

# **The impact of Canadian Mining in Latin America and Canada's Responsibility**

**Executive Summary of the Report submitted to the Inter-American Commission on Human Rights**



**Working Group on Mining and Human Rights in Latin America**



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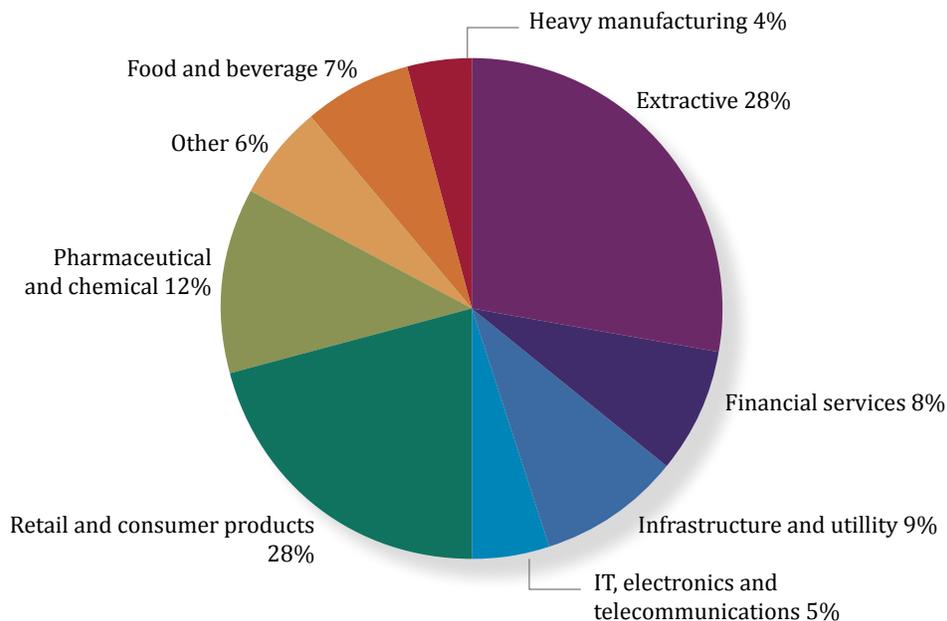
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# 1. Introduction

For some years now, there has been international awareness of the situation of communities whose human rights have been gravely violated by the expansion of large-scale extractive and infrastructure projects in their territories. These projects—generally undertaken without the participation of the affected communities, without prior consultation, and even in the face of their opposition—have raised serious questions. While governments and companies promise jobs, development, and prosperity for the communities, they in fact find themselves in poverty, face serious environmental harm and experience human rights violations. This sharp contrast requires reflection and appropriate countermeasures. A report commissioned in 2008 by the then United Nations Special Representative on Business and Human Rights, Prof. John Ruggie, reflects on this situation. It underscored the point that mineral extraction is the industrial sector generating the highest number of complaints of human rights violations (Figure 1).

FIGURE 1: ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS BY SECTOR



Source: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Report of the special representative of the secretary-general on the issue of human rights and transnational corporations and other business enterprises. A/hrc/8/5/add.2 23. May 2008.

**Thanks to the actions of victims** and human rights and environmental protection organizations, who courageously and patiently seek justice at every possible level, **the debate in international forums on the effects on human rights of extractive activities has been especially robust and significant.** Analysis now goes beyond seeking accountability from the states in which the projects are undertaken. Rather, in order to find appropriate answers consistent with the guarantee and protection of human rights, current analysis seeks to include the responsibility of other key actors in the violation of human rights, such as the countries of origin of the companies that run the projects, and the transnational corporations themselves.

In 2010, a group of seven non-governmental organizations decided to create the **Working Group on Mining and Human Rights in Latin America** (Grupo de Trabajo sobre Minería y Derechos Humanos en América Latina),<sup>1</sup> which was to consider the effects of the actions of transnational corporations in the region and the resulting violations of the human rights of the communities in the areas where those corporations operate, and to propose common strategies. As part of its work, the group identified the majority presence of Canadian mining companies in the region, as well as the impact of their activities on the communities in whose territories they have extractive projects.<sup>2</sup> Accordingly, the group decided to draft a report focusing on the impact of Canadian mining in Latin America and the role played by the government of Canada in the human rights violations committed. The process was supported by the development agency of the Catholic Church in Germany, Misereor.<sup>3</sup> By studying 22 mining projects developed by Canadian companies in nine countries of the region, the group was able to identify trends in terms of the impact of these activities and a pattern of human rights violations, as well as conditions in the host countries in which the mining investment occurred as well as Canadian policies that encourage human rights violations. This document presents the main findings and conclusions of the report.

<sup>1</sup> The **Working Group on Mining and Human Rights in Latin America** comprises the following organizations: the Latin American Observatory of Environmental Conflicts (*Observatorio Latinoamericano de Conflictos Ambientales*) –OLCA – (Chile), Colectivo de Abogados José Alvear Restrepo – CAJAR – (Colombia), Due Process of Law Foundation –DPLF – (regional), Centro Hondureño de Promoción para el Desarrollo Comunitario –CEHPRODEC– (Honduras), Asamblea Nacional de Afectados Ambientales – ANAA (Mexico), Asociación Marianista de Acción Social (Peru) and Red Muqui (Peru). Other organizations have cooperated with the Working Group, providing information on the main human rights violations caused by Canadian mining companies in the projects examined. Accordingly, the drafting of the report would not have been possible without the valuable contributions of: la Red de Asistencia Jurídica contra la Mega Minería – REDAJ – (Argentina), Foro Ciudadano de Participación por la Justicia y los DH –FOCO – (Argentina), Bienaventurados los Pobres – BEPE – (Argentina), Corporación Acción Humanitaria por la Convivencia y la Paz del Nordeste Antioqueño – CAHUCOPANA – (Colombia), Comité para la Defensa del Agua y el Páramo de Santurbán (Colombia), Federación de Organizaciones Campesinas e Indígenas del Azuay – FOA – (Ecuador), Periódico Intag (Ecuador), Unión de Sistemas Comunitarios de Agua del Azuay – UNAGUA – (Ecuador), Mesa Nacional Frente a la Minería Metálica (El Salvador), Comisión Pastoral Paz y Ecología de la Diócesis de San Marcos – COPAE – (Guatemala), Asamblea Veracruzana de Iniciativas y Defensa Ambiental – LA VIDA – (Mexico), Centro de Derechos Humanos de la Montaña –TLACHINOLLAN – (Mexico), Coordinadora de los Pueblos Unidos del Valle de Ocotlán (Mexico), Coordinadora Regional de Autoridades Comunitarias - Policía Comunitaria – CRAC-PC – (Mexico), Frente de Defensa Wirikuta (Mexico), Organización Campesina Emiliano Zapata (Mexico), Pro San Luis Ecológico (Mexico), Centro de Incidencia Ambiental – CIAM – (Panama), Comité Pro-Cierre de Mina Petaquilla (Panama), Comité Pro-Defensa de Donoso (Panama), Coordinadora Campesina por la Vida (Panama), Servicio Paz y Justicia – SERPAI – (Panama), Asociación de Defensa de la Tierra, El Agua, La vida y el Medio Ambiente de los caseríos afectados por el Proyecto Minero Huaquillas S.AC. Distrito y Provincia San Ignacio, Cajamarca (Peru), Municipalidad Ecológica Provincial de San Ignacio, Cajamarca (Peru), Pastoral Social de Dignidad Humana (PASSDIH) del Arzobispado de Huancayo (Peru), Red Agua, Desarrollo y Democracia – REDAD – (Peru), Vicaría del Medio Ambiente – VIMA – del Vicariato Apostólico de San Francisco Javier de Jaén (Peru).

<sup>2</sup> See Mining Watch Canada (2013). *Sector minero canadiense se enfrenta a aluvión de acusaciones y conflictos en A. Latina*. At: [<http://www.conflictosmineros.net/contenidos/18-internacional/13044-sector-minero-canadiense-se-enfrenta-a-aluvion-de-acusaciones-y-conflictos-en-a-latina>]. Accessed on January 29, 2014.

<sup>3</sup> The human rights clinics at the University of Quebec and the University of Texas, Mining Watch Canada, Halifax Initiative, Desarrollo y Paz Canada, and York University's Osgoode Hall Law School collaborated in the drafting of the report by providing technical inputs and remarks.

## 2. The Canadian Mining Industry and its Presence in Latin America

**T**here are numerous conflicts in Latin America arising from community resistance to mining models that harm the environment and violate human rights. At the time of this report, the database of the Observatory of Mining Conflicts in Latin America (*Observatorio de Conflictos Mineros in Latin America*) (OCMAL) held information on 198 active conflicts resulting from mega-mining operations in the region. Of these, 26 were in Argentina, 20 in Brazil, 34 in Chile, 12 in Colombia, 29 in Mexico, and 34 in Peru.<sup>4</sup> In September 2013, the Office of the Ombudsman of the People in Peru counted 107 active or latent social conflicts in the mining sector, out of a total of 148 socio-environmental conflicts.<sup>5</sup> Canadian mining companies operate in all of the above countries.

The mining industry is strategic and has a long tradition in Canada,<sup>6</sup> to the extent that the country has been dubbed “a mining power.”<sup>7</sup> In 2012, 57 percent of the world’s mining companies were listed on the Toronto Stock Exchange (TSX), and 70 percent of the shares issued by the mining sector worldwide were traded on the TSX.<sup>8</sup> There were approximately 1,619 mining companies listed on the TSX and TSX Venture in November 2013.<sup>9</sup>

Nearly half of all mining companies whose shares are traded on the TSX were engaged in operations outside Canada in 2012.<sup>10</sup> Of the 4,322 projects carried out by those companies outside Canada, 1,526 were in Latin America, 1,197 in the United States, 652 in Africa, 339 in Australia, 313 in Asia, and 295 in Europe.<sup>11</sup> The countries in the American hemisphere in which the Canadian companies are most active are Mexico (\$ 20 billion), Chile (\$ 19 billion), and the United States (\$ 17 billion).<sup>12</sup> According to various sources, **between 50 percent and**

**The mining industry is strategic and has a long tradition in Canada, to the extent that this country has been called “a mining power.”**

<sup>4</sup> OCMAL. *Base de datos de conflictos mineros, proyectos y empresas mineras en América Latina*. Available at: [[http://basedatos.conflictosmineros.net/ocmal\\_db/](http://basedatos.conflictosmineros.net/ocmal_db/)]. Accessed on January 29, 2014.

<sup>5</sup> See Office of the Ombudsman of the People of Peru [*Defensoría del Pueblo de Peru*] (2013). *Infografía: Estado de los conflictos sociales*, September. At: [<http://www.defensoria.gob.pe/modules/Downloads/documentos/Infografia-Reporte-de-Conflictos-115.pdf>]. Accessed on January 29, 2014.

<sup>6</sup> See Periferia Prensa (2012). *La lucha contra la minería une a Colombia y Canada*. At: [<http://www.periferiaprensa.org/index.php/ediciones-anteriores/159-ediciones-anteriores/edicion-74-junio-2012/1003-la-lucha-contra-la-mineria-une-a-colombia-y-canada>]. See also Sacher, William (2011). *El modelo minero canadiense: Saqueo e impunidad institucionalizados*. At: [<http://www.argenpress.info/2011/06/el-modelo-minero-canadiense-saqueo-e.html>]. Websites accessed on January 29, 2014.

