

THE POINT

OF NO RETURN

THE HUMAN RIGHTS OF INDIGENOUS PEOPLES
IN CANADA THREATENED BY THE SITE C DAM



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Cover Photo: *Jason Dick and Dakota Kesick dance in traditional regalia overlooking the Peace and Moberly Rivers where the British Columbia public energy utility BC Hydro began construction of the Site C dam in 2015.*

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THE POINT OF NO RETURN

THE HUMAN RIGHTS OF INDIGENOUS PEOPLES IN CANADA THREATENED BY THE SITE C DAM

The government of British Columbia (BC) is pushing ahead with construction of a massive hydro-electric dam in the northeast of the province, despite vigorous opposition by Indigenous peoples who would be severely harmed by the loss of a vital part of their traditional territories.

If completed, the Site C dam would turn an 83 km long stretch of the Peace River Valley into a reservoir. More than 20 km of its tributaries would also be flooded.

This land has unique significance to the Dane-zaa, Cree, Métis and other Indigenous peoples of the region. An independent environmental assessment conducted on behalf of the federal and provincial governments concluded that the dam would “severely undermine” the

ability of Indigenous peoples to carry out crucial cultural and economic practices such as hunting and fishing. A group of Canadian academics who reviewed the assessment concluded that the “number and scope” of harms identified by the assessment was “unprecedented in the history of environmental assessment in Canada.”¹

The ability of Indigenous peoples in northeast BC to exercise their rights to culture, livelihood, and health has already been severely undermined by extensive resource development in the region. The decision-making process leading to the approval of the Site C dam failed to give proper consideration to Canada’s legal obligations to protect Indigenous rights as set out in an historic

“We’ve never said no to the production of energy. We’ve said, let’s protect the valley. It’s the last piece of our backyard that’s relatively untouched.”

— Chief Roland Willson,
West Moberly First Nations

If completed, the Site C dam would turn an 83 km long stretch of the Peace River Valley into a reservoir.

More than 20 km of its tributaries would also be flooded.

treaty between First Nations and the state, the Canadian Constitution, and international human rights law. Although the federal and provincial governments have both asserted that the harms caused by the dam are justified, the actual need for the dam has not been clearly established and alternatives have not been properly explored.

Amnesty International is also concerned about the impact of the large numbers of workers being brought into the region to work on construction of the dam. The reliance on short-term and temporary workers from other regions to meet the labour demands of the natural resource sector in northeast BC has already strained local infrastructure and services. The decision-making process around the Site C dam failed to examine how an influx of more temporary workers could specifically disadvantage women or increase risks to their safety. This omission is particularly concerning given national and international attention to the disproportionately high rates of violence faced by Indigenous women and girls in British Columbia and across Canada.

Amnesty International has called for an immediate halt to the construction of the Site C dam², as have regional and national Indigenous peoples' organizations, and a wide range of environmental, faith, and social justice organizations.³ Two First Nations located close to the planned flood zone are currently challenging the dam in court, as is a group of non-Indigenous farmers and other local landowners. These legal challenges may not be resolved before the dam is completed.

Resource development projects can play an important role in meeting society's needs. However, Canadian and international law require a high and rigorous standard of protection to ensure that Indigenous peoples, who have already endured decades of marginalization, discrimination, dispossession, and impoverishment, are not further harmed by development on their lands and territories. As a general rule, the risk of serious harm to the rights of Indigenous peoples requires that large-scale resource development proceed only with their free, prior and informed consent.⁴



Source: Adapted from the report of the joint federal-provincial environmental impact assessment of the proposed Site C dam.

EVERYTHING WE NEED IS HERE



"The damage that this Site C is going to do, I don't even know how to explain it," says Georges Desjarlais, who is training to be spiritual leader for the West Moberly First Nations. It's a good place to hunt. And now in the last hundred years or so, it's become prime farmland."

Indigenous people make up just over 12 percent of the permanent population of northeast British Columbia⁵. Archaeological evidence shows that Indigenous peoples have lived in the Peace River region for more than 10,000 years. First Nations have identified hundreds of sites in the planned Site C flood zone that are sacred or of other cultural and historic significance.

"My people, they've used that river as a corridor, almost like what you call a major highway, for years and years and years," says George Desjarlais, an elder-in-training from the West Moberly First Nations. "There are grave sites and graveyards and village areas where they used to camp in the summer or the winter. Some of those islands are considered sacred places, one of them being Vision Quest Island, which is where, when the time comes, I'm going to be doing a vision quest."

Although there are no First Nations or Métis communities located within the planned flood zone, Indigenous peoples rely on the valley to hunt, fish, trap, and gather berries and plant medicines. By continuing to go out on the land to conduct

ceremonies and harvest wild foods, Indigenous women and men provide for many of the basic needs of their families and communities, while also maintaining and revitalizing cultures and traditions that have been undermined and attacked throughout Canada's history. Roland Willson, Chief of the West Moberly First Nations, says of the Peace River Valley, "Everything we need is here."

The valley is prime habitat for moose, which is a critical species for the traditional diet of Indigenous peoples in the Peace River region, and for other animals such as bears and eagles that have profound cultural and sacred significance. The Site C dam would flood a series of small islands where moose take shelter when they are calving. The dam also potentially jeopardizes migration of an already threatened fish species, the bull trout, which is of particular cultural importance. In addition, methyl mercury released by the flooding of the land could make fish from these waters unsafe to eat for at least 20 to 30 years, effectively a generation in the life of the affected communities.⁶

Indigenous knowledge and traditions are often associated with specific places. For example, a specific area where women have picked plant medicines and berries for generations may be associated with particular stories and teachings that are integral to the culture. Loss of these specific places can erode traditional knowledge and teachings.

The Peace River Valley is particularly important because it is close to a number of First Nations communities, including West Moberly and Prophet River. The valley is the most pristine natural area within easy reach of these communities. Many of the other areas that remain relatively intact are much more remote and therefore difficult for community members, especially elders and youth, to access.

Helen Knott, a social worker from the Prophet River First Nation, says it is vital for young people to have the experience of going out on the land with their elders. "All my grandmother's stories are connected to land," Helen says. "It's like that for all our elders. You have to be on the land to be able to share those memories."



Ken Forest of the Peace Valley Environment Association and Chief Roland Willson of the West Moberly First Nations, with a paddle intended to be given to Prime Minister Justin Trudeau. The paddle was built by Ken using moose antler and wood from the Peace River Valley and features a design by Alisa Froe from West Moberly.



