Submission of the Tsilhqot’in Nation to the Special Rapporteur:
For Urgent Attention to Imminent Human Rights Violation at Teztan Biny (Fish Lake)

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Source:

Tsilhqot’in National Government
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Description of Submitting Organization

The Tsilhqot’in National Government represents the collective interests of the six Tsilhqot’in communities that together comprise the Tsilhqot’in Nation: Tl’etinqox, ?Esdilagh, Yunešt’in, Tši Deldel, Tl’esqox and Xeni Gwet’in (“Tsilhqot’in Communities”).

Alleged Victims or Communities Affected

The activities impugned in this submission are located in Tsilhqot’in territory, in the caretaker areas of the communities of Yunešt’in and Xeni Gwet’in. The activities affect an area of profound cultural and spiritual importance to the entire Tsilhqot’in Nation.

Alleged Perpetrators

The perpetrators of the activities impugned in this submission are: (1) Taseko Mines Limited, a mining company with its registered office in Vancouver, British Columbia, Canada, and (2) the Government of British Columbia, which authorized the impugned activities.
Summary of Events

1. For 3 decades, the Tşilhqo't'in Nation has actively protected Teztan Biny (Fish Lake), Yanah Biny (Little Fish Lake) and Nabas (the surrounding area) (collectively, the “Teztan Biny Region”) from direct threats of devastation by state-authorized industrial development.

2. As detailed below, the Teztan Biny Region is an area of profound cultural and spiritual importance for the Tşilhqo't'in, as confirmed by two independent expert panels and the courts of British Columbia.

3. In 1989, the Tşilhqo't'in Nation started litigation to protect some of the last intact forested lands in its territory – including the Teztan Biny Region – from extensive industrial logging.¹ British Columbia and Canada fought this litigation every step of the way – for over two decades.

4. Finally, after 25 years in the courts, the Tşilhqo't'in won a historic victory at the Supreme Court of Canada in June 2014, establishing court-recognized Aboriginal title for the first time in Canadian history, to approximately 40% of the area in question.² The Teztan Biny Region is immediately adjacent to, but outside of, the Declaration of Aboriginal title. In addition, the Tşilhqo't'in established Aboriginal rights to hunt and trap throughout the entire claim area, including the Teztan Biny Region – one of the few areas in Canada with court-declared Aboriginal hunting and trapping rights.³ British Columbia’s authorizations for industrial logging throughout this area were struck down by the courts as an unjustified infringement of Tşilhqo't'in Aboriginal rights and title.⁴

5. However, the Teztan Biny Region faced another direct threat: an application by Taseko Mines Limited (“Taseko”) to build and operate the Prosperity Mine – a massive open-pit gold-copper mine. Prosperity Mine called for Teztan Biny to be drained and filled with waste-rock, and Yanah Biny to be inundated by the tailings storage facility.⁵ The Tşilhqo't'in were unified in their opposition to the Prosperity Mine and the destruction of the Teztan Biny Region.

6. Prosperity Mine required environmental approvals from both British Columbia and Canada. British Columbia conducted its own environmental review, without public hearings or independent experts, and issued an approval for Prosperity Mine in 2010.⁶ By contrast, Canada appointed a panel of independent experts to
conduct the federal environmental assessment (“Prosperity Panel”). The Prosperity Panel held public hearings, including hearings in the Tsilhqot’in Communities.  

7. The Prosperity Panel concluded, in its report, that Prosperity Mine would have significant, immitigable environmental and cultural impacts, including significant impacts on Tsilhqot’in cultural heritage, current traditional use of the area, and Aboriginal rights. The Prosperity Panel described the Teztan Biny Region as “unique and of special significance” to the Tsilhqot’in and stated “the loss of the Teztan Biny (Fish Lake) and Nabas areas for current use activities, ceremonies, teaching, and cultural and spiritual practices would be irreversible, of high magnitude and have a long-term effect on the Tsilhqot’in”.  

8. In November 2010, the Government of Canada accepted the Prosperity Panel’s conclusions, and rejected the Prosperity Mine proposal. As a result, Prosperity Mine could not proceed.  

