

PERMANENT, PEOPLES' TRIBUNAL

SESSION ON THE CANADIAN MINING INDUSTRY
Hearing on Latin America

MONTREAL, CANADA, MAY 29 – JUNE 1, 2014

RULING



MAY 29TH TO JUNE 1ST 2014



PERMANENT PEOPLES' TRIBUNAL
Session on the Canadian Mining Industry

- P P T -

HEARING ON LATIN AMERICA

**RE-APPROPRIATING AND DEFENDING OUR RIGHTS IN SOLIDARITY WITH COMMUNITIES
AFFECTED BY CANADIAN MINING PROJECTS HERE AND ABROAD!**

**OPENING NIGHT MAY 29TH
MCGILL UNIVERSITY**

**HEARING DAYS : MAY 30TH-31ST
DISCUSSION AND JURY'S VERDICT : JUNE 1ST**

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Session on the Canadian Mining Industry (2014-2016)

Hearing on Latin America

Montreal, Canada, May 29 – June 1, 2014

RULING

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PERMANENT PEOPLES' TRIBUNAL
SESSION ON THE CANADIAN MINING INDUSTRY

RULING FOR THE HEARING ON LATIN AMERICA
MONTREAL, MAY 29 – JUNE 1, 2014

RULING

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Mireille Fanon-Mendès-France
Maude Barlow
Nicole Kirouac
Gerald Larose
Viviane Michel
Javier Mujica Petit
Antoni Pigrau Solé
Gianni Tognoni

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EXECUTIVE SUMMARY

PERMANENT PEOPLES' TRIBUNAL SESSION ON THE CANADIAN MINING INDUSTRY

Ruling for the Hearing on Latin America
Montreal, May 29 – June 1, 2014

From May 29 to June 1, 2014, the Permanent Peoples' Tribunal (PPT) held a hearing in Montreal, Canada, to examine the facts related to claims of human rights violations caused by the Canadian mining industry in Latin America. The Tribunal assessed in this hearing the respective responsibilities of two types of actors: Canadian mining companies, on one hand, and on the other, the Canadian state and its different agencies, which contribute, through various political, economic and legal mechanisms, to human rights violations and to fostering impunity. Following the hearing, the PPT pronounced a verdict that includes recommendations directed at the corporations referred to in the cases presented at the hearing, to the Canadian mining industry, to the Canadian state, to the human rights treaty and non-treaty bodies, and to civil society.

First, the Tribunal notes that Canada is a key actor of the extractive sector. The country plays host to the headquarters of 75 % of the world's mining companies. Latin America is a premier destination for Canadian mining capital: Canadian corporations carry out between 50% and 70% of mining operations conducted in this region. The Canadian stock markets are also at the heart of the global extractive industry. In 2013, close to 1,500 mining projects carried out

in Latin America were operated by companies registered at the Toronto Stock Exchange (TSX and TSX-V).

Over the last twenty years, the proliferation of large-scale mining projects in the Americas, from the north of Mexico to the southern region of Patagonia in Chile and Argentina, a tendency strongly denounced by affected communities, has been assessed and documented by an impressive number of studies. A large number of these mining projects have triggered serious socio-environmental conflicts and undermined human rights. The McGill Research Group Investigating Canadian Mining in Latin America (MICLA) and the *Observatorio de Conflictos Mineros de América Latina* (OCMAL) have identified between 85 and 90 social conflicts involving Canadian companies.

In this context, a group of more than forty organizations from Quebec and the rest of Canada, involved in the promotion and defence of human rights and representing various social sectors, approached the PPT and submitted an official document detailing a pattern of systematic human rights abuses and stressing the gaps in access to justice for mining-affected communities. The organizations urged the Tribunal to set up proceedings and initiate



Photo : Quetzalli Malagon, 2014

THE MEMBERS OF THE JURY, PERMANENT PEOPLES' TRIBUNAL, SESSION ON CANADIAN MINING INDUSTRY, HEARING ON LATIN AMERICA

a specific session on the Canadian mining industry in light of the severity of the human rights violations reported over a number of years.

Founded in 1979 by socially-committed jurists, the Permanent Peoples' Tribunal is an opinion tribunal that builds on the historical experience of the Russell tribunals, set up as a forum for asserting peoples' fundamental rights. The methodology adopted by the Tribunal draws on an ongoing process of research that is firmly grounded in social realities, and the Tribunal attempts to bridge gaps in international law so as to adequately address the present and future needs of peoples as well as various emerging challenges.

During the public hearing on mining operations in Latin America that launched the Canadian session, the Tribunal heard the testimony of about 20 witnesses and experts. The testimonies focused on three interrelated areas of rights that are at particular risk of being affected by the implementation of mining projects: the right to life and a healthy environment, the right to self-determination, and the right to full citizenship. For their part, the charges presented against Canadian companies encompassed four areas: political support for and interference in the legislative processes of host states, economic and financial support, official development aid, and access to justice.

The jury of the hearing was comprised of Maude Barlow, Nicole Kirouac, Gérald Larose, Viviane Michel, Javier Mujica Petit, Antoni Pigrau Solé and Gianni Tognoni, and was presided by Mireille Fanon-Mendès-France. Paul Cliche and Nadja Palomo acted as co-prosecutors on behalf of

civil society. The government, as well as the five corporations whose acts were examined by the proceedings, i.e. Barrick Gold Corporation, Goldcorp, Excellon Resources, Blackfire Exploration and Tahoe Resources, were invited to present their defence at the hearing. The Tribunal did not hear from them.

RIGHTS VIOLATIONS BY CANADIAN MINING COMPANIES

The evidence and testimonies brought to the attention of jury members reveal a pattern of systematic human rights abuses perpetrated against communities affected by large-scale mining projects. Specific cases of human rights violations were presented to illustrate these recurring situations.

Right to life and to a healthy environment

Some of the most significant environmental impacts of mining include the contamination, reduction and depletion of water sources and aquifers, worsening air quality, ground contamination, loss of biodiversity, deforestation, and irreparable damage to landscapes, forests and fragile ecosystems. These impacts generate degradation in the health of communities and the ecosystems that sustain them, leading to an infringement of several rights associated with the right to life and to a healthy environment. During the hearing, witnesses shed light on cases related to the Canadian mining companies Barrick Gold and Goldcorp as emblematic of these violations.

In this regard, the Tribunal notes that Goldcorp (San Martin, Honduras) infringed on the rights to health, to water, and to a healthy environment of the people living in the vicinity of the mine.

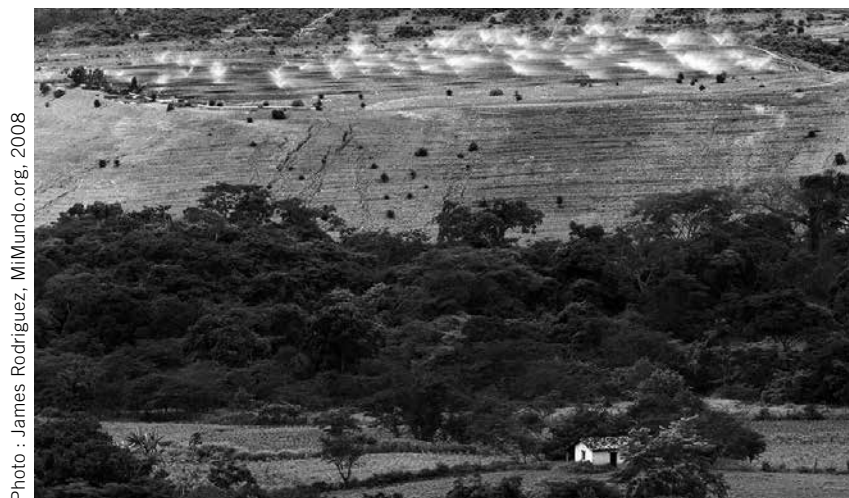


Photo : James Rodriguez, MiMundo.org, 2008

SAN MARTIN MINE, GOLDCORP, SIRIA VALLEY, HONDURAS

Reported impacts include the contamination of groundwater wells with cyanide and arsenic, which led to acute health problems, including the death of a 4-year-old child, and the depletion of 18 of the 21 water sources located near the mine, drastically reducing the availability of water for human consumption and agricultural production.

Barrick Gold (Pascua Lama, Chile-Argentina), for its part, has infringed on the right to water of indigenous and local peasant communities. The dust generated by the mine's operations has led to water contamination and to the irreversible impairment of glaciers that are fundamental in the hydrological cycle of this arid and semi-desert region, characterized by limited access to water.

Peoples' right to self-determination

Often carried out in spite of opposition expressed by local communities, mining activities are associated with abuses of a number of rights that are intrinsically related to peoples' right to self-determination and to dispose of their wealth and natural resources. The Tribunal finds that by dispossessing the communities of their natural and traditional resources, corporations also infringe on the economic, social, cultural and environmental rights of these communities and put their livelihoods and ways of life at risk. The right of indigenous peoples to consultation and to free, prior and informed consent is directly related to peoples' ability to determine their own development. The Tribunal denounces the overt discrimination, contrary to the United Nations Charter, to which indigenous peoples are subject, their being deprived of rights essential to the fulfilment of human dignity. The cases of Barrick Gold (Pascua Lama, Chile-Argentina) and Tahoe Resources (Escobal, Guatemala) have been presented at the hearing as typical examples of breaches of the right of peoples to self-determination.

Right to full citizenship

The imposition and implementation of large-scale Canadian mining projects jeopardize the ability of individuals and communities affected to defend their rights. Criminalization and repression of social protest and the undermining of labour and union rights are clear expressions of this trend. Numerous Latin American states have reformed their juridical framework in order to criminalize social protest and to legalize governmental responses to social protest. This leads to perpetuating the impunity of acts of

public repression. Only considering the 22 cases of Canadian mining projects examined in a report submitted to the Inter-America Commission on Human Rights (IACHR) by civil society groups from Latin America (*Grupo de Trabajo sobre Minería y Derechos Humanos en América*, 2014), we note at least 20 cases of murders and 25 attacks against mining opponents. Moreover, large-scale mining has particular impacts on women that translate into specific risks of economic marginalization, violence, oppression, and attacks on their health.

More specifically, Excellon Resources (La Platosa, Mexico) infringed on the right to freedom of association, the right to collective negotiation, as well as the right to peaceful assembly. The operations of Tahoe Resources (Escobal, Guatemala), for their part, violated the right to peaceful assembly and to security by orchestrating an armed attack against peaceful protesters. Finally, the operations of Blackfire Exploration (Payback, Mexico) generated significant social tension and violence, resulting in a breach of the right to life, through the murder, unpunished to date, of Mariano Abarca in 2009.

The Tribunal notes that the evidence brought to its attention highlights that the aforementioned human rights breaches are not isolated incidents. They are instead the expression of a widespread pattern of impunity and abuses by the mining industry, perpetuated by a lack of effective remedies in host and home states and in the current international legal framework.

THE CANADIAN STATE AND ITS SUPPORT OF MINING ON A WORLD-WIDE SCALE

The testimonies on the role and responsibility of Canada in mining-related human rights abuses demonstrated the significant, quasi-unconditional support of the Canadian government for mining companies operating in Latin America. The Tribunal notes with concern that government support is extended without being conditional upon any requirements regarding compliance with human rights standards. The documentary and testimonial evidence presented at the hearing clearly establishes that the Canadian state is fully informed of the high risks of rights violations and environmental damage associated with mining activity.

The Tribunal reiterates that states have extraterritorial obligations when it comes to protecting human rights. Under the *Maastricht*

Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, states, in this case Canada, are liable for acts and omissions that bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory. This obligation fully applies to states where a corporation, or its parent or controlling company, is registered or domiciled.

Political support and interference in the legislative processes of host states

Canadian embassies have on numerous occasions supported mining projects even when there were important social conflicts, an absence of social license, and even demonstrated violations of rights. While they were informed of many litigious cases and obvious cases of violations of fundamental rights of individuals and communities, the staff of the Canadian embassy in Mexico provided constant political support for Blackfire Exploration, for example by lobbying Chiapas authorities on behalf of the company for the approval of necessary permits. This contravenes the *Maastricht Principles*, according to which state institutions in a position of influence over companies must ensure that they respect their human rights obligations.

Furthermore, witnesses have reported various lobbying and interference tactics on the part of the Canadian state and its agents in support of the adoption of mining laws that are favorable to the interests of foreign investors, in so doing, weakening the practice of economic, social, cultural, civil and political rights. The Tribunal considers that the pressures exerted by Canada for the reform of mining regulations in Columbia and Honduras constitute interference that is contrary to the responsibility to maintain non-interference recognized by the *Charter of the Organization of American States*.

Expert testimony presented during the hearings has also denounced the fact that budgets allocated by Canada to international development are increasingly oriented toward the promotion of extractive industries and Canadian commercial interests. The Canadian International Development Agency (CIDA) – merged with the Department of Foreign Affairs, Trade and Development in 2013 – finances programs based on new partnership procedures involving NGOs and mining companies designed to promote the social acceptability of mining projects and to pacify conflicts with affected

communities. The Tribunal considers that with regard to the allocation of international development funds, the Canadian state does not respect its obligations to protect human rights.

Economic and financial support

The Canadian state uses economic development tools specifically designed to support the Canadian extractive sector and also brings considerable financial support to that same industry. The Canadian Pension Plan Investment Board (CPPIB), a Crown corporation responsible for managing contributions to Canadian pension plans, and Export and Development Canada (EDC), the official credit agency of Canada, permit the channeling of important investments toward mining operations of companies headquartered in Canada. These agencies therefore support projects whose social and environmental consequences are devastating, without the due diligence and transparency required given Canada's obligation to protect human rights.

The TMX Group of the Toronto Stock Exchange (TSX and TSX-V) is the global centre of financing for the mining sector. Corporations that are listed there must disclose the risks in relation to their performance on the markets, but there are no requirements to disclose information related to human rights. Canadian regulations protect the interest of investors, not of communities. Finally the Canadian tax system provides the mining sector with many marked benefits, including access to abundant liquidity and protection against legal proceedings, as well as tax benefits.

The Tribunal considers that the Canadian state financially and fiscally supports a sector that is soiled by numerous human rights violations, thus contravening its own priorities and commitments enshrined in the many human rights conventions, declarations and international agreements that Canada has duly signed.

Democratic deficit

The Tribunal deplores the highly asymmetrical application of international economic norms compared to international human rights laws. It was demonstrated that many states were constrained by arbitration tribunals to indemnify transnational corporations after instituting public policy that targets the respect of rights

and socio-ecological equity. This judicial, economic and political framework subordinates the ability of the state to implement public policies that favour the respect of human rights and environmental justice to the interests of transnational corporations, and thus has a highly anti-democratic effect.

Access to justice

Many international legal instruments provide for the right to effective recourse. While the *Maastricht Principles* set the obligations of states to protect economic, social and cultural rights of individuals on and outside of their territory, and to ensure that non-state actors do not prevent the exercise of these rights, the Canadian state has not promulgated any legislation outlining its competence to litigate as regards the extraterritorial activities of its corporations. Furthermore, written documentation and expert testimonies received by the Tribunal demonstrate that the mechanisms of non-legal recourse that exist in Canada, such as the Office of the Extractive Sector Corporate Social Responsibility Counsellor and the National Contact Point to the OECD, are either ineffective or very limited in scope.

Therefore, the victims, who are deprived of justice in their own countries, do not have access to Canadian justice either, whether from its legal or non-legal mechanisms. These victims are often confronted with a situation of complete impunity concerning violations of their rights. Consequently, the Tribunal considers that the Canadian state is violating the rights to effective recourse of individuals and peoples who see their human rights violated by the activities of Canadian mining companies.

RECOMMENDATIONS

In light of these considerations, the Tribunal has formulated the following general recommendations (refer to the verdict for all specific recommendations):

- That the Canadian state assume its responsibility to protect human rights; that it adopt measures to ensure that companies under its jurisdiction do not violate the exercise of these rights; that it make conditional any public support for companies upon adherence to standards that are clear and transparent concerning respect for human rights and

environmental legislation; and that it adopt legislation that enables effective access to justice for victims of abuses.

- That the Canadian mining industry recognize the primacy of human rights and the protection of the environment over economic interests; that it respect the right to self-determination of communities; that it assume all costs linked to the restoration of mining sites; that it cease its practices of repression of opposition; and that it adopt practices of transparency and accountability.

- That the Canadian mining companies targeted by this verdict recognize their failures and the damages caused to affected populations; that they provide compensation to the victims; that they respect the right to self-determination of communities, including their right to say no to mining projects; and if communities exercise the latter right, that the companies return the land to its rightful owners.

