline. Amnesty International is not aware that CGL has any code of conduct to ensure human rights due diligence or undertaken human rights due diligence measures as part of the CGL pipeline project. The documents submitted by the company as part of the environmental assessment certificate process make no mention of potential human rights impacts related to the pipeline project.

Coastal GasLink Response:

As stated in Coastal GasLink's letter sent May 26, 2023, respecting human rights is a fundamental operating principle of TC Energy, and by extension, how we have planned, and built, the Coastal GasLink Project. Coastal GasLink's work is lawful, authorized, and fully permitted under the laws of British Columbia and Canada. The project went through a robust provincial regulatory process where Indigenous groups were consulted, and the potential impact to Indigenous rights, as well as economic, social, heritage, health effects and other issues and concerns were thoroughly assessed. The decision to grant an Environmental Assessment Certificate and permits to Coastal GasLink was in part attributed to Coastal GasLink's thorough and extensive consultation and engagement with Indigenous groups and the design of mitigation and avoidance measures to protect Indigenous rights, culture, and traditions. Coastal GasLink's consultation record is publicly available on the provincial regulator's website and we have already provided an engagement and consultation summary for your reference.

It is true that Coastal GasLink does not use terminology such as "Human Rights impacts" in its documentation, however, the consultation carried out by both Coastal GasLink and the Environmental Assessment Office, and the accommodation and mitigation required of the project are precisely the approach to understanding and mitigating human rights described in the Guiding Principles on Business and Human Rights. In the case of resource development, the highly respected regulatory process in British Columbia employs a rigorous process to identify pathways of effects on five pillars – Environment, Health, Economy, Culture and Social. Although the terminology of human rights is not explicitly used, human rights are included in the effects that may be experienced across these pillars. Potential effects on Indigenous interests including rights and title were explicitly assessed and mitigated as part of the assessment process.

Through the implementation of its Socio-Economic Effects Management Plan, Coastal GasLink is in a constant process of consulting with communities and government agencies and adapting to the social effects that the project may be having on them. The specific example provided by Amnesty of private security does not acknowledge the security threats that Coastal GasLink has faced in carrying out its fully permitted project. Coastal GasLink, through the use of security workers, has attempted to provide the safest work environment possible for its workers given the hostile and, at times, illegal activities of protestors and opponents of the project.

Coastal GasLink operates on the core belief that our workers, contractors and Indigenous and local communities are entitled to a respectful and inclusive environment where everyone feels safe, and discrimination or harassment of any kind is not tolerated. Coastal GasLink is committed to creating an extraordinary legacy of safety and respect for communities and the environment. As part of that commitment, we provide cultural awareness and other training to people at every level of the project – including those who work and live in our workforce accommodations. Additionally, there are policies and practices in place to support these commitments, such as TC Energy’s Harassment Free Workplace Policy that affirms our commitment to creating a safe and respectful workplace.

Amnesty International

Amnesty International has maintained correspondence with CGL from July 2022 to November 2023, seeking information regarding any measures undertaken that could be considered part of a due diligence effort. When asked about measures taken by the company with regards to the allegations of human rights abuses being committed against the Wet’suwet’en Nation as a result of pipeline construction, representatives of CGL stated that they have not been made aware of any allegations of human rights abuses. CGL did not share any information about measures that the company has adopted to assess any potential or actual adverse human rights impacts associated with the construction of the pipeline, contrary to its responsibility to respect human rights as set out in the UN Guiding Principles. Further, CGL did not provide a concrete response when asked about existing complaint measures available to the public to report allegations of human rights abuses being committed by the company or its private security.

Coastal GasLink Response:

There are several complaint or feedback mechanisms available for those who want to raise concerns with Coastal GasLink. Complaints or feedback may be provided through the Coastal GasLink website or by telephone to the toll-free telephone line. Coastal GasLink manages issues through dialogue to ensure they are identified and addressed. Issues received or identified through ongoing engagement are systematically tracked and followed up on to promote resolution. Local governments, provincial agencies and Indigenous groups are encouraged to make contact with Coastal GasLink if a concern is identified related to the Project. Issues identified are addressed in alignment with Coastal GasLink’s approved Aboriginal Consultation Plan or Public Consultation Plan which are transparent and publicly available on the EAO’s website.

In addition, and more directly related to Wet’suwet’en issues, Coastal GasLink employs Indigenous relations personnel who have repeatedly provided contact information and invited input regarding the project. As indicated, Coastal GasLink has not received any complaints identifying human rights abuses, and the mechanisms for raising grievances continue to be accessible. In addition to the mechanisms of complaint directly to Coastal GasLink, concerns may be raised through either the Environmental Assessment Office or the BC Energy Regulator. To Coastal GasLink’s knowledge, human rights violations have not been raised with these regulators.

