

# Impacts of Canadian mining companies

## Canada's extraterritorial obligations

### Universal Periodic Review of Canada

Joint submission to the UPR Working Group 30th session (May 2018) by:

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The International Platform against Impunity (Pi) is a strategic alliance of European NGOs, specialising in international advocacy, which promotes international mechanisms' attention and action to address the structural causes and effects of impunity in different areas of Central America. Our action is in support of those most vulnerable to impunity and based on the work and proposals of our members on the ground. The current members of the Platform are from Sweden, Switzerland and the Netherlands. The Platform member organisations complement, at the international level, the action undertaken at the local level to combat impunity and defend human rights affected by it, in partnership with individuals and organisations directly involved in Central America. As a result, we address our assessments of the situation and proposals to diplomatic missions in Central American countries and to the UN human rights system. In the same complementary spirit, we seek partnerships with other international non-governmental organisations and networks in Central America, North America and Europe that are likely to influence human rights foreign policies in their countries or the European Union.

The Women's International League for Peace and Freedom (WILPF) is an international non-governmental organisation (NGO) with National Sections covering every continent, an International Secretariat based in Geneva, and a New York office focused on the work of the United Nations (UN). Since our establishment in 1915, we have brought together women from around the world who are united in working for peace by non-violent means and promoting political, economic and social justice for all. Our approach is always non-violent, and we use existing international legal and political frameworks to achieve fundamental change in the way states conceptualise and address issues of gender, militarism, peace and security. Our strength lies in our ability to link the international and local levels. We are very proud to be one of the first organisations to gain consultative status (category B) with the United Nations, and the only women's anti-war organisation so recognised.

Joint submission to the UPR Working Group  
30th session (May 2018)<sup>1</sup>

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<sup>1</sup> This submission was made on 5 October 2017.

## I. Introduction

1. The concerns and recommendations underlined in this joint submission by WILPF and the Plataforma Internacional contra la Impunidad are based on a shadow report brought to the attention of the CEDAW Committee for its review of Canada's periodic reports held on 25 October 2016.<sup>2</sup> That report includes two cases studies that are relevant to this UPR submission; for this reason, sometimes they are references to these in the text that follows.<sup>3</sup> This submission focuses on abuses human rights, in particular of women's rights and of indigenous peoples' rights, resulting from Canadian mining companies' operations and on the failure of the Canadian Government to failure to effectively regulate the extraterritorial activity of Canadian companies and ensure effective access to justice for such abuses.
2. Recommendations in this submission seek to ensure that the Canadian government takes effective measures to meet its obligations to respect, protect, and fulfill human rights, including with regard to activities of Canadian companies operating outside of Canada, in line with its obligations under the United Nations Guiding Principles on Business and Human Rights (UNGPs) and other relevant applicable international human rights standards.<sup>4</sup>
3. During the second cycle of the UPR (UPRII), Canada accepted "in principle" a

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<sup>2</sup>"Creating an international gender and peace agenda: impact of Canadian mines in Latin America", October 2016, available in English and Spanish at this link: <http://wilpf.org/wilpf-publications/>.

<sup>3</sup> United Nations Guiding Principles on Business and Human Rights, available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>4</sup> *Ibid.*

recommendation on business and human rights (128.151).<sup>5</sup> Canada stated that it would continue its efforts to encourage responsible business conduct by Canadian companies in their operations abroad.<sup>6</sup> Other previous UPR recommendations relevant to this submission are related to the ratification of the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (OP-ICESCR)<sup>7</sup> and the International Labour Organization (ILO) Convention 169<sup>8</sup>, and to the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>9</sup> have been all noted by Canada.

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<sup>5</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Canada, 28 June 2013, A/HRC/24/11, recommendation 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>6</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Canada, Addendum, 17 September 2013, A/HRC/24/11/Add. 1, paragraph 42, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CAIndex.aspx>.

<sup>7</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Canada, 28 June 2013, A/HRC/24/11, recommendation 128.6. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) (Costa Rica, France, Portugal, Spain), available at: <https://daccess-ods.un.org/TMP/7033085.22701263.html>.