- That host states ensure they have a legal framework that efficiently guarantees the respect of human rights and the environment by foreign companies; that they ensure quick, effective and equitable access to justice; that they review the fiscal obligations of mining companies; and that they abstain from signing new free trade agreements.

- That conventional and non-conventional human rights protection agencies develop binding regulations for transnational corporations and include an international mechanism that is appropriate to supervise their respect; and that the Inter-American Commission on Human Rights prioritize the question of extraterritorial responsibility of host states of extractive companies and consider the nomination of a special rapporteur on the topic.

- That communities affected by Canadian mining companies in Latin America and in Canada establish permanent communication and solidarity channels, use the available international mechanisms to make their grievances and demands known publicly; and that civil society organizations in Quebec, the rest of Canada, and Latin America continue their work to identify and document cases of mining companies that violate human rights.

RULING

PERMANENT PEOPLES' TRIBUNAL SESSION ON THE CANADIAN MINING INDUSTRY

Hearing on Latin America
Montreal, May 29 – June 1, 2014

1. INTRODUCTION

1.1 History and background of the session in Montreal, Canada

The increasing importance of extractive industries on the global economic and financial stage is well established. Over the past twenty years, the expansion of extractive projects, strongly denounced by affected communities, has been analyzed and documented in a striking number of studies. The report commissioned by the Secretary-General of the United Nations in 2008 on the role of transnational corporations with regard to the respect for and promotion of human rights already clearly indicated that the extractive industry is the sector responsible for the greatest percentage (28 %) of violations of rights that were addressed in the report.¹

Canada is a favoured location for raising capital for the global mining industry, particularly the venture capital required to finance mining exploration. No less than 75 % of the world's mining companies have their head offices in Canada. Latin America is a premier destination for

Canadian mining capital: Canadian companies, with estimated investments of more than \$50 billion in the region's mining sector, represent between 50 % and 70 % of the mining activity underway in Latin America.²

“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”.³ Canadian financial markets are also at the centre of the global extractive industry. In 2013, nearly 1,500 mining projects located in Latin America were owned by companies registered on the Toronto Stock Exchange (TSX and TSX-V).⁴

A large number of these mining projects are a source of serious socio-environmental conflicts and human rights violations. Of the 200 conflicts affecting local communities that were identified by the Observatory of Mining Conflicts in Latin America (OCMAL), more than 90 involve Canadian companies. The McGill Research



Photo : Quetzalli Malagon, 2014

THE ORGANIZING COMMITTEE AND THE JUDGES OF THE HEARING ON LATIN AMERICA, SESSION ON THE CANADIAN MINING INDUSTRY OF THE PERMANENT PEOPLES' TRIBUNAL

1. United Nations, Human Rights Council (2008). Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Addendum*. Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse**. A/HRC/8/5/Add.2, 23 May 2008.
2. Grupo de Trabajo sobre Minería y Derechos Humanos en América latina (GTMDHAL) (2014). El impacto de la minería canadiense en América Latina y la responsabilidad de Canadá Resumen Ejecutivo del Informe presentado a la Comisión Interamericana de Derechos Humanos, p.4.
3. Ibid.
4. TMX. A Capital Opportunity Mining, http://www.tmx.com/en/pdf/Mining_Presentation.pdf.

BOX 1. THE CANADIAN MINING INDUSTRY IN VARIOUS LATIN AMERICAN COUNTRIES ⁵

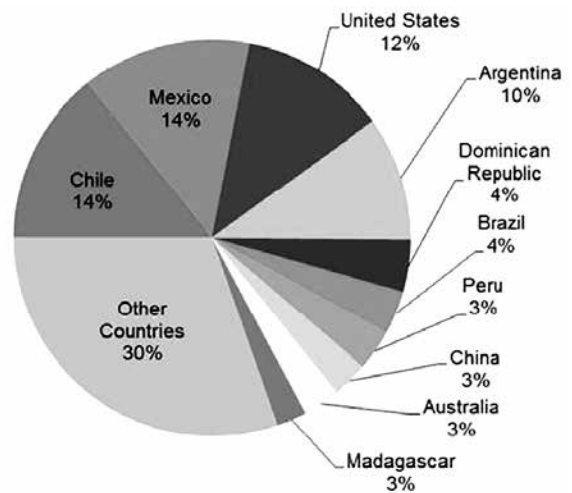
Mexico :	In 2012, 204 of the 285 (72 %) foreign mining companies were Canadian.
Peru :	In 2012, nearly half of the 200 juniors had their head offices in Canada.
Colombia :	In 2011, 43% of mining investments were managed by Canadian companies.

TABLE 1. PUBLICALLY LISTED MINING COMPANIES ON TSX AND TSXV (AS OF JAN.31 2014) WITH INVESTMENTS IN LATIN AMERICA

	Country	Number of companies
TSX	Argentina	20
	Bolivia	5
	Chile	20
	Colombia	7
	Mexico	44
	Peru	28
	TSXV	Argentina
Bolivia		4
Chile		20
Colombia		30
Mexico		99
Peru		39

Source: TMX Group Listings Database (data shown excludes dually listed companies)

PERCENTAGE OF CANADIAN MINING ASSETS ABROAD, BY COUNTRY, 2012 ⁶



“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”. CANADIAN FINANCIAL MARKETS ARE ALSO AT THE CENTRE OF THE GLOBAL EXTRACTIVE INDUSTRY. IN 2013, NEARLY 1,500 MINING PROJECTS LOCATED IN LATIN AMERICA WERE OWNED BY COMPANIES REGISTERED ON THE TORONTO STOCK EXCHANGE (TSX AND TSX-V).

5. Mexico: Anuario Estadístico de la minería mexicana 2012 (Edición 2013). Perú: ver el informe del Grupo de trabajo Minería y Derechos Humanos en América latina (2014), Ibid., p.4. Contraloría General de la Nación. Minería en Colombia : fundamentos para superar el modelo extractivista, May 2013, p. 193, online :http://lasillavacia.com/sites/default/files/mineropedia/mineria_en_colombia.pdf.

6. Natural Resources Canada. (2013). Canadian mining assets. Information Bulletin, December 2013. Online: <http://www.nrcan.gc.ca/mining-materials/publications/15382>

Group Investigating Canadian Mining in Latin America (MICLA) has documented 85 cases of conflicts that bring to light the significant impacts of Canadian mining projects on hundreds of communities in Latin America. These serious cases are of concern to an increasing number of communities, organizations, social movements and human rights observers both at the local and international levels.

1.2 The motion

The motion⁷ to hold a Canadian session of the Permanent Peoples' Tribunal (PPT) was presented in accordance with PPT Statutes, following two years of extensive research work investigation by institutions representing Canadian civil society, including civil society in Quebec.

It was presented by the following non-governmental organizations: L'Entraide missionnaire; the Committee for Human Rights in Latin America (CDHAL); Justice transnationales extractives (JUSTE); Projet Accompagnement Solidarité Colombie (PASC); the Polaris Institute; Alternatives; the Centre de recherche en éducation et formation relatives à l'environnement et à l'écocitoyenneté (Centr'ERE) of the Université du Québec à Montréal (UQAM); and the Coalition québécoise sur les impacts socio-environnementaux des transnationales en Amérique latine (QUISETAL).

On the basis of a rigorously documented file, the coalition requested that the PPT examine the facts related to charges of violations of rights committed by the Canadian mining industry through an analysis of the respective responsibilities of two categories of actors: mining companies and various bodies of the Canadian state, which contribute through a number of political, economic and legal mechanisms to the violation of rights and to the impunity which characterizes them.

The motion was the result of a collective effort of reviewing written records and systematizing and compiling documentation on the issues, impacts, and violations of rights related to mining operations. The documents that were reviewed consist of data produced by affected communities and parties working on these matters (social movements, NGOs, unions,

researchers, experts), including denunciations, testimonies, and interviews with key members of affected communities to identify the main impacts of the global presence of the Canadian mining industry supported by Canada. Research reports, environmental impact studies, scientific and educational articles, and news articles were also part of the review. A scientific committee composed of specialists, jurists and university researchers was formed to support the research process and the drafting of the motion.

In the motion we emphasized – and documented in detail – that “[there] are numerous deficiencies in access to justice for the affected communities and in the accountability of Canadian corporations operating abroad. People and communities whose rights are infringed are often deprived of recourse, both in the host countries where the companies operate and in the countries of origin where the companies are registered. Canada, in this regard, has no enforceable legislative framework governing the practices of its mining companies operating abroad.”

1.3 Structure of the indictment

The indictment⁸ received by the PPT following the preparatory phase has been adopted as the key document for the examination of the facts for the “Session on the Canadian Mining Industry – Hearing on Latin America”. The charges and the entirety of the documentation cited in the thirteen specific charges upon which the document is based form an integral part of this report.

The indictment is based on the following instruments of international law: the *Universal Declaration of Human Rights* (1948); the *International Covenant on Economic, Social and Cultural Rights* (1966); the *Universal Declaration of the Rights of Peoples* (Algiers, 1976); the *United Nations Convention on the Elimination of All Forms of Discrimination against Women* (1979); the *Stockholm Declaration on the Environment* (1972); the *Indigenous and Tribal Peoples' Convention* (no. 169) of the *International Labour Organization* (1989); the *Universal Declaration of the Collective Rights of Peoples* (Barcelona, 1990); the *Rio Declaration on the Environment and Development* (1992); the *Declaration on*

7. See online on the TPP Canada website: www.tppcanada.org.

8. Ibid.

the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998); and the *Declaration of the United Nations on the Rights of Indigenous Peoples* (2007).

The indictment focuses on three main categories of **interrelated rights that are at particular risk of being affected** by the implementation of mining projects: the right to life and a healthy environment, the right to self-determination, and the right to full and complete citizenship. Several forms of direct violation of people’s dignity – as well as a weakening of their very capacity to defend and

assert their rights – were presented through five specific cases of violations of rights that occurred in Honduras, Mexico, Guatemala and Chile.

The PPT was asked to examine various practices of the Canadian state, which supports the mining industry through a number of actions, policies, and government programs implemented by its various bodies. These were illustrated in cases involving Colombia, Honduras, Mexico, El Salvador, Chile and Peru, among others.

HUMAN RIGHTS COMPONENTS	SPECIFIC HUMAN RIGHTS ADDRESSED
Right to life and a healthy environment	Right to life; right to an adequate standard of living; right to food; right to water; right to health; right to housing; right to security; right to a healthy environment
Right to self-determination	Right of peoples to self-determination; right to land, territory and resources; right to participation; right to consultation; right to free, prior and informed consent; cultural rights; right to non-discrimination
Right to a full and complete citizenship	Right to work; right to fair and favourable working conditions; freedom of association and collective bargaining; freedom of expression; right to peaceful assembly; access to information; right to participation; right of an effective remedy; right to defend human rights; right to education; right to human dignity; right to peace; right to one’s honour and good reputation; right to non-discrimination; right to equality

ROLE OF THE CANADIAN STATE	
Political support and interference in the legislative processes of the host states	Interference in the reform of mining codes; lobbying and political and trade pressure through embassies and other diplomatic venues; indirect subsidies for corporate social investment; economic espionage, the establishment of free trade agreements protecting investment; trade missions.
Economic and financial support	Loans, credits and investment guarantees provided by Export Development Canada, shares of the Canada Pension Plan Investment Board; standards of disclosure of the Toronto Stock Exchange; incentives to mining investments through favourable taxation
Access to justice	Obstacles concerning access to Canadian courts for communities and individuals affected by Canadian mining; use of non-judicial mechanisms based on non-binding standards

The organizing committee of this session of the Permanent Peoples Tribunal requested that the Tribunal examine the following issues in particular:

- 1) The impact of the establishment of mining companies on the right to free, prior and informed consent and on the territorial rights of indigenous peoples;
- 2) The impact of large-scale mining projects on the right to a healthy environment and the rights of future generations;
- 3) The impact of mining activities on women's rights;
- 4) The impact of mining expansion on the right to defend one's own rights;
- 5) The impact of foreign investment protection agreements on the right to self-determination;
- 6) The interference of Canada in Latin American countries through the use of public institutions to favour the establishment of mining projects, in addition to the responsibilities of the Canadian government to regulate and provide a framework for mining companies registered in Canada.
- 7) The guarantee in the current international system of the right to justice for victims of violations of civil and political rights, of the right to work and unionize, and of their territorial, economic, social, cultural and environmental rights when these are contingent upon Canadian mining activities.

1.4 The Permanent Peoples' Tribunal (PPT)

1.4.1 Jurisdiction

The Permanent Peoples' Tribunal, founded in Bologna on June 25, 1979 by Lelio Basso, a lawyer, senator and one of the "fathers of the Italian Constitution," is the oldest opinion tribunal, now in its 35th year of existence. The PPT represents the continuation and evolution of the Russell Tribunals on the Vietnam War (1966-1967) and on the Crimes of Latin American Dictators (1974-1976). Based on the principles expressed in the *Universal Declaration of the*

Rights of Peoples (Algiers, 1976), its objectives and work methodology are centred around three guiding principles:

- To provide a forum for visibility that offers an opportunity to be heard, as well as affirmation, acknowledgment, and restitution for violations of their fundamental rights to the subjects (individuals and their communities) who, beyond the denial and the violation of these rights, are victims of the "crime of silence" (Bertrand Russell).
- To mitigate the jurisdictional and doctrinal deficiencies in international law, which views states as the sole subjects and actors, in light of new challenges and the specific needs of peoples as these arise throughout their history.
- To foster, by means of permanent and deeply-rooted research based on actual case studies that demonstrate the gulf between established and formal law and the rights that individuals and communities actually have, the development of innovative interpretations of established law as well as the formulation of new principles and rules responding to the present and future needs of peoples.

There is a close alignment between the objectives that have been pursued by the PPT since its founding and the frame of reference for this session. The criteria for analysis and decision-making used by the Tribunal in the Montreal hearing are in line with a number of rulings issued by the PPT in the course of its history, in particular, those on the sessions which addressed the policies of the International Monetary Fund (Berlin, 1988; Madrid, 1994); the Brazilian Amazon (Paris, 1990); impunity for crimes against humanity in Latin America (Bogota, 1991); the conquest of Latin America and international law (Bogota, 1992); the Bhopal disaster and corporate responsibility (Bhopal, 1991; London, 1994); transnational corporations in the textiles industry and their impacts on labour and environmental rights (Brussels, 1998); practices of transnational corporations (Warwick, 2001); the series of sessions on transnational corporations and the rights of peoples in Colombia (2006-2008); the sessions on the European Union and transnational corporations in Latin America (Lima, 2008 and

Photo : Mining Watch Canada.



EXCELLON MEXICO, LA PLATOSA MINE

Photo : James Rodriguez, MiMundo.org, 2014



ART AGAINST MINING, TLAMANCA, MEXICO

Madrid, 2010); and the recent series held in Mexico on “free trade, violence, impunity and the rights of the people of Mexico, 2011-2014”.

1.4.2 Proceedings

The motion⁹ presented by the organizing committee to the PPT in accordance with PPT Statutes, with the support of an extensive network of Canadian and international organizations (see appendix), was studied in accordance with the procedure established by the Secretariat and deemed admissible by the Presidential Council.

In accordance with the Statutes, the proceedings initiated with the indictment were communicated to the government of Canada via its ambassador in Rome (headquarters of the PPT Secretariat), **expressly inviting the Canadian government** to attend and to exercise its right of defence in a manner of its choosing.

The same communication inviting the subject entities to present a defence was **addressed to the corporations referred to in the proceedings:**

- **Barrick Gold Corporation**
- **Goldcorp**
- **Excellon Resources**
- **Blackfire Exploration**
- **Tahoe Resources**

The public hearings and in camera deliberation of the PPT concluded with no response from either the government or the corporations in question.

We note that the present hearing, dedicated specifically to Latin America, is part of a process which provides for additional sessions to further examine and qualify the factual analysis with regard to the responsibilities of the Canadian state and its mining multinationals in other geo-economic-political areas, including particularly and specifically, Canada.