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A GOOD LIFE

Elder Lillian Gauthier says “everything will change” with the construction of the Site C dam. “Then what are we going to live on?”

Dane-Zaa elder Lillian Gauthier says she could live without electric lights and a fridge but she’d be “lost” if her family could no longer hunt moose. Lillian said, “That’s what we’ve lived on as long as I can remember.”

The Peace River Valley crosses the eastern slopes of the Rocky Mountains, flowing into the neighbouring province of Alberta and eventually north to the Arctic. The valley is part of an important wildlife corridor stretching from the interior of British Columbia and Alberta north to the Yukon. Elders like Lillian Gauthier recall that moose, fish, ducks, geese, and wild berries were abundant when they grew up and that good hunters could afford to share what they harvested with the whole community.

Lillian, now 76, grew up at West Moberly and moved to the nearby Sauleau First Nation after she married a man from that community. Lillian recalls how her mother taught her how to trap when she was 10. Lillian still dries meat on a rack beside her

house at Sauleau. She makes moccasins and other clothing from moose hide and beads them in elaborate, traditional designs.

The pride Lillian takes in her skills, and the pleasure with which she talks about life on the land, echoes the words of other elders from the region. In a submission to the environmental assessment of the Site C dam, the Treaty 8 Tribal Association summarized conversations with First Nations elders about what they consider “a good life.” “Being on the land makes Dane-zaa people happy and promotes wellness,” the Tribal Association wrote. “People are happiest and strongest when out on the land and rivers.”⁷

Lillian Gauthier told Amnesty International how her whole family, including aunts, uncles, and cousins, used to go out on the land together for weeks at a time, to hunt and to preserve the meat and hides. Time together on the land reinforces family bonds and provides the opportunity to

pass on skills and knowledge to the next generation.

Today, however, the place where Lillian’s family used to camp has been destroyed by logging. Lillian says berry patches are harder to find. The springs and streams that provide drinking water for people when they are out on the land have become dirty and contaminated or have dried up entirely. Moose have become scarce. “Now you can go out days and days and never even get a moose,” Lillian says.

Lillian blames these changes on the massive scale of resource development in the region and on the pressures from the rapidly growing population of non-Indigenous people who have been drawn to the region by industry. Lillian worries that the additional impact of the Site C dam could be more harm than the land, and her people, can handle.

“Everything will change,” Lillian says. “Then what are we going to live on?”

THE LAST PIECE OF OUR BACKYARD



© Amnesty International

Stanley Napoleon at his house on Moberly Lake. He says the cumulative impacts of resource development in northeast BC “are just unreal.”

Just over 110 km², or 0.2 percent of northeast BC, is set aside as formally recognized First Nations reserve lands. This land base is not enough to sustain First Nations cultures and traditions.

Indigenous peoples have ongoing rights to harvest wild foods and practice their customs throughout their broader traditional territories. These rights are recognized in historic treaties between Indigenous peoples and the state, in the Canadian Constitution and its interpretation by Canadian courts, and in international human rights law. However, a half century of intensive resource development in northeast BC has meant that there are fewer and fewer places left where this is possible.

Intensive resource development in the Peace River Valley began in the 1960s. A large hydroelectric dam further upstream on the Peace River – the W.A.C. Bennett Dam – flooded more than 1,400 km² of forest and forcibly displaced hundreds of people from the Tsay Keh Dene and Kwadacha First Nations. A compensation agreement was only reached in 2006. In 2016, BC Hydro, the public utility which built and operates the dam, opened a public display at the dam itself that acknowledged the harm

done to the Tsay Keh Dene and Kwadacha First Nations. Speaking at the opening of the exhibit, a BC Hydro spokesperson said that the utility “deeply regrets those impacts and we commit that we will not repeat the mistakes of the past.”⁸

The Bennett dam’s large reservoir cut off animal migration routes and is blamed for the drowning deaths of hundreds of moose and caribou.⁹ There are also ongoing, unresolved concerns about mercury contamination in the reservoir. A study commissioned by the West Moberly First Nations found that virtually all the trout caught by the community on one of the rivers flowing into the Williston Reservoir had mercury contamination exceeding provincial health guidelines. The West Moberly First Nations believe this contamination is a lingering consequence of the construction of the Bennett dam a half-century earlier.

The energy produced by the Bennett dam, and the infrastructure associated with it and with a subsequent smaller dam called the Peace Canyon Dam, helped spur a resource development boom in northeast BC. Canada is the world’s fifth largest producer of natural gas. Approximately one-third of Canada’s production takes place in northeast BC.

This is in addition to extensive oil extraction, mining, and logging.

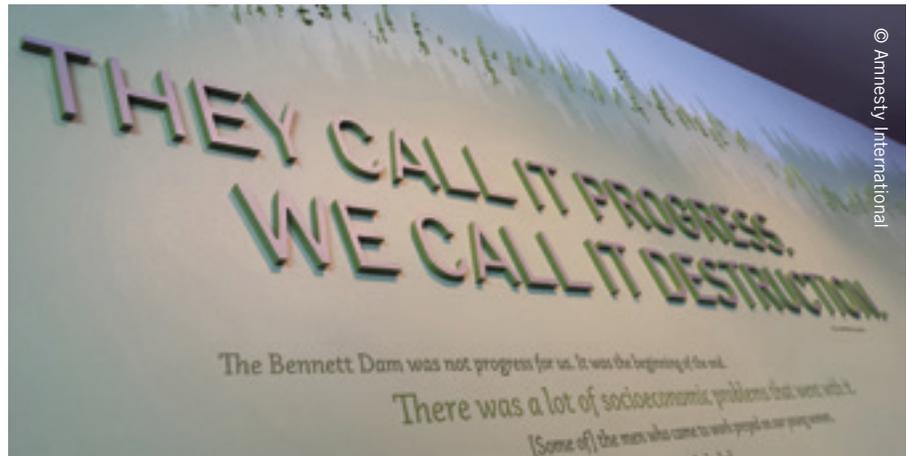
A report by Global Forest Watch Canada found that by 2012 more than 16,000 oil and gas wells had been drilled in the region and more than 45,000 km of roads had been opened. The study concluded that more than 20 percent of land in the region had been directly affected by some form of industrial development, including access roads, pipelines and seismic exploration, and that two-thirds of all land in the Peace River watershed was within five km of such development.¹⁰

Much of the natural gas in northeast BC is “sour gas” meaning that it is contaminated with deadly hydrogen sulphide. Leaks of this “sour” gas have forced evacuations and relocation of Indigenous communities. In 1979, the Blueberry River First Nations reserve, which has around 250 residents, was forced to relocate after a massive sour gas release. Overcrowding is now a major issue in the community. Land available for housing is severely limited by the proximity of other sour gas installations that make parts of the reserve unsafe for occupation.