<sup>7</sup> Sacher, William. (2011). *El modelo minero canadiense: Saqueo e impunidad institucionalizados*. Argenpress. Info. At: [<http://www.argenpress.info/2011/06/el-modelo-minero-canadiense-saqueo-e.html>]. Accessed on January 29, 2014.

<sup>8</sup> TMX. *Global Leaders in Mining*. At: [[http://www.tmx.com/en/listings/sector\\_profiles/mining.html](http://www.tmx.com/en/listings/sector_profiles/mining.html)]. Accessed on January 29, 2014.

<sup>9</sup> TMX. *Global Leaders in Mining. Sector Specs. Mining Companies Listed on Toronto Stock Exchange and TSX Venture Exchange*. At: [[http://www.tmx.com/en/listings/sector\\_profiles/mining.html](http://www.tmx.com/en/listings/sector_profiles/mining.html)]. Accessed on January 29, 2014.

<sup>10</sup> According to the TSX, there were 4,674 mining projects in Canada and 4,367 outside Canada. See TMX. *Global Leaders in Mining. Sector Specs. Mining Sector Profile*. At: [[http://www.tmx.com/en/listings/sector\\_profiles/mining.html](http://www.tmx.com/en/listings/sector_profiles/mining.html)]. Accessed on January 29, 2014.

<sup>11</sup> TMX. *A Capital Opportunity Mining*, p. 20. At: [[http://www.tmx.com/en/pdf/Mining\\_Presentation.pdf](http://www.tmx.com/en/pdf/Mining_Presentation.pdf)]. Accessed on January 29, 2014.

<sup>12</sup> Mining Watch Canada (2013). *Sector minero canadiense se enfrenta a aluvión de acusaciones y conflictos en A. Latina*. At: [<http://www.conflictosmineros.net/contenidos/18-internacional/13044-sector-minero-canadiense-se-enfrenta-a-aluvion-de-acusaciones-y-conflictos-en-a-latina>]. Accessed on January 29, 2014.

**70 percent of mining activity in Latin America involves Canadian companies**, a figure that demonstrates how much weight they have in the region.

The presence of Canadian companies in Latin America is neither new nor exclusive, but it has increased significantly in recent years. Thus in 2012 there were 67 Canadian mining companies operating in Argentina; 50 in Brazil; 55 in Chile; 39 in Colombia; 17 in Brazil; 201 in Mexico; and 89 in Peru.<sup>13</sup> The presence of Canadian companies in Latin American countries is reflected in the volume of mining projects in each country. In 2012, TSX reported 228 mining projects in Argentina; 154 in Brazil; 145 in Chile; 86 in Colombia; 585 in Mexico; and 231 in Peru.<sup>14</sup> Currently, the seven leading Canadian mining companies in terms of income derived from mining operations in Latin America are Barrick Gold, Yamana Gold, Teck, Goldcorp, Kinross Gold, Pan American Silver, and Gran Colombia Gold.<sup>15</sup>

Canadian junior mining companies also have a major presence, mainly in terms of exploration activities. Once the deposits have been evaluated, they are transferred to large companies with sufficient capital to conduct extractive operations — a profitable business. As of 2012, nearly 200 junior mining companies were operating in Peru alone, more than 100 of them headquartered in Canada.<sup>16</sup>

The increase in Canadian mining operations in the region is framed by the foreign policy of the current Canadian government toward developing countries. As government spokespersons have stated on several occasions, **the mining sector plays a fundamental role in the Canadian government's efforts to secure a new policy of cooperation with foreign states**, a policy in which the achievement of Canada's prosperity and security is central.<sup>17</sup> The recent merger of the former Canadian International Development Agency with the Department of Foreign Affairs and International Trade (DFAITD), as well as the creation of the Canadian International Institute for Extractive Industries and Development (CIIEID), reflect the new policy of using international cooperation mechanisms to promote Canadian mining companies in developing countries.<sup>18</sup>

In this policy, the government becomes a strategic ally of the private sector, represented by Canadian mining companies.<sup>19</sup> In recent years, those companies have

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<sup>13</sup> TMX. *A Capital Opportunity Mining*, p. 32. At: [[http://www.tmx.com/en/pdf/Mining\\_Presentation.pdf](http://www.tmx.com/en/pdf/Mining_Presentation.pdf)]. Accessed on January 29, 2014.

<sup>14</sup> TMX. *A Capital Opportunity Mining*, pp. 33, 34, 36, 38, 40 and 42. At: [[http://www.tmx.com/en/pdf/Mining\\_Presentation.pdf](http://www.tmx.com/en/pdf/Mining_Presentation.pdf)]. Accessed on January 29, 2014.

<sup>15</sup> Canadian International Development Platform. *Canadian Mining Investments in Latin America*. At: [<http://cidpnsi.ca/blog/portfolio/canadian-mining-investments-in-latin-america/>]. Accessed on January 29, 2014.

<sup>16</sup> Minería del Perú website. *Peru: líder en empresas junior*. At: [<http://mineriadelperu.com/2012/08/28/peru-lider-en-mineras-junior/>]. Accessed on January 29, 2014.

<sup>17</sup> See Laverdière, Hélène (2012). *How CIDA is Changing – For the Worse*. At: [[http://www.huffingtonpost.ca/helene-laverdiere/cida\\_b\\_2332831.html](http://www.huffingtonpost.ca/helene-laverdiere/cida_b_2332831.html)]. See also Robertson, Colin (2013). *The CIDA move's not radical. Canada is just playing catch up*. *Globe and Mail*. At: [<http://www.theglobeandmail.com/globe-debate/the-cida-moves-not-radical-canada-is-just-playing-catch-up/article10165928/>]. Webpages accessed on January 29, 2014.

<sup>18</sup> See *Globe and Mail* (2013). *Feds remove online references to CIDA, merge it with foreign affairs and trade department*. At: [<http://www.theglobeandmail.com/news/politics/cida-merges-with-department-of-foreign-affairs-and-international-trade/article12857391/>]. Accessed on January 29, 2014.

<sup>19</sup> See *Globe and Mail* (2013). *'Huge opportunities' for Canadian mining industry to work in developing countries*. At: [<http://www.theglobeandmail.com/news/politics/huge-opportunities-for->

received far-reaching support from Canada, to such an extent that Canadian cooperation assistance for development projects in other countries is conditioned on the “benefits” of the mining projects.<sup>20</sup> Accordingly, those companies both represent and benefit from the new development cooperation strategy of the current Canadian administration.<sup>21</sup>

**The financial and political backing the government of Canada has provided to mining companies** through entities such as the Department of Foreign Affairs and International Trade, Export Development Canada, and embassies<sup>22</sup> **has been strengthened by the *de facto* conversion of its cooperation agencies into mining investment promotion bodies.** This situation stands in contrast to the absence in Canada of a regulatory and institutional framework capable of responding adequately to complaints of human rights violations by Canadian mining companies in host countries. This is of particular concern, given that institutions in most of these countries are fragile, especially those charged with administering justice. In many cases, mining companies take advantage of this fragility to secure the enactment of regulatory frameworks favorable to their interests and prevent the investigation of human rights violations related to the projects.<sup>23</sup>

Given the increase in mining activities by Canadian companies in Latin America, their impact on local communities, and the direct role Canada now plays in the implementation of the extractive model in host countries, the organizations that took part in the drafting of the report focused on 22 mining projects operated by Canadian companies.

**The financial and political backing that the government of Canada has provided to its mining companies has been strengthened by the *de facto* conversion of its cooperation agencies into mining investment promotion bodies.**

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[canadian-mining-industry-to-work-in-developing-countries/article12670581/](http://www.theglobeandmail.com/news/politics/cida-merges-with-department-of-foreign-affairs-and-international-trade/article12670581/)]. Accessed on January 29, 2014.

<sup>20</sup> See Prime Minister of Canada. (2012). *PM announces initiative to help developing countries manage their natural resources. New Institute will build capacity in natural resources management and help reduce poverty in developing countries.* At: [<http://www.pm.gc.ca/eng/node/21744>]. See also Foreign Affairs, Trade and Development Canada. *Natural Resources Management. Creating jobs and opportunities in developing countries.* At: [<http://www.acdi-cida.gc.ca/acdi-cida/acdi-cida.nsf/eng/FRA-102311492-LK7>]. Webpages accessed on December 19, 2013, and on January 29, 2014.

<sup>21</sup> See *Globe and Mail* (2013). ‘*Huge opportunities’ for Canadian mining industry to work in developing countries.* At: [<http://www.theglobeandmail.com/news/politics/huge-opportunities-for-canadian-mining-industry-to-work-in-developing-countries/article12670581/>]. See also *Globe and Mail* (2013). *Feds remove online references to CIDA, merge it with foreign affairs and trade department.* At: [<http://www.theglobeandmail.com/news/politics/cida-merges-with-department-of-foreign-affairs-and-international-trade/article12857391/>]. Websites accessed on January 29, 2014.

<sup>22</sup> In this regard, see Keenan, Karyn. *Canadian Mining: Still Unaccountable.* At: [<http://www.halifaxinitiative.org/content/canadian-mining-still-unaccountable>]. Accessed on January 29, 2014.

<sup>23</sup> *Ibid.*

### 3. Projects Examined and Selection Criteria

The 22 projects selected are large-scale mining operations reported to have had serious environmental impacts and to have been associated with human rights violations (Figure 2). They are managed and developed by 20 companies headquartered in Canada, whose subsidiaries have projects in the following nine countries: Argentina, Chile, Colombia, El Salvador, Guatemala, Honduras, Mexico, Panama, and Peru. **The 22 projects can be considered a representative sample of the expansion of Canadian mining in the region, the human rights violations committed, and Canada's role in them.** The projects are as follows:

**The 22 projects can be considered a representative sample of the expansion of Canadian mining in the region, the human rights violations committed, and Canada's role in them.**

- ▲ **Argentina: Pascua Lama** binational project, of the Barrick Gold Corp. (Minera Argentina Gold S.A. and Compañía Minera Nevada SPA in Chile), which was initiated in 2009 and was in the construction phase when it was suspended on April 9, 2013 by a court order issued in Chile, which made it infeasible to continue the activities in Argentina; and the **Bajo de la Alumbreira** project of Xstrata Plc, Goldcorp Inc., and Yamana Gold Inc. (Minera Alumbreira Ltd.), in the extraction phase.
- ▲ **Chile: Pascua Lama** binational project of the Barrick Gold Corp., suspended as of April 9, 2013.
- ▲ **Colombia: Frontino** project of Gran Colombia Gold Corp.; **Mazamorra**s project of Gran Colombia Gold Corp.; **Marmato** project of Gran Colombia Gold Corp.; **Angostura** project of Eco Oro Minerals (formerly Greystar Resources); **Támesis**<sup>24</sup> project of Solvista Gold Corp. (sole shareholder in Sociedad Minera Solvista Colombia S.A.S.); and the **San Lucas** project of San Lucas Gold Corp. (Quia Resources Inc.). With the exception of the first and last projects, which are in the extraction phase, all the others are at the exploration stage.
- ▲ **El Salvador: Pacific Rim (El Dorado)** project of the US-Canadian company Pacific Rim Mining Corp. (acquired by the Australian company Oceana Gold in October 2013), in the license-application phase.
- ▲ **Guatemala: Mina Marlin** project of Goldcorp Inc., in the extraction phase.
- ▲ **Honduras: San Martín** or **Entre Mares** project of Goldcorp Inc. (Minerales Entre Mares Honduras S.A.), in the process of shutting down.
- ▲ **Mexico: La Diana** project (encompasses the mines located on the San Javier, La Diana, and San Miguel lots), initially operated by Camsim Mining and acquired in 2012 by Vendome Resources Corp., in the extraction phase; **Caballo Blanco** project of Goldgroup Mining Inc., at the exploration stage; **Wirikuta (La Luz, Universo)** project, the first of which is operated by First Majestic Silver Corp., at the prospecting stage; **San José del Progreso** project of Fortuna Silver Mines Inc. (Compañía Minera Cuzcatlán S.A.), in the extraction phase; **San Javier** project of Camsim Minas S.A., at the exploration stage; and the **Payback** project of Blackfire Exploration Ltd., which ceased operations when it was shut down in 2009.