9. The Charges can be accessed on the Canadian session website: www.tppcanada.org.

Canadian Mining and Rights-based Conflicts in Latin America



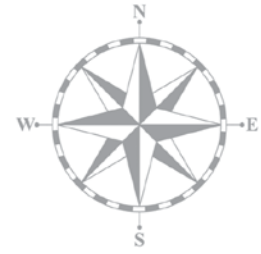
Since the 1990s mining corporations registered in Canada and listed on the TSX have spear-headed the latest mining boom in Latin America. They operate in all countries of the continent developing between 1200 and 1500 projects in any given year. These projects are primarily dedicated to mining gold and silver (82% of the total) through large-scale open pit mining techniques. These projects have triggered a growing number of socio-ecological conflicts that are mapped out here. Mining conflicts have a number of different and overlapping dimensions including concerns about mining's impacts on the environment, the threat to indigenous rights, cultures and territories, the erosion of workers' rights, and the undermining of basic citizenship rights.

Legend

Rights to a healthy environment	Rights to citizenship and security
Labour rights	Indigenous Territory
Indigenous rights	

0 500 1000 2000 kilometers

BY-SA
Emily Clark
Data: <http://mcla.ca/conflicts/>



1.4.3 Program of work

The public hearing and in camera deliberations were carried out in accordance with the program provided in the relevant Appendix 1. In addition to the oral testimony that was presented, the judges were able to refer in their decisions to the written evidence that was filed before the Tribunal (see Appendix 2).

1.4.4 Judges and prosecutors

In accordance with the practice adopted by the PPT for sessions consisting of several hearings, the jury for each session will be composed of permanent members of the PPT and ad hoc members appointed for their competencies and representativeness. The jury which sat in Montreal was composed of the following figures:



Photo : Christian Peña

PRESIDENT OF THE JURY

Mireille Fanon-Mendès-France (France)

is the president of the Frantz-Fanon Foundation and an expert with the Working Group on Afro-Descendants at the Council of Human Rights of the UN. The Frantz-Fanon Foundation, born out of the thought and struggle of Frantz Fanon, is a space for memory, reflection and education on anticolonialism, battling multiple forms of oppression. Mireille Fanon-Mendès-France is also a member of the International Association of Democratic Lawyers and the scientific council of ATTAC.



Photo : Gilles Pilette, 2014

MEMBERS OF THE JURY

Maude Barlow (Canada)

is the National Chairperson of the Council of Canadians and co-founder of the Blue Planet Project. She also chairs the board of Food and Water Watch in Washington and is a board member of the International Forum on Globalization in San Francisco and a Councillor with the Hamburg-based World Future Council. In 2008-2009, she served as Senior Advisor on Water to the President of the United Nations General Assembly. Maude Barlow is the recipient of eleven honorary doctorates as well as many awards and she has also authored and co-authored seventeen books, including the international bestseller *Blue Covenant* and her latest publication, *Blue Future: Protecting Water for People and the Planet Forever*.



Photo : Gilles Pilette, 2014

Gérald Larose (Quebec, Canada) is a social worker, union leader and professor at the School of Social Work at the Université du Québec à Montréal (UQAM). He is currently Chair of the Board of Directors and Executive Committee of the *Caisse d'économie solidaire Desjardins*. He was president of the *Confédération des syndicats nationaux* (CSN) from 1983 to 1999, and former president of the *Groupe d'économie solidaire du Québec* (GESQ). He also served as secretary-treasurer of the Intercontinental Network for the Promotion of Social Solidarity Economy (RIPESS).



Photo : Gilles Pilette, 2014

Nicole Kirouac (Quebec, Canada)

is a lawyer who is originally from the mining town of Malartic. She has held many positions over the years, including board member of the *Centrale de l'enseignement du Québec* (CEQ), founding president of the provincial association of



Photo : Gilles Pilette, 2014

Viviane Michel (Quebec, Canada)

is the president of Quebec Native Women (FAQ-QNW) and an Innu woman from Maliotenam on Quebec's

North Shore. A social worker by training and an activist engaged in her community, she has worked for a number of years with female aboriginal victims of violence and those struggling in urban Quebec and in her community. Her work with FAQ-QNW seeks to promote respect for the identity, culture and rights of nations and aboriginal women, as well as to educate and to raise awareness among aboriginals and non-aboriginals about realities and issues related to aboriginal people.



Photo : Gilles Pilette, 2014

Javier Mujica Petit (Peru) is a human rights professor and president of the Centre for Public Policy and Human Rights in Peru (EQUIDAD). He has worked with a number of institutions, including the General Confederation of Workers of Peru (CGTP), the United Nations Development Fund for Women (UNIFEM), the United Nations Development Programme (UNDP) and the Peruvian Ministry of Justice and Human Rights (MINJUS). He was a regional coordinator for the Inter-American Platform of Human Rights, Democracy and Development (PIDHDD) and represented the International Federation for Human Rights (FIDH) at the Organization of American States (OAS) from 2007 to 2010.

Antoni Pigrau Solé, Catalonia (Spain) is a professor of public international law at the University Rovira y Virgili of Tarragona, where he founded a Legal Environmental Clinic. He has headed the Tarragona Centre for Environmental Law Studies (CEDAT) since 2007, as well as the



Photo : Gilles Pilette, 2014

Catalan Journal of Environmental Law since 2009. He is the author of numerous books and is currently working on a major environmental justice project (www.ejolt.org). He is a member of the editorial board of the *Revista Española de Derecho Internacional* and a member of the Board of Governors of the Catalan International Institute for Peace (ICIP).

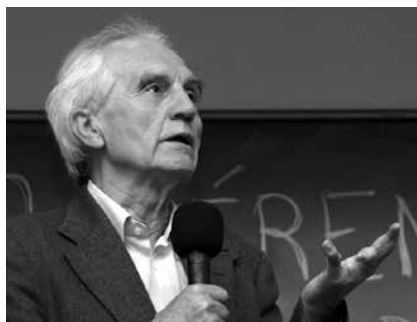


Photo : Gilles Pilette, 2014

Gianni Tognoni (Italy) has been the Secretary General of the Permanent Peoples Tribunal (PPT) since its founding in 1979. A physician and doctor of philosophy, Gianni Tognoni is one of the world's leading experts in health policy and pharmaceutical epidemiology. He is the director of the Institute of Pharmacological Research Mario Negri Sud. He has authored numerous scientific publications and is the recipient of many honorary doctorates. A permanent advisor to the World Health Organization (WHO), Dr. Tognoni's scientific endeavours ally with his commitment to justice.

CO-PROSECUTORS

Paul Cliche studied anthropology and education at the Université de Montréal and is currently a researcher, teacher, consultant and trainer at the Université de Montréal and at the *Association québécoise des organismes de coopération internationale* (AQOCI). He has many years of experience in the field of development. He worked at Development and Peace for more than sixteen years and in Latin America for a number of years, in particular in Ecuador, where he was advisor to the National Institute for Peasant Training and developer/coordinator of a rural development and training project in Andean communities that was co-managed by a NGO and a peasant movement.



Photo : Gilles Pilette, 2014

Nadja Palomo is a human rights activist and a biologist. Her interests lie in understanding and respecting bio-diversity as well as in socio-environmental conflicts and issues of human rights violations arising from such conflicts. Her work in the coordination of habitat rehabilitation projects initially led to a deepening awareness of the social and environmental reality of her Mexican homeland. She has a master's degree in environmental geography from the Université de Montréal, where she studied the perceptions of natural resources among aboriginal peoples. She has been a member of the coordinating team for the Committee for Human Rights in Latin America (CDHAL) since 2012.

2. GLOBAL CONTEXT AND EARLIER WORK BY THE TRIBUNAL

A MODEL THAT PRIORITIZES THE ECONOMIC INTERESTS OF A MINORITY OVER THE RIGHTS OF THE MAJORITY

The rights of populations working towards decolonization and political independence were the central focus of the Permanent Peoples' Tribunal during the first phase of its existence. More recent meetings focused on the increasing impact and effects of the prevailing economic model on individual and collective rights and on a condemnation of the normative inconsistencies of an international system that places the importance of human rights below the priorities set by a small minority defining the needs of the economic system. The PPT hearings discussed in Section 1.4.1. have enabled the development of a doctrine on the subject.

Thus, one of the Tribunal's recent judgments, in Ciudad Juarez, Mexico, in May 2012 was enunciated as follows:¹⁰

The make-up of colonial empires has been based on the appropriation of natural resources and of the labour force, often slaves, of populations and territories conquered by the powers of the time, leveraging their technological expertise and military force. Commercial enterprises formed their operational arm by ensuring an adequate flow of resources to feed the metabolism of this early capitalism.

This model has been maintained over the years and it is possible to observe that international economic relations remain organized around a prevailing model characterized by unequal economic exchange, labour exploitation of weaker sectors of the planet's population and massive exploitation of natural resources. This exploitation of natural resources, we now know, far exceeds the capacity of the planet and generates massive contamination of water, soil and air, to the point of calling into question – we now also know – the very survival of the planet. Today these large commercial enterprises are referred to as transnational corporations, but their function has remained the same: to guarantee the flow of energy, resources and the required labour force so that a small sector of humanity can maintain a

pace of life and consumption that monopolizes a substantial portion of wealth by denying its access to the vast majority.

The series of meetings that the PPT initiated in Canada on the issue of mining fits clearly into this trajectory, holding obvious parallels with the case of the European Union, but with the distinction that for the first time the centre of attention is focused on a single state of origin for transnational corporations.

The parallels are such that it is worth citing several excerpts from the PPT sentence from the *Session on The European Union and Transnational Corporations in Latin America: Policies, Instruments and Actors Complicit in the Violations of People's Rights*, held at Complutense University of Madrid, in Madrid, Spain, from May 14 to 17, 2010:

All these cases demonstrate that a regime of widespread permissiveness, unlawfulness and impunity exists and is manifested in the behaviour of European TNCs in Latin America. This regime is fostered by the institutional policies of multilateral development banks (Inter-American Development Bank, World Bank, European Investment Bank), international financial institutions, such as the International Monetary Fund, and regional institutions such as the EU and its various institutions. In particular, the PPT has confirmed the tolerant and even complicit attitude of the EU, which directly serves to promote the interests of its TNCs as the main actors in its economic expansion in terms of international competitiveness.

Among the instruments designed to achieve the globalisation of the interests of the EU and European corporations, the Association Agreements, investment promotion agreements and free trade agreements should be highlighted. A number of EU internal policies, such as the directives on agrofuels, biotechnology and intellectual property, translate into processes that threaten and undermine rights in Latin America and that generate enormous economic benefits for European corporations in areas such as biological

10. Tribunal Permanente de los Pueblos. Sesión Libre comercio, violencia, impunidad y derechos de los pueblos en México (2011-2014). Dictamen, Audiencia general introductoria. Ciudad Juárez, Chihuahua, 27-29 de mayo de 2012.

OPEN-PIT GOLD MINING,
PEÑASQUITO, MEXICO



Photo : James Rodriguez, MiMundo.org, 2009

fuels, genetically modified organisms, basic water and energy services, financial services and pharmaceuticals.

Evidence was also provided on the significant role of European development agencies and pension funds in backing the corporate interest agendas of TNCs in Latin America, as well as that of the European Investment Bank loans, more than 90% of which are aimed at supporting TNCs.

The sentence continued as follows:

[The] European Union, through the Lisbon Treaty and all its rules, provisions and directives, has created an international legal system that serves to provide a framework of legality in which TNCs (including publicly owned ones) can pursue their individual goals in various areas of strategic interest, such as natural resources, energy, trade, public services and investment. At the same time, the promotion of the principle of corporate social responsibility helps to provide an image of legitimacy and an ethical masking for TNCs' activities, hindering any binding initiative to enforce compliance with the human rights obligations enshrined in international legislation.

In the association agreements and free trade agreements, an absence of instruments such as democratic clauses, aimed at promoting governance and justice, has also been found. This omission by European Union institutions must be

understood as the result of the political will to make those instruments serve, solely and exclusively, the economic priorities of the corporations.

In the light of the cases examined by the PPT, a close functional relationship can be identified between the public policies of the EU and the interests of TNCs in strategic sectors. It is evident that the European institutions are permeable to the action of business lobbies, and that there is a relationship of interdependence and influence peddling between the public and private sectors, which is manifested in appointments to office and in the obvious existence of 'revolving doors.' This alliance is reflected in a dismantling of the institutional architecture of Latin American states and in the progressive weakening of mechanisms designed to safeguard the exercise of their political, economic, social and environmental sovereignty, seriously violating the rights of peoples.¹¹

In light of the information made available to the Tribunal through documentation and collected testimonies, the observations made in the report to the European Union in the Madrid sentence appear entirely applicable to Canadian policies with respect to the mining industry.

The parallels with the general conclusions from the Madrid sentence are even more pronounced when the sentence states that excessive growth in the economic power of transnational corporations has granted them the ability to "evade the legal and political controls of the

11. Permanent Peoples' Tribunal, 2010. The European Union and transnational corporations in Latin America: Policies, instruments and actors complicit in violations of peoples' rights. Deliberation Session – the Judgment, Universidad Complutense de Madrid, Madrid, May 14-17.

State” and “to act with a high level of impunity” in a context where “rights are indeed protected by a global legal order based on mandatory, coercive and enforceable trade and investment rules, whereas their obligations are overseen by national legal systems submitted to neoliberal logic, by manifestly fragile international human rights legislation and by corporate social responsibility which is voluntary, unilateral and not legally binding.”

On the whole, we are faced with a **global phenomenon** which involves similar actions and behaviours on the part of those states where the greatest number of transnational companies are headquartered. However, in order to progress in our interpretation of reality, we must also analyze its concrete manifestations, as we are doing here, even more so with respect to the mining industry for it is not only emblematic of how transnational corporations operate, but also constitutes the most aggressive form of **blind extractivism**. Blindness is the operative term, as the industry remains removed from any considerations of sustainable use of natural resources and respect for the environment or for the communities surrounding the operation site, causing numerous violations of individual and collective rights, massive contamination of water, soil and air, deforestation, and loss of important biodiversity, as well as the emergence of a growing number of uninhabitable spaces, which will often be left with toxic residues once mining operations are completed.

This arrangement also carries with it a proliferation of environmental conflicts, the criminalization of dissent, persecution of defenders of human rights and the environment, and the creeping

restriction of fundamental rights and freedoms. Canada is playing a leading role in this global scenario of pillage of lands.

3. FACTS PRESENTED TO THE TRIBUNAL

3.1. Rights violations by Canadian mining companies

The United Nations *Guiding Principles on Business and Human Rights* (2011) and the “**Protect, Respect, Remedy**”¹² framework stipulates that companies must respect human rights by refraining from violating the human rights of others and by taking responsibility when their operations have a negative impact on human rights.

The corporate responsibility to respect human rights applies to all internationally recognized human rights - including, at a minimum, the rights enshrined in the *Universal Declaration of Human Rights*¹³ and the rights established in the *ILO Declaration on Fundamental Principles and Rights at Work*.¹⁴

The responsibility to respect human rights requires that companies avoid having their activities cause or contribute to **adverse impacts**¹⁵ on human rights and take responsibility when these impacts occur, as well as take steps to avoid or mitigate adverse impacts on human rights that are directly related to their activities, products or services tied to their commercial relationships.

A so-called “actual” adverse human right impact (i.e. that has already happened or is happening) entails the need for reparation, while a “potential impact” associated with a risk, “requires action to prevent its materialization.”¹⁶ To this end, companies must have appropriate policies and procedures that reflect their policy as regards their responsibility to respect human rights commitments; due diligence procedures regarding human rights in order to identify, prevent, mitigate and report on how they approach their impact on human rights; and finally, procedures that enable the reparation

12. Human Rights Council (2011). United Nations Guiding Principles on Business and Human Rights, John Ruggie, HR/PUB/17/4, 16 June 2011.

13. The International Bill of Human Rights includes the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1996), and the International Covenant on Civil and Political Rights (1996).

14. Principles 11 and 12, United Nations Guiding Principles on Business and Human Rights.

15. We consider in this context that a «negative impact» on human rights occurs «when an action takes away or limits the ability of an individual to enjoy human rights that are his.» United Nations Office of the High Commissioner, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2012, p.19. Available online: www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf

16. *Ibid.*, p.19. In reference to the Guiding Principles 17-21 on human rights due diligence and the Guiding Principle 22 on the need for remediation.



SAN MARTIN GOLD MINE,
SIRIA VALLEY, HONDURAS

of any negative impacts on human rights that they have caused or contributed to causing.¹⁷

Canadian mining operations often generate adverse impacts on human rights and have major impacts on territories, communities and on life in its various dimensions. The exploration and exploitation of resources carried out by these companies usually leads to the displacement and uprooting of local communities; the endangering of water sources, food security and biodiversity of entire regions; the altering of traditional forms of life while causing chronic health problems; the undermining of sacred lands of indigenous peoples; and a frequent ignoring of indigenous peoples' rights to participation, to consultation, and to free, prior and informed consent in relation to activities that will have substantial impacts on their way of life. These activities thus increase human rights violations and give rise to a rising and systematic criminalization of environmental and community activists and human rights defenders.