As is the case in oil and gas development in other regions, an increasing number

**“...we commit that
we will not repeat the
mistakes of the past.”**

– BC Hydro spokesperson at the opening of an exhibit (shown on the right) acknowledging the harm done to First Nations by the province’s first major dam on the Peace River.



of operations in northeast BC rely on the process of hydraulic fracturing, or “fracking,” in which a pressurized mix of water and chemicals is used to open seams of previously inaccessible gas. Hydraulic fracturing uses large quantities of water and raises concerns about future impacts on groundwater.

Resource extraction has also led to rapid population growth in the region. Prior to the construction of the Bennett Dam, the population of the urban centre of Fort St. John was less than 4,000 people. In 2015, the official population figure for Fort St. John was just over 20,000 people, with around 40,000 more people living in smaller cities and towns in the region.

There is also a very large, uncounted population of temporary and transient workers employed in resource development. While the exact number of temporary workers is not known, estimates for the region range from 10,000 to 20,000, depending on industry cycles. More than 1,500 work camps have been built to house temporary workers and workers at remote sites in northeast BC. While most are small, housing only a few workers, at least 15 could potentially house hundreds of workers.¹¹

Extensive road construction, and the clearing of long strips of forest for oil and gas exploration, has fragmented wildlife habitat, making much of the territory accessible to hunters and fishers with recreational vehicles. As a result, hunters and fishers among the non-Indigenous population compete with Indigenous people for dwindling harvests.

“The cumulative impacts are just unreal,” says Stanley Napoleon, a former council member at the Saulteau First Nation and one of the founders of the Treaty 8 Tribal Association. “How much more can our land take?”

The environmental assessment of the Site C dam noted that the project had come forward without “a comprehensive land use planning vision” for the region. Each month, hundreds of licenses and permits are granted for resource extraction operations in the region. First Nations are notified of the proposals and provided a short window to respond. In the case of the largest projects like Site C, there may also be a public review process. However, there was no wider process to identify priorities for land use, including exercise of Indigenous rights, and ensure that these are respected in the individual, case-by-case decisions that are made.

The Site C environmental assessment recommended that a regional baseline study be carried out and other tools adopted for “evaluating the effects of multiple, projects in a rapidly developing region.” Without such a comprehensive assessment and planning process, it is doubtful that the full extent of the impacts of a project like Site C can be fully understood, much less addressed.

With a global downturn in commodity prices, resource development in northeast BC entered a dramatic slump in 2015. However, the province’s long-term plans for the region still anticipate greatly expanded natural gas production, including developing capacity to convert natural gas to a compressed liquefied form for export. When it approved the Site C

dam, the province also approved four new large oil and gas pipelines in the region. The province’s projections at the time predicted that some 60 major resource development projects would get underway in northeast BC in the coming decade.

First Nations in northeast BC have been innovative in how they adapt to and attempt to benefit from the industrialization of their traditional territories. The West Moberly First Nations, for example, developed a greenhouse program to cultivate native plants and has entered into agreements with resource companies to use these plants, instead of invasive foreign species, in their restoration activities. In this way, the nation has been able to reduce the negative impact of industrial activities while creating jobs in their community that are consistent with their values.

In early 2016, West Moberly entered into an agreement in principle with the BC government to develop a shared land-use planning framework in which certain areas, particularly the high mountain slopes, would be protected for uses prioritized by Indigenous peoples, including conservation of endangered caribou herds. However, the province has unilaterally excluded the possibility of protecting Indigenous land use in the Peace River Valley where it is building the Site C dam.

Chief Willson says First Nations like West Moberly have demonstrated their willingness to work with the province and the resource sector, but that there have to be limits on the land taken up for resource development. “We’ve never said no to the production of energy. We’ve said, let’s protect the valley,” says Chief Willson. “It’s the last piece of our backyard that’s relatively untouched.”

THE POINT OF NO RETURN

The Peace River Valley falls within the bounds of Treaty 8, an historic treaty between First Nations and the Canadian state that recognizes the right of First Nations to “pursue their usual vocations of hunting, trapping and fishing throughout the tract.” The continued obligation to uphold such treaties is enshrined in the Canadian Constitution and international human rights standards such as the *United Nations Declaration on the Rights of Indigenous Peoples*.

Helen Knott’s great-great-grandfather signed Treaty 8 on behalf of his people. Helen says that if the remaining lands in the valley are now flooded, the promise of that treaty will have been violated. “My major concern with the impact of Site C is that this is my home,” she says. “This is where I want to raise my children and my grandchildren. This is where my people are from. And what will we have left? That’s the part that scares me.”

Treaties negotiated in recent decades, such as the 1999 Nisga’a Agreement in BC, set out the respective jurisdictions of Indigenous and non-Indigenous governments in land use decisions. Treaties negotiated in the 1800s and early 1900s such as Treaty 8, did not. The federal and provincial governments have often acted as

though historic treaties like Treaty 8 can simply be ignored. In fact, the Supreme Court of Canada stated that historic treaties must be given a “liberal”, contemporary interpretation that is consistent with the promises made to Indigenous peoples during the negotiations and with Indigenous peoples’ own understandings of the agreements reached.¹²

Decisions on whether resource proposals should proceed are governed by a variety of laws at the federal, provincial, and territorial levels in Canada. Many of these laws, such as the Canadian Environmental Assessment Act 2012, give government broad discretion over what factors will be considered in a review, or if a review will be conducted at all. Assessments under the federal act can make only recommendations. The final decision is made by government.

First Nations had called for the assessment of the Site C dam to include consideration of whether the plans were consistent with the government’s legal obligations under Treaty 8 and with other constitutionally-protected Indigenous rights. The federal and provincial governments refused to do so and explicitly excluded such legal findings from the terms of reference for the assessment.

“My major concern with the impact of Site C is that this is my home.... This is where I want to raise my children and my grandchildren. This is where my people are from. And what will we have left? That’s the part that scares me.”

– Helen Knott, social worker,
Prophet River First Nation

Two of the First Nations most directly affected by the Site C dam, West Moberly and Prophet River, have initiated a series of legal challenges to the federal and provincial decisions authorizing construction of the dam. At the time of writing, these legal challenges remain unresolved.