<sup>8</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Canada, 28 June 2013, A/HRC/24/11, recommendation 128.12. Consider the ratification of ILO Convention No. 169 (Ecuador, Nicaragua, Paraguay), available at: <https://daccess-ods.un.org/TMP/7033085.22701263.html>.

<sup>9</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Canada, 28 June 2013, A/HRC/24/11, recommendations 128.60. Consider the adoption of a national action plan of action in pursuance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and implement, inter alia, the recommendations of the CRC on the national system to protect Aboriginal children (Cape Verde); 128.61. Adopt, in consultation with indigenous peoples, a national action plan for the implementation of the UNDRIP (Mexico); 128.66. Give full effect to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); 128.67. Take all necessary measures, including the implementation of the UNDRIP, to ensure to its indigenous peoples the full enjoyment of all their human rights, including economic, social and cultural rights, so that their quality of life is similar to the rest of citizens (Cuba), available at: <https://daccess-ods.un.org/TMP/7033085.22701263.html>

4. Regarding the implementation of previous UPR recommendations, progress has mainly been made with the revision in November 2014 of Canada's Corporate Social Responsibility Strategy for transnational extractive sector companies<sup>10</sup> and with Canada's decision to fully support the UNDRIP in 2016.<sup>11</sup> However, much remains to be done, notably to clearly set out in Canadian laws and policies, the obligation of Canadian businesses to respect human rights as enshrined in Pillar II of the UNGPs, including those of women and Indigenous Peoples abroad in the context of Canadian extractive industries, and to ensure effective access to justice for corporate human rights abuses.

## II. Canada's mining industry

5. Canada is one of the world's top mining countries. According to the Canadian Government, in 2013 over 50% of publicly listed exploration and mining companies were headquartered in Canada. The extractive industry in Canada accounts for close to 7% of the country's GDP and it is the country's largest private sector employer.<sup>12</sup> In Latin America, more than 80% of companies that invest in the metal mining sector are Canadian. The operations of more than one thousand Canadian companies operating in the region have been accompanied on several occasions by social conflicts in the communities where their projects are implemented as well as by negative environmental impacts.

6. Women are particularly affected. They face gender-based violence connected to

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<sup>10</sup> Canada's Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad, available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng>.

<sup>11</sup> Indigenous and Northern Affairs Canada, United Nations Declaration on the Rights of Indigenous Peoples, available at: <https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958#a2>.

<sup>12</sup> Statement at the end of visit to Canada by the United Nations Working Group on Business and Human Rights, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21680&LangID=E>.

mining operations and are often disproportionately impacted by the detrimental socio-economic and environmental changes caused by them. Victims of human rights abuses by Canadian companies that operate abroad face enormous challenges in accessing justice and receiving effective remedies. Women face additional barriers, indigenous women even more so.

7. In 2014, the Working Group on Mining and Human Rights in Latin America (Grupo de Trabajo sobre Minería y Derechos Humanos en América Latina)<sup>13</sup> presented to the Inter-American Commission on Human Rights (IACHR) a report systematising and documenting 22 projects carried out by Canadian mining companies in 9 countries in the region. The report reveals the businesses' systematic practice of human rights violations of members of the community. Some common patterns identified in the report are: the denial of participation, consultation and prior, free and informed consent of the affected communities, soil and water contamination, breach of labour rights, and acts of violence perpetrated by private security guards managed and supervised by mining companies against human rights defenders. A constant feature identified in the 22 cases featured in the report is that the Canadian Government is aware of the problems and that it has nevertheless continued to provide political, financial and legal support to companies that violate human rights.
  
8. Some Canadian corporations have taken advantage of the weaknesses in environmental and human rights laws in the countries where they implement their projects to carry out their activities without complying with environmental standards and human rights contained in Canadian laws.

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<sup>13</sup> In 2010 seven non-governmental organisations based in various Latin American countries formed a group with the aim of reflecting and taking action concerning mining and its impact on human rights in the region.