The assessment process by the EAO as well as the ongoing implementation of the Socio-economic Effects Management Plan are precisely the mechanisms that assess the potential impacts to Indigenous

group and communities across the project. The fact that the terminology of “human rights” is not used does not diminish the fact that the evaluation of these issues is being carried out. In addition, Coastal GasLink has had to evaluate how best to ensure a safe work environment for its workers in an area where unlawful and violent acts have threatened the safety of workers.² This too is relevant when considering human rights.³

Amnesty International

[The consultation process regarding the CGL pipeline did not meet the criteria developed by international human rights law and standards, breaching the Wet’suwet’en Nation’s collective right to consultation in order to obtain its free, prior and informed consent.](#)

Amnesty International’s research concludes that CGL/TC Energy has never received permission nor consent from the Wet’suwet’en Hereditary Chiefs to operate on Wet’suwet’en territory. CGL/TC Energy decided to proceed with construction of the pipeline even though the Wet’suwet’en Hereditary Chiefs did not provide their free, prior and informed consent.

Coastal GasLink Response:

At Coastal GasLink, we have placed our respect and deep commitment to collaboration with Indigenous and local communities at the forefront of all that we do. This commitment started more than ten years ago, when we openly and respectfully approached more than 20 Indigenous groups along our then proposed project corridor in accordance with Canadian law, and consistent with the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its guiding principles. Both Canada and British Columbia have since passed legislation to implement UNDRIP, and TC Energy complies with the laws of the jurisdictions within which we operate.

Based on the positive and respectful relationships that have been built over the years, we are proud of the project agreements we have in place with all 20 elected Indigenous groups along the project corridor, including Wet’suwet’en communities. These agreements were achieved through extensive consultation and engagement, unique to each Nation’s expectations, interests, and values. They are the result of collaboration, where we worked together to identify a path towards mutually beneficial relationships – relationships that considered and implemented feedback from community members regarding the project route and design, maintaining safe access to traditional and cultural activities, as well as benefits such as training, employment, contracting, and long-term community investments. Each

² Coastal GasLink workers have been subjected to illegal acts of intimidation, threats of violence and a violent attack on February 17, 2022. This environment of intimidation and illegal activity has resulted in the use of increased security in the area. Heightened security activity has only been used in areas where security of the workforce has been experienced. For details of threatening activity faced by Coastal GasLink workers, see Affidavit of T. Munro made November 7, 2023 filed under Action No.225057, including but not limited to paras 38,43,45,65-67,72(a)-(e), 73.

³ Article 3 of the 1948 UN Universal Declaration of Human Rights states that “Everyone has the right to life, liberty and security of person.”

of these communities spent considerable time and effort to learn about the project and in making their decisions to support the project.

Amnesty International

Amnesty International considers that, throughout the consultation process for the CGL pipeline, CGL/TC Energy's focus was not on obtaining the free, prior and informed consent of the Wet'suwet'en Hereditary Chiefs. Rather, consultations focused on "build[ing] and maintain[ing] positive long-term relationships with Aboriginal groups potentially affected by the project; ensur[ing] that Aboriginal community input and concerns are gathered, understood and integrated into project design and execution, as appropriate; and, ensur[ing] that concerns and issues with respect to environmental or socio-economic effects related to Aboriginal communities are addressed, as appropriate."

Coastal GasLink Response:

Coastal GasLink's view is that the description of its consultation efforts are the building blocks of attaining free, prior and informed consent, where that is achievable. Based on the positive and respectful relationships that have been built over the years, we are proud of the project agreements we have in place with all 20 elected Indigenous communities along the project corridor, including Wet'suwet'en communities. These agreements were achieved through extensive consultation and engagement, unique to each Nation's expectations, interests and values.

Amnesty International

Amnesty International's research reveals that, since the issuance of the environmental assessment certificate by the British Columbia Environmental Assessment Office in 2014, CGL has not continued consultations with the Wet'suwet'en Hereditary Chiefs about the CGL pipeline project.

Coastal GasLink Response

This is not accurate, as described in the Coastal GasLink Backgrounder provided in May. Since 2019, the Coastal GasLink team has had more than 2,800 engagements or interactions with the Office of the Wet'suwet'en and Hereditary House groups, including meetings, site visits, information sessions, emails, phone calls, and more – well beyond the project's regulatory requirements for consultation.

Amnesty International

Amnesty International considers that the injunction order allows CGL/TC Energy to proceed with pipeline construction without the Wet'suwet'en Nation's free, prior and informed consent, constituting an ongoing infringement of its rights to self-governance.

Coastal GasLink Response:

Coastal GasLink's work is lawful, authorized and fully permitted under the laws of British Columbia and Canada.