<sup>24</sup> According to information from the company, the Támesis project is part of the Caramanta project.



**FIGURE 2: 22 SELECTED PROJECTS**

**LEGEND**

- Argentina**
  - 1 Project Bajo de la Alumbra
  - 2 Project Pascua Lama (binational Chile-Argentina)
- Colombia**
  - 3 Project Frontino
  - 4 Project Mazamoras
  - 5 Project Marmato
  - 6 Project Angostura
  - 7 Project Támesis
  - 8 Project San Lucas
- El Salvador**
  - 9 Project El Dorado
- Guatemala**
  - 10 Project Mina Marlin

- Honduras**
  - 11 Project Entre Mares
- Mexico**
  - 12 Project Cerro de San Pedro
  - 13 Project Caballo Blanco
  - 14 Project Wirikuta
  - 15 Project San José del Progreso
  - 16 Project La Diana
  - 17 Project Payback
- Panama**
  - 18 Project Molejón
- Peru**
  - 19 Project Lagunas Norte
  - 20 Project Mantaro
  - 21 Project Río Tabaconas
  - 22 Project Las Huaquillas

**The situation of victims whose human rights have been violated as a result of extractive projects is generally met with impunity and the lack of access to justice at all levels.**

- ▲ **Panama: Molejón or Petaquilla** project operated by Petaquilla Minerals Ltd., in the extraction phase.
- ▲ **Peru: Lagunas Norte** project of Barrick Gold Corp. (Minera Barrick Misquichilca S.A.), in the extraction phase; **Mantaro** project of Stonegate Agricom Ltd. (Mantaro Peru S.A.C.), at the exploration stage; **Río Tabaconas** project of Golden Alliance Resources Corp. (Minera las Palmeras S.A.C.), at the exploration stage; and the **Las Huaquillas** project of Inca One Resources Corp. (Inca One Peru S.A.C.), at the exploration stage.

The following criteria were considered in selecting these projects:

- ▲ **First: The cases selected represent one of the following situations:** vertical imposition of a development model to the detriment of human rights, without the participation of the population or free, informed, prior consultation to seek consent; breakdown of the social fabric; forced displacement of the inhabitants of affected regions and disregard for the special protection of certain natural areas and territories belonging to agricultural, indigenous, or tribal communities. Complaints and rights advocacy led, on various occasions, to individuals involved in this fight being threatened, harassed, and criminally prosecuted on charges including even terrorism. The social conflicts surrounding these issues have been exacerbated and have cost many people their lives. Those legal mechanisms that have been activated nationally and internationally have been mostly to no avail. Such successes as there were have been sporadic, and were eventually overcome by the political and economic power of the companies.
- ▲ **Second: The projects examined are highly polluting, large-scale mining operations run by consolidated companies.** Thus, a frank discussion is essential on the impact such projects have on the environment and human rights, the power imbalance between companies and affected communities, and the effects of this imbalance on the democratic institutional culture of the countries in which the companies operate.
- ▲ **Third: The organizations have emphatically maintained that Canadian authorities are aware of the problems in each of these cases, but that Canada continues to provide political, legal, and financial support to companies that commit or tolerate human rights violations.** According to the information gathered, the Canadian government has advised several governments of countries where Canadian companies operate on the need for them to change their regulatory frameworks regarding environmental studies, citizen participation, oversight, and land availability for mining concessions. In the countries where the projects are carried out, Canadian embassies have served as negotiators in the business relationships among the companies, the host state, and Canada, in spite of reports of serious human rights violations stemming from the companies' activities. In some cases, there have been demonstrations in Canadian diplomatic offices, especially against the violence created by companies headquartered in Canada.

**In situations where human rights have been violated as a result of extractive projects, the result is generally impunity for the perpetrators and lack of access to justice at all levels for the victims.** Communities do not participate adequately in the design of or decision-making related to these projects, and are only given attention when the situation triggers serious conflict and violence, such that the project cannot move forward. Host states and the companies react to opposition to extractive activities only when they have no choice

but to address the protests and suspend the projects. However, in most cases, the decision is made to continue in spite of the opposition of the communities and people directly affected.

**Given the serious impact of the mining industry on the Latin American countries studied in the report, it is essential that the complaints, proposals and arguments of the communities be taken seriously at each stage of the projects.** In particular, views on economic development should incorporate alternatives constructed by those who inhabit the territories and have their own way of life, thought and subsistence.

**It is indispensable to take seriously the complaints, proposals and arguments of the communities in each stage of the projects.**

## 4. Negative Impact of the Canadian Mining Industry in the Cases Examined

Serious environmental, economic, social, and cultural harms have been reported in the cases selected, as well as the violation of various rights.

The cases cited in the report relate to large-scale mining exploration or extraction projects, including at least 13 open pit mines<sup>25</sup> and others that are deep underground but with surface processing methods.<sup>26</sup> As a consequence of these modes of operation, **serious environmental, economic, social, and cultural harms have been reported in the cases selected, as well as the violation of various rights of the neighboring communities, including the right to life, humane treatment, health, and property.**

### 4.1 Environmental impact

The **serious environmental impact** of this type of mining is well known, and is part of the information held by both Canadian companies and the Canadian government.<sup>27</sup> In the projects examined, the environmental harms concern pollution of air, water, and ground, whether actual or potential.

**Six of the cases show this pattern of environmental harm, mainly to water resources.**

- ▲ In **Argentina**, at the **Bajo de la Alumbraera** project, pollution especially affects the water, in part because of the defective installation of a tailings dam at the head of a waterway, which means that its impermeability is not guaranteed.<sup>28</sup>
- ▲ In **Honduras**, at the **San Martín or Entre Mares** project, there have been complaints of pollution of the Agua Tibia and Guajiniquil streams as a result of serious acidic infiltration in 2008. In June 2009, a new inspection was made by mine experts from the University of Newcastle, and fresh documentary evidence was found of a serious pollution event in September 2008.<sup>29</sup>
- ▲ In **Chile**, at the **Pascua Lama** project, harm to various glaciers has been reported. In April 2013, mine operations were suspended after a court order, upheld in the last

<sup>25</sup> Pascua Lama project (Argentina and Chile), Bajo de la Alumbraera project, Marmato project, Angostura project (the initial presentation of the project by the company was for an open pit mine, although later it was presented as an underground mining project), Mina Marlin project, San Martín project, Cerro de San Pedro project, Caballo Blanco project, Wirikuta project, San Javier project, Blackfire project, Molejón or Petaquilla project, and Lagunas Norte project.

<sup>26</sup> In El Salvador, even though most of the El Dorado project was designed to be underground more than open pit, there are some deposits (for example, Nueva Esperanza and others not yet delimited) that might be extracted by open pit methods.

<sup>27</sup> On this point, see Office of the Prosecutor for the Defense of Human Rights of El Salvador [*Procuraduría para la Defensa de los Derechos Humanos de El Salvador*]. *Informe sobre la minería metálica y los derechos humanos en la República de El Salvador*, presented at the general hearing held during the 146<sup>th</sup> session of the Inter-American Commission on Human Rights. At: [<http://asprode.org/docs/mineria.pdf>]. Accessed on January 29, 2014.

<sup>28</sup> Juicio ético y popular a las transnacionales (2012). *Audiencia Regional Noroeste. Minera la Alumbraera. Bienaventurados los pobres, Colectivo Sumaj Kausay*, Catamarca, November 12. At: [<http://juicioalastransnacionales.org/2012/11/caso-minera-la-alumbraera/>]. Accessed on January 29, 2014.

<sup>29</sup> See Mac: Mines and Communities (2010). *Goldcorp staff face criminal charges over mine pollution in Honduras*. At: [<http://www.minesandcommunities.org/article.php?a=10373>]. Accessed on January 29, 2014.



▲ Cattle drinking water contaminated by the activities of Goldcorp Inc. in Valle de Siria, Honduras.



▲ Bajo de la Alumbra Mine in Argentina.

instance by the Chilean Supreme Court on September 25, 2013,<sup>30</sup> on the basis of evidence of underground water contamination in the Toro 1, Toro 2, and Esperanza glaciers. This information has been corroborated by the National Geology and Mining Service and the Environmental Evaluation System, which issued its original order in October 2012 for the suspension of drilling by Barrick Gold.<sup>31</sup>

- ▲ In **Panama**, the **Minera Petaquilla S.A.** consortium felled 54.2 hectares of old-growth, secondary, and gallery forest and approximately eight additional hectares of vegetation in order to construct an access road, heliports, camps, and the processing plant. It also extracted non-metal minerals, which caused erosion and sedimentation in water sources.<sup>32</sup>
- ▲ In **Peru**, at **Lagunas Norte mine** in La Libertad Department, the Asociación Marianista de Acción Social (AMAS) used citizen monitoring between 2005 and 2010 to track the pollution of the area's rivers. Examination of the physical, chemical, and biological quality of the water in the Perejil, Chuyuhual, and Caballo Moro river basins revealed that serious pollution is caused by mining activities, which impacts crop harvests and small-scale livestock farming.<sup>33</sup>

<sup>30</sup> Supreme Court of Chile, Judgment of September 25, 2013. At: [[http://www.cooperativa.cl/noticias/site/artic/20130925/asocfile/20130925182733/pascua\\_lama\\_suprema.pdf](http://www.cooperativa.cl/noticias/site/artic/20130925/asocfile/20130925182733/pascua_lama_suprema.pdf)]. Accessed on January 29, 2014.

<sup>31</sup> Court of Appeals of Copiapó, Judgment of July 15, 2013, p. 24. At: [[http://www.poderjudicial.cl/noticias/File/PROTECCION%20PASCUA%20LAMA%20COPIAPO.pdf?opc\\_menu=&opc\\_item=](http://www.poderjudicial.cl/noticias/File/PROTECCION%20PASCUA%20LAMA%20COPIAPO.pdf?opc_menu=&opc_item=)]. Accessed on January 29, 2014.