### III. Violations of Indigenous Peoples' rights

9. The Guatemala Hudbay case (see Annex 1 to shadow report to CEDAW Committee) involves serious allegations of violations of the human rights of Maya-Q'eqchi villagers, an Indigenous People from eastern Guatemala, by the Canadian company Hudbay Minerals in the context of the Fenix Mining Project. The indigenous communities' concerns in this case focus on two issues. First, the violation of Indigenous Peoples' right to free, prior, and informed consent (FPIC) and to be consulted on any development project that is likely to affect their lands, territories and other resources. In the case of Guatemala, the UN Special Rapporteur on the rights of indigenous peoples stated that the country has no adequate legal or institutional framework to fulfil the state's duty to consult indigenous peoples;<sup>14</sup> therefore, communities have argued since the beginning of the Fenix Mining project that the consultation procedures were defective.

10. Secondly, there have been recurrent and grave acts of violence perpetrated by mining companies' private security guards against communities. Three civil lawsuits initiated by members of the Q'eqchi communities against the company Hudbay Minerals in the context of the Fenix Mining Project operations are currently pending before the Canadian courts.<sup>15</sup> Allegations include the killing of Adolfo Ich, a respected community leader and school teacher who was hacked with machetes and shot in the head by mine company security personnel,<sup>16</sup> the

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<sup>14</sup> James Anaya, Special Rapporteur on the Rights of Indigenous People, in his report submitted to the Human Rights Counsellor, 2012, at the 18th sessions period, addresses the issue of observations on the situation of the right of the indigenous peoples of Guatemala in relation to extraction and other projects on their additional territories.

<sup>15</sup> <http://www.chocversushudbay.com/>.

<sup>16</sup> <http://www.chocversushudbay.com/wp-content/uploads/2010/11/Choc-v-Hudbay-Statement-of-Claim-updated-Oct-2013.pdf>.



shooting and paralyzing of German Chub by mine company security personnel,<sup>17</sup> and the gang-rape of 11 women by mining company security personnel, police and military during the forced eviction of their village and families from their ancestral lands.<sup>18</sup>

11. Canada's decision in 2016 to fully support and implement the United Nations Declaration on the rights of Indigenous Peoples,<sup>19</sup> reiterated by Prime Minister Justin Trudeau in his recent address to the 72nd Session of the UN General Assembly,<sup>20</sup> is a landmark decision to ensure the respect of Indigenous Peoples' rights. The obligations under UNDRIP, including the FPIC principle, should also be duly implemented in the context of Canadian businesses' activities, including those operating outside Canada.<sup>21</sup> In order to meaningfully implement the UNDRIP, Canada should indeed fully recognize the right to free, prior and informed consent of indigenous peoples in its laws and policies and ensure that Canadian businesses are legally bound to respect these rights, including in their operations outside Canada. Moreover, to give full legal effect to the FPIC

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<sup>17</sup> <http://www.chocversushudbay.com/wp-content/uploads/2010/11/Chub-v-Hudbay-Statement-of-Claim-updated-Oct-2013.pdf>.

<sup>18</sup> <http://www.chocversushudbay.com/wp-content/uploads/2010/11/Amended-Statement-of-Claim-Caal-v.-HudBay-FILED.pdf>.

<sup>19</sup> Indigenous and Northern Affairs Canada, United Nations Declaration on the Rights of Indigenous Peoples, available at: <https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958#a2>.

<sup>20</sup> <https://beta.theglobeandmail.com/news/politics/trudeau-to-use-un-speech-to-recognize-canadas-relationship-with-indigenous-peoples/article36338926/?ref=http://www.theglobeandmail.com&>; <https://www.thestar.com/opinion/editorials/2017/09/21/justin-trudeau-must-match-welcome-un-remarks-on-indigenous-reconciliation-with-deeds-editorial.html>.