The federal government has responded by claiming that Indigenous peoples have the onus to prove that their treaty rights have been violated and that the standard for such proof requires a much more rigorous review of the evidence than was allowed for in its own decision-making process. The government has taken the position that it can only be compelled to act to protect treaty rights as the result of a full trial – rather than the more expeditious judicial reviews currently underway – in which a new body of evidence of Indigenous land use in the region would be examined. Such a trial could take a decade or longer to be resolved.

The Inter-American Commission on Human Rights has previously ruled that the necessity for Indigenous peoples in Canada to undertake long and expensive legal



Opposition to the Site C Dam has brought together a large and diverse movement of Indigenous peoples, non-Indigenous farmers and landowners from the Peace Valley, and environmental groups. In the photo: Yvonne Tupper, Saulteau First Nation and Treaty 8 Stewards of the Land; Arlene Boon, Peace River Valley Landowners Association; Saulteau elder Della Owens; and community member Amy Meyer. “One day I’m going to be a grand-mother,” says Yvonne Tupper. “We have to leave something for our grandchildren.”

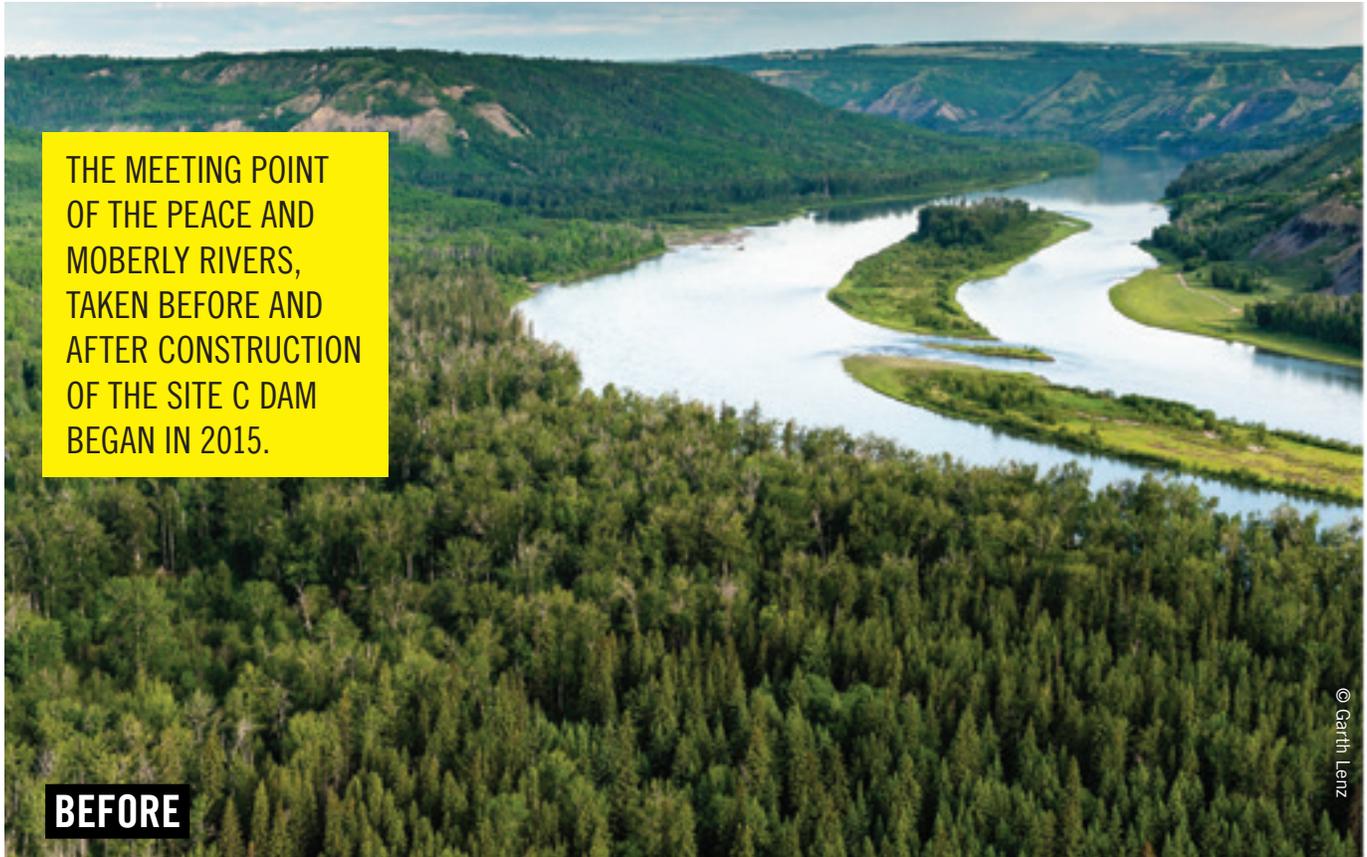
proceedings to prove their rights is contrary to international standards of justice.¹³

In the meantime, BC Hydro, the public energy utility that is building the Site C dam, has moved ahead rapidly with constructing work camps and clearing

forest in the planned flood zone. BC Hydro has stated that in the first 100 days of construction, it cleared more than 5.3 km² of land. This includes previously undisturbed forest. Chief Willson has characterized these actions as “trying to push as fast they can as they can so they

can say to the court, it’s already gone too far to pull back.”

In January 2016, the provincial premier, Christy Clark, said of the Site C dam, “I will get it finished. I will get it past the point of no return.”¹⁴



VIOLENCE AGAINST INDIGENOUS WOMEN AND GIRLS IN CANADA

A combination of racism and discrimination fuels violence against Indigenous women and girls within both the home and the community, and denies them the protection and support they require to escape violence.

According to 2015 government statistics, Indigenous women and girls across Canada are at least three times more likely to experience violence than all other women and girls and at least six times more likely to be murdered. Because a gulf of mistrust between Indigenous communities and the police leads to the underreporting of crimes against Indigenous people, because police often fail to accurately record when victims of crime are Indigenous, and because the crime statistics exclude unsolved missing persons cases and suspicious deaths where Indigenous women are also overrepresented, it is likely that threats faced by Indigenous women and girls are even greater than acknowledged.

Indigenous women's organizations have long worked to draw attention to the violence faced by Indigenous women and girls. A 2004 Amnesty International report, *Stolen Sisters*, found that a combination of racism and discrimination fuels violence against Indigenous women and girls within both the home and the community, and denies them the protection and support they require to escape violence. The *Stolen Sisters* report concluded that police and government have long been aware of these patterns of violence but all too often failed to take adequate or appropriate action.

