

Committee on the Elimination of Racial Discrimination -80th Session

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**Report submitted by First Nations Women Advocating Responsible
Mining (FNWARM) British Columbia, Canada**

**To Canada's 19th and 20th Periodic Reports: Alternative Indigenous
Shadow Report on Canada's Actions on the *UN Declaration on the
Rights of Indigenous Peoples*, with a focus on the Canadian Extractive
Sector Operating within Canada**

January 2012

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Introduction

The members of the First Nations Women Advocating Responsible Mining (FNWARM) wish to provide this submission for the consideration of the UN Committee on the Elimination of Racial Discrimination especially in regard to Canada's 19th and 20th Periodic Reports in order to share our concerns about the serious impacts on our rights, titles, lands and waters as a result of mining exploration and extraction in British Columbia.

In its 19th and 20th Periodic Reports, Canada states that “ *Aboriginal title affords legal protection to prior occupation of land in the present-day and thus recognizes the importance of the continuity of the relationship of an Aboriginal group to its land over time...where prior occupation of title is established on the basis of its use for hunting the value of the land for such a use may not be destroyed by its subsequent use for activities such as strip mining*”

The UN Declaration on the Rights of Indigenous Peoples calls for “*free, prior and informed consent*” when decisions are made with regard to Indigenous lands, waters and rights.

Yet despite Canada's claim that Aboriginal title affords legal protection against activities which threaten the Indigenous relationship to our lands and waters and despite Canada's endorsement of UNDRIP our rights, titles and interests continue to be ignored by governments and mining companies.

Our very survival is threatened by resource developments being pursued in the absence of proper consultation and accommodation, under a regime of antiquated government legislation, standards and practices and in an environment marked by discriminatory practices, ignorance and willful destruction of our lands and way of life in the name of profit at any cost. Here is our story.

About FNWARM

In the fall of 2008 BC First Nation Leaders gathered in Prince George, British Columbia for an historic summit on mining issues. The gathering brought together more than 300 Chiefs, Elders, and industry and government representatives for three days to discuss urgent issues of concern regarding mining in their regions.

This initiative came about as an attempt to dramatically alter the often fractious, destructive and tension filled history between the mining industry and First Nations in British Columbia. First Nation leaders, in an effort to seek workable solutions in dealing with resource exploration and extraction, avoid costly and time consuming court cases, protect their rights and titles in their territories and ensure sustainable and, where appropriate, beneficial resource development for their communities produced a First

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Nations Mining Action Plan to guide their efforts in building secure economic futures and new and constructive relations with the mining industry in the future.

A unique feature of the Prince George Summit, noticed and acknowledged by many as the work of the meeting progressed was the extraordinary contribution made by a number of strong, articulate and determined First Nation Women Leaders as they shared their stories of dealing with intransigent mining interests and protecting the interests of the communities they represent and as they offered up solutions to deal with these concerns.

In 2009, driven by shared concerns for their First Nation lands, rights, culture and the wellbeing of their families and future generations these women leaders formed an association to help each other cope with growing pressures on their communities from mining development. They were adamant that their purpose was to be a constructive one and so was born First Nation Women Advocating Responsible Mining (FNWARM)

Our core group of members include, former Chief Betty Patrick and Councillor Verna Power from Lake Babine First Nation, Corrine Porter, Executive Director of Dena Kaheh Institute from Lower Post First Nation, Chief Carol Ann Johnny from Dease River First Nation, Chief Marilyn Baptiste from Xenigwentin First Nation, Chief Bev Sellars of the Xat'sull First Nation, Anne Marie Sam, former Councillor of Nak'azdli First Nation and Chief Dolly Abraham of Takla Lake First Nation. These women come from the Kaska, Carrier Sekani, Tsilhqot'in and Shuswap territories located in the north and central regions of BC. Several young First Nation women and others volunteer their time and technical expertise in support of the work of FNWARM. In addition we have had support from women leaders from the Taku River Tlingit First Nation. Organizationally, the women have solidified into a tightly knit, fully committed group which has made an impact in First Nation circles and mining forums, gained media attention and built public support through our web site and through networking with the BC and national ENGO community.

The goals and objectives of FNWARM are to focus on building support for changes to mining legislation with particular reference to the free entry tenure system and environmental review, to support one another and exchange information with regard to mining activity in members' territories and to promote support for effective land use planning. The members of FNWARM also continue to believe that effectiveness of their work lies in support for the First Nations leadership in pursuing these goals through the BC First Nations Energy and Mining Council and BC First Nations Leadership Council and have kept in constant touch with these organizations to coordinate our efforts.

The Issues

Economic Pressures: In the face of economic downturn and huge losses in the forestry sector from devastation of the mountain pine beetle and collapse of the lumber market the government of British Columbia has turned to aggressively promoting mining as the provinces economic savior. It is rubber-stamping proposed mining projects with little or

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no regard for environmental concerns or First Nations titles, rights and interests to and in the future development of their traditional territories. These attitudes have emboldened industry to pursue projects and profits without regard to proper consultation/accommodation with First Nations whose territories contain the minerals and ore they wish to mine.