We are committed to undertaking our work in a respectful manner and take our responsibility for protecting our workers and ensuring public safety seriously. TC Energy and Coastal GasLink respect the right to peaceful and lawful protest, however, the activities of opponents of the project have, at times, exceeded the legal limits of protest, endangering people and the environment. It is regrettable that the RCMP are required to enforce the court ordered injunction, however we understand that RCMP enforcement has been necessary to protect workers and public safety due to unlawful and anarchistic activities in the area.

Amnesty International

Threats and acts of gender-based discrimination and violence

Amnesty International's research reveals that employees of CGL and Forsythe Security have threatened women members of the Wet'suwet'en Nation over the radio, including threatening to rape them and making derogatory and sexist remarks towards them.

Amnesty International's research reveals that the introduction of CGL man-camps on Wet'suwet'en territory has contributed to increases in threats and acts of gender-based violence against Indigenous women. The RCMP has investigated these incidents.

Coastal GasLink Response:

Coastal GasLink notes that it has not been provided with the underlying research referenced throughout the report.

Coastal Gaslink has not received complaints consistent with the allegations above, but would take such complaints seriously.

Amnesty International

Employees of Forsythe Security have subjected members of the Wet'suwet'en Nation to intrusive and aggressive surveillance, harassment and intimidation.

- *Amnesty International has documented that, since pipeline construction activities began, employees of Forsythe Security (the private security firm hired by CGL) have subjected Wet'suwet'en land defenders within their territory to intrusive and aggressive surveillance, harassment and intimidation.*
- *Amnesty International's research reveals that employees of Forsythe Security have a constant presence along the Morice FSR. Their presence is not limited to areas close to pipeline construction sites; it is throughout the Wet'suwet'en Nation's territory, including outside of land defenders' homes.*
- *Wet'suwet'en land defenders interviewed by Amnesty International indicated that they have near daily encounters with employees of Forsythe Security. As a private security company contracted by a company to protect its facilities, worksites and personnel, Forsythe Security does not have and should not exercise policing powers. However, in practice, Forsythe Security has consistently acted well outside its permitted duties and its area of operation, proactively seeking out, surveilling and intimidating Wet'suwet'en land defenders. Amnesty International has documented that acts of intimidation and harassment by*

employees of Forsythe Security against Wet'suwet'en land defenders and their supporters include permanently stationing themselves along the Morice FSR; stationing themselves directly outside the Gidimt'en Checkpoint, Lamprey Village and the Unist'ot'en Healing Centre, and monitoring all activity, including cultural activities; filming Wet'suwet'en land defenders who live on the territory and visitors to the territory, including children; and, routinely following Wet'suwet'en land defenders and other members of the Nation in vehicles along the Morice FSR to and from the Gidimt'en Checkpoint, Lamprey Village, the Unist'ot'en Healing Centre, land defenders' homes, and sometimes for up to 50 kilometers into the nearby townships.

- *Amnesty International's research reveals that Forsythe Security employees follow members of the Wet'suwet'en Nation travelling through their territory along the Morice FSR, as well as in nearby cities. They photograph and record members of the Nation, including children. Amnesty International observed these tactics during its visits to Wet'suwet'en territory in July 2022 and May-June 2023. Members of the organization's research team were also followed, photographed and filmed by Forsythe Security on multiple occasions.*

- *Amnesty International's research reveals that employees of Forsythe Security tracks the movements of members of the Wet'suwet'en Nation, including children, and shares this information over the radio.*

- *Amnesty International considers that, the ongoing surveillance and intimidation by Forsythe Security, from the time that pipeline construction activities began to the time of publication of this report, has severe impacts on Wet'suwet'en land defenders' ability to be and feel safe on their territory. The actions of Forsythe Security also affect Wet'suwet'en land defenders' rights to hunt, trap, fish, gather and conduct ceremonies on their territory by making them feel uncomfortable and afraid and therefore limiting their ability to enjoy and move around their territory.*

Coastal GasLink Response:

Throughout project construction and operations, Coastal GasLink prioritizes the safety of workers, communities and the environment. A number of different regulatory approvals, industry codes and standards and internal plans and policies require Coastal GasLink or its contractors to take actions to maintain safety and security of the project and its workforce, including through provision of 24 hour on-site security and controlled access to worksite and workforce lodging facilities.

We are committed to undertaking our work in a respectful manner and take our responsibility for protecting our workers and ensuring public safety seriously. TC Energy and Coastal GasLink respect the right to peaceful and lawful protest, however, the activities of opponents of the project have, at times, exceeded the legal limits of protest, endangering people and the environment.⁴ It is regrettable that the RCMP are required to enforce the court ordered injunction, however we believe that RCMP enforcement has been necessary to protect workers and public safety due to unlawful activities.

There is a civil action before the Supreme Court of British Columbia (No. 225057) in which similar allegations are made. As such we are not able to speak further on matters before the court. However, court filings are available to the public.

⁴ See note 2 above.



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