<sup>32</sup> National Environmental Authority. Department of Environmental Quality Protection. April 2007. *Technical Inspection Report*.

<sup>33</sup> AMAS, Compañía de Jesús Región Perú and IPEDEHP Team (2011). *Vigilancia ciudadana de la calidad del agua. Una experiencia desde la sociedad civil en el departamento de la libertad en Perú*. At: [[http://www.muqui.org/adjuntos/Vigilancia\\_Ciudadana\\_LaLibertad.pdf](http://www.muqui.org/adjuntos/Vigilancia_Ciudadana_LaLibertad.pdf)]. Accessed on January 29, 2014.

- ▲ In **Guatemala**, it has been determined that **Marlin Mine** operations have led to major water contamination. Technical studies show the presence of heavy metals such as iron, aluminum, magnesium, and arsenic in local rivers, including the Tzala and Riachuelo, downstream of the tailings dam.<sup>34</sup>

## 4.2 Forced displacement

Various large-scale mining projects have disturbed the social organization of communities and their way of life in a number of ways. Such disturbance may be:

- 1) **planned and managed directly by the company** to ensure the effectiveness of the project. In this regard, it is important to note that companies usually indicate in environmental impact studies whether the project involves forced displacement;<sup>35</sup>
- 2) **caused by environmental disturbances** that directly affect the livestock and agricultural livelihoods of communities, such as decreased water for irrigation, deaths of animals, and contamination of ground, water, and air; and
- 3) **caused by corporate pressure to replace artisanal mining.**

From the cases examined, the report highlights, among other issues:

- ▲ Displacement of neighboring communities around the **Entre Mares** mine in **Honduras**, where it has been reported that the licensee company urged — and in some cases forced—the sale of land, arguing that the law authorized expropriation of the land or the state would pay less for it;<sup>36</sup>
- ▲ Displacement of farmers and stockbreeders from their places of residence as a result of environmental disturbance. At **Bajo de la Alumbreira** mine in **Argentina**, local inhabitants were forced to leave their places of historical residences due to the death of their animals, deterioration of their water supply, and fencing off of their roads;<sup>37</sup>
- ▲ Displacement resulting from the replacement of artisanal mining by large-scale mining. Complaints to this effect have been made regarding **mining projects in Colombia**. For example, it has been reported that the **Marmato** project involves plans to

<sup>34</sup> Comisión Pastoral Paz y Ecología (2008). *Informe Anual de Monitoreo y Análisis de la Calidad del Agua*. San Marcos, Guatemala. At: [<http://www.catapa.be/files/Informe%20Anual%20del%20Monitoreo%20y%20Análisis%20de%20la%20Calidad%20del%20agua.pdf>]. Comisión Pastoral Paz y Ecología. (2009). *Segundo Informe Anual de Monitoreo y Análisis de la Calidad del agua*. San Marcos, Guatemala. At: [<http://ebookbrowse.com/segundo-informe-anual-del-monitoreo-y-analisis-de-la-calidad-del-agua-copae-pdf-d344131246>]. Websites accessed on January 29, 2014.

<sup>35</sup> For example, the environmental impact study presented by the Petaquilla Gold S.A. to obtain authorization for the Petaquilla project states: “The project area affects very few areas open for agriculture and livestock farming; therefore, no need for the involuntary movement of populations has been identified.” See Petaquilla Gold S.A. (2007). *Estudio de Impacto Ambiental Categoría III. Proyecto Minero Molejón*, p.6. Available at: [<http://birdinginpanama.com/petaquilla/EIA-Proyecto%20Minero%20Molejon.pdf>]. Accessed on January 29, 2014.

<sup>36</sup> Almendarez, Juan (2011). *Operación encubierta: Goldcorp (Entre Mares) & Gobierno de Honduras esconden información sobre niñas, niños y adultos contaminados*. At: [<http://tribunaldesalud.files.wordpress.com/2012/04/operacion3b3n-encubierta-2011.pdf>]. Accessed on January 29, 2014.

<sup>37</sup> See Flores Juana Rosalinda y otro c/Minera Alumbreira Limited. s/Daños y perjuicios. Expte. 348/03.



◀ Downtown area of the city of Marmato, Colombia, where more than 5,000 persons will be displaced by the activities of Gran Colombia Gold.

completely vacate the urban area, which would entail the relocation of more than 5,000 inhabitants from their places of origin.<sup>38</sup>

### 4.3 Community division and breakdown of social fabric

The report underscores different factors that exacerbate community divisions, especially in rural areas and traditional territories. These include: seeking of the agreements of members of affected communities by the project license-holder; the breakdown of political and institutional representation of communities through agreements that fail to recognize traditional collective-representation authorities; the promise of jobs and prosperity; and the irregular acquisition of property deeds for the purposes of expropriation.

The report identifies that division of the population affected by the mining activities was clearly evident in, for example:

- ▲ **Chile**, in the **Pascua Lama** project, when irrigators of Valle de Huasco signed an agreement with Barrick Gold, stipulating payment of US\$ 60 million over 20 years as compensation for harm to the image of the area's agricultural products because of the gold deposits. In time, that money divided the irrigator group, as there were complaints of corruption in the way the funding was managed.<sup>39</sup> Barrick Gold's advertising campaigns have been condemned by social and community organizations in Chile as an attempt to divide the communities being affected by the mining project.<sup>40</sup>

<sup>38</sup> Semana (2013). *Proyectos mineros en el socavón*. At: [<http://www.semana.com/economia/articulo/proyectos-mineros-socavon/353676-3>]. Accessed on January 29, 2014.

<sup>39</sup> Álvarez, Rodrigo (2007). *Regantes se disputan platas de Pascua Lama. Fuertes recriminaciones por un supuesto mal uso del fondo compensatorio acordado con la minera Barrick, tras la aprobación del proyecto minero*. Revista del Campo de El Mercurio. At: [<http://www.olca.cl/oca/chile/region03/pascualama272.htm>]. Accessed on January 29, 2014.

<sup>40</sup> El ciudadano (2012). *Religiosas rechazan donación de Barrick Gold*. At: [<http://www.elciudadano.cl/2012/07/09/54762/religiosas-rechazan-donacion-de-barrick-gold/>]. Accessed on January 29, 2014.

- ▲ **Mexico**, in the **Wirikuta (La Luz)** project, where representatives of the Wixárika people have agreed to prospecting by First Majestic Silver Corp on indigenous communal lands in Real de Catorce municipality, a step that has caused division in the community.<sup>41</sup> In the **San José del Progreso** project, also in Mexico, the Compañía Minera Cuzcatlán S.A. established itself on parcels held by shareholders of communal land (*ejidatarios*) under usufruct agreements, allegedly without the full knowledge of the signatories. This has reportedly given rise to division among the population, to the extent that no assemblies of shareholders in the common lands have been held since 2009.<sup>42</sup>

#### 4.4 Criminalization of social protest

Given the absence of prior consultation, lack of response to complaints, and the failed attempts at dialogue, communities opposing large-scale mining have found a more effective way to express themselves and raise their profile: roadblocks, obstruction of mining activities, and social protest. This opposition to the large mining operations imposed by national authorities has had serious consequences for the local population, including criminalization of rights advocacy and closure of institutional spaces for dialogue, in addition to the exacerbation of violence, threats and harassment, deaths and serious injuries. There are numerous examples of criminalization highlighted in the report, including the following:

- ▲ Faced with the local population's resistance to the **Molejón or Petaquilla** project in **Panama**, Penonomé police anti-riot units entered the camps on May 26, 2009 without any prior attempts at dialogue with protesters. Officers threw teargas canisters at those present and arrested 19 farmers, who were beaten and jailed in the town of Coclesito.<sup>43</sup>
- ▲ At the **Entre Mares** project, in **Honduras**, in 2010, 17 members of the Valle de Siria Environmental Committee (Comité Ambientalista del Valle de Siria) were accused of opposing the clearing of a forest in a mining concession area. These individuals were prosecuted in a trial court that first ordered their supervised pretrial release and, later, in February 2013, acquitted them of all charges.<sup>44</sup>
- ▲ In **San José del Progreso**, in Oaxaca state, **Mexico**, 23 persons were detained in May 2009, after the eviction of residents who had spoken out publicly against groundwater contamination in the area.<sup>45</sup>

<sup>41</sup> No a la mina (2012). *Minera causa divisiones en la comunidad Wirikuta*. At: [<http://www.noalamina.org/mineria-latinoamerica/mineria-mexico/minera-causa-divisiones-en-la-comunidad-wirikuta>]. Accessed on January 29, 2014.

<sup>42</sup> Portal of the former United Nations Rapporteur on the Rights of Indigenous People, James Anaya. At: [<http://unsr.jamesanaya.info/study-extractives/map/index.php/reports/view/78>]. Accessed on January 29, 2014.

<sup>43</sup> IACHR (2011). *Second report on the situation of human rights defenders in the Americas*. OEA/Ser.L/V/II. December 31, 2011, para. 322.

<sup>44</sup> Comité Ambientalista del Valle de Siria (2013). *Juez falla a favor de 17 ambientalistas del Valle de Siria*. At: [<http://comiteambientaldelvalledesiria.com/2013/03/07/juez-falla-a-favor-de-17-ambientalistas-del-valle-de-siria>].

<sup>45</sup> Testimony of Bernardo Vásquez. At: Centro Prodh. Documentary. *Minas y Mentiras - La verdad sobre el proyecto minero en San José del Progreso (Oaxaca)*. At: [<https://www.youtube.com/watch?v=Qk4ZouXcvt0>]. Accessed on January 29, 2014.

## 4.5 Adverse economic effects

**The adverse economic effects on communities surrounding the projects can especially be seen in changes to sources of income and livelihood, resulting in increased poverty.** Mining companies tend to make attractive promises of prosperity, employment, and quick fixes for the vulnerable situation of populations inhabiting the mining regions. However, the organizations that took part in the drafting of the report indicate that those promises go unmet and that socioeconomic indicators for these regions are the same or worse than they were prior to the project. Added to this is the often paternalistic attitude of companies toward the communities, reflected in gifts or donations. Far from being a sustainable answer to the problems of poverty and vulnerability, such measures have helped create a situation of dependency that undermines communities.

The cases studied include examples of mines in the process of closing. These cases reflect both the effects of projects of that magnitude and the reaction—or lack thereof—of host states, Canada, and companies. These examples call into question the argument that the extractive industry offers better opportunities for economic development than traditional livelihoods and development models that do not include extractive mega-projects.

- ▲ In **Peru**, community landholders affected by the **Lagunas Norte** came together in the Inter-Provincial Environmental Rights Defense Association (*Asociación Interprovincial de Defensa de los Derechos Ambientales*), and denounced the mining companies in the area for not having executed the work projects they promised with regard to the environment and to social responsibility.<sup>46</sup>
- ▲ In **Guatemala**, a study on the impact of the **Marlin Mine** conducted by Tufts University in the US concluded that “over the entire life-cycle of the mine, environmental risks significantly outweigh economic benefits.”<sup>47</sup>



▲ Members of the *Congregación de Hermanas del Buen Samaritano* in a demonstration in Vallenar, Atacama region, against aids offered by Barrick Gold.