In 2015, two separate investigations by international human rights bodies – the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW)¹ and the Inter-American Commission on Human Rights² – concluded that the federal government and the government of BC had failed to take reasonable and adequate precautions to prevent violence against Indigenous women and girls. The two reports specifically referred to the failure to address underlying factors putting Indigenous women and girls at risk, including discrimination, social and



Silhouettes of women placed along the highway outside Fort St. John to draw attention to the missing and murdered Indigenous women of the region.

economic marginalization, and inadequate access to safe, affordable housing. The CEDAW report concluded that Canada was responsible for a “grave violation” of the rights of Indigenous women and girls.

In 2015, the federal government announced that it would conduct a national inquiry into the issue of missing and murdered Indigenous women and girls.

FOOTNOTES

1 Committee on the Elimination of Discrimination against Women. *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. 30 March 2015. CEDAW/C/OP.8/CAN/1.

2 Inter-American Commission on Human Rights. *Missing and murdered indigenous women in British Columbia, Canada*. 2015. OEA/Ser.LN/II. Doc.30/14

IT'S GOTTEN WORSE IN THIS TOWN



Norma Podolecki and Geraldine Gauthier with a picture of their sister Lynn Gauthier, who was murdered by her spouse. They recall, "Nothing scared her or stopped her. She lived life to the fullest."

Jobs in the resource industry in the Peace River region generally pay wages that are considerably higher than the national average. The high wages attract thousands of workers from across the country. Industry depends on these short-term and temporary workers to take jobs that cannot be filled within the relatively small local population.

While the high wages are attractive to many, there is little job security. Seasonal cycles of work, and shifts in the resource economy lead to frequent and abrupt layoffs. Furthermore, most of the high paying jobs go to men. On average, women's wages in the region are actually below the national average for women. Despite efforts to increase the numbers of Indigenous workers employed in the resource sector significant barriers remain and Indigenous workers report that they are often the first to be let go.

At the same time, the large numbers of workers being brought into the region, and the high wages paid for skilled jobs in extractives industries, have driven up local prices. The availability of necessities such as housing, childcare and medical services

has not kept up with the pace of growth. The assessment of the Site C dam noted,

"Housing can become so scarce and expensive that those whose wages are not directly tied to resource development sectors, such as teachers, medical practitioners, other essential social service providers, and lower-wage workers or disadvantaged populations, can find themselves unable to afford suitable accommodations."¹⁵

Separate studies by the Fort St. John Women's Resource Society ("The Peace Project")¹⁶ and the Northern Health division of the provincial health ministry¹⁷, have raised concerns about the impacts of resource development on women's safety in northeast BC. For many women, a combination of low wages and high cost of living can create a dangerous dependency on a male partner with access to resource industry wages. Housing shortages and inflated housing prices, in particular, can make it harder for women to escape situations where their safety is at risk. One service provider told Amnesty International, "You'd be surprised how many women are

just one argument with their spouse away from being on the streets. It can be a very precarious situation."

The tens of thousands of men who pass through the region for short-term employment predictably include some who are a threat to women's safety. These dangers are accentuated by a work culture that is highly stressful and, for some, may include binge-drinking and drug abuse in the down-time between shifts.

In 2014, Fort St. John had the highest per capital crime rate, and the highest case load per police officer, among 31 British Columbia municipalities of 15,000 people or more.¹⁸ National statistics comparing the frequency and seriousness of violent crimes, ranked Fort St. John 11th among 239 municipalities across Canada.¹⁹

Lillian Gauthier's daughter, Lynn Gauthier, was brutally murdered by her spouse in 2000 after a long history of domestic violence. Her spouse had come to the region to work in the construction industry.

The murder of Lynn Gauthier is one of many accounts of murders, disappearances and

“It’s very easy to be an unknown in this town. You can commit a crime and no one knows who you are. And I’m really scared because of these other big projects that are coming into the community.”

– Connie Greyeyes

violent attacks on women – particularly Indigenous women and girls – shared with Amnesty International during research visits to northeast BC in 2015 and 2016. These stories included accounts of domestic violence as well as encounters with strangers that ranged from aggressive harassment to brutal violence, including unsolicited offers of drugs and money for sex, attempts to coerce them into vehicles with groups of men, sexual assault, and gang rapes.

While circumstances surrounding these incidents vary considerably, stories shared by survivors and family members convey a common sense of the pervasiveness and even “normalization” of violence, especially for Indigenous women and girls. These accounts suggest that the marginalization of Indigenous women, and the pervasive negative stereotyping of Indigenous women in Canadian society, contribute to Indigenous women and girls in Fort St. John being disproportionately targeted for such harassment and violence.

Connie Greyeyes, one of the founders of a local movement to honour the lives of Indigenous women and girls lost to violence, believes that the large numbers of short-term and temporary workers in Fort St. John have made the community more unsafe for women. She told Amnesty International, “It’s very easy to be an unknown in this town. You can commit a crime and no one knows who you are. And I’m really scared because of these other big projects that are coming into the community.”

Helen Knott has spoken out publicly about being violently assaulted by a group of

transient workers. She says, it’s “imperative” to talk about the violence that she and so many of her friends and family have experienced because the turmoil created by resource development “really does create a dangerous place for our women and our young women coming up.”²⁰

Lynn Gauthier’s sister, Geraldine Gauthier, told Amnesty International that she felt that the situation had actually “gotten worse in this town.” Like many other women Amnesty International spoke with, she felt that the resource economy was adding to the danger.

Critically, despite the wealth that has been created by resource development, the women Amnesty International spoke with felt that not enough resources have been devoted to addressing women’s safety and other needs. Fort St. John has a range of service organizations including a women’s shelter, a homeless shelter, and specific services for urban Indigenous people. Under an innovative arrangement called the Peace River Agreement (formerly Fair Share), the province transfers more than \$21 million a year to the municipal budget to help “bridge the gap” between local tax revenue and the burden of hosting such a large portion of the province’s resource sector. However, frontline workers told Amnesty International that funding for basic services remains inadequate and that they are consistently overwhelmed by the demands in the community.

The Fort St. John Women’s Resource Society provided support to more than 500 clients a month in 2015. Almost three-quarters of the women and girls seeking help from the Women’s Resource Society are Indigenous. Amanda Trotter, the Resource Society’s Executive Director, says she’s “terrified” by the gaps in the services available in the community and the number of people at risk of falling through these gaps. She says, “Nobody is asking the communities, ‘What do you really need?’”