The problems are compounded by archaic laws and systems that give mining companies more rights to prospect and develop lands than any other sector or group, and an on-line staking system that allows anyone with a lap top computer and a few dollars to lay claim to lands across the province.

The result has been immense pressure on First Nations, most of whom have never ceded their traditional lands through treaty or other means. They have been fortified by successive court rulings that have emphasized their rights and have fought to defend their territories and ways of life.

Industry record: The industry's track record works against it when it asks First Nations to trust in its commitment to protecting the environment, respecting First Nations rights and culture and ensuring First Nations receive meaningful benefits. Most of the nearly two thousand mines that have been opened in BC since colonization have provided little or no benefits for First Nations. They proceeded without any consultation, or with token approaches that did not constitute an effort to truly accommodate or to obtain informed support.

Meanwhile, the promise of good jobs has too often resulted in low paying work, with the higher paying positions going to people from the outside. What First Nations have too often been left with are destroyed lands and ecosystems, and mines that continue to pollute their water, wildlife and even their people long after they are closed.

A 2003 audit found there were already 1,887 closed or abandoned mines in BC. Of these, 1,171 were of environmental concern and presented public health and safety issues. So much for industry promises that their pollution can be controlled, and so much for laws that were supposed to ensure these mines were cleaned up and the land and water made safe.

If anything, conditions have worsened since then in terms of protection of the environment. In 2002 the federal government amended the Metal Mining Effluent Regulations (MMER) to allow lakes and other freshwater bodies to be re-classified as "tailings impoundment areas." providing a loophole for mining companies to circumvent the general Fisheries and Oceans department ban on damaging or destroying fish habitat

In a number of cases, companies that own one or more abandoned and polluting mines are the same ones seeking to open new mines nearby or elsewhere in First Nations' territory. First Nations are therefore naturally skeptical when they are asked to accept the studies and commitments they make regarding the environment and benefits.

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Our experiences: FNWARM members have experienced insulting low offers of support funding to review proposals that would not allow even cursory reviews or consultations with their community. In some cases, they have been invited on to working groups with the province and companies to establish the terms of reference for environmental assessment review, only to find all the decisions have already been made.

FNWARM members are subjected to what they see as dirty tricks. These include, but are not limited to:

- Efforts to create dissent between First Nations affected by a proposal;
- Opposition to First Nation appointees to review panels;
- Sending in private firms against First Nations wishes to offer cash incentives – bribes – in an effort to get “consultation” interviews with band members;
- The use of lawsuits to try to silence opposition. One Chief was personally served, along with her band council, with a defamation suit for issuing a release stating that talks with a company were off. This suit was dropped after two years – but forced the Band Council to use up nearly \$90,000 in scarce resources to pay for the legal representation to defend against the charges;
- The spending of large sums on media and PR promotions designed to generate public anger against First Nations who refuse to rubber stamp projects. Some members have even had to set up contingency plans at schools to deal with situations where their children might be at risk from community backlash to First Nation opposition;
- The destruction of land and resources by explorers who have staked claims on line and use the current free access system to go where they want and do what they want on First Nations traditional lands and in some cases even on First Nations reserve lands.
- Community members are left disconnected from traditional territories when they are denied access to traditional hunting, fishing medicine picking and gathering areas

Compounding the problem are provincial rules and processes that permit such actions. For example:

- The online staking and free entry access system. Online staking was launched in 2005 – and had 2.56 million hits and 3,110 claims in its first week. After 9 months 12,800 claims had been acquired online – an increase of 160% over the previous year. For the most part, the system does not recognize unextinguished title and rights; and more than 85% of the province is still open to mineral exploration;
- A process that gives industry the option, rather than the requirement, to consult with First Nations;
- An environmental review process that ignores many First Nations issues;
- Opposition to fully including First Nations on a government-to-government basis to review projects;

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- The appearance that the Province is working in cooperation with industry to push through proposals – community consultation sessions often make proposals sound like joint government-industry sales pitches;
- A provincial environmental assessment review process that almost always approves projects;
- A process that repeatedly leaves First Nations to be advised of government decisions through the media or even company announcements;

Our stories: Our members say First Nations are already paying too high a price for the ongoing pollution of the abandoned mines in their territories to simply accept claims that new projects will be safe. As an example one of our members reports: *“Bears around the abandoned tailings ponds close to the community are missing hair, have growths in their bodies, wrong pigmentation inside their organs and flesh. Animals and birds get into this water and carry contamination elsewhere. Crows, wolves and bears eat poisoned carcasses. Hunters are leaving animals they have bagged because they are unfit to eat. We never heard of cancers, never heard of diabetes and we are now burying our people from these diseases. It always makes me wonder if it is because of the food we are taking from the bush. We all depend on wildlife as food but today we have to be very careful.”*

Another of our members, whose First Nation has been a victim of divide and conquer tactics on the part of a company opening an open pit for low grade gold and copper, expresses serious concerns over the impact of the mine on the headwaters to the Arctic on which it sits. She worries about the destruction of the land, loss of wildlife, community health and societal impacts.

