

The United Nations Committee on the Elimination of Racial Discrimination (CERD): A User Guide for Land Defenders

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INTRODUCTION

CANADA ALWAYS looks for ways to deny the inherent rights of Indigenous peoples. But, internationally, it's a different story. Self-determination is a well-established principle of international law. That is why Indigenous nations and groups have used international human rights mechanisms like the United Nations Committee on the Elimination of Racial Discrimination (CERD) for years to assert their rights, build political leverage, demand accountability, and access enforcement mechanisms.

But most of all, Indigenous Peoples, as Arthur Manuel often said, can't "cry on the shoulder of the guy who took your land." That guy can change things but won't, because, well, he has your land. You have to speak to his manager.

Which is exactly what Indigenous groups have been doing. In December 2019, CERD responded to urgent reports filed by the Wet'suwet'en, Secwepmec, and Dunne-za and Cree groups facing immediate threat from resource extraction and development on their lands.

CERD's harshly worded decision called upon Canada to immediately suspend construction on, respectively, the Coastal GasLink pipeline, Trans Mountain pipeline, and the Site C dam until the free, prior and informed consent of the people could be obtained.

The Committee also told Canada to get some adults in the room, encouraging "the State party to seek technical advice from the United Nations Expert Mechanism on the Rights of Indigenous Peoples." Canada now has to respond to this decision when it reports to the Committee at the end of this year.

Advocating to CERD has been effective for these groups, but navigating this system can seem hard from the outside. So here are some facts on what it does and how it actually works.

WHAT IS THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)?

It is a body of independent experts that monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

The committee consists of 18 members, elected on four-year terms, with half of the members elected every two years; it meets three times a year in Geneva, Switzerland.

HOW IS CERD DIFFERENT FROM OTHER UN MECHANISMS AVAILABLE TO INDIGENOUS PEOPLES?

- CERD is a “treaty body,” meaning it monitors one of the nine core international human rights treaties of the UN.
- These treaties, also known as “Conventions,” are the central documents of international law.
- Canada is a “State party” to the Convention, having signed on in 1966 and ratified it in 1970.

As a Convention, it is binding on State parties; unlike a declaration, or the special procedures (independent experts who provide advice only), it is enforceable.

- The UN *Declaration on the Rights of Indigenous Peoples*, while important and hard-fought, doesn't have the teeth that a Convention does, making it easier for the Canadian government to cherry-pick which elements it wants to adopt.

All State parties have an obligation to ensure that everyone in the state can enjoy the rights set out in the Convention; it is CERD's job to make sure they do this.

- To exercise its powers, CERD has a dispute resolution mechanism and an individual complaints mechanism, as well as an Early Warning and Urgent Action Procedure (see page 4).
- As the guardian of the Convention, CERD has a mandate to undertake investigations, make recommendations, make decisions, and even launch commissions.

WHAT IS THE PERIODIC REVIEW?

- Every state that is a party to the Convention must submit a report to CERD every four years, explaining how the Convention is being implemented and how they are fulfilling their obligation to protect the rights set out in the Convention.
- This presents an opportunity for communities to submit “shadow reports” outlining their concerns, explaining the situation on the ground, and providing their own assessments of Canada's compliance or violation of the Convention.

While Indigenous peoples face many kinds of discrimination and oppression, these reports need to be laser-focused on the Convention itself – i.e. issues of racism – as this is what the Committee has the mandate to deal with

- The Committee reviews the report (and shadow reports) and identifies concerns or makes recommendations in a “Concluding Report”.

Canada's next periodic review has not yet been scheduled, but we expect it will take place in 2022

- Ahead of this review, Canada has a periodic report due November 15, 2021, when it will be required to report back on CERD's 2019 decision condemning the Coastal Gaslink pipeline, Trans Mountain pipeline, and the Site C dam.
- CERD has also asked that Canada report back on:
 - a) the status of adoption of the legislation to implement the UN Declaration on the Rights of Indigenous Peoples, indicating to what extent indigenous peoples have been involved in its drafting;
 - b) the implementation of the legislation adopted by the province of British Columbia including in relation to the development of the C dam project, the approval of the Trans Mountain Pipeline Expansion project in British Columbia as well as the Coastal Gas Link Pipeline;
 - c) further efforts undertaken to engage in negotiations and consultations with the Secwepemc and Wet'suwet'en communities affected by the projects mentioned above, where no agreement has been reached, as well as their results.”

WHAT IS THE EARLY WARNING AND URGENT ACTION PROCEDURE?

- Between periodic reviews, the Early Warning and Urgent Action Procedure ([EWUAP](#)) provides another avenue to get CERD's attention as events unfold on the ground.
- These are intended to be preventative, i.e. so that existing situations don't escalate into conflicts or to respond to situations that demand immediate attention to prevent further violations of the Convention.
- An EWUAP should be submitted to CERD ahead of one of their scheduled sessions (check the [CERD website](#) for deadlines for submission of an EWUAP).