<sup>21</sup> United Nations Guiding Principles on Business and Human Rights, Commentary to Guiding Principle 12 and Guiding Principle 2, available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

principle, Canada should also ratify the ILO Convention No. 169.<sup>22</sup>

## 12. Recommendations:

- a. Take effective measures to ensure Canadian businesses' respect for the UN Declaration on the Rights of Indigenous Peoples, in particular for the principle of free, prior and informed consent, including in their activities outside Canada and with particular attention to extractive industries;
- b. Ratify the International Labour Organization Indigenous and Tribal Peoples Convention, 1989, No. 169 without delay.<sup>23</sup>

## IV. Violations of women's rights by Canadian mining companies operating abroad

- a. Water availability and pollution resulting from Canadian mining operations and impact on the life, health and rights of women

13. Several reports documenting the impacts caused by Canadian mining in Latin America have identified a systematic pattern of contamination of water sources as well as a problem of over-exploitation of aquifers that results in problems of scarcity and drought for affected communities. (See the Marlín Mine Guatemala case, Annex 2 to shadow report to CEDAW Committee.)<sup>24</sup>

14. Given women's central role in the management of water resources for personal,

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<sup>22</sup> Statement at the end of visit to Canada by the United Nations Working Group on Business and Human Rights, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21680&LangID=E>; E/C.12/CAN/CO/6, 23 March 2016, paragraph 20 e).

<sup>23</sup> Also recommended by the United Nations Working Group on Business and Human Rights in its statement at the end of visit to Canada by the United Nations Working Group on Business and Human Rights, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21680&LangID=E>.

<sup>24</sup> Working Group on Mining and Human Rights of the Interamerican Committee on Human Rights, Report on the Impact of Canadian Mining in Latin America and Canada's Responsibility, 2013. See also Amnesty International, Guatemala: Mining in Guatemala: Rights at Risk, 2014.

domestic and community use, women are particularly affected by mining projects established in their communities. When water sources are lost, controlled or contaminated by companies, women are forced to travel to distant places to access water, and this affects other aspects of their life, such as the use of time and personal safety, as explained below (in the section Specific Acts of Violence). The Special Rapporteur on the human rights to safe drinking water and sanitation has warned that inordinate amounts of time spent by women and girls carrying water have major impacts on the enjoyment of other rights, such as access to paid employment and education.<sup>25</sup>

15. Deteriorating environmental conditions caused by mining, particularly the pollution of rivers and water sources, have increased health problems in communities. (See the Marlín Mine Guatemala case, Annex 2). Mining companies have defended their actions by arguing the lack of rigorous studies to determine the direct impact of mining on the health of women and their communities. However, it is necessary to consider that the health impacts caused by mining should be analysed long-term in all their manifestations.<sup>26</sup> A recurring issue in women's resistance to mining is the claim concerning accelerated deterioration of family health, especially in skin, respiratory or reproductive diseases, caused by mining companies' operations.<sup>27</sup> In addition to the deterioration of women's own health and that of their families, it should be taken into account that tasks

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<sup>25</sup> A/HRC/27/55, 30 June 2014.

<sup>26</sup> *Bermudez Rico*, Rosa Emilia (Coord.), *Los territorios, la minería y nosotras: las mujeres nos preguntamos*; Guía de trabajo, published by Censat Agua Viva – Amigos de la Tierra Colombia, Colombia, 2014.

<sup>27</sup> On 22 February 2010 the Human Rights Prosecutor in Guatemala filed a public case for violation of the human right to health, based on information which had appeared in the press concerning skin problems complained of by the residents of the municipalities of Sipacapa and San Miguel Ixtahuacán, PDH, EXP.EIO-SM.01- 2010/DESC (February 2010). The case is currently ongoing. See also the report *Human and Environmental Impact: The Marlín Mine in Guatemala* by the Interamerican Association for Environmental Defense.

relating to the care of sick community members continue to be fall mainly and disproportionately on women, which means this additional burden is placed on women without any recognition or remuneration.

b. **Economic violence: Low employment of women in mining**

16. The mining industry privileges the hiring of male labour over that of women. Large mining corporations offer limited job opportunities to women. The opportunities are normally confined to services required by miners, such as cooking and cleaning. These jobs are usually subcontracted by local companies, which offer poor working conditions, low wages, lack of benefits and social security and unstable labour relations.<sup>28</sup> Ultimately, mining companies usually perpetuate the gendered segmentation of labour.

