

**Seminar of the Expert Mechanism on the Rights of Indigenous Peoples
December 5-6th, 2022**

“Impact of militarization on Indigenous territories, lands and natural resources”

Professor Felicity Amaya Schaeffer, University of California, Santa Cruz

Good Afternoon. Today I will discuss the impact of border security and militarization on Indigenous lands that have long spanned the U.S-Mexico border (while not discussed here, Indigenous peoples are affected by many other militarized border regions such as the US-Canada border, the Guatemala-Mexico border, and the Israel-Palestinian border). Indigenous reservations and unrecognized tribes make up about 40% of the almost 2,000-mile U.S.-Mexico border region that includes: the Tohono O’odham, Yaqui, Cocopah, Pai, Lipan Apache, Tigua, Kickapoo, and the Kumeyaay. The Tohono O’odham reservation, about the size of the state of Connecticut, is currently the most militarized region of the US-Mexico border, *and* the most militarized community within the United States.¹ Their sovereign land is under military occupation by the Department of Homeland Security (DHS). In addition to a vehicle barrier, armed border patrol agents chase unauthorized persons across their reservation; numerous checkpoints snag migrants *and* O’odham tribal members; 9 surveillance towers monitor the entire reservation; a detention center detains migrants and O’odham tribal members; super highways cut and sever their land; and helicopters and drones tear across their sky.

There are deadly consequences for Indigenous and Latino/a migrants, refugees, and asylum seekers –many who die attempting to cross the Sonoran desert. Many are from Latin America, including Indigenous peoples fleeing genocide in Mexico and Guatemala. Less understood is how border militarization affects the Tohono O’odham tribal nation whose desert

land has become a prison and a war zone. They are under 24-hour surveillance and sacred sites and practices are being destroyed.

It is not by accident that border traffic has been funneled directly onto their land. Since 1993 and 1994, Operation Hold the Line and Operation Gatekeeper authorized construction of border walls on either side of the O'odham reservation. These walls diverted border traffic right onto their reservation, weaponizing their desert land as a killing ground for thousands of migrants.² Not only could DHS claim innocence in face of migrants dying of heat dehydration in the desert, but the desert was declared a surveillance void lacking border security, creating the necessity for military presence on sovereign O'odham land.³ With this influx of border traffic, in addition to the tribe's inability to adjudicate non-Native crimes on their reservation (and the heavy cost of doing so), O'odham cannot handle this manufactured border "crisis" on their own, challenging what it means for their tribal council to "consent" to border militarization.

The idea of a border on O'odham land was created in 1848 through the Treaty of Guadalupe Hidalgo. This treaty authorized the U.S. to contain and eliminate Indigenous fugitives crossing the newly declared border (especially targeting the Apache). For this reason, O'odham protestors demand an end to borders, and the long genocidal border military war against Indigenous peoples. The persistent imposition of U.S. sovereignty and rule violently contains their movement and enforces assimilation or conformity to US sovereignty and the loss of a distinct way of life in relation to their land. Their rights as stated in Article 36 of the UNDRIP are not being protected:

"Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders."

The imposition of border patrol, militarized personnel, virtual surveillance and border walls have the following impacts:

- 1) Many are separated from family across the border.
- 2) Many tribes have lost autonomy and land on the Mexico side of the border given many were forced to migrate north to the U.S. side to be closer to family, or to access hospitals and schools.
- 3) Border walls and border patrol make it difficult to practice cross-border ceremonies, pilgrimages, hunting and gathering of plants and medicines, trade, commerce, and other cross-border religious practices.
- 4) The entrance of drug cartels also lure Indigenous youth into the lucrative business of trafficking drugs or contraband across the reservation, leading many to end up in detention centers and prisons off the reservation, often leaving families with little to no information about their whereabouts.

The virtual transformation of border control (drones, surveillance towers, ground sensors, etc) also extend the reach of militarization into their everyday lives. The 9 Integrated Fixed Towers (IFTs) on the O'odham reservation, for instance, have the ability to surveil the movements of border crossers, but also O'odham tribal members. The sensors on the towers can see into cars and homes miles away from their location. In addition, with checkpoints placed hundreds of miles across border regions, Indigenous peoples are treated as potential foreigners, as criminals, and unauthorized intruders on their own land. Many are harassed by border patrol who demand they show US documents to prove they are authorized to be there, even when they state they are O'odham or when they show their tribal cards. Tribal members have been killed by

high-speed chases, and others are afraid to speak Spanish out of fear they will be mistaken as migrants, or as someone who assists migrants, which constitutes a federal crime.

These are not simply bureaucratic inconveniences, but threats to their autonomy and futurity as a people. Each day the US asserts its sovereign power to surveille, harass and incarcerate anyone who looks or acts threatening, even when it entails the carrying of sacred items across the border used in ceremony. These everyday militarized tactics of control come at the cost of their communal values and ways. For example, given the criminalization of those who help border crossers, the O’odham are unable to live by their collective tribal laws (what they call Himdag) as they are prevented from aiding migrants—including providing them water, food, shelter, or even a ride, even when they are on the verge of dying. Many refuse this inhuman legal imposition, at great risk to themselves and their community.