<sup>46</sup> Letter of April 12, 2012 to Canada’s Minister of International Cooperation, Beverley J. Oda, from the Inter-Provincial Environmental Rights Defense Association [*Asociación Interprovincial de Defensa de los Derechos Ambientales*], the coordinating authority for the defense of the environmental rights of the peoples of the El Perejil, El Chuyugual, and El Caballo Moro river basins, in the region of La Libertad, provinces of Otuzco, Sánchez Carrión, and Santiago de Chuco, which are in the area of influence of the Lagunas Norte project of the Barrick Misquichilca S.A. company, a subsidiary of Barrick Gold Co.

<sup>47</sup> Zarsky, Lyjuba and Leonardo Stanley (2011). *Searching for Gold in the Highlands of Guatemala: Economic Benefits and Environmental Risks of the Marlin Mine*. September. At: [[http://ase.tufts.edu/gdae/policy\\_research/marlinemine.pdf](http://ase.tufts.edu/gdae/policy_research/marlinemine.pdf)]. Accessed on January 29, 2014.

► Burial of Bernardo Vásquez Sánchez, Zapoteca indigenous leader killed on March 15, 2012, after denouncing the context of violence generated by the activities of Fortuna Silver in San José del Progreso, Mexico.



#### 4.6 Violent deaths and serious injuries to mineworkers and opponents of projects

The report notes at least 23 violent deaths and 25 cases of serious injury at **ten** of the projects examined, although the total number of individuals murdered and injured may be much higher. Nearly all of the reported acts have gone unpunished, without any determination to date of the perpetrators' motives. Nor have reparations been made to victims or their relatives. The ten cases pertain to mining projects in **Mexico, Colombia, El Salvador, Honduras, and Guatemala.**

- ▲ According to information provided by various organizations, at least **two identifiable factors** negatively impact the rights to life and humane treatment of those who work at or are related to the mining projects examined: the **existing context of violence** in the areas of influence of some of the projects, and the **precarious work conditions in the mines**, which can lead to death and permanent bodily injury.
- ▲ In the cases included in the report, there have been complaints of **serious threats to and harassment of individuals who express opposition** to the activities of Canadian mining companies. Not all the cases involve murder, but attacks and other acts of violence to intimidate opponents of mining activities have occurred quite frequently.<sup>48</sup>

The information provided indicates that the most serious violations of the rights to life and humane treatment took place: 1) after the victims investigated, reported, or disseminated news relating to mining activities; 2) during public demonstrations, acts against mining activities, or confrontations between persons defending the mining activity and those opposed

<sup>48</sup> See Global Witness (2012). *Survey finds sharp rise in killings over land and forests as Rio talks open*. At: [<http://www.globalwitness.org/library/survey-finds-sharp-rise-killings-over-land-and-forests-rio-talks-open>]; CIEL. (2010). *Environmental Defenders in Danger: The situation in Mexico and Central America in the context of the mining industry*. At: [<http://www.miningwatch.ca/files/CIEL,%20Environmental%20Defenders%20in%20Danger,%20English.pdf>] sites accessed on January 29, 2014.

to it; and 3) with state involvement in the acts of violence in the context of state support for the activities of mining companies. There is also information about inactivity by Canadian embassy authorities when the acts were reported and the refusal of mining companies to admit that their activities are related to acts of violence.<sup>49</sup>

Among the cases in the report involving the assault and murder of leaders of organizations opposing the projects, we highlight the following:

- ▲ From the beginning of the **Payback** project in **Mexico** in 2008, the town of **Chicomuselo, Chiapas state**, expressed its opposition. On November 27, 2009, Mariano Abarca Roblero was murdered after receiving threats and after being arrested in August of that year for participating in peaceful protests against the project. Several employees and contractors of **Blackfire Exploration** company were accused by local townspeople of involvement in the incident. It is noted that the Canadian embassy failed to respond to complaints about these acts.<sup>50</sup>
- ▲ Father Reinel Restrepo Idárraga, a priest who headed a civic committee against the **Marmato** project in the Department of **Caldas, Colombia**, was murdered on August 29, 2011. A few days before his death, Father Restrepo had indicated that his fight to prevent the mining mega-project in his parish could cost him his life.<sup>51</sup>
- ▲ In **El Salvador**, in the context of **Pacific Rim's** involvement in the **El Dorado** gold project in the Department of Cabañas, there have been eight reported murders of members of the Association of Friends of San Isidro, Cabañas (*Asociación Amigos de San Isidro Cabañas*) (ASIC) and of activists opposed to the operations at the mine, as well as two reported injuries.<sup>52</sup>
- ▲ To give an idea of the extreme working conditions in the mines, according to figures gathered in **Peru**, as of August 4, 2008, there had been 44 fatal accidents, the most common cause being falling rocks (37 percent), followed by poisoning, asphyxiation, and radiation absorption (12 percent).<sup>53</sup>
- ▲ As for the companies' refusal to admit any connection between their activities and acts of violence, after several murders and serious injuries to residents of **San José del Progreso, Oaxaca state, Mexico**, where **Cuzcatlán Mine** is located, Fortuna Silver released a public statement regretting the acts of violence and emphatically deny-

<sup>49</sup> Straight.com (2012). *Activists call on Vancouver mining companies to stop violence in Guatemala and Mexico*. At: [<http://www.straight.com/article-714646/vancouver/mining-activists-want-violence-stop>]. Accessed on January 29, 2014.

<sup>50</sup> Moore, Jennifer and Gillian Colgrove (2013). *Corruption, Murder and Canadian Mining in Mexico: The case of Blackfire Exploration and the Canadian Embassy*. At: [[http://www.miningwatch.ca/sites/www.miningwatch.ca/files/blackfire\\_embassy\\_report\\_eng\\_0.pdf](http://www.miningwatch.ca/sites/www.miningwatch.ca/files/blackfire_embassy_report_eng_0.pdf)]. Accessed on January 29, 2014.

<sup>51</sup> Mining Watch Canada (2011). *Response from Marmato, Colombia to the murder of Father José Reinel Restrepo*. At: [<http://www.miningwatch.ca/news/response-marmato-colombia-murder-father-jos-reinel-restrepo>]. See also Brief on the Right of Petition, filed by Javier Giraldo Moreno before the Ministry of Mines, March 13, 2012; Reclame - Nodo Universitario Antioquia (2012). *Aquellas muertes. En memoria del Padre José Reinel Restrepo Idárraga*. At: [<http://reclameu.blogspot.com/2012/03/aquellas-muertes-en-memoria-del-padre.html>]. Websites accessed on January 29, 2014.

<sup>52</sup> Steiner, Richard, International Union for the Conservation of Nature (IUCN) and Commission on Environmental Economic and Social Policy (CEESP) (2010). *The El Dorado gold mine, violence in Cabañas, CAFTA claims, and the national effort to ban mining*, p. 17. At: [<http://www.walkingwithelsalvador.org/Steiner%20Salvador%20Mining%20Report.pdf>]. Accessed on January 29, 2014.

<sup>53</sup> Mine Safety Institute [*Instituto de Seguridad Minera*] (2008). *Revista de Seguridad Minera*. No. 65, p. 2. At: [<http://www.isem.org.pe/revista/pdfrevista/65.pdf>]. Accessed on January 29, 2014.

ing any links to its own activities. Nevertheless, several local organizations challenge these assertions, maintaining that the violence in San José began with the arrival of Fortuna Silver.<sup>54</sup>

## 4.7 Adverse health consequences

► Demonstrator stresses the impact of open pit mining in children's health in Honduras.



The cases examined in the report mentioned the adverse health consequences of exposure to mining activities or to the resultant contaminated water, air, and ground. There are also the testimonies of affected persons who did not exhibit their current symptoms prior to the large-scale mining projects. These cases include:

- ▲ At **Bajo de la Alumbreira** project in **Argentina**, doctors at Belén Hospital in Catamarca province decided to keep statistics on respiratory illnesses, due to the unusually high demand for treatment. Studies confirmed that respiratory illnesses in children had increased from 1,374 to 2,244 cases between 2000 and 2003.<sup>55</sup>
- ▲ At **Entre Mares** project in **Honduras**, health problems have been reported among the population of Valle de Siria, especially dermatological and gastrointestinal issues, as well as the presence of lead in blood.<sup>56</sup>
- ▲ In **Guatemala**, Physicians for Human Rights conducted a study of the detriment to the health of persons living near and downstream from **Marlin Mine**. They found elevated levels of mercury, copper, arsenic, and zinc in the urine samples of the population studied.<sup>57</sup>

<sup>54</sup> Straight.com (2012). *Activists call on Vancouver mining companies to stop violence in Guatemala and Mexico*. At: [<http://www.straight.com/article-714646/vancouver/mining-activists-want-violence-stop>]. Accessed on January 29, 2014.

<sup>55</sup> No a la mina (2012). *La llegada de La Alumbreira disparó los casos de cáncer en Andalgalá*. At: [<http://www.noalamina.org/mineria-argentina/mineria-catamarca/la-llegada-de-la-alumbreira-disparo-los-casos-de-cancer-en-andalgalá>]. Accessed on January 29, 2014.

<sup>56</sup> Movimiento Mesoamericano contra el Modelo Extractivo Minero (2012). *Estrategias por la defensa de la tierra y el territorio. Agobiante crisis de salud en Valle de Siria causada por Goldcorp inc. / entremares*. Available at: [<http://www.movimientom4.org/2012/07/agobiante-crisis-de-salud-en-valle-de-siria-causada-por-goldcorp-inc-entremares/>]. Accessed on January 29, 2014.

<sup>57</sup> See Basu, Niladri, Howard Hu, and International Forensic Program of Physicians for Human Rights (2010). *Toxic Metals and Indigenous Peoples near the Marlin Mine in Western Guatemala. Potential Exposures and Impacts on Health*. At: [<http://goldcorpoutofguatemala.files.wordpress.com/2010/07/guatemala-toxic-metals.pdf>]. Accessed on January 29, 2014.

## 4.8 Fraudulent acquisition of property

The organizations involved in the cases in this report have stated that the transfer or sale of land by communities in the project areas is frequently the result of deception, fraudulent manipulation of property titles, or forced evictions. **In most cases, the transfers or sales occur without any information on the real price of the assets or the impact that the mining activities will have on future property values.**

- ▲ As an example, the report notes that in 1999, Goldcorp, in charge of extractive operations at **Marlin Mine in Guatemala**, began to purchase land from families in the areas surrounding the future operations site. This action continued in 2002, when Montana Exploradora de Guatemala S.A. set out to acquire the land within the mineral rights concession granted by the Ministry of Energy and Mines. The organizations that provided the information report that some 600 families were forced to turn over the land on which they had been living without individual property deeds in exchange for Q. 4,000 per hectare (about US\$ 500 at current exchange rates).<sup>58</sup>
- ▲ Irregular acquisition of land has also been reported in the **Cerro de San Pedro project in Mexico** where, in 1997, a group of inhabitants from La Zapatilla community entered into a lease contract with New Gold company for part of the communally held land (*ejido*) of Cerro de San Pedro and the seat of the municipal government. Local organizations complained that the inhabitants of the town of La Zapatilla do not belong to the cooperative or to the town of Cerro de San Pedro, nor are they the owners of the public or private structures covered in the contract. The controversy surrounding the ownership of the leased land has given rise to a lawsuit in the Superior Agrarian Court of Zacatecas.<sup>59</sup>

**In most of the cases, the transfers or sales happen without the existence of any information on the real prices of the assets or the impact that the activities of the mining projects will have on future property values.**

The harm to the environment, to the social structure of communities, and to human rights caused by the large-scale mining activities of Canadian companies in several Latin American countries is notorious and serious. However, as seen below, the regulatory frameworks and practices of the host states, as well as the regulations and institutions of Canada, do not provide adequate preventive mechanisms or effective judicial remedies for complaints of human rights violations.