c. **Women human rights defenders**

17. Women have been victims of violence in the context of social conflict that exists following the implementation of Canadian mining projects in Latin America. In this scenario physical and sexual assaults against women have intensified as a strong expression of gender-based violence. In some cases, the violence has been perpetrated by the employees responsible for providing private security to Canadian mining companies.<sup>29</sup> A common pattern among some Canadian mining companies has been to outsource private security activities to companies in countries where they operate, even with the knowledge that in those countries there are not the necessary government controls to ensure that security companies respect the human rights of the members of the communities.

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<sup>28</sup> Bermudez, Rosa Emilia (Coord.). *Mujer y Minería. Ámbitos de análisis e impactos de la minería en la vida de las mujeres. Enfoque de derechos y perspectiva de género*. Sensat Agua Viva. Bogotá, 2011, p 11.

<sup>29</sup> *Ibid.*

18. In some cases, it has been even shown that the security companies are staffed by former military or police members operating with a mentality of repressive security typical of the military regimes of the seventies and eighties in Latin America, in which sexual violence against women was part of a strategy of social repression (see Hudbay Guatemala case, Annex 1). Various reports show that security companies overstep their duties and design strategies to counter protests by community members against the presence of mining companies in their communities. Cases have been documented of members of security companies perpetrating violence against human rights defenders, including sexual violence against women of the community who oppose the projects (See the Hudbay Guatemala case, Annex 1 and the Marlín Mine Guatemala case, Annex 2).

19. Canada is a party to the Voluntary Principles for Security and Human Rights, which notably provide the obligation for parties to conduct risk assessments that consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security and to ensure that they act in a manner consistent with international standards on the use of force and firearms.<sup>30</sup> However, these principles remain voluntary in nature and do not incorporate any gender perspective, including regarding the prevention of the risk of sexual or gender-based violence by private security companies.

20. Canada also recently adopted guidelines to support human rights defenders, which provide the expectation that: "Canadian companies working internationally are expected and encouraged to operate lawfully, transparently and in consultation with host governments and local communities and to conduct their

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<sup>30</sup> Voluntary Principles on Security and Human Rights: <http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/>.

activities in a socially and environmentally responsible manner.”<sup>31</sup> However, in case of conflict between a Canadian company and a local community, these guidelines only provide the possibility for a Canadian diplomatic mission “to deny or withdraw trade advocacy support” and for cases involving oil and gas companies, to seize Canada’s Corporate Social Responsibility Counselor for an “advisory or intervention role”.<sup>32</sup> Such an approach falls short of the standards required under the UNGPs, which provide a clear duty for companies to respect human rights, to consult relevant stakeholders (including human rights defenders) to assess their human rights impacts and to remedy violations deriving from their activities.<sup>33</sup>

#### d. Women’s access to justice

21. In order to access justice in their own country, women have to face a series of structural and circumstantial problems; this means that although the legal remedies are formally available in legislation, in practice they prove to be inefficient and difficult for women to access, especially in rural areas. Because of the financial interests at stake and the institutional weakness of Latin American countries, it is unlikely that States in which mining operations are carried out require companies to meet basic standards of human rights.

22. Canada has recently adopted a Feminist International Assistance Policy, which provides Canada’s commitment to become a global leader on corporate social

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<sup>31</sup> Voices at risk: Canada’s guidelines on supporting human rights defenders, paragraph 4.2 Cases involving Canadian entities, available at: [http://international.gc.ca/world-monde/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/rights\\_defenders\\_guide\\_defenseurs\\_droits.aspx?lang=eng#a4](http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng#a4).

<sup>32</sup> *Ibid.*

<sup>33</sup> United Nations Guiding Principles on Business and Human Rights, Commentary to Guiding Principle 18 and Guiding Principle 2, available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

responsibility in a manner that fully considers gender equality.<sup>34</sup> To meaningfully implement this policy with regard to corporate activities, Canada's efforts should be grounded on a human rights-based approach and take into account the following recommendations.

