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Countering the Criminalization of Indigenous Land Defenders

Documentary reporting by international human rights bodies that uses source materials such as photographs, interviews, international reports, press releases, and government records share with human rights documentary filmmaking a commitment to the use of visual media and personal narrative to tell the story of Indigenous human rights violations. These sources advance an Indigenous human rights framework in settler-colonial countries by underscoring the significance of the Indigenous voice to understanding human rights abuses. Here I draw particular attention to human rights abuses perpetrated against Indigenous land defenders.

Indigenous land defenders rely on international bodies to monitor the domestic law proceedings that criminalize their land defence practices and tell their story in a way that conveys the precarity of their human rights situation. Through first-hand accounts, these reports disclose the array of state laws and government mechanisms employed against defenders as they strive to enact the Indigenous laws and customary practices that authorize them to govern their unceded territories and to fulfill their “historic legal obligations” by protecting their “social, political, economic, and spiritual institutions.”¹ Through their monitoring, international bodies serve notice to states that Indigenous peo-

1 Napoleon (2007).

ples enact their rights as sovereign nations when they organize in the protection of their homelands using non-violent means. Non-violence is essential to defining the activities of human rights defenders. The definition and scope of their work expresses “the universality of human rights”² work and recognizes that this work occurs on behalf of others, thereby affirming these activities as actions that “benefit all of society.”³ State and international protections recognize the risks associated with non-violent action and the vulnerability of persons who, in standing against the violation of human rights, “constitute a direct corporal link between the human rights violations that are taking place and the political action that is being taken to stop them.”⁴ Not only do land defenders engage in activities that promote and protect a broad spectrum of human rights, they also undertake legitimate forms of opposition to violations that threaten Indigenous law⁵ and the human rights’ protections to which state parties are obligated.

Visual media in the form of documentary film plays an important role in representing the human costs associated with land defence conflicts. Through the immediacy of portrayals, documentaries bridge the social and political gap that exists between Indigenous peoples who struggle in remote locations and audiences who live far from these sites. By filling the “vacuum”⁶ created by the failure of state law to recognize Indigenous peoples’ governing authority in locations of “enormous economic” and

2 Fernandez/Patel (2015), 897.

3 UN “Launch.”

4 Fernandez/Patel (2015), 906.

5 A report by the Yellowhead Institute concerning the use of injunction applications by Coastal Gaslink applicants demonstrates how Indigenous law is made subsidiary to Canadian law through legal strategies that anonymize, isolate, and disidentify Indigenous land defenders from the sources of their actions within an Indigenous law context. See Yellowhead Institute (2021).

6 Amnesty International (2014), 24.

“strategic”⁷ interest, documentaries afford viewers with the understanding that these sites are areas of human habitation where the state has actively neglected its human rights commitments.⁸ By demonstrating the activities associated with enacting sovereign rights and land protection, documentaries convey how Indigenous land defenders overcome divisions that have been brought about by incursions from extractive industries. Land defenders both rebuild and reform laws and lay the groundwork for the ongoing protection of their homelands. One of the most significant achievements of documentary films is to show how, despite the destruction caused by extractive industries, Indigenous lands remain integrated spaces where Indigenous laws, peoples, and lifeways continue to endure.

Wet’suwet’en Opposition to Coastal Gaslink Ltds’ Pipeline Construction

Wet’suwet’en land defenders, who opposed the construction of a 670-kilometre pipeline through their ancestral territory, drew international attention to their struggles against police and private security forces when they called upon the United Nations to investigate the militarization, harassment, and criminalization of Wet’suwet’en people: “We ... urge relevant UN bodies to conduct a field visit to our territory.”⁹ Using site visits, interviews, and court records as sources for its report, Amnesty Interna-

7 Torrado (2022), 107.

8 Colombian human rights lawyer Nancy R. Tapias Torrado observes that these areas are not only strategic to government interests and economic sectors, including “mining, renewable energy and agroindustry,” but are also places of human habitation that due to their remoteness represent “neglected communities” caused by the state’s failure to fulfill its “international human rights obligations” (2022), 107.

9 Submission by Gidimt’en Land Defenders (2022), 5.

tional found that Wet'suwet'en Land Defenders and Hereditary Chiefs had been subject to intimidation, harassment, unlawful surveillance, and arbitrary arrest and detention, "solely for exercising their Indigenous rights and their rights to freedom of expression and peaceful assembly."¹⁰ Investigators noted failures on the part of Coastal Gaslink to obtain the Wet'suwet'en Nation's "collective right" to free, prior, and informed consent, "in violation of the Nation's human rights." They rebuked the company's use of an "overbroad" interlocutory injunction issued by the British Columbia Supreme Court that impeded the Nation's rights to "self-governance," "control of their territories," "freedom of peaceful assembly," and "freedom of movement," in preventing Wet'suwet'en peoples from engaging in uninhibited access to their unceded lands.¹¹

The report leverages the authority of international law to affirm the Wet'suwet'en people's struggle through its use of direct accounts and its not reporting in the detached, impersonal style associated with legal neutrality and objectivity. The report's style and content generate a profound sense of discomfort with the appalling treatment to which defenders were subject when arrested by Royal Canadian Mounted Police and taken into custody. I quote directly in the following:

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.

It was like these SUVs with these steel dog carriers 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. ... It felt like it was intentional, you know, ...like to make an example of the Mohawks.

10 Amnesty International (2023), *Removed* 6.

11 *Ibid.*, 5.