However, the violations of rights linked to the activities of these companies have been recognized many times by international bodies and are covered by the conventions, treaties and protocols on human rights mentioned in section 1.3 of this verdict. These binding international

instruments have been ratified by the majority of countries where Canadian mining companies operate.

3.1.1. Right to life and to a healthy environment

Large-scale mining activities represent a real and **serious threat to the right to life and to a healthy environment** for present and future generations. Written documents and detailed witness testimonies on the activities of Barrick Gold and Goldcorp in Chile and Honduras were presented to the Tribunal as emblematic of the non-respect of peoples' rights to life and to a healthy environment, as well as other associated rights, in particular the rights to water (Pascua Lama mine in Chile and Argentina, Barrick Gold) and to health (San Martin mine in Honduras, Goldcorp) of affected communities.

The accelerated expansion of mining that Latin America is facing is affecting areas which have traditionally been mining zones, in addition to areas which have until now remained free from mineral exploration and exploitation, including areas with fragile ecosystems: rainforests, desert zones, glaciers, etc. Modern industrial mining techniques have major environmental impacts that occur at all stages of the process. Contamination of streams and groundwater (acid mine drainage, heavy metals, chemicals such as arsenic and sulfuric acid, erosion and sedimentation); reduction and depletion of rivers and aquifers; decrease in air quality (toxic

17. Ibid. Principles 13 and 15.

particulates, gaseous emissions, including sulfur dioxide); soil contamination, deforestation and irreparable degradation of landscapes (excavation of massive pits, creation of mountains of waste products), of forests and of fragile ecosystems; and loss of biodiversity are among the most important environmental impacts caused by this kind of exploitation.

The **right to a healthy environment** is increasingly recognized in national constitutions – 117 constitutions around the world make reference to the importance of a healthy environment – and as an integral part of the corpus of international law. The *Stockholm Declaration on the Environment* in 1972 stated that “[A human being] has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations” (Principle 1).

Within the framework of international human rights law, the right to an environment is mainly reflected in **regional instruments** for the protection of rights. The right to a healthy environment is found in the regional conventions protecting human rights in the Americas, Africa and Europe.

In the Americas, the *Protocol of San Salvador*¹⁸ (art. 11, 1988) states that: “1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.” The Inter-American Commission on Human Rights recognizes that many **fundamental rights require the existence of a healthy environment** as a necessary precondition for their exercise, and that they are deeply affected by the degradation of natural resources.¹⁹ According to the Commission, as well as the *American Declaration of the Rights and Duties of Man* (1948) and the *American Convention on Human Rights* (1969), acting on concern for the protection of the health and well-being of individuals, intrinsically linked to the right

to life, to personal security, as well as to physical, psychological and moral integrity, requires respecting the right to a healthy environment.²⁰

The *African Charter on Human and Peoples’ Rights* (1981) recognizes the right of peoples – understood as a collective right – to a “general satisfactory environment favourable to their development” (Article 24). At the level of European environmental law, the *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (1998) asserts the importance of procedural rights and democratic processes in ensuring environmental rights. The rights to information, participation and to effective remedy are recognized as being at the heart of the fulfillment of the right to a healthy environment for present and future generations: “[i]n order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention” (art. 1).

Various UN bodies have interpreted a number of treaty articles as closely linked with the protection of the environment, noting that environmental degradation affects a set of interrelated rights, including the right to health, the right to water, the right to life, the right to food and the right to an adequate standard of living. The **right to water**, particularly affected by industrial mining activity, includes, as established in *General Comment No. 15* in 2002 by the United Nations Committee on Economic, Social and Cultural Rights, and the interpretation of Articles 11 and 12 in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the components of *availability, quality and physical and economic accessibility* without discrimination. The right to water was also recognized in 2010 as a human right by the United Nations General Assembly in its Resolution 64/292 on the right to water and sanitation, where it is reported as “a human right that is essential for the full enjoyment of life and all human rights.” *General Comment No. 12* of the Committee on Economic, Social and

18. Additional protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, 1988.

19. Inter-American Commission on Human Rights (2011). Segundo informe sobre la situación de las defensoras y defensores de derechos humanos en las Américas. 31, para. 312. OEA/Ser.L/V/II. Doc. 66. December 31, 2011.

20 Ibid.

Cultural Rights on the **right to food** and *General Comment No. 14* on the **right to health** also affirm that a healthy environment is necessary for the enjoyment and realization of these rights.

TESTIMONIES AND CASES HEARD

Expert testimonies and submitted documents brought the significant environmental risks and impacts of large scale mining operations to the attention of the Tribunal. **Bruno Massé**, coordinator of the *Réseau québécois des groupes écologistes* (RQGE), spoke during the hearing of the risks related to acid mine drainage, which can lead to acidification and contamination of water sources. **Meera Karunanathan** from the Council of Canadians indicated that most social conflicts related to the implementation of a mining project are linked to the protection of water. For example, in El Salvador, a significant social mobilization has emerged around the anticipated impact of mining on the limited water resources of the country, while the companies Pacific Rim and OceanaGold are planning to use 900,000 litres of water per day for the El Dorado project. **Juliana Turqui** of Oxfam America also highlighted the specific environmental risks of mining activities in countries such as those in Central America that exhibit high biodiversity, are densely populated, and feature peasant agriculture with a central role in local economies.

The uncertainty surrounding the systemic and long-term impacts of mining requires the affirmation of a duty of prevention and precaution for host countries as well as for countries that are the originators of investments. Mining activities carry intrinsic risks which, even if not immediately visible, can have a significant long-term impact on ecosystems. Future generations are particularly concerned when it comes to impacts on health, relating to reproduction among other things, as well as to ways of living, to common goods, to land, and to cultural diversity. Even life itself may be endangered. Under the **precautionary principle**, a principle emerging from international environmental law which made its first appearance in 1982 in the *World Charter for Nature*, an activity for which the long-term negative effects are poorly understood should not be undertaken (art. 11 (b)). The *Rio Declaration on Environment and Development* (1992) established the principle: “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not

be used as a reason for postponing cost-effective measures to prevent environmental degradation” (Principle 15).

VIOLATION OF THE RIGHT TO HEALTH, THE RIGHT TO WATER AND THE RIGHT TO A HEALTHY ENVIRONMENT: THE CASE OF GOLDCORP’S SAN MARTIN MINE, HONDURAS

Carlos Amador, representative for the *Comité ambiental del Valle de Siria*, and **Pedro Landa**, from the *Centro Hondureño de Promoción al Desarrollo Comunitario* (CEHPRODEC) outlined several impacts of mining on human health, mainly due to the exposure of residents to contaminated water. Since 2003, acid mine drainage has been visible, originating from the Palo Alto well, which has caused acidification of nearby streams. In 2006, the breakdown of a geotextile membrane in a tailings pond resulted in the groundwater infiltration of cyanide and arsenic at levels higher than those permitted by the World Health Organization (WHO). For four years, a dozen families, displaced and relocated by the company in the community of Palo Raro, have been consuming water contaminated with arsenic from a well built by Entre Mares for their water supply.

The presence of abnormally high levels of heavy metals (lead, arsenic, mercury, iron, cadmium) in the blood of people living near the mine was confirmed by blood tests. Children are particularly prominent among the victims. In 2007, a toxicological risk assessment conducted with 62 people living in villages surrounding the mine showed that 27 people, including 24 minors, had high levels of lead in their blood. The contamination caused a variety of serious health problems among local populations: skin disorders, respiratory problems, lung cancer, pneumoconiosis, gastrointestinal disorders, elevated frequency of miscarriages, and genetic disorders. One four-year-old child, born with bone deformities, died in 2011, not having received the necessary treatment. The same symptoms of malformation were found in another child born in 2011 in the community of Nueva Palo Raro.

A decreasing volume of water available for human consumption and agricultural production for local communities was also visible, due to the heavy use of water by the mine and to the cutting of trees, as happened for instance in the year 2000, when 5,000 trees were cut in



VALLE DE HUASCO, CHILE

conditions of illegality, even before the issuing of the environmental licence. The activities of the Entre Mares mine required an extremely large volume of water: between 550,000 and 740,000 litres of water per day. In 2003, 18 of the 21 water sources surrounding the mine had gone dry.

The facts in question represent a clear violation of the right to health guaranteed by the ICESCR (art. 12) and the right to water protected by the aforementioned legal instruments, as well as of the *International Convention on the Rights of the Child* (1989), whose Article 24 affirms the right of children to enjoy the highest possible standard of health. The State of Honduras and Goldcorp are responsible for obstructing access to information related to environmental rights. The results of tests carried out in 2007, which confirmed the presence of lead in the blood of many people in surrounding communities, and were known to the state and the company, were concealed until February 2011. The victims have received no compensation for damages. To date, neither the government of Honduras nor the company has taken adequate measures to address the public health problems caused by the presence of the mine in the Siria Valley. The Government of Canada, informed of the situation through numerous complaints, took no steps to

investigate the situation or demand that Goldcorp pay compensation for the environmental and health damages to affected communities.

VIOLATION OF THE RIGHT TO WATER AND THE RIGHT TO A HEALTHY ENVIRONMENT: THE CASE OF PASCUA LAMA IN CHILE, BARRICK GOLD

Pascua Lama is a bi-national mining project carried out on the border between Chile and Argentina, and particularly affecting the territory of the *Comunidad Agrícola de los Diaguita Huascoaltinos* in Huasco Province of Chile, at the source of the Estrecho and Toro rivers. The gold and silver deposit that the company is hoping to exploit is located under the glaciers that form the basis of the hydrological system of the Huasco Valley.

Nancy Yañez, lawyer, professor at the Faculty of Law at the University of Chile, and co-director of the Observatorio Ciudadano, recounted at the hearing how the right to water in the Diaguita de los Huascoaltinos communities has been particularly affected by the Pascua Lama project.

Barrick Gold has failed to honour its environmental commitments in the implementation of the bi-national Pascua Lama mining project. In 2000, during the presentation of the project before Chile's Environmental Impact Assessment System (SEIA), the company did not mention the impacts or the risk of destruction of the glaciers that directly affect the water cycle in the region, in addition to the impact it would have on indigenous territory, endangering their

traditional subsistence activities and access to water. Barrick Gold's initial proposal included plans to move 13 hectares of the Esperanza, Toro 1 and Toro 2 glaciers, transporting them to the Guanaco glacier. In the Environmental Qualification Resolution (RCA 24/2006), Nevada SpA had committed to avoid destroying the glaciers.

The written submissions are conclusive as to the existence of environmental damage affecting a fragile ecosystem. Satellite images taken in January 2013, presented in a report by the Centre for Human Rights and Environment (CEDHA), show a significant decrease in the surface area of several glaciers, namely Toro 1, Toro 2 and Esperanza, due to dust and debris deposited on the glaciers following drilling and blasting work.

The witness, **Sergio Campusano**, president of the indigenous community organization *Comunidad Agrícola Diaguita de los Huascoaltinos* since 2004 explained, with satellite images to support his claim, that residues from dust deposited on the glaciers after drilling and blasting are contaminating the water and soil, and that since the arrival of the extractive enterprise the surface area of the glaciers has decreased substantially. These residues are causing a disturbance in the

hydrological cycle, a particularly serious problem in a semi-arid desert region with limited water resources.

During the construction phase of the Pascua Lama project, initiated in 2009, Barrick Gold/ Nevada caused irreversible damage to water sources in the region by failing to undertake the mitigation work necessary to prevent contamination of the water by contact with the tailings or to prevent the degradation of glaciers caused by dust generated by the work.

Loss of access, availability and control over community water resources, especially in the indigenous communities of Diaguita de los Huascoaltinos, stem from the implementation of the Pascua Lama project. The projects being undertaken on their ancestral land deny them access to the natural resources that are essential to the realization of their economic, social and cultural rights. Their traditional economic activities, especially agriculture and raising livestock, are affected by water availability. The projects in question violate the rights guaranteed by *Convention 169 of the International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention*. Articles 4.1 and 7.4 of the Convention require states to protect the environment of indigenous territories, in cooperation with the communities concerned. Mining activities also violate Chile's 1993 *Indigenous Peoples Act*, Article 64 of which stipulates that no use of water resources located on atacameños or Aymara territories may affect the water supplies

GOLDCORP'S SAN MARTIN MINE,
SIRIA VALLEY, HONDURAS

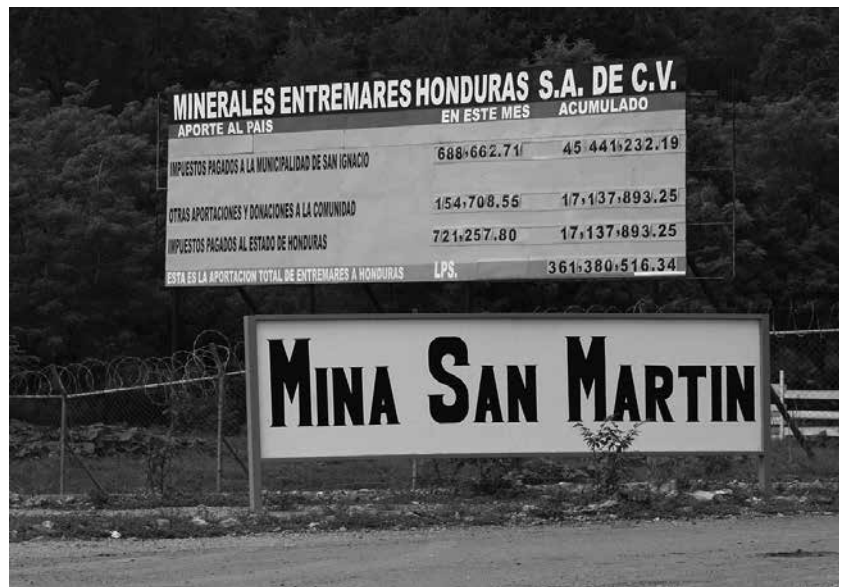


Photo : James Rodriguez, MiMundo.org, 2007



TESTIMONY OF SERGIO CAMPUSANO,
HEARING ON LATIN AMERICA, SESSION ON
THE CANADIAN

of local communities. The right to water was also officially recognized by Chile in 2010. There are close links between the right to water for indigenous peoples and their environmental rights, their right to self-determination, and the protection of natural resources.

3.1.2 The right to self-determination

The *Universal Declaration of Human Rights* states in its preamble that it is “essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

The right of peoples’ to self-determination constitutes the second axis of the analysis carried on by the Permanent Peoples’ Tribunal to address the impacts of Canadian mining on peoples’ rights in Latin America. Among the rights necessary to a full enjoyment of the right to self-determination are the rights of peoples to land, territory and resources, to consultation and to free, prior and informed consent, as well as their right to non-discrimination and respect of their economic, social and cultural rights.

TESTIMONIES AND CASES HEARD

The cases of the communities affected by the operations of Tahoe Resources in Guatemala (Escobal mine) and Barrick Gold in Chile (Pascua Lama mine) have been examined by the Permanent Peoples’ Tribunal as typical cases of infringement of the right to self-determination.

The testimonies and evidence submitted show that the implementation of transnational mining most often take place by force, with denying the right of peoples to be consulted, to consent and to participate in collective decisions. The **establishment of asymmetrical relations** with mining-affected communities have further infringed in the cases examined here the rights of the indigenous and non-indigenous communities. Traditional economic activities as well as social and cultural ways of life are deeply altered as a result of transnational mining extraction.

VIOLATION OF THE RIGHT TO SELF-DETERMINATION: PASCUA LAMA, BARRICK GOLD, CHILE

Operations, exploration and construction of the Pascua Lama mine, operated by the Canadian corporation Barrick Gold and its subsidiary Nevada SpA have been conducted since the acquisition of the concession in 1994, without the consent of the citizens of the Huasco Valley and **without consulting the Diaguita de los Huascoalinos** indigenous community, whose ancestral territory is affected and partially occupied by the mine. The environmental impacts of the mine, in particular those concerning availability of water suitable for human consumption as well as for agricultural activities and traditional livestock farming, have caused major impacts on the living conditions and existence of this community.