9. However, within months, Taseko submitted a revised version of its mine proposal to Canada for approval, now named New Prosperity. New Prosperity would purportedly preserve Teztan Biny as a functioning ecosystem, but still destroy Yanah Biny and much of Nabas.  

10. A second panel of independent experts was appointed to conduct the federal environmental assessment for New Prosperity (the “New Prosperity Panel”), and it again held public hearings, including in each of the Tsilhqot’in Communities. The Tsilhqot’in were required to participate in an unprecedented second environmental assessment process to protect Teztan Biny.  

11. In its final report, the New Prosperity Panel concluded that Taseko had failed to demonstrate even “proof of concept” and that Teztan Biny would be contaminated over time, notwithstanding expensive water treatment options and other mitigation efforts. The New Prosperity Panel confirmed that the Teztan Biny Region is “unique and of special significance” to the Tsilhqot’in and that New Prosperity would result in significant, immitigable impacts on Tsilhqot’in cultural heritage and current use of lands and resources for traditional purposes.  

12. The New Prosperity Panel concluded that New Prosperity would “endanger their ability to sustain their way of life and cultural identity”, in part because it would eliminate a highly valued “cultural school”.
13. In February 2014, the Government of Canada accepted the New Prosperity Panel’s conclusions and rejected the New Prosperity Mine proposal. As a result, New Prosperity Mine could not proceed.

14. Taseko responded with litigation seeking to overturn both the New Prosperity Panel report and the Government of Canada’s rejection of New Prosperity. The Tŝilhqot’in Nation has had little choice but to participate in 5 years (and counting) of litigation to defend the outcomes of the environmental assessment process. Taseko lost both legal challenges at the trial level in December 2017. Appeals were argued in January 2019 and judgments are pending.

15. The Government of Canada’s rejection of New Prosperity in 2014 still stands. Nonetheless, in October 2016, Taseko applied to British Columbia to carry out an extensive drilling program throughout the Teztan Biny Region (“Drilling Program”) for the stated purpose of advancing the New Prosperity Mine – notwithstanding this mine was rejected and cannot proceed as matters stand.

16. The Drilling Program is extensive, involving construction of 367 test pits; 122 geotechnical drill sites; 48 km of new exploration trails and roads; modification of 28 km of existing access trails and roads; and establishment of a 50-man camp. All of this disturbance would occur within a relatively small area.

17. The Tŝilhqot’in Nation opposed any further disruption or destruction of the Teztan Biny Region to advance a rejected mine. The Nation submitted extensive evidence to British Columbia as part of the consultation process documenting the importance of the Teztan Biny Region to the Tŝilhqot’in peoples, and the serious environmental, cultural and spiritual impacts of authorizing the Drilling Program to proceed. The Tŝilhqot’in Nation also submitted that the Drilling Program could not be justified in the circumstances, given that the New Prosperity Mine is rejected and cannot be built.

18. British Columbia prepared an impact assessment of the Drilling Program as part of the consultation process with the Tŝilhqot’in. In its impact assessment, British Columbia acknowledged:

   a. “Teztan Biny and Nabas areas are places of unique and special significance for the Tsilhqot’in cultural identity and heritage.”;
b. “Teztan Biny and Nabas are highly valued by the Tsilhqot’in due to its remoteness, peacefulness and relatively pristine nature of these lands and waters …”; 25

c. “[T]he proposed exploration work can be disruptive and may have significant emotional impacts such as TN members avoiding use of this area for hunting and trapping activities during an active drilling program”; 26

d. The “NOW 2017 [i.e. Drilling Program] activities are likely to have serious impacts on social, cultural, spiritual and experiential aspects of [Tsilhqot’in] hunting and trapping activities” and “fishing activities”; 27

e. “…[A]pproval of the 2017 NOW application will significantly impact TN’s use and enjoyment of this culturally and spiritually significant area and may result in the TN choosing to avoid the area entirely until the work is done, including for fishing activities” and “gathering activities”; 28

f. “… the impact on TN’s strong claim of an Aboriginal right to cultural and spiritual practices in this area is assessed as serious”. 29 [emphasis in original].