Canadian laws governing resource development fail to provide a detailed or rigorous framework for addressing the social impacts of such projects. The key federal legislation, the Canadian Environmental Assessment Act, calls for examination of impacts on “the health and socio-economic conditions” of Indigenous peoples. In practice this has often been

interpreted narrowly as including only direct impacts of either the operation of the project or the loss of traditional livelihoods and food sources. Provincial legislation in BC includes “environmental, economic, social, heritage and health” effects. The assessment of the Site C dam was carried out jointly by the two levels of government. Because of the provisions of the BC Environmental Assessment Act, local government and community groups were able to raise issues such as the impact on housing. However, there was no requirement to consider how these effects might have a different or greater impact for women than for men. The assessment of the Site C dam, in particular, failed to consider the specific impacts on Indigenous women and girls.

The absence of such a gender-based analysis is a critical gap in the decision-making process. This gap is all the more troubling given existing concerns about violence against women in the region and overarching provincial and national concerns about threats to the lives and safety of Indigenous women and girls.

BC Hydro has said that more than 1,200 people have already been employed in the initial construction of the dam in 2015 and 2016 and that the number of people employed on site will peak between 1,700 and 2,100 people. BC Hydro has committed to a number of measures to help deal with the social impact of the Site C dam, including constructing large, self-contained work camps to reduce the strain on local communities. BC Hydro has also committed to open a small number of rental units and childcare spaces in Fort St. John and has made donations to local service providers, including \$50,000 to local emergency and transitional housing for women. While these initiatives are commendable, they have been made without a transparent, public assessment of the actual needs of the community.

International human rights standards require states to take comprehensive measures to prevent violence against women and girls, including addressing factors that increase the risk for particular women and girls. This responsibility extends to all political, legal and administrative structures of the state, at all levels of government.

THEIR DEFINITION OF CONSULTATION AND OURS ARE COMPLETELY DIFFERENT



First Nations drummers along the shores of the Peace River.

In a written response to Amnesty International's concerns over the Site C dam, the BC Minister of Energy and Mines stated that the rights of Indigenous peoples were upheld through a process of consultation and accommodation that "has been deep and meaningful." The province points to a process that began in 2007 and included funding for Indigenous groups to carry out their own research and community discussions.

Despite these claims, in Amnesty International's view the decision-making process around the Site C dam falls far short of the standard of protection required by the severity of its many potential impacts. The process has violated Canada's human rights obligations toward Indigenous peoples because:

- the province had put its own plans for the valley ahead of Indigenous peoples' preferred use of the land, even before the consultation began;
- the province failed to obtain the free, prior and informed consent required for a project of this magnitude; and

- the impacts on the rights and well-being of Indigenous peoples cannot be justified.

Canadian and international law requires a rigorous standard of protection for the human rights of Indigenous peoples. This high standard of protection responds to the long history of colonialism, forced assimilation, and racism that has marginalized and impoverished Indigenous families and communities around the world and left them especially vulnerable to further abuses.

Consultation is part of this framework for protection but consultation has to be meaningful. No amount of consultation is adequate if, at the end of the day, the concerns of Indigenous peoples are not seriously considered and their human rights remain unacknowledged or unprotected. Furthermore, consultation is only meaningful if there is genuine willingness to abandon a proposal or explore alternatives to ensure that human rights are protected and fulfilled.

There is no indication on the public record that the province has ever seriously considered Indigenous peoples' own priorities for the Peace River Valley. The environmental assessment set out one such possibility: collaboration between the province and First Nations to establish a protected area in the valley where Indigenous land use such as hunting would take precedence. For consultation around the Site C dam to have been meaningful, this option and other proposals from Indigenous peoples should have been given proper consideration.

The fact that this did not happen is all the more striking given a previous BC court case involving the West Moberly First Nations and the duty to consult. In a case concerning a proposed mine in the midst of important caribou habitat, a BC court ruled that consultation had not been "sufficiently meaningful, and the accommodation put in place was not reasonable" because "the full range of possible outcomes" was never considered.²¹ In particular, the court said that West Moberly's own plans to

“We believe consultation is a dialogue, where they listen and we listen. They take into consideration, and make accommodations, for our rights. What happened in this process is....they had already made their decision.”

– Chief Willson. West Moberly First Nations

protect the area for caribou conservation should have been considered as part of a meaningful consultation process.

“Their definition of consultation and ours are completely different,” says Chief Willson. In a published interview about the Site C dam, the West Moberly First Nations chief stated, “We believe consultation is a dialogue, where they listen and we listen. They take into consideration, and make accommodations, for our rights. What happened in this process is....they had already made their decision and then they came to talk to us and told us what their decision was. We asked them to amend it and they said ‘No.’ Then they went on to go forward with their decision.”²²

The 2007 *United Nations Declaration on the Rights of Indigenous Peoples* sets out minimum global standards for the “survival, dignity and well-being of Indigenous peoples.” In 2015, the Truth and Reconciliation Commission of Canada – established to address the legacy of more than a century of forced removal of Indigenous children from their families, communities, and cultures – identified the *UN Declaration* as “the framework for reconciliation” between Indigenous and non-Indigenous peoples in Canada. All provinces and territories in Canada have publicly committed to carrying out the Truth and Reconciliation Commission’s Calls to Action which include implementation of the *UN Declaration*. In May 2016, the federal

Minister of Indigenous Affairs and Northern Development told the UN Permanent Forum on Indigenous Issues that Canada’s commitment to implement the *UN Declaration* was unconditional.

The *UN Declaration* generally calls on states to do much more than consult with Indigenous peoples. Where the *UN Declaration* refers to consultation, it also calls on the state to “collaborate” with Indigenous peoples. Where there is a risk of serious harm, the *UN Declaration* and other international human rights standards generally require that projects such as dams, mines, and other resource development go ahead only if the affected peoples grant their free, prior and informed consent (FPIC).