Sergio Campusano, president of the Diaguita de los Huascoalinos community explained before the Tribunal the ways in which the mine’s

activities have affected the availability of water for agricultural activities (thus compromising food security), for raising livestock, and for the domestic use of all of the communities in the Huasco Valley. The Diaguita de los Huascoaltinos have been mobilized against the project since its beginning. The decisions made following the acquisition of the concession, the implementation of the project despite opposition, and the use of various cooptation and persuasion tactics have resulted in violations of the Diaguita's right to self-determination and their right to free, prior, and informed consent.

VIOLATION OF THE RIGHT TO SELF-DETERMINATION: ESCOBAL, TAHOE RESOURCES, GUATEMALA

In Guatemala, the Canadian mining corporation Tahoe Resources - of which Goldcorp owns 40% of shares - and its subsidiary Minera San Rafael S.A. began commercial exploitation of the Escobal site's mineral deposits in 2013, despite opposition from communities in the Santa Rosa and Jalapa departments expressed during **five municipal consultation sessions and nine community assemblies**. It was indicated before members of the court that the mine is also operating without the consent of the Xinka communities, some of which live close to the mine and are affected by its operations.

Witnesses **Oscar Morales** and **Erick Castillo**, farmers and active members of the *Comité en Defensa de la Vida y de la Paz*, presented evidence before the Tribunal of acts of violence, repression and criminalisation committed against individuals opposed to the mine. They highlighted the damage caused by the mine's activities, which are characterized by highly irregular operating conditions. Following a complaint

filed by the community, the Guatemalan Court of Appeal suspended the mining permit in July 2013, but the mine has remained active.

RIGHT TO SELF-DETERMINATION: RIGHT OF PEOPLES TO LAND, TERRITORY AND RESOURCES, RIGHT TO CONSULTATION AND TO CONSENT

A widely recognized rule of international law enshrines the right of peoples to dispose of their natural resources for their own ends. This right, designed to facilitate independence for nations living under colonial domination, is honoured by the *Charter of the United Nations* and is enacted by the UN as *the right of all peoples to remove themselves from colonial domination*.²¹ This right is referred to in several international instruments, including the *Declaration on the Granting of Independence to Colonial Countries and Peoples*²² which stipulates that all peoples have the right to self-determination because "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, and is contrary to the Charter of the United Nations."

In the two international covenants of 1966, the first common article states that, "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This right, as understood by the covenants and as formulated in General Assembly resolution 3201 *Declaration on the Establishment of a New International Economic Order* of 1974, is above all a guarantee of a pluralistic and democratic society.

Along with resolution 2588 B (XXIV) of 15 December 1969 and resolution VIII adopted by the International Conference on Human Rights held in Teheran in 1968, the resolution reiterates the need "to continue to study the ways and means of ensuring international respect for the

²¹ Resolution 1514, UN General Assembly, 14 December 1960. This right was reaffirmed afterwards by the two covenants of 1966 and was broadly confirmed by the International Court of Justice in the East Timor case, in the Advisory Opinion on the construction of a wall by the State of Israel, and in the Military and Paramilitary Activities in and Against Nicaragua case where the Court implicitly broadened its content and clearly linked it to the principle of non-intervention and with the right of peoples to choose their own political and ideological models.

²² Ibid.



MARCH OF THE MEXICAN NETWORK OF PEOPLE AFFECTED BY MINING (REMA), TLAMANCA, MEXICO

right of peoples to self-determination,” and the affirmation that “acquisition and retention of territory in contravention to the right of the people of that territory to self-determination is inadmissible and a gross violation of the Charter.” With resolution 2649 of 1970, the UN General Assembly reaffirms its concern in light of the fact that “many people are still denied the right to self-determination and are still subject to colonial and alien domination,” and notes that “the obligation undertaken by the States under the *Charter of the United Nations* and the decisions adopted by United Nations bodies have not proved sufficient to attain respect for the right of peoples to self-determination in all cases.”

As referred to in article 1(1) of the *Charter of the United Nations*, the right to development²³ cannot be assured unless it is recognized that peace and security are necessary factors for its realization. *The Declaration on the Right to Development*²⁴ establishes clear links between the right to self-determination of peoples and their right to freely dispose of their natural resources. Furthermore, the *Vienna Declaration and Programme of Action* of 1993 reaffirms the universality of rights and states that “All peoples have the right to self-determination. By virtue

of that right they freely determine their political status, and freely pursue their economic, social and cultural development.” (art. 2)

In the case of Canadian mining companies that operate in host countries - in particular the countries in the cases presented to the Tribunal - **development is organized in a unilateral manner**, for the profit of the mining companies. Attempts made by indigenous nations to develop their economies are thwarted by the systemic destruction of ecosystems, natural resources and social relations that form the basis of local economies in order to ensure that the mining company has free access to the territories it is attempting to appropriate or has already appropriated. According to James Anaya, former UN Special Rapporteur on the Rights of Indigenous Peoples, natural resource extraction has become the **most pervasive source of challenges** to the full exercise of the rights of indigenous peoples.²⁵

In regards to the activities of these companies, the right to development, expressed as the right to be able to freely dispose of one’s natural resources, has been violated in a consistent manner. In light of the various declarations and covenants and in virtue of the *United Nations Declaration on the Rights of Indigenous Peoples*,²⁶ the Diaguita and Xinka indigenous communities, which have the right to self-determination and to the

23 A/RES/41/128 4 December 1986.

24 Resolution 2542, UN General Assembly, 11 December 1986.

25 United Nations Human Rights Council (2011d). Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries operating within or near indigenous territories, A/HRC/18/35, 18th session, 11 July 2011, para. 57.

26 Human Rights Council and General Assembly, September 2007.

entirety of their natural resources, are deprived of their means of subsistence and as such are particularly discriminated against. For example, in Chile, during the first universal periodic review (UPR), some member states of the Human Rights Council made recommendations, including the protection of vulnerable groups.²⁷ It was requested of that state to “Continue taking the necessary measures to protect vulnerable groups, including women, children and any other minority, whose rights could be violated.” Between the first and second UPR, there was no change pertaining to the violations suffered by indigenous peoples.

In order to avoid any ambiguity between the notions of people and state, the members of the People’s Permanent Tribunal have highlighted that the concept, “nation,” is often used in place of “people”;²⁸ furthermore, the *Charter of the United Nations* (preamble, art. 55), to which the covenants refer, insists on the notion of “people.” The members of the Permanent Peoples’ Tribunal have consulted the work of Aureliu Cristescu, former Special Rapporteur on the Rights of Minorities, which recommends that the two terms be maintained in order to define what constitutes a people: “a *social entity* possessing a clear identity and its own characteristics, and that it implies a relationship with a territory, even if the people in question have been wrongfully expelled from it and artificially replaced by another population.”²⁹

Within this designation, the Diaguita de los Huascoalinos indigenous community and the Xinka communities are indeed peoples who should be able to enjoy the right to self-determination and *de facto* the entirety of their natural resources, as stated in the *United Nations Declaration on the Rights of Indigenous Peoples*.

It should be recalled that the right of peoples to self-determination is not only enshrined in the covenants but also in the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*. These elements oblige all states to respect the right to self-determination in accordance with the Charter of the United Nations

and to foster its realization. As demonstrated by witnesses and by the reviewed case studies, this was not the case for these two communities.

RIGHT TO NATURAL RESOURCES

Pertaining specifically to natural resources, the members of the Permanent Peoples’ Tribunal refer to resolution 1803 of the General Assembly regarding the *Permanent Sovereignty over Natural Resources* which highlights the importance for peoples to be able to exercise this right, “in the interest of their national development and of the well-being of the people of the State concerned.”

The resolution states the following:

In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State’s sovereignty over its natural wealth and resources.

In regards to the prospecting, development and availability of these resources, Barrick Gold and Tahoe Resources corporations should have verified that their actions were “in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.”

This was not the case with Tahoe Resources Corporation. With the support of the Guatemalan government, which did not organise any consultations on the items specified in the aforementioned resolution, the company was able to obtain an operating permit even though nine community consultations, called “*consultas de buena fe*,” and five municipal consultations³⁰ held in the departments of Jalapa and Santa Rosa overwhelmingly rejected the Escobal mining project. Furthermore, in the municipality of La Villa de Mataguescuintla (department of Jalapa), after a municipal referendum in November 2012, more than 10,000 people voted against the mining project and only 100 people in

²⁷ Recommendation 121-34, A/HRC/26/5.

²⁸ § 221, The right to self-determination: historical and current development on the basis of United Nations instruments, Aureliu Cristescu, 1981.

²⁹ Ibid.

³⁰ Including 17, 19 February, 20 March and November 2013.

favour. In the Jalapa referendum of November 2013, 98.3 % of the 23,000 participants voted against the mine.

After the implementation of the project despite opposition, more than 200 people filed complaints. Contrary to Guatemalan legal procedure, the individual complaints were heard as a package by the Ministry of Mines and Energy and rejected on April 3, 2013. That same day, Tahoe Resources was granted its operating permit. Following the initiation of legal proceedings to fight the rejection of these complaints, an order of suspension of the project was issued by the Court of Appeal of Guatemala in July 2013, the Court stating that the Guatemalan government must provide adequate follow-up to the complaints. The Government of Guatemala and Tahoe Resources appealed the decision. In January 2014, Tahoe announced the start of mining operations, despite the fact that the Supreme Court has not yet issued a final decision.

In the case of Chile, the *Comunidad Agrícola Diaguita de los Huascoalinos* indigenous organization filed a complaint against the Chilean state in 2007 with the Inter-American Commission on Human Rights in order to denounce the negligence of the Chilean judicial system and the state's violation of various articles of the *American Convention on Human Rights*, including article 8 on the right to a fair trial, article 21 on the right to property, and article 25 on the right to judicial protection. In 2009, the Inter-American Commission on Human Rights recognized³¹ the denial of justice experienced by the Diaguita de los Huascoalinos community.

The right to effective access was not respected in these case studies. However, article 8 of the *Universal Declaration of Human Rights* specifies that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” It must be concluded that whereas the power of transnational corporations has increased over the past forty years, the mechanisms to hold

companies accountable for the violations they commit have not been adjusted in consequence. This has resulted in a **denial of justice for victims**.

Neither in Chile nor in Guatemala has it been demonstrated that “nationalization, expropriation or requisitioning was based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign ” (art. 4, resolution 1803).

In Chile, Barrick Gold Corporation tried to obtain, in different ways, the support of Huasca Valley residents who were opposed to the project. The mining company and the *Junta de Vigilancia del Valle del Huasco* reached an agreement in 2006, providing that Barrick Gold would make a payment of 60 million USD, over a period of 20 years, to compensate for the possible adverse consequences on agricultural production resulting from its mining activities. The agreement required absolute consent from farmers whose land was being irrigated. The company had an obligation to ensure that the implementation of mining activities did not prejudice human rights. Moreover, it **should have prevented the risk of negligence** surrounding the impact of an investor's activities³² exercising due diligence within the meaning of the obligation stated in article 2 of the *General comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant*.³³ According to this obligation, mining corporations are required to verify adherence to standards in a proactive way before operating on a territory and to assure that these standards continue to be upheld throughout the mining operation's existence.

These corporations are not the only ones guilty of violating the fundamental rights of the Diaguita de los Huascoalinos communities in Chile and the citizens of Santa Rosa and Jalapa in Guatemala. The **host country as well as the home country** of investment have both played a part in the violation of the rights of these communities. As such, Chile and Guatemala are as responsible as the Canadian state, which relies on the principle of non-interference to justify its failure to take action with respect to the activities of companies operating outside of Canada. The actions of Barrick Gold and Tahoe

31 Evidence REPORT n°141/09, PETICION 415-07.

32 On due diligence, see for example Fischer, S. et T., Triest (2012). “La «diligence raisonnable» des entreprises: une approche suffisante pour lutter contre les violations des droits de l'homme? ”, Commission Justice et Paix belge francophone.

33 U.N. Doc. HRI/GEN/1/Rev.7,80th session, p.4.



COMMUNITY CONSULTATION ON NATURAL RESOURCES EXTRACTION, SANTA CRUZ QUICHÉ, GUATEMALA

Resources corporations, along with those of the Chilean and Guatemalan states, seriously infringed upon “ the free and beneficial exercise of the sovereignty of peoples and nations over their natural resources,” thus violating the right of peoples to self-determination as it is specified in resolution 1803.

Concerning the right to freely dispose of natural wealth and resources, states have the obligation to ensure that they operate “in the interest of their national development and of the well-being of the people of the State concerned.” Among other things, this right must allow for the realization of economic, social and cultural, civic and political rights.

The testimony given by **Sergio Campusano** brings information to light concerning attempts to obtain approval of the mining project by bribing the communities, which constitutes a form of corruption and does not respect the right to a fair and impartial decision. The issue of possible impacts that these mining projects may have does not take into account long-term effects on the environment. The members of the Permanent Peoples’ Tribunal, concerned about violations of the right to life of indigenous and all peoples, recommend that Canadian mining corporations apply the precautionary principle and cease their **tactics of buying out and deliberately dividing** communities, tactics that are destructive to indigenous peoples.

Based on the evidence of these testimonies, the members of the Permanent Peoples’ Tribunal observe that these are not the only

rights that have been violated. In accordance with Convention 169, which applies to indigenous peoples, including the Diaguita de los Huascoalinos in Chile and the populations affected by the Escobal mine in Guatemala, the right to consultation was not respected by the corporations or by the states.

RIGHT TO CONSULTATION AND TO FREE, PRIOR AND INFORMED CONSENT

The right to consultation under the *Declaration on the Rights of Indigenous Peoples*, adopted by the General Assembly of the United Nations in September 2007, obliges states to consult “and cooperate in **good faith** with the indigenous peoples concerned **through their own representative institutions** in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

Convention 169 stipulates that the State must consult indigenous peoples whenever “consideration is being given to legislative or administrative measures which may affect them directly” and obtain their consent (art. 6) following the principle of good faith without forgetting that they have the “right to decide their own priorities for the process of development” (art. 7); Article 15 recognizes the right of indigenous peoples to be consulted regarding the exploitation of the wealth of the subsoil of their territory even where it is the property of the state. This was confirmed at the Durban *World Conference*



COMMUNITY CONSULTATION ON NATURAL RESOURCES EXTRACTION, SANTA CRUZ QUICHÉ, GUATEMALA

against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in 2001 in South Africa where states were reminded “to consult the representatives of indigenous [peoples] when decisions are taken regarding the policies and measures that impact on them directly” (art 22-d).

Although Chile ratified Convention 169 of the ILO in 2008, as did Guatemala in 1996, its transposition into domestic law is far from being complete. This ratification should have introduced legal reforms regarding codes referring to water, minerals, fishing and electrical concessions, among others. Nevertheless, the Constitution of Guatemala foresees respect (art. 66, sect. III) for the rights of indigenous peoples and is committed to guaranteeing their development (art. 68, sect. III).

According to the Durban Action Plan, states where part of the population is indigenous and a victim of discrimination, should agree “to adopt or continue to apply, in consultation with them, constitutional, administrative, legislative and judicial measures as well as any others desired which tend to promote, protect and guarantee to indigenous people the exercise of their rights and the use of human rights and fundamental liberties on the basis of equality, non-discrimination and a full and free participation in all aspects of social life, in particular in those domains which impact on their interests” (art.15). The Action Plan also recommends that states “honour and respect the

treaties and accords that they have concluded with indigenous people and (...) recognize them and apply them as required” (art.20).

Yet neither in Chile nor in Guatemala were the indigenous peoples consulted. As a result, their consent could not have been given, according to the principle of good faith, to the companies or to the state, contravening in this way the above mentioned prescriptions of Convention 169 of the ILO and of the *Declaration of the United Nations on the Rights of Indigenous Peoples*.

The members of the Permanent Peoples’ Tribunal have learned that, in the case of Chile, as soon as discussions regarding the adoption of Convention 169 began, and between 2000 and 2009, parliamentarians challenged its constitutionality in an attempt to reduce its impact and to counter the decision³⁴ affirming that article 6, referring to the right to consultation and consent is, because of its “self-executing” character, by obligation applicable to any legislative or administrative measure affecting indigenous peoples.