She says: *“For me it can all be summed up in one word ‘family.’ My three children- they are the reason I fight. I look at the project and it is going to destroy our land. It is located within my family’s hunting area where our families have gone for generations and now we are told we and our children can never go back there. Also, my daughters are going to grow up in a mining town and all the research that I look at shows aboriginal women are most affected when big industry towns are being developed. The destruction of our culture and traditions, the very essence of who we are as a people has no price and once destroyed, can never be replaced. Our identity comes from the land what identity will my children have, when all that is left is a 300 meter deep open pit, a tailings pond and waste rock piles.”*

As well as policy debates, legislative reform, environmental assessments, science and market analysis these are the very human stories and concerns regarding the impacts of resource extraction and exploration for our communities that must be taken into account as governments and industry pursue resource development. In telling “our stories” over the last three years and taking advantage of the unique strength and unity as First Nation women leaders working for change we believe we have a powerful message that it is to everyone’s advantage to hear in building better relations with the mining industry and which will lead to sustainable development and a more sound economic climate for investment in the future.

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Another story saw FNWARM help the Takla First Nation draw attention to a Harvard Law School's International Human Rights Clinic report detailing the impacts of an "unjust" government mining regime on the Takla Lake people, and on First Nations across BC.

The 200-page study was initiated and funded entirely by the International Human Rights Clinic and was a first involving indigenous peoples in Canada. It details how mining laws are stacked against Takla Lake and other First Nations in BC, describing them as in contravention of international and constitutional law, overly favourable to industry, lacking in fair compensation, and in need of "urgent law reform."

The Chief of Takla Lake First Nation, a member of FNWARM, stated: *"I strongly support this damning assessment of the provincial mining system because I know firsthand how BC law and policy are used to avoid meaningfully addressing our Aboriginal rights, title, and community concerns.*

"For example, the provincial government's lack of action on historic and abandoned mining sites, such as the contaminated Bralorne mercury mine and the environmental impacts of numerous past exploration sites, have resulted in roads and contaminated waste strewn across our traditional territory.

"BC promised to help us clean up the legacy contamination from the mining industry, and yet no progress has been made. At the same time, BC is constantly approving exploration projects in our territory while paying little attention to our concerns.

"When these historic impacts are combined with today's intense exploration, you start to see large scale damages to our land and we are still not consulted or compensated for this."

The Chief notes Takla has still not been compensated by the province for the massive Kemess South open-pit mine, which has generated huge revenues for the BC government over the years.

Our current focus: The central strategy of FNWARM's ongoing work has two components. The first is to continue to support the local battles of our members including to save Teztan Biny (Fish Lake) and stop the Prosperity Mine project in the territory of the Tsilhqot'in Nation, a project which is the perfect poster child for why and how not to proceed with mining development.

At the same time, we have also supported, encouraged and celebrated positive developments, which point the way to real solutions and a "better way of doing business." Most notably we were excited to celebrate with the Taku River Tlingit First Nation the negotiation and signing of their historic Land Use and Government-to-Government Agreements this past summer. Such agreements bring certainty to all parties concerning the extent, opportunities, benefits and responsibilities for development and

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ensure decision-making and a powerful voice for First Nations over the future of their lands. Sadly, these agreements are too few and far between.

Our members also cosponsored and hosted a Mining Forum in Victoria BC this fall in an attempt for the first time ever to bring together First Nations, Industry and Government in a dialogue on mining reform and solutions to the conflicts in this sector. It was well-attended, received wide coverage and both the major mining associations in BC made positive contributions to the discussion. Once again, however, the Government of British Columbia refused the opportunity to work with us and did not participate.

CONCLUSION

While we are pleased that the Canadian Government has endorsed the United Nations Declaration of Rights of Indigenous Peoples it is more than clear that it is a long road ahead to ensure compliance with our right to “free, prior and informed consent” when decisions are made with respect to our lands, waters, culture, rights and future generations. Battling one project at a time is not enough without broader reference to the need for regulatory reform accompanied by greater respect for and integration of First Nations traditional, cultural and environmental values and priorities in resource development.

As women, mothers, grandmothers and leaders there is much to be gained by supporting one another, diminishing our sense of isolation as we cope with the sometimes overwhelming challenges that present themselves every day. Personal support and sharing is extremely important to building our networks and sustaining community support. We also know that our determination to measure success in our communities through the prism of our traditional values and beliefs, with healthy families and young people as our emphasis is essential for sustainability and limiting impacts negative to our communities. In these efforts we believe we are uniquely placed to bring this important focus to the campaign to protect our rights, lands and waters and bring changes as to how business is done in our communities.

We wish to thank members of the Committee for consideration of our submission and invite you to visit our website at www.fnwarm.ca for further information on our activities as well as the link to *Bearing the Burden: The Effects of Mining on First Nations in British Columbia*, the Report of the International Harvard Law Clinic at Harvard Law School.

Respectfully submitted on behalf of the members of FNWARM,

Bev Sellars, Chief Xat'sull (Soda Creek) First Nation

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