Nonetheless, British Columbia granted approval for the Drilling Program in July 2017. 30

19. The Tšilhqot’in were forced to return to court once again to challenge British Columbia’s approval for the Drilling Program. Although the Tšilhqot’in were successful in obtaining a series of injunctions to prohibit the Drilling Program while this litigation unfolded, 31 the Tšilhqot’in challenges to the permit were unsuccessful both at first instance 32 and on appeal. 33 The Supreme Court of Canada declined to hear a further appeal from the Tšilhqot’in in June 2019. 34

20. Notably, the B.C. Court of Appeal affirmed the importance of the Teztan Biny Region to the Tšilhqot’in peoples:

In addition to hunting and trapping, the Tšilhqot’in conduct fishing, gathering, and spiritual and ceremonial activities in the Area. Certain members have cabins there, and it is the site of an active cultural school. The Area is also a resting
place for a number of the Tsilhqot’in peoples’ ancestors. The petitioners say that the Area has become increasingly critical for the Tsilhqot’in in order to maintain their culture and exercise their rights, as other areas of the Tsilhqot’in territory have become more developed. The Crown concedes that the Tsilhqot’in have strong prima facie claims to fishing and gathering rights and to pursue ceremonial and spiritual activities in the Area as a place of unique and special significance for the Tsilhqot’in cultural identity and heritage.35

The Court of Appeal even noted that it may have been reasonable to reject the Drilling Program in these circumstances.36 But ultimately the Court concluded that it was not unreasonable to grant the permit for the Drilling Program.

21. The injunction protecting the Teztan Biny Region expired with the Supreme Court of Canada’s decision on June 13, 2019. The following day, Taseko provided 14-days notice of its intention to proceed with the Drilling Program, as required by its mineral lease.

22. The Tsilhqot’in Nation assembled a peaceful gathering on July 2, 2019 and turned around Taseko’s personnel and machinery as they attempted to mobilize into the Teztan Biny Region.37 Tsilhqot’in leadership reiterated that the area is sacred to the Tsilhqot’in peoples (“[t]hat’s our church”38) and that the Tsilhqot’in Nation did not consent to the Drilling Program.

23. Taseko filed a civil lawsuit against the Tsilhqot’in National Government, two Tsilhqot’in Chiefs and a Tsilhqot’in spiritual leader on July 5, 2019, in response to the peaceful action. The company has set a hearing in B.C. Supreme Court for July 16 to obtain a court order prohibiting Tsilhqot’in interference with the Drilling Program. The Tsilhqot’in have stated that they have no choice pursuant to their own laws and responsibilities but to protect the sacred lands and waters of the Teztan Biny Region.

24. As a result, Tsilhqot’in leadership, elders, youth and members stand at imminent risk of criminal charges and civil liability for asserting their human rights under the U.N. Declaration on the Rights of Indigenous Peoples and by taking the steps demanded by their own laws and identity to protect lands of profound spiritual and cultural importance to the Tsilhqot’in peoples.
25. Amnesty International Canada has monitored the situation closely for many years. It recently confirmed that “in Amnesty International’s views, planned exploration activities in the area of Biny and Yanah Biny violate rights protected in the UN Declaration on the Rights of Indigenous Peoples and other international human rights standards …”

26. Despite repeated entreaties, the Government of British Columbia has not acted to resolve or reduce conflict over the Drilling Program. Notwithstanding its public commitments to Indigenous peoples, and to implementation of the U.N. Declaration, the Government of British Columbia has not taken steps to prevent the serious cultural and spiritual impacts of the Drilling Program.

Additional Comments

27. The Tŝilhqot’in peoples face an imminent, “eyes wide open” violation of their most fundamental human rights under international law, including the U.N. Declaration on the Rights of Indigenous Peoples.

28. The Tŝilhqot’in have undertaken extraordinary efforts to express and protect their powerful cultural and spiritual connection to the lands and waters at stake, including participating in two environmental assessment processes and multiple court cases over the past decade (and counting).

29. Because of these extraordinary efforts, the profound cultural and spiritual importance of the Teztan Biny Region to the Tŝilhqot’in is now established beyond contention, by reports of independent expert panels, the courts, and even British Columbia’s own impact assessment for the Drilling Program. This makes the impending violation of international human rights all the more egregious, because it truly would be undertaken “eyes wide open” by both Taseko and the Government of British Columbia.