<sup>58</sup> Polanco, Mara Luz (2012). *La minería en Guatemala (El caso de Goldcorp: de la Mina Marlin al Escobal)* (Guatemala: Universidad de San Carlos de Guatemala, Facultad de Ciencias Económicas, Instituto de Investigaciones Económicas y Sociales IIIES).

<sup>59</sup> See Ciepac, *Minera canadiense pagará a ejidatarios \$1 el metro para solucionar conflicto. En abril, ejidatarios del municipio de Ocampo bloquearon las instalaciones para exigir el pago de daños por deforestación de tierras, envenenamiento de ganado y contaminación de arroyos*. At: [<http://www.ciepac.org/boletines/chiapasaldia.php?id=535>]. Accessed on January 29, 2014.

## 5. Host State Conditions Conducive to the Negative Impacts of Mining

**I**n view of the negative impact of Canadian mining, it would be hoped that host states would comply fully with their international human rights obligations. This would entail, among other actions, the enactment of laws protecting the rights of affected populations, the issuance of mining regulations that guarantee human rights, transparent formulation of public policies and plans relating to the mining industry with due participation by citizens, and an effective guarantee of the right of access to justice. Instead, the organizations that have worked on the cases examined in the report have found the following patterns conducive to the violation of human rights.

### 5.1 Inadequate legal frameworks and problems in their implementation and enforcement

**In view of the negative impact of Canadian mining, it would be hoped that the States in which the projects are undertaken would comply fully with their international human rights obligations.**

This reality in the host countries is reflected mainly in:

- ▲ Legal and constitutional lacunae in the protection of rights;
- ▲ Vague and contradictory laws that foster and promote practices that run counter to protection of the environment and the rights of individuals and communities;
- ▲ The absence of adequate mining laws, often influenced by external actors;
- ▲ National mining plans or policies extremely favorable to private investment;
- ▲ Nonexistent or inadequate mechanisms for citizen participation and prior consultation, that are merely informative and have no effect on state decision-making;
- ▲ The lack of efficient measures to regulate the extractive sector;
- ▲ The absence of plans for the closure of mines, mitigation measures, and funds for future environmental harm and the rehabilitation of the area, as well as the lack of any serious demand for them by state authorities;
- ▲ State authorities drawn mainly from the mining industry itself, who permit and facilitate company actions.

These problems are directly reflected in mining policies and plans that fail to consider the opinions and needs of communities and provide no effective guarantee of access to justice. On this point, the organizations complain that there is a disconnect between domestic legal requirements for engaging in the different stages of mining activity, the institutional weakness of the states that prevents them from effectively demanding compliance with those requirements, and the power of the large companies to circumvent them. Consequently, the following problems have been reported in the implementation and enforcement of legal frameworks:

- ▲ Disregard of mining laws and indifference toward the protected status of certain lands on which mining activities are conducted, including indigenous, tribal, and agricultural land, as well as nature reserves or ecological or archaeological protection areas;
- ▲ Nonexistent or improper citizen participation to build social consensus and the lack of free, informed, prior consultation to obtain consent;



- ▲ Noncompliance with environmental laws; and
- ▲ Disregard of principles of international human rights and social responsibility.

▲ Citizens of San Miguel Ixtahucán and Sipacapa, Guatemala, demonstrate against the presence of Montana Exploradora, subsidiary of Canadian Goldcorp.

## 5.2 Disregard for the rights of indigenous and tribal peoples

One of the commonest consequences of inadequate regulation has been the persistent establishment of large-scale mining projects on indigenous peoples' lands, in communities of persons of African descent, and in rural farming communities, without taking account of the particular quality of those territories, the special protection to which they are subject, and the prohibition against extractive operations in many such areas. The report contains numerous examples of this situation, including in particular:

- ▲ In **Argentina**, the **Bajo de la Alumbreira** project designed its electroduct to pass through the territory of the Diaguita community in such a way that it affected the Inca Trail.
- ▲ In **Chile**, the **Pascua Lama** project affects the ancestral lands of the Huascoalina community.
- ▲ In **Colombia**, the **Marmato** project affects Afro-Colombian and indigenous communities (the Embera Chamí indigenous people), as well as farming communities comprised of whites and persons of mixed ancestry.
- ▲ In **Mexico**, the mining project in **Wirikuta** affects the Wixárika (Huichol) indigenous people. In addition, the **project in San José del Progreso** affects ancestral lands of the Zapoteca community while the **Blackfire Mine** affects indigenous and farming communities of the Grecia and Nueva Morelia cooperatives.
- ▲ In **Guatemala**, the **Marlin Mine** affects lands owned by the Maya Mam and Sipakapense community.
- ▲ In **Panama**, the **Petaquilla** project affects the Ngäbe-Buglé communities located in the concession area.

**In the projects analyzed in the report, the rule has been the absence of free, informed, prior consultation to seek consent.**

In addition, in the projects analyzed in the report that **the norm has been the absence of free, informed, prior consultation to seek consent** when required from the affected indigenous or tribal communities.

- ▲ In the **La Diana** project in the towns of Lliatenco and Malinaltepec, Guerrero State, **Mexico**, it has been indicated that the mining concession granted by the federal government was not preceded by consultation with the affected Na Savi and Me'phaa indigenous peoples. That omission stands in contrast to the public statements by the coordinator of community authorities for the regions affected by the mining concessions, who expressed opposition to their continuation and concern over the environmental harm they could cause.<sup>60</sup>
- ▲ In the **Marlin Mine** project in **Guatemala**, the office of the compliance advisor/ombudsman of the World Bank investigated the issue of consultation and concluded there was "no evidence that [the] municipalities of San Miguel or Sipacapa or landholders were consulted or notified before [or] during granting of [the] exploration license."<sup>61</sup>

### 5.3 Disregard for nature reserves and protected areas

In at least **11 of the cases in the report, mining activities were conducted without regard for the special care that must be taken in areas considered nature reserves or ecological or archaeological protection zones**, or for the infeasibility of mining projects in those areas.

- ▲ In **Argentina**, the **Pascua Lama** project affects an area called San Guillermo, located in a national park and overlapping a water reserve area comprised of glaciers.<sup>62</sup> The situation is the same in the project area on the Chilean side of the border.<sup>63</sup>
- ▲ In **Mexico**, the **Cerro de San Pedro** project is in an ecological reserve. The pressure from the company has been so great case that in May 2011 an urban development plan was presented that aims to set aside the classification of the Cerro de San Pedro

<sup>60</sup> Peace Brigades International, *PBI Mexico: Indigenous groups oppose mining exploitation in the Costa Chica and Montaña regions of Guerrero* (2011). At: [[http://www.pbi-mexico.org/field-projects/pbimexico/news/news/?tx\\_ttnews%5Btt\\_news%5D=2582&cHash=e8c882fc11bec3ee05348d83aef5813f&L=1](http://www.pbi-mexico.org/field-projects/pbimexico/news/news/?tx_ttnews%5Btt_news%5D=2582&cHash=e8c882fc11bec3ee05348d83aef5813f&L=1)]. Accessed on January 29, 2014.

<sup>61</sup> See Annex to the Report of the Office of the Compliance Advisor/Ombudsman (2005). *Assessment of a complaint submitted to CAO in relation to the Marlin Mining Project in Guatemala*, September 7, p. 22. At: [<http://www.cao-ombudsman.org/cases/document-links/documents/CAO-Marlin-assessmentanexes-English-7Sept-05.pdf>]. Accessed on January 29, 2014.

<sup>62</sup> Barrick Gold Corporation. 2006. *Environmental Impact Report*; Asociación Ecologista INTICHUTEH and others. *Objeciones al proyecto minero binacional „Pascua Lama“*; Asociación Ecologista INTICHUTEH and others. *Respuesta a la Evaluación del ESTUDIO DE IMPACTO AMBIENTAL, Proyecto Pascua Lama*; Rodríguez Pardo, Javier. 2005. *Así Funciona la Minera Barrick Gold*. Ecoportal. At: [[http://www.ecoportal.net/Temas\\_Especiales/Derechos\\_Humanos/Asi\\_Funciona\\_la\\_Minera\\_Barrick\\_Gold](http://www.ecoportal.net/Temas_Especiales/Derechos_Humanos/Asi_Funciona_la_Minera_Barrick_Gold)]; National Parks Administration [Administración de Parques Nacionales] 2008. Integrated management plan for the San Guillermo National Park and Biosphere Reserve [Plan de manejo integrado del Parque Nacional y de la Reserva de Biosfera "San Guillermo"]; Supreme Court of Argentina. *Vargas, Ricardo Marcelo c/Provincia de San Juan y Otros s/ Daño Ambiental*. S.C. V.175, L.XLIII. Originario.

<sup>63</sup> Court of Appeals of Copiapó, Judgment of July 15, 2013, p. 24. At: [[http://www.poderjudicial.cl/noticias/File/PROTECCION%20PASCUA%20LAMA%20COPIAPO.pdf?opc\\_menu=&opc\\_item=](http://www.poderjudicial.cl/noticias/File/PROTECCION%20PASCUA%20LAMA%20COPIAPO.pdf?opc_menu=&opc_item=)]. Accessed on January 29, 2014.

zone as an ecological reserve. The area where the **Wirikuta** project is located is recognized at the state level as a protected natural area,<sup>64</sup> and in 1988 it was included by the United Nations Organization for Education, Science and Culture in its global network of sacred natural sites.

- ▲ In **Colombia**, in the area of influence of the **Santurbán mine**, there are around 200,000 hectares of high plateau and Andean forest on the border between the departments of Santander and Norte de Santander, an area with vast biodiversity and more than 58 lakes. The **Mazamorras** project is also under development in a national monument and archaeological reserve area classified as a national park.<sup>65</sup>
- ▲ In **Panama**, the **Molejón or Petaquilla** project is being conducted on archaeological sites and in the Mesoamerican biological corridor designated as a protected area by the National Environmental Authority.

**In general, the States in which extractive projects are conducted do not offer effective judicial remedies whereby the communities and individuals whose rights are infringed can obtain justice, truth and full reparation.**

## 5.4 Absence of real participation by affected citizens

Another feature of the mining projects highlighted by the report is the bilateral negotiation and decision-making between states and companies, without real participation by the public, affected communities, or other social actors. According to the report's findings, in some cases people first found out about a project from changes in activity in the area, the presence of trucks, or the scarcity of water.