### 23. Recommendations:

- a. Strengthen its legislation governing the conduct of corporations under its jurisdiction in relation to their activities abroad, including by requiring those corporations to conduct gender, human rights and environmental impact assessments before making investment decisions;<sup>35</sup>
- b. Adopt measures to facilitate access to justice for women who are victims of human rights violations committed by businesses and ensure that judicial and administrative mechanisms put in place take into account a gender perspective;<sup>36</sup>
- c. Ensure that Canadian companies, including those working transnationally, respect the legitimate role of human rights defenders, and refrain from actions that undermine the capacity of human rights defenders to operate free from hindrance and insecurity, including women human rights defenders.<sup>37</sup>

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<sup>34</sup> Canada's Feminist International Assistance Policy, available at: [http://international.gc.ca/world-monde/issues\\_development-enjeux\\_developpement/priorities-priorites/policy-politique.aspx?lang=eng](http://international.gc.ca/world-monde/issues_development-enjeux_developpement/priorities-priorites/policy-politique.aspx?lang=eng).

<sup>35</sup> CEDAW/C/CAB/CI/8-9, paragraph 19 a).

<sup>36</sup> CEDAW/C/CAB/CI/8-9, paragraph 19 c).

<sup>37</sup> In compliance with the Human Rights Council's resolution Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights A/HRC/RES/31/32, 20 April 2016, paragraph 16, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/083/21/PDF/G1608321.pdf?OpenElement>; Human Rights Defenders and Economic, Social and Cultural Rights, Statement by the Committee on Economic, Social and Cultural Rights, E/C.12/2016/2, 7 October 2016; General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, Committee on Economic, Social and Cultural Rights, E/C.12/GC/24, 10 August 2017, paragraph 48, available at:

## V. Gaps in Canada's business and human rights framework for the extractive industry

24. The Canadian Government, through its missions, embassies and consular offices, provides support to the extractive mining industry. In 2009, the government launched the policy called "Strategy Corporate Social Responsibility" (CSR Strategy) for transnational extractive sector companies, which was revised in November 2014. Under this policy all extractive companies operating outside Canada must respect human rights standards enshrined in Canadian laws, including those contained in the UN Guiding Principles on Business and Human Rights. However, the only consequence for breaching the policy (CSR Strategy) is the loss of Canadian government's trade advocacy support. In addition, the policy does not establish a process to determine which authority can assess that a company has not respected human rights standards and according to what criteria.

25. In 2009, Canada established the Office of the Extractive Sector CSR Counsellor, which has a mandate to provide advice to businesses and serve as a mediator to resolve conflicts that arise between mining companies and the communities in which they operate. The Counsellor can offer advice and guidance for all stakeholders on implementing CSR performance guidelines, review the CSR practices of Canadian extractive sector companies operating outside Canada and begin a conflict resolution process at early stages of a dispute. However, the Counsellor lacks the mandate to investigate and determine whether mining companies have violated human rights. In addition, the process is voluntary, which means that at any time of the dispute resolution process, the parties can leave the mediation table.



26. Since 2009, only six cases have reached the Counsellor. In three of them, the companies decided to withdraw from the process. In another case, the Counsellor suggested to the plaintiffs to first exhaust the internal processes provided by the company. The last case was closed without the relevant report being published.<sup>38</sup> The Counsellor's post was vacant for over a year between 2014 and 2015.<sup>39</sup>

27. In the absence of an administrative mechanism that can monitor mining companies' compliance with human rights, some victims have turned to the Canadian courts to seek the justice that they have not found in their home countries. Although in recent years Canadian courts have agreed to examine some cases of human rights violations committed by Canadian companies operating abroad,<sup>40</sup> the vast majority of victims still face significant barriers to access to the Canadian justice system, such as determination of which court has the authority to hear the cases, the enormous financial costs, the time they have to invest in the process, and the lack of legal expertise or assistance.<sup>41</sup>

28. This issue has already been examined by UN treaty bodies, which stated as one of their main concerns allegations of human rights violations committed by Canadian companies operating abroad, particularly mining companies, and the limited access to judicial remedies before courts.<sup>42</sup> In particular, the Human Rights

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<sup>38</sup> [http://www.international.gc.ca/csr\\_counsellor-conseiller\\_rse/publications-publications.aspx?lang=eng](http://www.international.gc.ca/csr_counsellor-conseiller_rse/publications-publications.aspx?lang=eng).