The *UN Declaration* and other international standards allow for the balancing of rights among Indigenous peoples and between Indigenous and non-Indigenous peoples. Accordingly, the requirement of free, prior and informed consent is not absolute. However, governments that seek to limit or restrict the rights of Indigenous peoples must meet a very high standard of justification, in keeping with the risk of serious harm. As international human rights experts have stated, including James Anaya, the former UN Special rapporteur on the rights of Indigenous peoples, before an exception to the general requirement of FPIC can even be considered, there must be a compelling and objective rationale, alternatives for achieving this objective must be fully explored, any harmful impact must be minimized, and care must be taken to ensure that benefits to some are not outweighed by harm to others.²³

In Amnesty International’s view, the Site C dam does not meet any part of this test. The rationale for the Site C dam has shifted repeatedly. Although BC Hydro told the review process that the Site C dam was necessary to meet future needs of BC households and industry, the province has also raised the possibility of exporting “excess” electricity. In February 2016, the provincial energy minister stated that BC’s needs for electricity had not grown in eight years.²⁴ The environmental assessment report was critical of gaps in the information provided by BC Hydro. It called for the province’s projections of future energy needs, and the costs to meet those needs, to be developed in greater detail and submitted to the independent BC Utilities Commission for review. The province has rejected this

recommendation, stating that no further review is needed.

Notably, construction of the Site C dam had been previously considered in the 1980s and the plans were rejected at that time after the BC Utilities Commission concluded that the dam was not cost effective. Prior to bringing forward the current plans, the provincial government changed the law so that a review by the Commission is no longer mandatory.

There are a wide range of possible alternative to the Site C dam that could potentially meet the province’s future energy needs. These include an alternative dam site publicly endorsed by the Treaty 8 Tribal Association; refurbishing or expanding existing facilities; developing other sources of renewable energy such as geo-thermal; reducing current energy exports; or reducing household and industrial demand. In a 2011 statement opposing the Site C dam, four First Nations in northeast BC – Doig River, Halfway River, Prophet River and West Moberly – called for an independent study of all viable options for meeting the province’s future energy needs.²⁵ Such a study was never carried out.

The environmental assessment of the Site C dam concluded that the province “will need new energy and new capacity at some point” and that – based on the available information – Site C “would be the least expensive of the alternatives.” However, the panel was also highly critical of BC Hydro and the province for the limited information provided on the costs and benefits of other, potentially less harmful ways to meet the province’s energy needs. Review panel chair Harry Swain later took the highly unusual step of publicly criticizing the approval of the project, calling the failure to properly study alternatives a “dereliction of duty.”²⁶

Ultimately, any advantages claimed for Site C have to be considered in light of the otherwise avoidable harm that would be done to the cultures, livelihoods, health, and safety of Indigenous peoples. Chief Lynette Tsakoza of the Prophet River First Nation says Canada cannot continue putting Indigenous peoples’ rights and interests last. “It is not too late to change course,” Chief Tsakoza says. “The damage to the Peace River is not yet irreversible. Stopping Site C is a perfect opportunity to demonstrate to all Canadians that the government takes reconciliation seriously.”

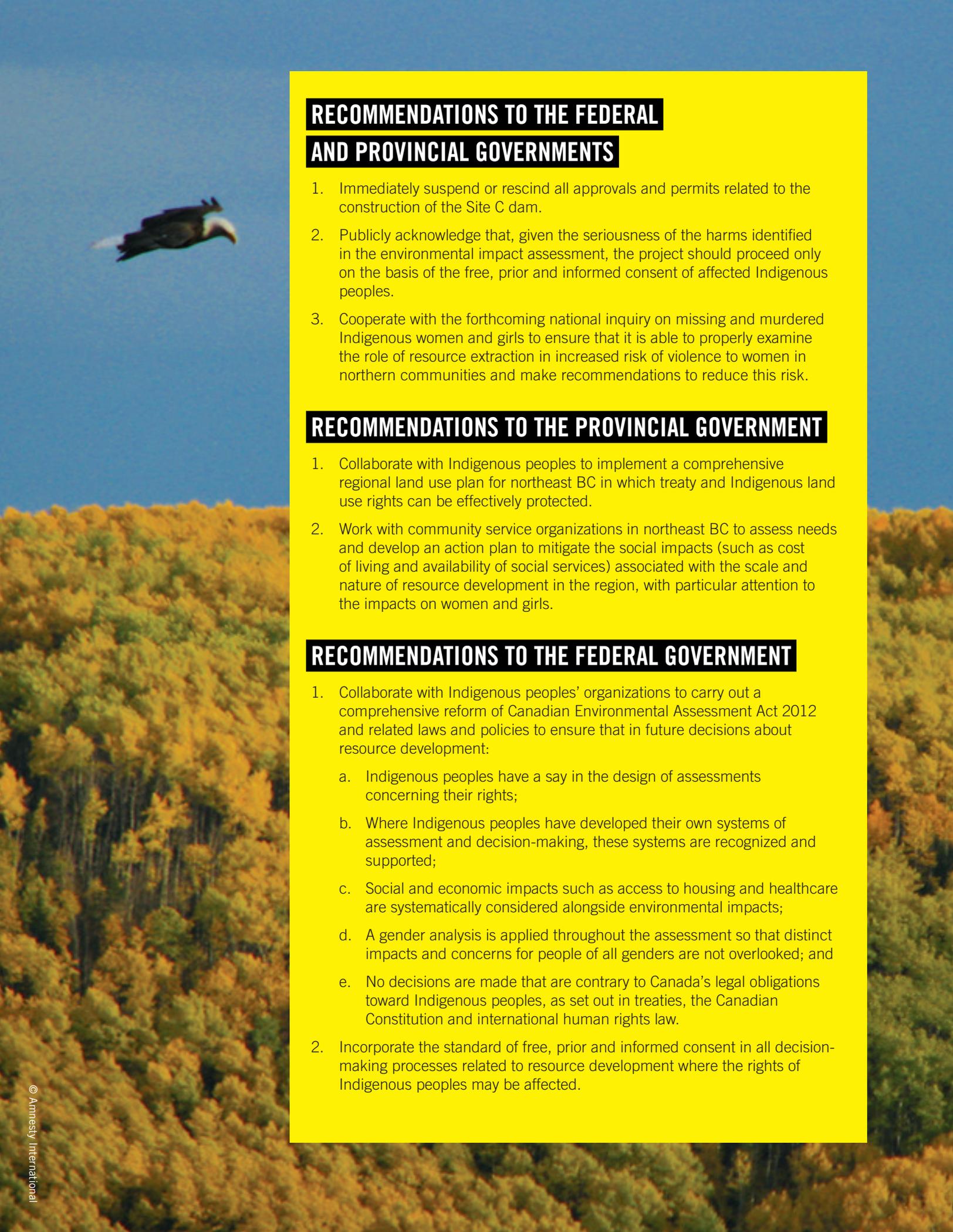


“It is not too late to change course. The damage to the Peace River is not yet irreversible. Stopping Site C is a perfect opportunity to demonstrate to all Canadians that the government takes reconciliation seriously.”