30. After exhausting all legal avenues, Tŝilhqot’in elders, youth, leaders and other members are now in a position that no community or peoples should ever have to face: a direct threat to their most spiritual and sacred places, their most fundamental values, and their way of life.
31. The Tšilhqot’in National Government respectfully requests that the Special Rapporteur take urgent action to:

   a. investigate and denounce this violation of international human rights;

   b. call on the Governments of Canada and British Columbia to intervene and resolve this conflict in a manner that fully respects the international rights of the Tšilhqot’in as Indigenous peoples;

   c. affirm that no exploratory activity or mine development can or should occur in the Teztan Biny Region without the free, prior informed consent of the Tšilhqot’in peoples;

   d. highlight the above concerns in the annual report of the Special Rapporteur; and

   e. conduct a site visit with the Tšilhqot’in Nation to the Teztan Biny Region, with the intention of further investigating and understanding this situation and bringing attention to this violation of human rights.

Documents

See attached:

- Schedule A: Reasons for Decision
- Schedule B: Tšilhqot’in Affidavits
- Schedule C: Revised Impact Assessment

Additional Resources:

- Teztan Biny: http://www.teztanbiny.ca/

- Video:
  1. Stand for our Younger Generations
  2. Nits’il?in (Chief) Jimmy Lulua on the Significance of Teztan Biny
  3. Dr. David Suzuki supports Teztan Biny (Fish Lake)
  4. Take a Stand For Teztan Biny (Fish Lake)
  5. Stand with the @Tsilhqotin
References

3 Tsilhqot’in Nation v British Columbia, 2007 BCSC 1700, paras 1239-41; aff’d 2012 BCCA 285.
4 Tsilhqot’in Nation v British Columbia, 2007 BCSC 1700, paras 1276-1301; aff’d 2012 BCCA 285, paras 313, 336.
8 Prosperity Panel Report, pp ii-v, 201-203.
9 Prosperity Panel Report, p 203.
15 New Prosperity Panel Report, p x.
17 New Prosperity Panel Report, p. x
19 New Prosperity Gold-Copper Mine Project – Environmental Assessment Decision.
20 Taseko Mines Limited v Canada (Environment), 2017 FC 1099; Taseko Mines Limited v Canada (Environment), 2017 FC 1100.
23 This evidence included impact statements from Tsilhqot’in members, which were later sworn or affirmed in substantially similar form as affidavits for the Tsilhqot’in court challenge to the permit once issued. See Schedule B: Tsilhqot’in Affidavits. Exhibits for the Affidavits can be provided upon request but were not included due to size.
25 Schedule C: Revised Impact Assessment, p 3.
26 Schedule C: Revised Impact Assessment, p 20.
27 Schedule C: Revised Impact Assessment, pp 21, 22.
28 Schedule C: Revised Impact Assessment, pp 22, 23.
29 Schedule C: Revised Impact Assessment, p 31.
30 Schedule A: Reasons for Decision (July 17, 2017).
31 William v British Columbia, 2018 BCSC 1271; William v British Columbia, unreported, September 17, 2018, CA45557 (Dickson J.A.); William v British Columbia, 2019 BCCA 112.
32 William v British Columbia (Attorney General), 2018 BCSC 1425.
33 William v British Columbia (Attorney General), 2019 BCCA 74.
34 William v British Columbia (Attorney General), 2019 CanLII 53413 (SCC).
35 William v British Columbia (Attorney General), 2019 BCCA 74, para 5.
36 William v British Columbia (Attorney General), 2019 BCCA 74, para 52.

37 For media coverage, see: ‘That’s our church’: Tsilhqot’in roadblock halts Taseko mine work on land considered sacred [CBC British Columbia]; Tsilhqot’in Nation blockade to remain despite Taseko Mines retreat [The Narwhal]; Tsilhqot’in Nation sends mining company home in peaceful protest [National Observer]; Tsilhqot’in Nation stops Taseko Mines exploratory drilling [Williams Lake Tribune].

38 ‘That’s our church’: Tsilhqot’in roadblock halts Taseko mine work on land considered sacred [CBC British Columbia].