

**16<sup>th</sup> Session of the Expert Mechanism on the Rights of Indigenous Peoples**  
*Item 3: Study and advice on the impact of militarization on the rights of Indigenous Peoples*

17 July 2022

*Delivered by Moe Shiojiri*

Thank you Madame Chair,

We welcome that the EMRIP is addressing the impacts that militarizing indigenous lands have on indigenous peoples, including on economic, social and cultural rights, particularly on the rights to education and health.

We welcome that sections II and III of the current draft include different scenarios in which the militarization of indigenous lands occurs. We think that these sections do not explicitly reference states of emergency. As explained in our submission, while the ICCPR does allow for declarations of emergency, it underscores that the use of such measures must be exceptional and consistent with other obligations of a State. Despite this, states of emergency have been increasingly used to militarize indigenous lands. This has been the case in Guatemala, where states of emergency have been used to facilitate excessive use of force by military forces to repress indigenous communities from exercising their right to freedom of expression and freedom of association, and to control migration flows.<sup>1</sup>

In addition, military forces have conducted forced evictions.<sup>2</sup> These evictions often deploy violence, such as the burning and destruction of homes, and acts that could be tantamount to torture or inhuman treatment. They are also undertaken without prior notification and without establishing resettlement measures.<sup>3</sup> This has deprived indigenous communities of their rights to land, which is also interconnected to the right to adequate housing.

We are also concerned that States may adopt legislations that would allow the permanent presence of military forces. This is the case with Guatemala's recently

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<sup>1</sup> Cfr. "Guatemala issues emergency decree as new migrant caravan reported", Aljazeera, 30 March 2021, <https://www.aljazeera.com/news/2021/3/30/guatemala-issues-emergency-decree-as-new-migrant-caravan-rumored>

<sup>2</sup> Cfr. CERD, Letter to Guatemala under the Early Warning and Urgent Action Procedure, CERD/EWUAP/2022/MJ/CS/ks, 2 December 2022, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FALE%2FGTM%2F9640&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FALE%2FGTM%2F9640&Lang=en); <https://www.landcoalition.org/en/newsroom/forced-evictions-and-military-occupation-of-communities-in-the-sierra-de-las-minas-in-guatemala/>

<sup>3</sup> Cfr. CESCR, Concluding observations on the fourth periodic report of Guatemala, E/C.12/GTM/CO/4, 11 November 2022, para. 36, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGTM%2FCO%2F4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGTM%2FCO%2F4&Lang=en)

proposed Bill 6067, which legitimizes the use of force by the military.<sup>4</sup> We would like to highlight that militarization does not require the continuous physical presence of the military, but can also include their potential presence through such forms of legislation and unchecked states of emergency.

Madame Chair, we also welcome inclusion of the role of businesses in militarization in the draft, such as foreign development projects and private security companies.<sup>5</sup> We suggest that Recommendation 11 includes a call for States to actively participate in the process towards the development of the legally binding instrument to regulate the activities of transnational corporations and other business enterprises in international human rights law.

We suggest to expressly mention the right to a clean, healthy, and sustainable environment in paragraphs 15 and 35 of the current draft, to be consistent with Recommendation 22 of the Annex.

Thank you, Madame Chair.

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<sup>4</sup> Official letter to the Guatemalan Government from Mandates of the Special Rapporteur on freedom of peaceful assembly and of association; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on human rights defenders. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27625>

<sup>5</sup> Paragraph 20, EMRIP draft study on the Impact of militarization on the rights of Indigenous Peoples. <https://undocs.org/A/HRC/EMRIP/2023/2>