The members of the Tribunal have also learned that, during the 149th session of the Interamerican Commission on Human Rights, the Commission expressed its concern³⁵ with the persistent threat and impact of plans and projects for development and investment as well as concessions for the extraction of natural resources on ancestral territories, and the

34 On August 4, 2000, a petition was presented by various Chilean members of parliament asking the Constitutional Court of Chile to rule on the constitutionality of Convention 169 of the ILO on the rights of indigenous peoples and tribes of 1989. The ruling is available online: <http://www.politicaspUBLICAS.net/panel/jp/678-sentencia-tribunal-constitucional-rol-309-agosto-2000.html>

35 The Interamerican Commission on Human Rights (IACHR)-Organization of American States (OAS). Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources. Norms and jurisprudence of the Inter-American human rights system, <http://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf>

persecution, stigmatization and criminalization of ancestral authorities and indigenous leaders involved in the defense of their territories.

On a regional level, the absence of appropriate consultation seeking to ensure the free, prior and informed consent of indigenous peoples during the development of mining projects seems to be the rule rather than the exception, as is underlined in a report that analyzed the impact of twenty-two Canadian mining projects in nine countries in Latin America.³⁶

The members of the Permanent Peoples' Tribunal, in response to questions presented to them, rule that:

The indigenous communities concerned, in this case the Diaguita Huascoaltinos in Chile and the communities of the Departments of Santa Rosa and Jalapa in Guatemala belonging to the Xinka people, constitute peoples whose fundamental, individual and collective rights, should and must be respected in accordance with international law.

The exploitation of the territory of the local communities by the companies Barrick Gold and Tahoe Resources constitutes a violation of the right of peoples to conduct their own affairs.

By depriving the Diaguita de los Huascoaltinos community in Chile and the Xinka community in Guatemala of their natural and traditional resources, these companies violate their economic, social, cultural and environmental, civil and political rights, which are preemptory norms contained in the two pacts of 1966 holding states accountable for implementing their international obligations. In this way, these communities see their way of life, their traditional knowledge, and the economic and social processes unique to their culture thwarted.

The companies in question, as well as the Chilean, Guatemalan and Canadian governments, have contravened the obligation imposed by Convention 169 of the International Labour

Organization (ILO) concerning the right to consultation and the right to consent in line with the principle of good faith.

Indigenous peoples suffer undeniable discrimination; they are deprived of essential rights that ought to ensure human dignity. The requirement of non-discrimination, and its corollary, equality, are a foundational pillar of the *Charter of the United Nations*. This principle is embodied in Article 1 §4 of the Constitution of Chile, which is violated in the case of the Diaguita de los Huascoaltinos community, and in articles 2 (title I), 4 (title II) of the Constitution of Guatemala with regard to the Xinka people.

3.1.3 Right to full and complete citizenship

The rights to freedom of expression, of association, of peaceful assembly and of access to information, along with the right to participation and the right to effective remedy before a court constitute a collection of rights that are indispensable if every person and every community is to be able to decide their own future. The self-determination of peoples is not possible if individuals and groups are hindered by a third party from enjoying the freedom and autonomy required for constituting a common life. In the framework of a free and democratic society, it is unacceptable that the very possibility of gathering and associating or of actions conducted by individuals or communities in the exercise of their right to peaceful assembly and freedom of association are subjected to the discretionary power of the state or the realm of business.

The charge formulated before the Tribunal maintains that the establishment of Canadian mining megaprojects are weakening the capacity for the defense of the rights of individuals and communities affected by mining activities. These include, among others, rights linked to freedom of expression, the right to union assembly, the right to collective bargaining, the right to the physical integrity of persons, etc. The charge also specifies that mining megaprojects have

³⁶ GTMDHAL (2014), *op.cit.*, p.22

particular impacts on women that translate into specific risks of economic marginalization, violence, oppression and impairment of health.

The document also states that the criminalization of those opposed to mining projects constitutes a worrisome phenomenon that is rapidly increasing in Latin America. Numerous Latin American countries are reworking their juridical framework in order to criminalize social protest and to legalize government response. This leads to perpetuating the impunity of acts of public repression.³⁷ As the IACHR stresses in its 2011 report on the situation of defenders of human rights in Latin America, the criminalization of opposition affects people who defend human rights both individually and collectively.³⁸ The stigmatization of resistance movements provoked by this criminalization, above and beyond having a dissuasive effect on groups that denounce abuses, can be translated into new factors of violence and intimidation.

ABILITY OF INDIVIDUALS AND PEOPLES TO DEFEND THEIR RIGHTS

This situation seriously affects specific clauses concerning the protection of defenders of human rights included in the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* of 1998. These clauses explicitly recognize the right of human rights defenders:

- To seek the protection and realization of human rights at the national and international levels;
- To conduct human rights work individually and in association with others;
- To form associations and non-governmental organizations;
- To meet or assemble peacefully;
- To seek, obtain, receive and hold information relating to human rights;
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their



Photo : Christian Peña, 2014

TESTIMONY OF NANCY YAÑEZ, SESSION ON THE CANADIAN MINING INDUSTRY, PERMANENT PEOPLES' TRIBUNAL, HEARING ON LATIN AMERICA

functioning and to draw attention to any aspect of their work that may impede the realization of human rights;

- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
- To benefit from an effective remedy; and
- To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the state that result in violations of human rights.

Also, it is pertinent to underline that respect for union freedoms - which includes the right of workers to bargain collectively with their employers for purposes of improving their working conditions - and just and favourable working conditions constitute indispensable conditions for access to and enjoyment of other fundamental rights, such as the right to an adequate standard of living, recognized in Article 25.1 of the *Universal Declaration of Human Rights* according to which

[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing,

37. Observatorio de conflictos mineros de América Latina (OCMAL) (2011). Cuando tiemblan los derechos: extractivismo y criminalización en América latina.
38 Inter-American Commission on Human Rights (IACHR) (2011). Segundo informe sobre la situación de las defensoras y defensores de derechos humanos en las Américas. 31, para. 312. OEA/Ser.L/V/II. Doc. 66. December 31, 2011.

TESTIMONY OF DANTE LOPEZ, SESSION ON THE CANADIAN MINING INDUSTRY, PERMANENT PEOPLES' TRIBUNAL, HEARING ON LATIN AMERICA



housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The charge provided underlines the fact that the states where Canadian mines operate are often without effective juridical recourse for affected communities. This means, all too often, a denial of justice for the victims.³⁹ In those states that welcome investments, a process giving rise to various wrongs described in the testimony and documents offered, systems for the protection of human rights are often inadequate to guarantee respect for these rights, either due to a lack of capacity or an unwillingness to abide by international legal obligations formally adopted by the states.

More specifically, the charge presented insists that the company Excellon Resources Inc. and its subsidiary, Excellon de México S.A. de C.V., violated the right to freedom of association in a union, the right to bargain collectively, as well as the right to peaceful assembly in the framework of operations of the La Platosa mine in the state of Durango, Mexico, which has been operating since 2005. Similarly, the allegations maintain

that the Canadian enterprise Tahoe Resources and its subsidiary, Minera San Rafael S.A., violated the right to peaceful assembly as well as the right to physical integrity of persons in the context of operations linked to the Escobal project in Guatemala. It is alleged as well that the Canadian company Blackfire Exploration and its subsidiary, Blackfire Exploration Mexico S. de R.L. de C.V., violated the right to life in the framework of operations linked to the exploitation of the barite mine, Payback, in Chicomuselo, Chiapas, Mexico, the company having instilled a climate of violence and having been implicated in the assassination of Mariano Abarca in November 2009.

RIGHT TO WORK AND TO UNIONS:
THE CASE OF THE LA PLATOSA MINE,
EXCELLON RESOURCES, MEXICO

Dante Lopez, representing the Mexican Human Rights defense organization, *Proyecto de Derechos Económicos, Sociales y Culturales* (ProDESC) and **Juan Francisco Rodriguez**, Secretary of Section 309, affiliated with the national mining union, *Sindicato Nacional de Trabajadores Mineros Metalúrgicos y Similares de la República Mexicana* (SNTMMSRM), gave testimony before the PPT. They denounced the

³⁹ See Canadian Network for Corporate Accountability (2013). Briefing Note: Canada needs to be open for justice, online: <http://cnca-rcrce.ca/wp-content/uploads/canada-needs-to-be-open-for-justice-E-oct-13-2.pdf>

lack of security measures and the frequency of workplace accidents in the La Platosa mine operated by Excellon Mexico, a subsidiary of the Canadian mining company Excellon Resources. Witnesses pointed out the involvement of the company in a police investigation for theft during which three workers were tortured, as well as acts of persecution initiated by the company in order to deter the forming of a union.

Dante Lopez showed how Excellon has systematically refused to recognize the union that was finally put in place by the workers in November 2010. Witnesses reported that government authorities did nothing to encourage the company to negotiate with workers, even when the company created a company-sponsored union that it used as a pretext to reiterate its refusal to negotiate. They also denounced the pressures exercised by Excellon Mexico on the affiliates of Section 309 when its members attempted to elect persons of their choice, thus contravening the **right of workers to freely choose their union representatives**.

Witnesses also made reference to the repression that was brought to bear against members of the local *ejido* (an agrarian structure) who mobilized against the mining company after the latter showed no respect for the commitments they had undertaken with the members of the community in virtue of the rental understanding signed by Excellon and the La Sierrita *ejido* in 2008.⁴⁰ When the union membership joined the mobilization of the *ejido* in July, 2012, the company refused to pay the salaries of union members. **Demonstrations were repressed with violence** on several occasions, and the members of Section 309 were ultimately fired for abandoning their work.

The actions described constitute a violation of Article 2 of the *Convention 87 of the ILO on Freedom of Association and Protection of the Right to Organise* according to which “[w]orkers and employers, without distinction whatsoever, shall have the right to establish

and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”

In the same way, lines 1 and 2 of Article 2 of the *ILO Convention no. 98 on the Right to Organise and Collective Bargaining* point out that “[w]orkers’ and employers’ organisations shall enjoy adequate protection against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration;” and that “[i]n particular, acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’ organisations, or to support workers’ organisations by financial or other means, with the object of placing such organisations under the control of employers or employers’ organisations, shall be deemed to constitute acts of interference within the meaning of this Article.”

Witnesses emphasized to the Tribunal that their efforts aimed at the National Contact Points of the Organization for Cooperation in Economic Development (OECD) in Mexico and Canada were unsuccessful.

CRIMINALIZATION AND REPRESSION OF THOSE WHO DEFEND THEIR RIGHTS: THE CASES OF ESCOBAL MINE IN GUATEMALA (TAHOE RESOURCES) AND PAYBACK MINE IN MEXICO (BLACKFIRE EXPLORATION)

Jennifer Moore of MiningWatch Canada demonstrated before the Tribunal the way in which Canadian companies, in conjunction with the countries obtaining mining investments, increasingly **use the law to suppress and silence social protests** for the defense of land, the environment, and the health and survival of the population when faced with mining activities. Criminalization is not an isolated action: it is a complex process that requires an array of actions taken with the goal of dissuading all opposition. Examples of the means used to this end are stigmatization, arbitrary indictments, and direct attacks on the life and physical well-

⁴⁰ In 2008, members of the *ejido* and Excellon signed a contract for the renting of lands that included social provisions designed to favour economic development and improvement of the quality of life of the community (for example, the construction of a water treatment plant, measures for preferential hiring for members of the *ejido*, payment of an annual rental fee, student bursaries, and contribution to a fund for social development). Several of these commitments were not honoured. Acta de acuerdos, March 11, 2008.



TESTIMONY OF JENNIFER MOORE, SESSION ON THE CANADIAN MINING INDUSTRY, PERMANENT PEOPLES' TRIBUNAL, HEARING ON LATIN AMERICA

being of those trying to defend human rights. The criminalization of resistance is becoming increasingly widespread.

Pedro Landa of CEHPRODEC indicated how efforts to document and systematize that led to drafting the report on the activities of Canadian mining companies in Latin America, presented to IACHR in 2014, identified, for the 22 cases of Canadian mines studies, at least 20 murders and 25 attacks on those opposing the mining companies.⁴¹

Jennifer Moore similarly illustrated this with the most recent report from Global Witness,⁴² which documents that between 2002 and 2013 at least **908 citizens have been murdered** across the globe while trying to protect their rights to land and a safe and healthy environment. The report mentions that the number of murders of environmental activists tripled between 2002 and 2012, reaching an average of two deaths per week. With 147 assassinations, the year 2012 was the most murderous yet. The actual number of assassinations is in all likelihood higher than this. It is in fact very difficult to collect reliable data of this sort, and even more difficult to have it verified. It was also brought to the Tribunal's attention that in this same period, 913 journalists were murdered on the job. These tendencies are

highly alarming for our liberty of expression and the possibility of communities to participate in decisions of a public nature.

The vast majority of these crimes remain unpunished. Between 2002 and 2013, it is notable that only 10 people were tried, sentenced and punished for these crimes, i.e. approximately 1 % of the total number of known murderers. The most dangerous places to defend land and environmental rights are, according to Global Witness, Brazil, with a total of 448 murders, followed by Honduras (109) and Peru (58). The large number of deaths suggests that the amount of non-fatal violence and intimidation are likely much higher, though their occurrence is not documented in this report.

Oscar Morales, resident of the San Rafael de las Flores municipality, Guatemala, where the mining company Tahoe Resources operates through its affiliate Minera San Rafael, warned that there exists a **systematic policy of criminalization**, through the corporation, targeting anyone opposing the installation of the mine and the resulting impacts on human rights. He clarified beforehand that by criminalization he means the arbitrary application of the law or threats of

41 GTMDHAL (2014), op.cit.

42 Global Witness (2014). « Deadly Environment: the Dramatic Rise in Killings of Environmental and Land Defenders ». En ligne : <http://www.globalwitness.org/deadlyenvironment/>



FORCED EVICTION OF FIVE MAYA Q'EQCHI' NEIGHBOURING COMMUNITIES, EL ESTOR, GUATEMALA

such application, as well as the stigmatization of actions, ideas and proposals of those wanting to protect the environment and human rights.

To illustrate his points, Oscar Morales made reference to a number of events that occurred in the context of protests against the Escobal mine, notably:⁴³

- the removal of six elderly persons during a demonstration in 2011;
- the initiation of fifteen arbitrary lawsuits against protest leaders under the law on violence against women;
- the oppression and dissolution of a peaceful demonstration that ended with the arrest of 31 people in September 2012;
- An armed attack on peaceful protestors in April 2013, resulting in six injured protestors; and
- In May 2013, the introduction of a state of siege by the government of Guatemala on the territory where the operations of a Canadian mining company were being conducted.

The witness Erick Castillo, who is one of the six injured parties from the attack on April 27, 2013, explained to the Tribunal the way in which the mine's security guards **opened fire on peaceful protestors** at this event. He also spoke of several cases of sexual abuse by the police force, as well as the murder of several individuals opposed to mining activities, for

example, the murder of a young female leader of mining opponents, Topacio Reynoso, 16 years of age, on April 13 2014. Oscar Morales also highlighted to the Tribunal the persecution affecting those defending rights; he himself faced the Guatemalan state apparatus at over 30 legal proceedings because of the role that he played in organizing community consultations. Jennifer Moore noted as well that there are more than 90 cases of criminalization of those opposing the Escobal mine.

José Luis Abarca, from the Chicomuselo, Chiapas municipality, denounced before the Tribunal the murder of his father, Mariano Abarca, on November 27, 2009, by individuals with known affiliations with the Canadian company Blackfire Exploration.⁴⁴ Mariano Abarca, who was involved with *Red Mexicana de Afectados por la Minería* (REMA), had previously been beaten, threatened and imprisoned by company officials. José Luis Abarca also declared that despite the fact that certain individuals implicated in these murders were arrested, they have since been released. The crime committed against his father remains unpunished.

The facts indicated in the aforementioned testimonies both illustrate and confirm the way in which the activities of Canadian mining companies could signify a reoccurring **systematic**

43 See for instance Mining Watch Canada and Network in Solidarity with the People of Guatemala (NISGUA) (2013). Tahoe Resources Shareholder Alert : A Dangerous Investment, online : https://www.nisgua.org/investor_alert_tahoe_8may13.pdf

44 See for instance Moore, J. and G. Colgrove (2013). Corruption, Murder and Canadian Mining in Mexico : The Case of Blackfire Exploration and the Canadian Embassy. United Steelworkers, Common Frontiers, and MiningWatch Canada. United Steel Workers/Common Frontiers/MiningWatch Canada (2010). Report from the March 20-27 fact-finding delegation to Chiapas, Mexico, to investigate the assassination of Mariano Abarca Roblero and the activities of Blackfire Exploration Ltd.