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.¹²

At the criminal contempt trial of three Wet'suwet'en land defenders, a member of the Royal Canadian Mounted Police Community-Industry Response Group testified about the behaviour of fellow officers and their "laughing about police violence, mocking arrestees and making derogatory comments about symbols worn by two Indigenous women to honour and remember murdered and missing Indigenous women and girls."¹³ Audio tapes confirmed these reports and brought to light recordings of officers "beating an Indigenous arrestee."¹⁴

The practices detailed in the report exemplify how Indigenous land defenders are shamed, humiliated, and demeaned. Indigenous protectors are clearly targeted through acts of violence that are intended to discourage, dissuade, and weaken their resolve to protect their land.

In describing Wet'suwet'en land defenders' experiences through first-hand accounts, the report permits readers to go "behind the blockades"¹⁵ and act as witnesses to the violations land defenders experience. These accounts invite readers to reflect on the personal impact of conflicts. First-person accounts put a face on human rights' struggles in ways that builds relationships between distant peoples. Such access is vital to understanding the human toll associated with conflicts over Indigenous lands and rights. In furthering our capacity to comprehend the dispute from an Indigenous point of view and to anticipate a future without conflict, land defenders' direct testimony raises uncomfortable

12 Ibid., *Removed* 61, 60, 49.

13 Hosgood (2024).

14 Ibid.

15 Napoleon (2010), 1.

questions about how Indigenous peoples will live in the aftermath of land-dispute conflicts. How will they restore their lifeways when the disputes end? How will they rebuild relationships that have been broken and desecrated by Indigenous human rights violations?

These questions are central to the goals of Indigenous reconciliation, yet they remain an underexamined area within human rights and post-conflict studies.¹⁶ Reflecting on the repercussions of Indigenous land rights' struggles and the impact these conflicts have on Indigenous communities' attempts to rebuild, Indigenous legal scholar Val Napoleon urges the participation of "many voices" to account for the violations that have occurred and the lives that have been affected. Napoleon writes,

from the whispers of our grandmothers, to muted voices of despair and to angry shouts across the land. There are no easy answers here, but what is important is to unflinchingly stay within the tensions of the hard politics and with the discomfort they generate.¹⁷

In the aftermath of these conflicts, when government and industry stakeholders walk away, it is important to understand lingering impacts on the Indigenous community that wreak further discord and damage requiring restoration. It takes time to restore communities and relationships that have been disrupted by these conflicts.

Generating Discomfort by Making Visible 'Invisibilized' Colonial Relations: Documentary Film and Yintah

As a credible source of information gathering, documentary film represents an important tool for exposing the scope of human

16 Nichols/Morales (2023), 1188; Federman/Niezen (2022), 21.

17 Napoleon (2010), 2.

rights' violations and exploring court and media narratives that exclude the Indigenous point of view about land conflicts. For example, in the wake of reports on the dire human rights situation of land defenders, the United Nations Office of the High Commission called for international support to protect "ordinary men and women" confronting "homicide," "extreme risks" from wide-ranging attempts to "silence their work," and "widespread impunity" by the agents of "mega-projects" who violate their human rights.¹⁸ Human rights lawyer Nancy R. Tapias Torrado characterizes these violations as "silencing practices" that overlook the recognition that "the defense of human rights is a right in itself."¹⁹

As a response to the challenge posed by silencing practices, producers and directors Jennifer Wickham (Gidimt'en Bear/Wolf Clan, Wet'suwet'en Nation), Brenda Michell (Tsakë ze' K-eltiy of the Unist'ot'en people, Wet'suwet'en Nation), and Michael Toledano (reporter, photographer, and documentarian) released the award-winning documentary, *Yintah*, in March 2024. This feature-length film follows the ten-year struggle of the Wet'suwet'en peoples to protect their land from pipeline trespass by Coastal Gaslink Ltds and other fossil fuel companies. Through the integration of community sources and voices as well as Wet'suwet'en histories, the film models Indigenous human rights obligations that are premised by community consultation and respect for free, prior, and informed consent.

Yintah — meaning "land" — participates in what the producers describe as "de-colonial filmmaking" ("About the Documentary"). Made with the guidance, participation, and authority of Wet'suwet'en clans, hereditary chiefs, and Indigenous land defenders, the film incorporates footage of Indigenous and non-Indigenous direct political actions. The film's de-colonial Indige-

18 U.N. "Launch"; UN "Human Rights Defenders"; Sekaggya (2010); Tzay (2023).

19 Tapias Torrado (2022), 106.

nous standpoint asserts Wet'suwet'en title and governance in the "traditional laws and collective authority of the Wet'suwet'en house groups at the centre of the story" ("About the Documentary"). The storyline focuses on the leadership and activism of two Wet'suwet'en women, *Tsake ze' Howihkat* Freda Huson of the *C'ilhts'ekhyu Clan*, and *Tsake ze' Sleydo'* Molly Wickham of the *Gidimt'en Clan*. By permitting viewers to go "behind the blockades" and have direct access to the ceremonial, political, social, and legal relations that inform and authorize land protection, the film guides the viewer to an understanding of Indigenous law and Wet'suwet'en justice. This form of justice extends beyond the punitive forms of Canadian law to which Indigenous land defenders are made subject. By foregrounding the voices of Wet'suwet'en peoples, the film affords viewers a vision of Indigenous reconciliation premised by the assertion of Indigenous sovereignty and the decolonization of Indigenous history. As Elder and Chief Violet Gellenback notes about the film's impact, "For the first time, it is our own people telling our history" ("About the Documentary Film *Yintah*").

Yintah provides an Indigenous perspective on events in a remote community by documenting and upholding Indigenous human rights in the face of determined acts of aggression against land defenders. Like the voices of Wet'suwet'en peoples, *Yintah* acts as a witness to their struggles. The film participates in the events that occur on the lands and bears witness to the lifeways land defenders are struggling to protect.

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