– Chief Lynette Tsakoza of the Prophet River First Nation

ENDNOTES

- 1 “Statement of Concerned Scholars on the Site C Dam project.” Programme of Water Governance, University of British Columbia. 24 May 2016.
- 2 “Site C Dam and the Human Rights of Indigenous Peoples in the Peace Valley: Open Letter to Prime Minister Justin Trudeau and Premier Christy Clark from Amnesty International Secretary General Salil Shetty. 18 November 2015. TG AMR 20/2902/2015.
- 3 “There’s nothing clean about the Site C Dam.” Open letter to Prime Minister Justin Trudeau from Canadian organizations. 11 February 2016.
- 4 United Nations Declaration on the Rights of Indigenous Peoples, Articles 25, 26, 28, 29, 31, 32.
- 5 Leslie T. Foster et al. *British Columbia Atlas of Wellness*, 2nd edition. University of Victoria. 2011.
- 6 Review Panel Established by the Federal Minister of the Environment and the British Columbia Minister of the Environment. Report of the Joint Review Panel – Site C Clean Energy Project. 1 May 2014. P. 102.
- 7 Treaty 8 First Nations Community Assessment Team. *Telling a Story of Change the Dane-zaa Way. A Baseline Community Profile of: Doig River First Nation, Halfway River First Nation, Prophet River First Nation, West Moberly First Nations*. 27 November 2012.
- 8 Jonny Wakefield. “B.C. Hydro acknowledges W.A.C. Bennett dam’s dark side.” *Dawson Creek Mirror*. 10 June 2016.
- 9 Tina Loo. “Disturbing the Peace: Environmental Change and the Scales of Justice on a Northern River.” *Environmental History* (2007) 12 (4): pp. 895-919.
- 10 Lee, P and M. Hanneman. *Atlas of land cover, industrial land uses and industrial-caused land change in the Peace Region of British Columbia*. Global Forest Watch Canada report #4. 2012.
- 11 Northern Health British Columbia. Understanding the State of Industrial Camps in Northern BC: A Background Paper. Appendix B. 17 October 2012.
- 12 R. v. Badger, [1996] 1 S.C.R. 771.
- 13 Inter-American Commission on Human Rights (IACHR). *Report N° 105/09 on the admissibility of Petition 592-07*, Hul’qumi’num Treaty Group, Canada. October 30 2009. Paras. 37-9.
- 14 News 1130 and Canadian Press, “Former B.C. premier Bill Bennett’s accomplishments celebrated at memorial.” 31 January 2016.
- 15 Review Panel Established by the Federal Minister of the Environment and the British Columbia Minister of the Environment. *Report of the Joint Review Panel – Site C Clean Energy Project*. 1 May 2014. P. 188.
- 16 Clarice Eckford and Jillian Wagg, *The Peace Project: Gender Based Analysis of Violence against Women and Girls in Fort St. John – revised*. The Fort St. John Women’s Resource Society, February 2014.
- 17 Northern Health British Columbia. *Understanding the State of Industrial Camps in Northern BC: A Background Paper*, 17 October 2012.
- 18 British Columbia Ministry of Public Safety and Solicitor General. *Police Resources in British Columbia*. 2014.
- 19 Statistics Canada. *Crime Severity Index values for 239 police services policing communities over 10,000 population*. 2011.
- 20 Joanna Smith. “Fort St. John ‘a dangerous place for our women,’ Indigenous activist says. *Toronto Star*, 3 April 2016.
- 21 *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*. 2010 BCSC 359. The decision was upheld on appeal [2011 BCCA 247] and in 2012 the Supreme Court denied the province and First Coal Corporation leave to further appeal the decision [2012 SCC 8361].
- 22 Roy L. Hales. “The Treaty Canada Wants to Forget.” *The ECOreport*. 14 March 2016.
- 23 UN Special Rapporteur on the Rights of Indigenous Peoples. *Extractive industries and indigenous peoples, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*. UN Human Rights Council. 2013. A/HRC/24/41. Paras. 31-36.
- 24 Justine Hunter. “B.C. Energy Minister says clean power projects aren’t the priority.” *Globe and Mail*. 29 February 2016.
- 25 Doig River, Halfway River, Prophet River, and West Moberly First Nations. *Declaration Concerning the Proposed Site C Dam on the Peace River*. 17 September 2010.
- 26 Emma Gilchrist. “‘Dereliction of Duty’: Chair of Site C Panel on B.C.’s Failure to Investigate Alternatives to Mega Dam.” *Desmog Canada*. 11 March 2015.



RECOMMENDATIONS TO THE FEDERAL AND PROVINCIAL GOVERNMENTS

1. Immediately suspend or rescind all approvals and permits related to the construction of the Site C dam.
2. Publicly acknowledge that, given the seriousness of the harms identified in the environmental impact assessment, the project should proceed only on the basis of the free, prior and informed consent of affected Indigenous peoples.
3. Cooperate with the forthcoming national inquiry on missing and murdered Indigenous women and girls to ensure that it is able to properly examine the role of resource extraction in increased risk of violence to women in northern communities and make recommendations to reduce this risk.

RECOMMENDATIONS TO THE PROVINCIAL GOVERNMENT

1. Collaborate with Indigenous peoples to implement a comprehensive regional land use plan for northeast BC in which treaty and Indigenous land use rights can be effectively protected.
2. Work with community service organizations in northeast BC to assess needs and develop an action plan to mitigate the social impacts (such as cost of living and availability of social services) associated with the scale and nature of resource development in the region, with particular attention to the impacts on women and girls.

RECOMMENDATIONS TO THE FEDERAL GOVERNMENT

1. Collaborate with Indigenous peoples' organizations to carry out a comprehensive reform of Canadian Environmental Assessment Act 2012 and related laws and policies to ensure that in future decisions about resource development:
 - a. Indigenous peoples have a say in the design of assessments concerning their rights;
 - b. Where Indigenous peoples have developed their own systems of assessment and decision-making, these systems are recognized and supported;
 - c. Social and economic impacts such as access to housing and healthcare are systematically considered alongside environmental impacts;
 - d. A gender analysis is applied throughout the assessment so that distinct impacts and concerns for people of all genders are not overlooked; and
 - e. No decisions are made that are contrary to Canada's legal obligations toward Indigenous peoples, as set out in treaties, the Canadian Constitution and international human rights law.
2. Incorporate the standard of free, prior and informed consent in all decision-making processes related to resource development where the rights of Indigenous peoples may be affected.



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