- ▲ There is an example from **Mexico**, where the community discovered by chance that exploration work had started again at **Cuzcatlán Mine**, because there was a water shortage in the area.<sup>66</sup>

## 5.5 Nonexistent or ineffective judicial remedies

The cases examined demonstrate that, **in general, host states do not offer effective judicial remedies whereby communities and individuals whose rights are infringed can obtain declarations of liability, penalties for violations and damage caused, and reparations.**

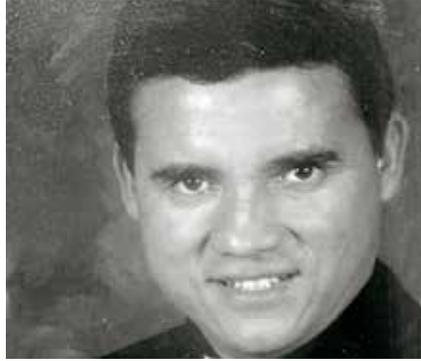
- ▲ In the case of the **Bajo de la Alumbraera** project in **Argentina**, a company executive was eventually prosecuted for serious environmental pollution in the drainage basin of the project area. However, no judgment has yet been handed down that establishes the facts, punishes those responsible, and orders reparations.
- ▲ In the case of the **Bajo de la Alumbraera** project in **Argentina**, a company executive was eventually prosecuted for serious environmental pollution events in the drainage

<sup>64</sup> Urdimbres.com. *Plan de manejo Wirikuta*. At: [[http://urdimbres.com/index.php?option=com\\_content&view=article&id=199&Itemid=299](http://urdimbres.com/index.php?option=com_content&view=article&id=199&Itemid=299)]. However, in spite of the regulatory provisions, nearly 70 per cent of the surface area of the mining concessions granted is within the protected natural area, in zones designated for sustainable agricultural use, recovery, special use, and traditional use.

<sup>65</sup> Mining Watch Canada, CENSAT-Agua Viva and Interpares (2009). *Land and Conflict. Resource extraction, human rights, and corporate social responsibility: Canadian companies in Colombia*, p. 43. At: [[http://www.interpares.ca/en/publications/pdf/Land\\_and\\_Conflict.pdf](http://www.interpares.ca/en/publications/pdf/Land_and_Conflict.pdf)]. Accessed on January 29, 2014.

<sup>66</sup> Centro Prodh. Documentary. *Minas y Mentiras - La verdad sobre el proyecto minero en San José del Progreso (Oaxaca)*. At: [<https://www.youtube.com/watch?v=Qk4ZouXcvt0>]. Accessed on January 29, 2014.

► José Reinel Restrepo, Parish priest of Marmato, Department of Caldas, Colombia, who lead the resistance against the displacement of his community due to the activities of Gran Colombia Gold. His killing occurred on September 1st, 2011, and remains in impunity.



basin of the project area. Nevertheless, no judgment has yet been handed down that establishes the facts, punishes those responsible, and orders measures of reparation.

- ▲ This situation is repeated in the case of **Entre Mares in Honduras**, where the authorities dismissed charges against the company executive and the public servant who were initially prosecuted for acts of environmental pollution.

With respect to the violence that has resulted in numerous deaths and injuries, judicial authorities have also failed to take prompt and diligent action to ensure that the acts are exhaustively investigated.



▲ Demonstrators demand justice for the assassination of peasant-miner leader Alejandro Uribe, happened on September 19, 2006, in the city of Montecristo, department of Bolivar, Colombia.

## 6. Canadian Policies that Contribute to the Negative Impact of the Mining Industry

The conditions described and the lack of effective judicial remedies in host states should be adequately counterbalanced in Canada, the mining companies' state of origin. Canada should have laws that require companies to answer for the harm caused by their actions abroad, as well as a policy to prevent violations from happening. These requirements are fully consistent with international law standards on the responsibility of states of origin for the actions of transnational corporations.

Regarding Canada's role in the situations reported, the organizations involved in the drafting of the report suggest that the mechanisms of national and international responsibility for corporations and for the state of Canada itself should be redesigned. Indeed, it is crucial to develop the concept that states of origin of transnational corporations have the obligation to respect and guarantee human rights in connection with violations committed outside their borders, when the commission of such violations is facilitated by the acts or omissions of the home states.

### 6.1 Financial and political support without requiring compliance with international human rights standards

**It follows from the information compiled in the report that the Canadian government provides broad support to the extractive sector without requiring sufficient guarantees from Canadian companies that they will not harm the environment or cause human rights violations abroad.** In some cases, the Canadian government has supported extractive projects even after it became aware of amply documented environmental abuses and human rights violations.<sup>67</sup> Canada offers its mining companies political, economic, and legal privileges that have extremely negative consequences for the protection of the human rights of the populations of the countries in which the projects are developed.

The report finds that the political and economic support Canada gives Canadian companies (through mechanisms such as Export Development Canada (EDC), the Investment Board of the Canadian Pension Plan, and the Canadian International Development Agency) is provided without adequate controls to prevent the violation of human rights in the countries where the companies that receive these benefits operate.

In 2011, EDC provided the extractive sector with more than CAD \$17 billion in financing and insurance, making this industry its biggest beneficiary. In spite of falling under the Access to Information Act, virtually no public information is available about EDC's decision-making processes. Nor does EDC disclose how it evaluates proposals from clients; the conditions, if any, it imposes on clients to obtain financing; how it evaluates whether clients remain in compliance with conditions established and/or the pertinent regulations; and how it deals with

**The Canadian government provides broad support to the extractive sector without requiring sufficient guarantees from Canadian companies that they will not harm the environment or cause human rights violations abroad.**

<sup>67</sup> Canadian Network on Corporate Accountability (2007). *Dirty Business, Dirty Practices: How the Federal Government Supports Canadian Mining, Oil and Gas Companies Abroad*. Halifax Initiative. At: [<http://www.halifaxinitiative.org/sites/halifaxinitiative.org/files/DirtyPractices.pdf>]. McGill Research Group Investigating Canadian Mining in Latin America. At: [<http://micla.ca/>]. Websites accessed on January 29, 2014.

**The report makes repeated references to complaints of Canada's undue interference in the domestic legislative processes for the drafting of mining regulations.**

cases of noncompliance. Of the companies studied in the report, three have or had financial support from EDC: Barrick Gold, Iamgold, and Yamana Gold.<sup>68</sup>

It is also important to note the role of the **Canadian International Development Agency (CIDA)**, which merged in May 2013 with the Department of Foreign Affairs and International Trade, now the Department of Foreign Affairs, International Trade and Development. CIDA is a government agency whose principal mission is “to lead Canada’s international effort to help people living in poverty.” However, in November 2012 — prior to the merger — a parliamentary committee of the opposition party issued a report criticizing the use of CIDA money to support the interests of mining companies.<sup>69</sup>

- ▲ The support of Canadian embassies is clear in the case of the **Payback** project operated by Blackfire Resources in Chiapas, **Mexico**. The Canadian embassy called on public servants of Chiapas state to facilitate the establishment of the mine. Blackfire was so grateful it wrote: “All of us at Blackfire really appreciate all that the Embassy has done to help pressure the state government to get things going for us. We could not do it without your help.”<sup>70</sup>

## 6.2 Canada’s undue interference in the countries

**The report makes repeated references to complaints about Canada’s undue interference in the domestic legislative processes for the drafting of mining regulations**, particularly in past and current legislative reforms in **Colombia, Honduras, and Peru**.

- ▲ In **Colombia**, Canada participated actively through CIDA, which cooperated with a technical assistance project in which intermediaries or agents of Canadian companies, such as the Canadian Energy Research Institute, were hired as experts in mining legislation in order to draft the new Colombian mining laws.<sup>71</sup>

In **Peru**, the prime minister of Canada visited President Ollanta Humala in May 2013 and announced his government’s support for Peru’s efforts to improve the environmental impact assessment process for mining and energy projects as well as support for natural resource management. Neither the joint statement signed by both heads of state nor the related public statements make mention of the need to take seriously reported violations of the rights of communities in the areas in which the mines are located.<sup>72</sup>

<sup>68</sup> EDC (2009). *EDC provides USD\$200 million loan to Chile’s Codelco*. Press Release. At: [<http://www.edc.ca/EN/About-Us/News-Room/News-Releases/Pages/USD-20-million-loan-chile-codelco.aspx>]; EDC. *Individual Transaction Information*. At: [<https://www19.edc.ca/edcsecure/disclosure/DisclosureView.aspx?lang=EN>]. Websites accessed on January 29, 2014.

<sup>69</sup> Mining Watch Canada (2012). *Poor Mining Companies? Parliamentary Committee Report Calls for CIDA Giveaway to Canadian Private Sector*. At: [<http://www.miningwatch.ca/news/poor-mining-companies-parliamentary-committee-report-calls-cida-giveaway-canadian-corporations>]. Accessed on January 29, 2014.

<sup>70</sup> Moore and Colgrove (2013). *Corruption, Murder and Canadian Mining in Mexico* p. 6. At: [[http://www.commonfrontiers.ca/Single\\_Page\\_Docs/PDF\\_Docs/May05\\_13\\_Blackfire\\_Embassy\\_Report\\_2013-05-02\\_ENG%20%20final.pdf](http://www.commonfrontiers.ca/Single_Page_Docs/PDF_Docs/May05_13_Blackfire_Embassy_Report_2013-05-02_ENG%20%20final.pdf)]. Accessed on January 29, 2014.

<sup>71</sup> Mining Watch Canada, CENSAT-Agua Viva and Interpares (2009). *Land and Conflict*, p. 43. At: [[http://www.interpares.ca/en/publications/pdf/Land\\_and\\_Conflict.pdf](http://www.interpares.ca/en/publications/pdf/Land_and_Conflict.pdf)]. Accessed on January 29, 2014.

<sup>72</sup> See RPP (2013). *Primer Ministro de Canada llega a Lima para encuentro con Humala*. At: [[http://www.rpp.com.pe/2013-05-21-primer-ministro-de-canada-llega-a-lima-para-encuentro-con-humalanoticia\\_596897.html](http://www.rpp.com.pe/2013-05-21-primer-ministro-de-canada-llega-a-lima-para-encuentro-con-humalanoticia_596897.html)] and official website of the Office of the President of Peru, Declaración conjunta Peru – Canada (2013). At: [<http://www.presidencia.gob.pe/declaracion-conjunta-peru-canada>]. [Available in English at: <http://pm.gc.ca/eng/news/2013/05/22/canada-peru-joint-statement>]. Websites accessed on January 29, 2014.



◀ Meeting between Prime Minister of Canada, Stephen Harper, and the President of Peru, Ollanta Humala, on May 22, 2013.

Days after the visit, the executive branch of Peru issued two supreme decrees to facilitate investments, further relaxing the legal frameworks applicable to extractive industries, especially mining. Some years ago, PERCAN, the bilateral agreement between Canada and Peru, served as the platform for advising Peru on the implementation of mining sector regulations. The framework for the enactment of Peru's current regulations on the environment and citizen participation in the mining sector was established pursuant to PERCAN.