<sup>39</sup> The state of Canada's Corporate Social Responsibility strategy, Open Canada, 25 March 2015, available at: <https://www.opencanada.org/features/the-state-of-canadas-corporate-social-responsibility-strategy/>.

<sup>40</sup> Choc v Hudbay Minerals Inc., 2013. ONSC 1414, available at: [http://www.fasken.com/files/upload/Choc\\_v\\_Hudbay\\_Minerals\\_Inc\\_2013\\_OJ\\_No.PDF](http://www.fasken.com/files/upload/Choc_v_Hudbay_Minerals_Inc_2013_OJ_No.PDF).

<sup>41</sup> Mining Watch Canada. Submission to the UN Committee on Economic, Social and Cultural Rights. January 2015. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCO%2fCAN%2f19290&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCO%2fCAN%2f19290&Lang=en).

<sup>42</sup> CRC/C/CAN/CO/3-4, 6 December 2012, paragraph 28; CCPR/C/CAN/CO/6 , 13 August 2015, paragraph 6; E/C.12/CAN/CO/6 , 23 March 2016, paragraphs 15 and 16; CEDAW/C/CAB/CI/8-9, 25 November 2016, paragraph

Committee regretted the absence of effective independent mechanisms with the power to investigate complaints of abuses by such companies that affect the enjoyment of human rights by victims, as well as the absence of an adequate legal framework. For its part, the Committee on Economic, Social and Cultural Rights expressed its concern that existing non-judicial remedial mechanisms, such as the Office of the Extractive Sector Corporate Social Responsibility Counsellor, have not always been effective.<sup>43</sup>

29. The Committee on the Elimination of All Forms of Discrimination Against Women noted the specific challenges for women in seeking access to justice for corporate human rights violations.<sup>44</sup> Despite these repeated calls to regulate corporations and ensure access to justice in Canada by victims of corporate abuse, the Canadian government has continued to argue for voluntary and non-binding measures. Self-regulation and non-judicial dispute resolution are clearly not working. In September 2017, the Committee on the Elimination of Racial Discrimination recommended Canada to swiftly establish an independent ombudsman mandated to receive and investigate human rights complaints against Canadian corporations operating in other countries.<sup>45</sup>

30. Recommendations:

a. Adopt in consultation with civil society national action plan to comprehensively

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18 and 19; CERD/C/CAN/CO/21-23, 13 September 2017, paragraph 21 and 22.

<sup>43</sup> CCPR/C/CAN/CO/6 , 13 August 2015, paragraph 6; E/C.12/CAN/CO/6, 23 March 2016, paragraph 15

<sup>44</sup> CEDAW/C/CAB/CI/8-9, 25 November 2016, paragraph 18.

<sup>45</sup> CERD/C/CAN/CO/21-23,13 September 2017, paragraph 21 and 22.

implement the UNGPs on business and human rights;<sup>46</sup>

- b. Introduce effective mechanisms to investigate complaints filed against Canadian corporations, including by establishing an extractive sector ombudsman with the mandate to, among other things, receive complaints and conduct independent investigations;<sup>47</sup>
- c. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.<sup>48</sup>

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<sup>46</sup> Also recommended by the United Nations Working Group on Business and Human Rights in its statement at the end of visit to Canada by the United Nations Working Group on Business and Human Rights, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21680&LangID=E>.

<sup>47</sup> CEDAW/C/CAB/CI/8-9, 25 November 2016, paragraph 19 b).

<sup>48</sup> E/C.12/CAN/CO/6, 23 March 2016, paragraph 61.