Even the construction of border walls causes great damage to the land and people. After the passage of the REAL ID Act (2005) and the Secure Fence Act (2006), the U.S. constructed the border wall along the Rio Grande River in Texas, including on the lands of the Lipan Apache. As argued by Margo Tómez, co-organizer of the Lipan Apache Women’s Defense, “the wall was built on sensitive environmental areas and lands inhabited by indigenous communities, without sufficient and effective prior consultation with the affected population, and apparently continues to damage the land, the ecosystem, and the cultural and traditional ways of life of indigenous communities.”⁴ Despite Lipan Apache petitions to stop border construction, and then to remove the walls that were built, 10 years later, President Trump continued to ramp up border wall construction destroying sections of the Jacumba Wilderness at Skull Valley on Kumeyaay ancestral land as well as unceded territory of the Organ Pipe National Monument, next to the Tohono O’odham reservation. Under the authority of the Real ID Act, Trump

bypassed over 30 environmental laws, including international laws protecting Indigenous peoples' right to be consulted before construction on their land. Indigenous leaders associate the infrastructural violence of this massive construction project with a war crime. To build the wall, construction teams blasted burial grounds, destroyed historical pictographs and sacred sites on O'odham, Kumeyaay, and other Indigenous peoples' historical lands. Contractors syphoned hundreds gallons of water from Quito Baquito springs, the last natural spring in the O'odham desert (and home to many species of animals and plants on the verge of extinction); and mutilated countless saguaro plants the O'odham consider ancestors. The border wall also cut right through an ancient Kumeyaay prayer circle where untold artifacts, burial grounds, and historical evidence has been destroyed. As argued by Dakota lawyer and professor, Angelique EagleWoman, "the 'Mexico border' is the American cognate for a legal killing zone and a constitution-free zone rooted in capitalism, war, and extermination."⁵

¹ The IFTs, says Amy Juan, Tohono O'odham member and Tucson office manager at the International Indian Treaty Council, will make the Nation "the most militarized community in the United States of America."

² Jason De Leon discusses the strategic use of the desert as a state weapon that absolves the state of a direct hand in the killing of migrants in his book, *The Land of Open Graves: Living and Dying on the Migrant Trail* (Oakland: The University of California Press, 2015).

³ See Felicity Amaya Schaeffer's book, *Unsettled Borders: The Militarized Science of Surveillance on Sacred Indigenous Land*, especially Chapter 2.

⁴ Letter to the UN CERD Chairman, April 27th, 2017, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://iosde.org/uploads/3/5/1/9/35199981/lawd_response-signatures_fin.pdf.

⁵ "The Eagle and the condor of the Western Hemisphere: Application of International Indigenous Principles to Halt the United States Border Wall," (2009), <http://ssrn.com/abstract=1440831>.

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**The role of Indigenous women in combatting militarization and the impact of militarization
on the rights of Indigenous women**

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Good Morning. Today I continue my discussion of militarized borders by honing in how Latin American and U.S. Indigenous women are affected by multiple nation-state military control on their land, but also as they are displaced and forced to flee their home, facing sexualized violence by multiple state and non-state actors of military violence. In the face of state-supported neocolonial resource extraction, privatization, land theft, and mega-development projects, land defenders, oftentimes Indigenous women, confront armed and military forces when they fight to protect their land. As careful stewards of their families and communities, Indigenous land defenders risk their lives as states respond with targeted feminicide against activist leaders in Mexico, Guatemala, and Nicaragua who successfully halt extraction and development projects such as Honduran activist Berta Cáceras who gained acclaim across Latin America fighting for land rights, especially against dams, illegal logging, and plantation land grabs in Indigenous communities near and far from her home. This prominent role, however led to a spate of militarized violence targeting dozens of women environmental activists, including Cáceras who was killed in her home by a national militia trained by US forces.

As land defenders, Indigenous women face the dictatorial hand of the national guard and security forces that murder activists with impunity. This climate of state-backed impunity attracts other armed groups such as cartels, illegal gangs, paramilitary forces, and other illegal resource bandits onto their land who contribute to even more widespread violence. This climate of

impunity has led to obscene violence against Indigenous women's bodies – from rape, disappearances, and murders.¹

Rape and the mutilation of women and girls' bodies have long served as a weapon of militarism and war. State and non-state actors work together to brutally target women's bodies as a sign of sovereign power and aim to impose a patriarchal capitalist value-system that privilege individual and corporate profit over people and collective relations to land. Thus, it is important to consider the multiple axis of domination women face: state/nonstate military violence, patriarchy, and capitalism. Militarized and patriarchal violence follows them as they face violence in their communities, in their homes, and moving without accompaniment of men such as while traveling to work and even fleeing violence by migrating north. The brutal forms of violence against them are meant to silence them, but as we see in Oaxaca, Chiapas, Guatemala and beyond, women are shouting from the streets and demanding *collective* redress in local and international courts.