[Click here](#) for a record of all of CERD's communications to Canada (letters and decisions) as a result of these procedures.

Indigenous peoples in Canada have been submitting EWUAPs since at least 2009.

OTHER WAYS TO PARTICIPATE IN CERD AND GET ITS ATTENTION:

→ Indigenous groups also have the option of **sending representatives** to a CERD meeting in Geneva (there are various funding options to support this);

OR

Indigenous groups can also **ask a member of CERD to visit** Canada to observe the situation for people here,

BUT in order to go on the record, this has to be an official visit
– I.e. by invitation and sanction of the Canadian government.

***WHAT WE HAVE ACHIEVED
AT CERD SO FAR:***



***SPOTLIGHT ON
SECWEPMEC &
WET'SUWET'EN***

**FEBRUARY
2009**

The Indigenous Network on Economies and Trade (INET) worked together with four Indigenous Nations in British Columbia to initiate an EWUAP regarding Canada's Comprehensive Land Claims Policy and the British Columbia Treaty Commission (BCTC). The Secwepemc also raised the expansion of Sun Peaks Resort and municipality – a major corporate development in Secwepemc territory, which the Secwepemc people did not consent to.

**APRIL
2017**

Members of the Secwepemc Nation and St'at'imc Nation of BC, together with INET, initiated another EWUAP in follow up to the previous one from 2009, regarding ongoing attempts by the governments of Canada and British Columbia to extinguish Aboriginal title.

**AUGUST
2017**

During Canada's periodic review, a large contingent of Indigenous peoples travelled to Geneva to appear before CERD – a coalition of Indigenous people including the Secwepemc, Cree, Athapaskan, and Algonquin First Nations – to submit joint recommendations to ensure that Indigenous peoples are full decision-makers regarding our lands and resources.

**AUGUST
2018**

Land users and land defenders of the Secwepemc Nation submitted an EWUAP to outline opposition to the Trans Mountain pipeline, its violation of Indigenous and international law, and the criminalization of the Tiny House Warriors standing in its path.

**NOVEMBER
2019**

The Justice for Girls Outreach Society submitted an EWUAP with the endorsement of Wet'suwet'en land defenders documenting the human rights violations, including police violence, forcible removal/forced eviction, and industrial destruction of lands and artifacts causing irreparable harm to Wet'suwet'en people, culture, lands, and water in connection with the Coastal GasLink pipeline.

**NOVEMBER
2020**

The land defenders of the Secwepemc and Wet'suwet'en Nations, with the Hereditary Chiefs of the Gidimt'en Clan Woos, Gisdaywa, Madeek Wet'suwet'en Nation collaborated on an EWUAP in follow up to CERD's 2019 decision, and documented documenting the increased human rights violations, forced removal, and criminalization and harassment of Indigenous land defenders.

CANADA SEEMS TO IGNORE CERD. WHY KEEP SUBMITTING TO THEM?

OVER THE LAST 12 YEARS, CERD has been strong in its condemnation of Canada's violations against Indigenous peoples, yet Canada's responses fall far short of its requests to address them. In its most recent letter to CERD, for example, it seems as though Canada is relying on the forthcoming legislation on UNDRIP (BILL C-15, An Act respecting the United Nations *Declaration on the Rights of Indigenous Peoples*) to defend itself against all charges. Yet, this act does nothing to address the impacts of Site C dam, the Trans Mountain pipeline, and Coastal GasLink pipeline, and the convention and rights violations CERD has raised with respect to these projects.

If Canada is going to continue to ignore CERD, dodge its concerns, and claim progress through wildly insufficient and incremental policy change, what's the value in continuing to pursue recourse through them?

1. Canada does not like to be embarrassed internationally – especially [Trudeau](#);
2. Canada likes to promote a reputation for fairness and equality; even if it does not respond to CERD's requests, there are [consequences and ripple effects](#) in public and international opinion;
3. This is an opportunity to amplify Canada's failures through [local](#) and [international media](#);
4. Canada repeatedly vies for a seat on the UN Security Council; this is one way to expose to the UN Canada's failures to implement international law on its own turf;
5. If Canada continues to ignore CERD's substantive concerns, it will be in violation of the Convention; this could result in severe international consequences. In its mandate, CERD can launch a dispute resolution mechanism, make recommendations to the UN General Assembly on Canada's non-compliance, and even refer the issue to the [Special Committee on Decolonization](#) – all things unprecedented for Canada, and all things Canada *does not want*.

A key reason for Indigenous peoples to go to the United Nations is because Indigenous peoples are open targets for human rights violations with no protection from the Canadian state. There are multiple other human rights mechanisms through the United Nations that may also be accessed.

But alongside the UN system, we must build international solidarity movements to watch all the watchers and protect inherent Indigenous rights.