### 6.3 The omissions of the Canadian diplomatic service and the shielding of mining companies from accountability through free trade agreements

It has been noted that, while Canadian embassies have played a fundamental role in promoting mining activities, they have not responded to complaints about human rights violations in the countries.<sup>73</sup> **Canadian embassies in the nine countries in this report** have received complaints and witnessed demonstrations at their headquarters to protest the violence caused and the conditions created by Canadian companies in those countries.

- ▲ In **Argentina**, Conciencia Solidaria filed a complaint with the Canadian embassy in September 2011 for complicity in the destruction of glaciers in the Pascua Lama, project, a report that was not accepted. The organization also presented a letter to the Canadian embassy on March 9, 2010 condemning the repression, one month earlier, in the town of Andagalá related to the Bajo de la Alumbrera project.<sup>74</sup>
- ▲ In **Mexico**, the embassy provided support to Blackfire Resources and disregarded community opposition to the mine. In July 2009, in the presence of diplomatic officers, community leader Mariano Abarca gave a speech before the embassy of Canada in Mexico City. One month later, the embassy reported having received 1,400 letters about Abarca

<sup>73</sup> McBain-Haas, Brigitte and Ulrike Bickel (2005). *Informe de Misereor y FIAN Internacional. Minería de Oro a Cielo Abierto. Violaciones de los Derechos Humanos y Destrucción Ambiental – El caso de la Mina de Oro Marlin* (San Marcos, Guatemala: Misereor & FIAN), p. 17.

<sup>74</sup> Ivoox, video recording entitled *Conciencia solidaria no fue recibida por la embajada de Canada* (2011). At: [[http://www.ivoox.com/conciencia-solidaria-no-fue-recibida-embajada-audios-mp3\\_rf\\_783971\\_1.html](http://www.ivoox.com/conciencia-solidaria-no-fue-recibida-embajada-audios-mp3_rf_783971_1.html)]. Accessed on January 29, 2014.

► Demonstrators in the state of Chiapas show placards with a picture of Mariano Abarca, community leader killed on November 27, 2009.



after he was arrested on the basis of complaint filed by a Blackfire representative in Mexico. Shortly after he reported having received threats, Mariano Abarca was murdered on November 27, 2009. Even after his murder, the closure of the mine, and reports of corruption, the embassy continued to defend the company to Mexican officials. It also turned over information to Blackfire that enabled it to sue the state of Chiapas under the North American Free Trade Agreement for the mine's closure.<sup>75</sup>

In addition to the consular service's failure to take action in light of complaints from communities, various problems have been noted in relation to the fact that the Free Trade Agreements (FTA) promoted by Canada lack serious commitments and guarantees to prevent human rights violations. Eight of the nine countries studied in this report have boosted trade relations through treaties with Canada and six of them have already signed FTAs with Canada: Mexico in 1994, Chile in 1997, Peru in 2009, Colombia in 2011, Honduras and Panama in 2012.

Those trade agreements usually contain clauses on human rights and environmental protection. However, they lack the legal bases to force the parties — and, fundamentally, Canada — to comply with the obligation to respect and guarantee the human rights that are violated in the host countries by the actions of Canadian mining companies. The treaties do not specify the forum for the litigation of claims or any effective follow-up mechanism to handle victims' complaints and provide reparations. As a general rule, companies enjoy a legal framework and extensive measures that guarantee their rights as foreign investors. For example, they enjoy investment guarantees and in cases of disputes can bring claims against host states in international arbitration forums. The role of human rights in arbitrations of this type is, at best, peripheral.<sup>76</sup> On the other hand, victims do not enjoy a wide range of binding mechanisms for the protection of their rights at the international level.

<sup>75</sup> Moore and Colgrove (2013). *Corruption, Murder and Canadian Mining in Mexico*, p. 6. At: [[http://www.commonfrontiers.ca/Single\\_Page\\_Docs/PDF\\_Docs/May05\\_13\\_Blackfire\\_Embassy\\_Report\\_2013-05-02\\_ENG%20%20final.pdf](http://www.commonfrontiers.ca/Single_Page_Docs/PDF_Docs/May05_13_Blackfire_Embassy_Report_2013-05-02_ENG%20%20final.pdf)]. Accessed on January 29, 2014.

<sup>76</sup> Cf. Reiner, Clara and Christoph Schreuer. "Human Rights and International Investment Arbitration," in *Human Rights in International Investment Law and Arbitration*, ed. Pierre-Marie Dupuis, Ernst-Ulrich Petersmann, and Francesco Francioni (Oxford: Oxford University Press, 2009) pp. 82–3; Gus Van Harten (2010). "Investment Treaty Arbitration, Procedural Fairness, and the Rule of Law," in *International Investment Law and Comparative Public Law*, ed. Stephan W. Schill (Oxford: Oxford University Press, 2010) p. 627.

## 6.4 Inadequate legal framework in Canada to prevent and punish human rights violations caused by mining activity

**The Canadian State has knowledge of the serious environmental damage and the human rights violations in the regions in which Canadian companies operate**, and has been called upon nationally and internationally on numerous occasions to adopt effective mechanisms to address human rights violations abroad by Canadian companies.<sup>77</sup> However, Canada has not responded to these requests.

The report notes **the efforts Canada has made to enact legislation on the accountability of mining companies for their actions abroad**. Of these, the most notable is Bill C-300, which sought to ensure that corporations engaged in mining, oil or gas activities and receiving support from the government of Canada act in a manner consistent with international environmental best practices and with Canada's commitments to international human rights standards.<sup>78</sup> This draft law established standards of conduct for Canadian companies abroad and gave the Canadian government the authority to investigate complaints of noncompliance.

This bill additionally regulated the economic, political, and diplomatic (mainly through embassies) support the Canadian state provides to Canadian companies abroad, and conditioned it upon respect for the above standards.<sup>79</sup> Although the bill's opponents lobbied hard and it was ultimately defeated,<sup>80</sup> it was only by a margin of six votes (140 to 134). This shows that this issue is highly relevant to many members of parliament and to Canadian society.<sup>81</sup>

<sup>77</sup> See United Nations Human Rights Committee (2013). *Report of the Working Group on the Universal Periodic Review. Canada*. A/HRC/24/11, 28 June 2013, in which the recommendations include: "128.151. Continue efforts towards the establishment and implementation of an effective regulatory framework for holding companies registered in Canada accountable for the human rights impact of their operations (Egypt)."

<sup>78</sup> See the complete text of Bill C-300 at: [<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=3658424&File=36>] accessed on January 29, 2014.

<sup>79</sup> See documentary on Bill C-300, at: [<http://www.youtube.com/watch?v=Nf563OSDOWs>]. Accessed on January 29, 2014.

<sup>80</sup> See summary of events surrounding the Bill and its ultimate defeat in Parliament: Bill C-300 a High Water Mark for Mining and Government Accountability, at: [<http://www.miningwatch.ca/article/bill-c-300-high-water-mark-mining-and-government-accountability>]. Accessed on January 29, 2014.

<sup>81</sup> Curry, Bill (2010). *Lobbying Blitz Helps Kill Mining Ethics Bill*, in *Globe and Mail*. At: [<http://www.theglobeandmail.com/news/politics/lobbying-blitz-helps-kill-mining-ethics-bill/article1775529/>]. Accessed on January 29, 2014.

## 7. Recommendations

This report provides evidence that the accelerated and aggressive advance of extractive activities around the world — and particularly in Latin America — generates several human rights violations. The respect, protection and enjoyment of rights by individuals, communities and social organizations in the Americas call for a collective effort and a firm decision by various actors. To contribute to this effort and in view of the pattern described in this report, we make the following recommendations:

### 1. Recommendations to the Inter-American Commission on Human Rights

- ▲ Include the extraterritorial responsibilities of states regarding the extractive activities of their companies abroad in its analysis of human rights violations, and incorporate this in the Annual Report, the Country Reports, *in loco* and working visits, press releases, and other documents.
- ▲ In view of the urgency and seriousness of the human rights situation in various countries of the region, as well as the growing number of individual petitions and thematic hearings concerning violations stemming from the activities of extractive industries, take the following steps:
  - a) Quickly process petitions and cases involving human rights violations caused by extractive companies and pay particular attention to the issue through precautionary measures and monitoring and promotion mechanisms;
  - b) Prepare a regional thematic report on the impact of the extractive industry on human rights and the international responsibility of the companies' states of origin.
- ▲ Urge the states of origin of the extractive companies that are members of the OAS to create and put into practice effective mechanisms of access to justice for the victims harmed by the extractive activity.

### 2. Recommendations to the state of Canada

- ▲ Implement measures to ensure that Canadian mining companies conducting business in Latin America do so in accordance with international human rights treaties to which they are subject both in the host countries, in light of Article 36 of the OAS Charter, and in the state of Canada.

#### *Non-interference*

- ▲ Refrain from providing any government support, whether through development programs, trade and/or association agreements, public financing or technical or political assistance, for the purpose of influencing the enactment of lax regulatory frameworks for mining investments and to the detriment of the obligation to guarantee human rights in the host countries of the extractive projects.

*Project financing and support to companies*

- ▲ Include international human rights standards in the regulation of credit agencies and public and private investment institutions that finance extractive activities and refrain from providing legal, political, or financial support to companies involved in human rights violations.

*Access to justice and complaint mechanisms*

- ▲ Guarantee effective access to justice before the Canadian courts, so that victims of human rights violations by Canadian companies abroad can obtain truth, justice, and comprehensive reparations.
- ▲ Create objective, impartial, and effective mechanisms to monitor and investigate complaints about human rights violations by Canadian mining companies abroad. Such mechanisms must be designed in accordance with the Paris Principles on the status and functioning of national human rights institutions.

*Punishment and mitigation of harm*

- ▲ Provide assistance to ensure compliance with measures for the suspension of projects and the withdrawal of companies from countries where they operate, when appropriate, and for the adoption of sufficient measures for comprehensive reparation and the mitigation of harm.

### **3. Recommendations to states in which extractive activities are conducted**

- ▲ Include international human rights standards in the legal framework regulating development and natural resource extraction policies, taking particular account of obligations to prevent irreparable harm; to have free, informed, prior consultations with indigenous peoples; and to seek their consent from the initial stages of any decision or project that might affect the rights to their lands.
- ▲ Establish mechanisms that ensure effective judicial protection, in order to protect human rights and redress violations stemming from the extraction of natural resources.
- ▲ Refrain from signing international agreements that entail waiving jurisdiction over disputes arising from extractive projects, especially when they conflict with human rights obligations.

We encourage the Inter-American Human Rights System, as a fundamental pillar of human rights in Latin America, to strengthen and unite its efforts and initiatives and make possible the adoption of the recommendations presented here, along with others that may arise from further reports, hearings, or petitions aiming to protect the rights of victims of a model of natural resource exploitation that is irrational and inconsistent with international human rights standards.





Observatorio Latinoamericano de Conflictos Ambientales, Colectivo de Abogados José Alvear Restrepo, Due Process of Law Foundation, Centro Hondureño de Promoción para el Desarrollo Comunitario, Asamblea Nacional de Afectados Ambientales, Asociación Marianista de Acción Social y Red Muqui



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