When communities in Mexico, for example are displaced from their land by multinational mega development and extraction projects and forced to migrate north towards the United States, women are either left behind when the men are forced to migrate or are brutally killed for defending land themselves. Mexican armed forces are tasked by the U.S. to prevent (at whatever cost) Indigenous migration north, causing them to face another round of violent military repression. For Indigenous and Mexican women forced to migrate, rape is so routine that many are advised to start birth control before they depart. Rape is the cost of travel by cartel and gang members, coyotes, police officers, and border patrol who often force them to comply with sexual advances if they want further passage north. The fear of speaking out against their experiences at and beyond the border are connected to a culture of fear of retribution and the lack

of legal redress against perpetrators, similar to what we have seen with the killing of young Mexican maquila workers or of displaced Indigenous migrants. The many femicides are unpunished, oftentimes with little legal recourse.

These are collective forms of violence that aim to shame and destroy families and communities. In 2008 alone, 722 violent deaths were reported against women. After many years of outcry by women's groups and the international community, the Guatemalan congress passed the 2008 *Law Against Femicide and Other Forms of Violence Against Women* with a special tribunal court to begin a process of adjudicating these widespread violence.² Sexual violence on women's bodies is also a colonial strategy of territorial control, land theft, genocide, and assimilationist projects backed by the military on both sides of the border. During the mid to late 1800s, the U.S. Cavalry stationed at military forts along the border committed rapes against Indigenous women. And today young Indigenous girls and women go missing at higher rates when mining and oil fracking camps are set up on their land. As Native scholars and activists remind us: in the United States, 4 out of 5 Indigenous women and girls experience violence and are 10 times more likely to be murdered or to go missing than the national average.³ As argued by Audra Simpson, "Indian women 'disappear' because they have been deemed killable, rapeable, expendable" and a threat to capitalist-patriarchal systems of value.⁴

How does militarism impact the rights of Indigenous women?

- I. We need stronger language in the UNDRIP that links militarism with land theft through security and development, including extraction, border security and even "green" development projects such as wind farms and lithium mining (all of which are oftentimes justified as in the "public interest").⁵ Thus we must revisit the language

of Article 30 #1 which supports the state's justification of development on Indigenous land when in the "public interest":

"Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant *public interest* or otherwise freely agreed with or requested by the indigenous peoples concerned."

This language actually perpetuates militarism, given "public interest" projects – oil fracking, development, and national security are often carried out on Indigenous land with violent consequences in the name of the "public interest" or the "public good" which has become the rule rather than exception. In addition, military violence follows them, taking place far from their lands and territories.

- II. When mention is made about using Indigenous land for military purposes in Article 30 #1, ("States shall undertake **effective consultations with the indigenous peoples concerned**, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories **for military activities.**"), the UNDRIP must make connections between militarism and sexualized violence against women (also men and boys).
- I. The right to consultation and informed consent in Article 32, #2 also does not include Indigenous women who are often left without a voice in local representational bodies.

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their **free and informed consent** prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

"States shall provide effective mechanisms for just and fair redress for any such activities, and **24 appropriate measures** shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."

The language here should be more specific about redress and the measures taken to mitigate harm. Indigenous women want their land back/right to stay home, want an immediate end to genocide and violence against land defenders, want the right to security and to live without violence (by all armed forces including: military, state, developers, contractors, husbands, cartels, illegal gangs, etc), to have a prominent role in local, state, and international decision-making, and to live according to their own understanding of non-patriarchal community law.

¹ As argued by Subcomandante Galeano, “these [neoliberal mega-development] projects will destroy the territories of the Indigenous peoples’ and have attendant impacts and consequences that will have repercussions in increasing, not lessening, the rates of femicides, murders, massacres, disappearances and forced dislocations in the country.”

² See chapters 5 and 7 of the anthology, *Indigenous Women and Violence: Feminist Activist Research in Heightened States of Injustice*, edited by Lynn Stephen and Shannon Speed. Tucson: The University of Arizona Press, 2021.

³ For official statistics of Indigenous women in the U.S., see the Native Women’s Wilderness website: <https://www.nativewomenswilderness.org/mmiw>. And for a more in-depth understanding of the reasons Indigenous women go missing see Sarah Deer’s book, *The Beginning and End of Rape: Confronting Sexual Violence in Native America*. For a discussion of feminicides across the Americas see Rosa-Linda Fregoso and Cinthia Bejarano’s book, *Terrorizing Women: Feminicide in the Americas*.

⁴ “The State is a Man: Theresa Spencer, Lorraine Saunders and the Gendered Cost of Settler Sovereignty in Canada,” Clark University Video Archive (2016), <https://commons.clarku.edu/videoarchive/235>.

⁵ On 21 June 2020, 15 Indigenous Ikoos people were killed, some of them burned to death by paramilitary forces even while the National Guard did nothing but watch. Protestors have since 2012, blocked a mega offshore wind farm next to a lagoon arguing it would affect their fishing, farming, and sacred spaces. Again in 2020, protestors were brutalized for standing up against Obredor’s Interoceanic development project. See Eoin Wilson’s article in *Aljazeera* (July 13, 2020), “Murders, megaprojects and a ‘new Panama Canal’ in Mexico: Activists suspect murders of 15 Indigenous community members are linked to their opposition to a proposed megaproject.”