TESTIMONY OF ERICK CASTILLO,
SESSION ON THE CANADIAN MINING
INDUSTRY, PERMANENT PEOPLES' TRI-
BUNAL, HEARING ON LATIN AMERICA

violation of full citizenship with respect to the affected communities, depriving in many ways those living in the region of the possibility of enjoying their fundamental civil, economic, social and cultural rights. The testimonies heard and the documentation submitted to the Tribunal illustrate that these are not isolated incidents, but rather systematic behaviours, supported and perpetuated by a legal framework and a policy of impunity.

WOMEN'S RIGHTS AND THE RIGHT TO NON-DISCRIMINATION

From Ecuador, the Tribunal heard the testimony of **Lina Solano Ortiz**, of the *Frente de Mujeres Defensoras de la Pachamama*. Solano highlighted the fact that mining activities impact women disproportionately in communities where mining companies operate. In addition to being at the heart of food production, in many communities in Latin America women assume the role of protectors of natural resources to reproductive and cultural ends. Lina Solano illustrated the way in which mining activity results in the overexploitation of women's labor, which leads to an expansion of child labor and a corresponding decrease in school attendance. She also raised the issues of the **masculinization of spaces** associated with these activities and the concomitant reinforcement of patriarchal

ideology, the intensification of violence against women, as well as the steady deterioration of social relations within and among families.

While human rights are universal, interdependent and indivisible (which means that a human being's dignity cannot be adequately protected if these rights are not protected for all, without distinction), it appears that in practice, **access to these rights is always undermined by multiple forms of discrimination** based on race, age, sexual orientation, religion or gender, which result from intersecting systems of oppressions such as racism, capitalism, colonialism and sexism. These multiple forms of discrimination are not one-dimensional. They overlap, for example in the lives of Indigenous women living in isolated regions, creating specific patterns of human rights violations.

Under international law, the 1966 Covenants affirm the right of all human beings to non-discrimination (art. 2). The *Convention on the Elimination of All Forms of Discrimination against Women* (1979) calls upon State Parties to take "in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (Article 3). The protection of so-called universal human rights cannot be understood without addressing the multidimensional nature of the



TESTIMONY OF LINA SOLANO, SESSION ON THE CANADIAN MINING INDUSTRY, PERMANENT PEOPLES' TRIBUNAL, HEARING ON LATIN AMERICA

right to equality and without recognizing the fundamental nature of this right, which could be characterized as a “right to equal rights” in that it conditions the exercise of other fundamental rights.

Lina Solano described various situations where mining development affects the living conditions of women. Above all, she emphasized the **exacerbation of pre-existing gender-based division of labor**, which has the effect of increasing women’s economic dependency, the exploitation of women’s time, unpaid labor and bodies, as well as the increase of violence against women whether within the family unit, the community or by the State through repression and the criminalization of resistance against mining.

Lina Solano identifies an increased economic dependence of women on men by reason of patriarchal forms of land ownership conditioning access to land. When resource extraction becomes a community’s central activity, certain

roles and positions usually held by men are reinforced automatically, namely within the family. This gendered economic dependence manifests itself through an imbalance in employment opportunities open to women. One must take into account that the majority of jobs generated by the mining industry are typically male jobs, and that when typically female jobs are created, they are generally poorly paid. In mining communities in Peru, for instance, it is common for girls to work in bars and restaurants, serving the mining community under very precarious labor conditions.⁴⁵ Because of the concentration of male workers in mining communities, an increase in sex work is generally noted.

While women assume a central role in food production, their land ownership title is often fragile or non-existent. Therefore, when a mining company establishes itself on a given territory, they are the most likely persons to lose access to land. Similarly, the impacts of water scarcity and contamination on farming activities also affect

45 International Labour Organization (ILO) (2007). *Niñas en la minería, invisibles*, September.

Photo : James Rodriguez, MiMundo.org, 2007



COMMUNITIES LIVING CLOSE TO GOLDCORP'S SAN MARTIN MINE, SIRIA VALLEY, HONDURAS

women disproportionately. Traditional knowledge held by peasant and Indigenous women is also affected.

On the other hand, when men leave their traditional occupations in the community, women find themselves forced to take on a double workload by assuming the role of provider in addition to unpaid work as caregivers within the family. When health problems arise because of the contamination of ecosystems by mining activity, the burden of providing care for family members, in particular children, falls on women again. Written documentation presented to the Tribunal showed how, in the case of the San Martin mine in Honduras, health problems generated by the mine have particularly affected women and children, who are more in contact with water in the context of their daily tasks.

The development of the mining sector exacerbates gender hierarchy, the vulnerability of women's bodies, as well as violence against women. This

is due, on the one hand, to the development of prostitution networks in the vicinity of mining areas. The social dislocations resulting from splits between the supporters and opponents of mining provoke divisions within families and communities, contributing to the reinforcement of both **institutional violence** (repression, aggression, criminalization of resistance to mining) and **private violence against women** (domestic violence).

Latin American women, Indigenous women in particular, are at the heart of resistance against mining megaprojects. Many women have faced criminal charges or attacks as a result of their opposition to these projects.⁴⁶ Cases of arbitrary detentions of women in the resistance in Ecuador, physical assaults and threats to women opposing the Marlin mine in Guatemala (operated by Goldcorp, a Canadian corporation), of sexual assaults and threats against Q'eqchi' women during forced displacements linked to the Fenix mine⁴⁷ in Guatemala by security personnel of the *Compañía Guatemalteca del Níquel* (CGN), then a subsidiary of Canadian-owned corporation HudBay Minerals,⁴⁸ were brought to the attention of the Tribunal.

3.2 Canadian support to the expansion of mining in Latin America

Canada is the most important state actor in the global mining sector. Its legislation, regulatory framework and overall governance mechanisms favor the expansion of the mining industry in Canada and abroad. At the May 31 hearing on the role and responsibility of Canada, witnesses who presented their findings to the jury clearly demonstrated a **significant, quasi-unconditional support of the Canadian government** for mining companies operating in Latin America.

Previous sessions of the TPP have highlighted a fundamental contradiction inherent to neoliberal globalization: while it rests on the paradigm of free trade as a driver of economic development, its expansion is made possible thanks to sustained public intervention. This is particularly glaring in the case of mining, which is an industry

46 International Women and Mining Network (IWMN)/Red Internacional Mujeres y Minería (RIMM) (2010). Women from Mining Affected Communities Speak Out. Defending Land, Life & Dignity. International Secretariat-Samata, India.

47 See the documents related to the three civil lawsuits underway in Canada against HudBay Minerals, whose admissibility has been approved by the Ontario Superior Court, in July 2013: www.chocversushudbay.com/

48 In August, 2011, HudBay Minerals sold the Fenix mine to Solway Investment Group, based in Cyprus.

that benefits from institutional arrangements put in place by host states, home states and international financial institutions.

Charges laid against the Canadian State describe the different forms government support for mining companies can take: political support and diplomatic pressure abroad to push for the adoption of permissive legal and regulatory frameworks, financial support to corporations, and omissions, as evidenced by the lack of effective judicial and non-judicial mechanisms available in Canada for the individuals and communities affected by Canadian mining activities abroad.

The Permanent Peoples' Tribunal notes with concern the **absence of a legal framework requiring Canadian corporations to respect human rights abroad**, and the fact that government support is extended without being conditional to any requirements concerning the respect of human rights. Expert reports presented revealed that the services provided by the government to mining companies, whether under the form of diplomatic support or access to insurance products, are not conditional upon the respect, by corporations of international legal norms.

At most, corporate responsibility and voluntary guidelines are promoted. Despite the efforts of civil society groups and organizations in the past decade to advocate for the implementation of accountability mechanisms to regulate the Canadian extractive sector, to this day, Canada only has a **voluntary strategy** in this area.

In 2006, a **series of roundtables** convened by the Canadian government brought together representatives from the industry, NGOs and academics. This process culminated with the publication in 2007 of a consensus report produced by a Multi-stakeholder Advisory Group.⁴⁹ This report notably recommended the implementation of an independent complaint mechanism with powers to investigate and

to formulate recommendations, as well as a policy explicitly conditioning the provision of government services to respect for human rights.

Two years later, "*Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian Extractive Sector Abroad*"⁵⁰ was unveiled by the Canadian government as the official response to the Advisory Group's report. From an international law perspective, it is clear that **the proposed framework is largely inadequate**. The strategy proposes voluntary social responsibility codes but fails to establish any incentive to ensure compliance.

One main conclusion emerged from the testimonies and documents consulted by the Tribunal: important shortcomings exist and constrain communities' opportunities to define their own development paths and to access effective recourses in case of rights violations. Observers heard by the Tribunal identified mining development in Latin America as a major factor in local conflicts, environmental damages and human rights violations, namely of the right to self-determination and those rights associated with political expression and human rights protection. Additionally, these impacts reinforce existing dynamics of discrimination and inequality affecting indigenous peoples and women.

On many occasions, Canada has been called upon by the UN to **remedy the accountability gap** benefitting its extractive sector. In 2007, the UN's Committee for the Elimination of Racial Discrimination (CERD), preoccupied by the violations of indigenous peoples' rights to land and health and by damages to the living environment and the ways of life of indigenous peoples as a result of the operations of Canadian mining corporations abroad, asked Canada to

take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable. The Committee requests the State party to include in its next

49 National Roundtable Advisory Group (2007) National roundtables on corporate social responsibility (CSR) and the Canadian extractive industry in developing countries: advisory group report. Online: http://www.miningwatch.ca/sites/www.miningwatch.ca/files/RT_Advisory_Group_Report_0.pdf

50 Foreign Affairs, Trade and Development Canada (2009). "Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian Extractive Sector Abroad."



GOLDCORP'S MARLIN MINE IN SAN MIGUEL IXTAHUACAN, GUATEMALA

periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.⁵¹

Five years later, in April 2012, the CERD reiterated this request to the government of Canada and lamented the fact that Canada had still not adopted measures to address the impacts of transnational corporations' activities abroad on Indigenous peoples' rights, in particular those of the mining sector. The UN Committee noted that the "*Building the Canadian Advantage*" was not sufficient to ensure corporate social responsibility and respect of indigenous peoples' rights.⁵²

By using its political and economic leverage to promote Canadian mining interests, Canada interferes with the enjoyment of human rights in Latin America and with the capacity of host states to protect and guarantee these rights. The Canadian State does not require from extractive companies that they implement due diligence procedures in relation to human rights as a condition to obtaining services or financial products from the government of Canada, via embassies or Export Development Canada, for instance. By contrast, Canada has laws, policies

and practices in place that facilitate mining operations, thus contributing to their expansion and to the perpetuation of abuses.

The testimonies heard during the hearing highlighted four axes of Canada's conduct which violate peoples' rights in Latin America.

- Canada does not condition the support (political, diplomatic and economic) it extends to Canadian mining companies upon respect for human rights abroad.
- Canada pressures public authorities abroad to encourage the adoption of legal and regulatory frameworks which promote the interests of the mining sector.
- Interference with local democratic processes is also an issue when the government of Canada employs public funds for development assistance to promote mining activities and their acceptance in local communities.
- The government of Canada fails to take action to ensure access to effective judicial and non-judicial remedies in Canada for individuals and communities affected by the activities of Canadian corporations abroad.

51 UN Committee on the Elimination of Racial Discrimination (CERD), UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Canada, 25 May 2007, CERD/C/CAN/CO/18, online: <http://www.refworld.org/docid/465fe0082.html>.

52 Committee on the Elimination of Racial Discrimination (CERD) (2012). Consideration of reports submitted by States parties under article 9 of the convention. Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada, CERD/C/CAN/CO/19-20, 80th session.



GOLDCORP'S MARLIN MINE MARLIN,
SAN MIGUEL IXTAHUACAN, GUATEMALA

The documentary and testimonial evidence presented at the hearing clearly establishes that **the Canadian State is informed of the risks and rights violations** generated by mining activity. The risks of human rights violations occurring as a result of large-scale mining activities have been comprehensively documented. For years, civil society groups in Canada and internationally have denounced these abuses to the government of Canada, supported with abundant documentation.

INTERNATIONAL LAW AND EXTRATERRITORIAL OBLIGATIONS OF STATES

The acts and omissions of a state may affect the realization of human rights outside its territory: Canada is a prime example in the mining sector. In a context of economic globalization, the activities of transnational corporations and home states have important impacts on the respect, protection and fulfillment of rights. Historically, the relative isolation of legal structures within national borders has generated gaps in the protection of rights. International law is moving towards the recognition of human rights obligations placed on the home states of transnational corporations.

Ana Maria Suarez-Franco, an expert in international law at Food First Information and Action Network (FIAN International) and a member of the Consortium on Extraterritorial Obligations (ETO) came before the Tribunal to clarify the application criteria of the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural*

Rights, adopted in autumn 2011 by a group of experts from all regions of the world. The Maastricht Principles **codify the extraterritorial obligations of states** within the existing norms of international law, stemming from a review of international treaties, customary law, and the jurisprudence of international and regional courts, as well as general comments and concluding observations of the treaty monitoring bodies of the United Nations.

Home states have obligations regarding the respect, protection and guarantee of human rights. Under the Maastricht Principles, the extraterritorial obligations of the home state is relevant in “ situations over which State acts or omissions bring about **foreseeable effects** on the enjoyment of economic, social and cultural rights, whether within or outside its territory” (Principle 9 b).

Under Principle 13, “States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.”

This responsibility to protect applies to acts attributable to state agents, but also to the actions of companies that the state is in a position to influence. Principle 25 c) specifies that the obligation to protect human rights applies “where the corporation, or its parent or

MARCH OF THE MEXICAN NETWORK
OF PEOPLE AFFECTED BY MINING (REMA),
TLAMANCA, MEXICO



Photo : James Rodriguez, MiMundo.org, 2014

controlling company, has its center of activity, is **registered or domiciled**, or has its main place of business or substantial business activities.”

States **in a position to influence** non-state actors, including companies, must exercise that influence in compliance with their obligation to respect human rights: “States that are in a position to influence the conduct of non-State actors even if they are not in a position to regulate such conduct, such as through their public procurement system or international diplomacy, should exercise such influence, in accordance with the *Charter of the United Nations* and general international law, in order to protect economic, social and cultural rights” (principle 26).

To qualify a state as having failed to comply with its extraterritorial obligations, it is not necessary to establish a direct causal link between the conduct of the state and the damage sustained. The doctrine of extraterritorial obligations of states specifies that the very fact of a state not taking steps to avoid a foreseeable risk constitutes a breach of its obligations and creates liability.

States also have an obligation to create an international environment conducive to the universal realization of economic, social and cultural rights, which is reflected in particular

when implementing policies for development assistance, as well as trade agreements and investment treaties (principle 29).

The *United Nations Guiding Principles on Business and Human Rights*, adopted as a resolution by the Human Rights Council in June 2011, also details the state’s duty to protect human rights against violations by companies. Among the recommendations addressed to home states, the Guiding Principles set forth, for example, that “States should **set out clearly the expectation that all business enterprises** domiciled in their territory and/or jurisdiction **respect human rights** throughout their operations”(Principle 2). The activities of all government institutions must take into account the obligations of the state regarding human rights: “States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support”(principle 8).

3.2.1. Political support to the Canadian mining industry

Several expert testimonies presented clear evidence in the case of Honduras, Mexico, Peru and Colombia of the use of resources and public leverage by the Government of Canada to advance the interests of Canadian mining companies in a way that undermines human rights. The network of embassies is frequently used to facilitate meetings with various ministries and local

authorities. Funds intended for development assistance were used for technical assistance projects aimed at having host states adopt mining codes favorable to foreign investment or to neutralize communities resisting Canadian mines. Globally, free trade agreements and investment treaties are limiting the ability of host states to legislate in favour of human rights.

UNCONDITIONAL SUPPORT BY EMBASSIES

Many observers have pointed to the **role played by the Canadian diplomacy** in the expansion of the mining sector. In all the cases submitted to the Tribunal, and at various stages of deployment of business activities, embassy staff was involved, so much so that Latin American government officials often conflated the function of representatives of Canadian embassies with that of lobbyists for Canada's mining sector. The most recent economic strategy for Canada internationally, the Global Markets Action Plan announced in November 2013, places "**economic diplomacy**" at the centre of Canada's international presence.

In many cases, Canadian embassies have continued to support mining projects even after being made aware of social conflicts, lack of social legitimacy, and even human rights violations. Canadian embassies were, among others, able to lobby for the adoption of laws and regulations favorable to the industry (examples from Colombia and Honduras discussed below), facilitating interviews and meetings with policy makers and exercising pressure for host governments to act in the interest of Canadian companies. This **privileged access to authorities** in the country of operation is particularly sought out at key moments in the development of a project, for example, for obtaining permits or mitigating social tensions. It is clear from the expert testimony heard that the support of the embassies may have had a decisive impact on the ability of a company to establish itself in a given area.

Jennifer Moore, from MiningWatch Canada, presented the Tribunal with the results of an analysis of internal documents from the Canadian embassy in Mexico, obtained through an access to information request. Despite having several sections blacked out, the documents

provide extensive information on the embassy's management of social issues and conflict related to the barite mine operated by the company Blackfire Exploration Chicomuselo, in Chiapas between 2007 and 2009. As previously noted in Section 3.1.3, the presence of the mine resulted in significant social tensions and violent acts until the conflict reached an apex with the murder of Mariano Abarca in November 2009.

Jennifer Moore explained how the **unconditional support of the embassy** has encouraged the company not to take steps to anticipate risks and to respect human rights. Everything indicates that the embassy has been closely monitoring the tensions surrounding the establishment of the mine. Monitoring the conflict is however intended to help the company overcome obstacles facing the project. By all accounts, the embassy has played an active role in supporting the project since its inception, including by promoting it to the authorities of Chiapas. Having made a few visits, embassy officials were fully aware of the tensions in Chicomuselo and the lack of prior consultation with affected communities. Four months before his assassination, Mariano Abarca filed a complaint with the embassy concerning armed workers at the mine site who were threatening opponents of the mine. A few weeks later, he was arrested by police on the basis of an unfounded complaint by the company. At that time, the Canadian embassy received 1,400 letters of solidarity demanding the release of Mr. Abarca and requesting protection measures to safeguard his life. Although Mariano Abarca had on several occasions spoken out about threats against him, as reported to the Tribunal by **Jose Luis Abarca**, son of the assassinated environmental leader, the embassy did not make any attempt to protect him.⁵³

Shortly after the murder, evidence of payment of bribes by Blackfire to the Mayor of Chicomuselo was unveiled in the media. The mine was finally closed shortly afterwards by local authorities for non-compliance with environmental regulations. However, even after these serious crimes under international law, Canadian officials have, at the request of the company, advised it on recourses available under Chapter 11 of the North American Free Trade Agreement (NAFTA) to sue Mexico for loss of profits following closure of the mine. It would seem that the embassy

⁵³ MiningWatch (2013). Backgrounder : A Dozen Examples of Canadian Mining Diplomacy, 8 October, online : <http://www.miningwatch.ca/article/backgrounder-dozen-examples-canadian-mining-diplomacy>



5 YEARS AFTER THE MURDER OF MARIANO ABARCA, CIVIL SOCIETY ASKS FOR JUSTICE

Photo : M4 - Movimiento Mesoamericano contra el Modelo extractivo Minero, 2014

also defended the company during questioning by the Mexican government and refused to demand a full and impartial investigation, alleging that responsibility in this matter lay exclusively with the Government of Mexico.

Despite being informed of several contentious situations and of obvious violations of the fundamental rights of individuals and the community, embassy staff never conditioned its political support with a view to resolving these issues. The embassy has evidently not been promoting the respect of human rights with Blackfire. Instead, it has consistently sided with the mining company. These actions are in conflict with the above mentioned Principle 8 of the *United Nations Guiding Principles on Business and Human Rights*.

INTERFERENCE IN THE LEGISLATIVE PROCESSES OF FOREIGN COUNTRIES

Witnesses have reported that various lobbying tactics have been carried out by Canada and its agents to ensure the adoption of mining codes favourable to the interests of foreign investors. The pressure exerted by Canada to reform the Colombian and Honduran mining codes has been defined by the experts heard by the Tribunal as interfering with national laws. These mechanisms can be seen as interference in the internal affairs of a third state, **affecting its democratic processes** and, above all, the capacity of the people to participate in public choice. Observers stressed that these interventions occurred in

the context of a long-term armed conflict in Colombia and in that of the 2009 military coup in Honduras.

Maude Chalvin of *Projet Accompagnement Solidarité Colombie* (PASC) presented to jury members the context of the drafting and passage of Act 685 of 2001 which reformed the **Colombia's mining code**. This legislation gave **precedence to mining over any other use of the land**, including the collective property titles of indigenous and afro-descendant communities. Moreover, the provisions of the reformed mining code **criminalize the activities of artisanal mining**, causing artisanal miners to lose their ancestral occupancy rights. In fact, prior to the 2001 reform, artisanal miners' occupancy rights were a major barrier to the expansion of multinational mining companies in Colombia. The conflict with artisanal miners, who were strongly mobilized against the reform, was characterized by heavy repression and numerous exactions by paramilitaries.⁵⁴

The reform of the mining code lowered mining fees and established tax exemptions for mining companies and large landowners. It also abolished the notion of a "*protected area*." With the required administrative authorization, any part of the territory, including national parks and heritage sites, can be subject to mining concessions. As demonstrated by the documentation submitted to the Tribunal, the

⁵⁴ The Tribunal was provided with a list of eighteen Colombian members of parliament who played a major role in the mining reform initiative of the late 1990s and who are currently detained, charged or awaiting trial for their ties to paramilitary groups.



TESTIMONY OF MAUDE CHALVIN, SESSION ON THE CANADIAN MINING INDUSTRY, PERMANENT PEOPLES' TRIBUNAL, HEARING ON LATIN AMERICA

new legislation facilitates the granting of mining permits and weakens the capacity of the state to regulate this sector.

The documents examined by the Tribunal also show that Canada actively participated in drawing up this reform. Indeed, the Canadian International Development Agency (CIDA) – which merged with the Department of Foreign Affairs, Trade and Development in 2013 – contributed financially to the drafting of this new mining code between 1997 and 2002 through its project “Energy, mining and environment.” The project **funneled financial and technical support** to the Colombian government for the purpose of capacity-building in favour of its Ministry of Mines and Energy. In view of the mining code revision, the Pastrana government, financed by the Canadian Energy Research Institute (CERI),⁵⁵ hired the law firm Martinez-Cordoba and associates, which acted as counsel to more than half of the mining companies listed

in the Canadian mining companies register. The new bill was also sponsored by various mining companies having interests in Colombia.

The Canadian mining industry clearly benefits from the adoption of this new act. In its report of May 2013, the Office of the Auditor General of Colombia called the Canadian government’s role in the liberalization of this sector “Canadian colonization,” adding that precious geological information, useful to junior mining companies, had been obtained through CERI. Between 2002 and 2009, direct foreign investment in the mining sector reached 500%. In 2011, 43% of mining investments in Colombia were made by Canadian companies.

The members of the jury noted with concern that areas of mining or oil exploitation were also regions where a significant number of human rights violations are committed in the context of the present armed conflict in Colombia.⁵⁶ The aforementioned Auditor General’s report indicates that 80% of human rights violations, 78% of crimes against unionists, and 89% of violations against indigenous communities’ rights occurred in regions where there are mining or oil exploitation activities.

In **Honduras**, the adoption of the new mining code in January of 2013 **put an end to a ten-year-long moratorium** on mining. The Tribunal has reviewed with concern documentary evidence showing that the process of drafting the reform was not transparent, and that it thwarted civil society proposals for new legislation aimed at providing better regulation of the mining sector. The new code allows the **unlimited use of water** throughout the entire territory and goes against many of the international obligations that bind Honduras on matters of indigenous peoples’ rights. The new Act also allows open pit mines, contrary to the Honduran civil society project based on years of investigation and consultations. The latter were to be studied by the Congress in August 2009, but the debate was never held because of the military coup which occurred in June.

Documents presented to the Tribunal show that the Department of Foreign Affairs and International Trade (DFAIT), the Canadian

55 Contraloría General de la Nación. Minería en Colombia: fundamentos para superar el modelo extractivista, May 2013, p. 193, online: http://lasillavacia.com/sites/default/files/mineropedia/mineria_en_colombia.pdf.

56 Projet Accompagnement Solidarité Colombie (PASC) (2013). Délégation PASC. Audience contre la pétrolière canadienne Pacific Rubiales Energy, online:http://www.csn.qc.ca/c/document_library/get_file?uuid=210a8eb6-972d-4b4a-94b1-baefb236e7ff&groupId=13943

embassy, and the former Canadian International Development Agency (CIDA) played an active role in the legislative process between 2010 and 2012.

Pedro Landa of the *Centro Hondureño de Promoción al Desarrollo Comunitario* (CEHPRODEC) explained before the jury that the mining reform was carried out in a context of militarization of public security and erosion of democracy around the **military coup of 28 June 2009** against President Manuel Zelaya.

Important meetings were orchestrated between the government of Honduras and Canadian government employees throughout the negotiation process. Shortly after the election of Porfirio Lobo Sosa, in November of 2009 – which many civil society groups dismissed as illegitimate – a meeting took place involving the Canadian ambassador, Canadian investors, and President Lobo Sosa. At this point, Canada pressured the Honduran government to increase the protection of foreign investments and to neutralize resistance movements against implantation of mining projects. In return, Canada offered to support the recognition of the Honduran government before the international community and its reintegration in the Organization of American States (OAS). Close ties with Canadian officials were maintained throughout the drafting process up to the adoption of the new Act.

The new mining code is part of a larger institutional reform which affected several ministries and resulted in broader investment protection legislation, including an anti-terrorism act and legislation concerning debt conversion, allowing companies to acquire potential mining land for future development; both were adopted during the same time frame. In 2013, Canada signed a free trade agreement with Honduras.

Honduras is experiencing a very violent phase in its history. In the past four years, more than 100 human rights and environmental rights activists have been assassinated. Documents show that the military coup created the conditions for the adoption of pro-mining industry legislation. It took an authoritarian government to effect these changes, contrary to popular will. Furthermore, the reform itself led to an increase in repression



PEDRO LANDA DURING THE OPENING EVENT OF THE HEARING ON LATIN AMERICA

and criminalization of human rights activism, and limited people's ability to effectively fight mining projects.

The obligation of states to respect human rights under international law entails that one state's actions in a third state must not hinder the latter's capacity to protect its own population's human rights. It is specified in the Maastricht Principles that states have an obligation to refrain from any actions that would infringe directly (principle 20) or indirectly (principle 21) on economic, social and cultural human rights outside their territory. Principle 21, which refers to **indirect interference**, stipulates the following: "States must refrain from any conduct which: a) impairs the ability of another State or international organization to comply with that State's or that international organization as regards economic, social and cultural rights; or b) aids, assists, directs, controls or coerces another State or international organization to breach that State's or that international organization's obligations as regards economic, social and cultural rights, where the former States do so with knowledge or the circumstances of the act."

Furthermore, states have the obligation to avoid any damage or violation of rights, and must, in order to respect this obligation, "desist from acts

and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially” (principle 13). This principle specifies that a state is responsible if the impairment is a foreseeable result of their conduct, even if it is uncertain.

The Canadian state also contravenes its non-interference duty established by the *Charter of the Organization of American States*: “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements” (art. 19).

Canada also violates peoples’ exclusive right to their wealth and natural resources (art. 8 of the Algiers Declaration) and the right to freely choose their economic and social system (art. 11 of the Algiers Declaration): “Every people has the right to choose its own economic and social system and pursue its own path to economic development freely and without any foreign interference.”

The mining legislation promoted by the government of Canada in Colombia and Honduras, allowing the assault of transnational mining companies on new territories, inhibits the full enjoyment of economic, social, cultural, civil and political rights of peoples. The pressure exerted in order to establish a climate favourable to mining investments, which in both cases occurred in a political context preventing political expression and social participation of citizens, has directly interfered with economic, social and political processes on the domestic front.

Consequently, Canada contravenes the right to democracy enshrined in the *Inter-American Democratic Charter*: “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and

defend it.”⁵⁷ By lobbying for mining societies, Canada hinders democratic processes instead of promoting them.

INTERNATIONAL AID

The charges brought before the Permanent Peoples’ Tribunal allege that the budgets allocated by Canada to cooperation and international development are increasingly oriented towards the promotion of mining and Canadian commercial interests. Stephen Brown, Professor of International Development at the University of Ottawa, spoke to the Tribunal of an explicit “**recommercialization**” of **official development assistance** (ODA) in Canada, noting that this is a step backwards in relation to the progress made in the past in the fight against subjecting international aid to conditions.

To illustrate his point, Stephen Brown presented the example of three development projects announced by the former Canadian International Development Agency (CIDA). With a budget of \$6.7 million, in Peru CIDA funds a joint initiative with the mining company Barrick Gold and the NGO World Vision Canada. Similar partnerships are simultaneously developed in Ghana and Burkina Faso. The local social responsibility project of one of the world’s largest mining transnationals is thus subsidized by public funding of nearly a half million dollars for these projects. In each of them corporate financial participation is minor. In one case, the company pays only 13 % of the budget of the initiative. Although the terms of the program are justified by the need to mobilize multiple resources for development, public funds remain clearly predominant in this type of program. Stephen Brown notes that it is inappropriate, even illegal, to allocate public funds for international development of this sort and that it represents a violation of the *Official Development Assistance Accountability Act* (2008, which stipulates that official development assistance should focus on reducing poverty and ensuring compliance with international human rights instruments.

These programs are instead acting as an **indirect subsidy** for mining companies. Under the banner of “social responsibility,” the real purpose of these programs is to improve the image of Canadian mining companies, to mitigate the social and environmental impacts

⁵⁷ Inter-American Democratic Charter, Res. A.G. Res. 1. XXVIII-E/01, 11 September 2001, art. 1, par. 11.

of their activities, to promote social acceptance of projects, to force consent, and to paper over conflicts with the affected communities.

Several observers have pointed out that these programs are implemented in countries where opposition to the mining industry is strong and that these partnerships create more division and tension within communities. In practice, the partnerships are highly beneficial for mining companies: **solidarity NGOs are instrumentalized to convince local communities**, with the promise of gifts, to accept mining projects, while support from CIDA enhances the international competitiveness of companies.

Other initiatives under the pretext of international aid also facilitate the implementation of Canadian mining projects. For example, the Andean Regional Initiative, announced in 2011, aims to “promote the effective implementation of corporate social responsibility” with three pilot projects in Colombia, Peru and Bolivia. In addition, a Canadian International Institute for Extractive Industries and Development (CIEID) was established in 2012, with \$25 million funding from CIDA, to associate Canadian universities in defining “best practices” in the management of natural resources in developing countries. Mr. Brown told the Tribunal that the management of corporate social responsibility should not be the responsibility of the Canadian state.

The *Maastricht Principles* summon states to consider the following priorities for cooperation: “prioritise the realization of the rights of disadvantaged, marginalized and vulnerable groups” (Principle 32 (a)) and “observe international human rights standards, including the right to self-determination and the right to participate in decision-making, as well as the principles of non-discrimination and equality including gender equality, transparency and accountability” (principle 32 (c)). This obligation does not appear to be respected by the Canadian government in the granting of international cooperation funds. The Tribunal is concerned that the remarketing of development aid described by witnesses seems to be increasingly present in Canada’s foreign relations.

Even as Canada creates special funds for NGOs working with mining companies, it significantly

reduces subsidies to solidarity and international cooperation organizations, and in so doing hampers initiatives in support of social justice.

3.2.2 Economic and financial support

The Canadian state mobilizes tailored economic development tools to support the mining industry. Funds are channeled into the mining sector in particular through Export Development Canada (EDC), the Canada Pension Plan Investment Board (CPPIB), the Toronto Stock Exchange (TMX Group) and the Canadian tax system.

Witnesses before the Tribunal argued that Canada contravenes the principle of due diligence outlined in the *UN Guiding Principles on Business and Human Rights*, which stipulates the following:

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence (principle 4).

Reports heard by the Tribunal highlighted EDC and CPPIB’s **lack of effective and transparent mechanisms** to ensure that no funding is granted to companies that jeopardize environmental or human rights.

The **Canada Pension Plan Investment Board** (CPPIB) is a Crown corporation with a mandate to manage the Canada Pension Plan Investment funds, totaling \$172.6 billion. It is the one of the most substantial pension funds in the world. The equity portfolio managed by CPPIB affects hundreds of mining companies, some of which were the subject of denunciations before the Tribunal. In 2005, CPPIB adopted a responsible investment policy, but according to witnesses at the hearing, it does not apply selection criteria to favour investment in companies with a positive assessment in regards to respect for the environment and human rights.

Laurence Guénette of *Projet Accompagnement Québec-Guatemala* (PAQG) explained to the jury that divestment campaigns for the removal of funding from human rights offending extractive companies face several



OPEN-PIT PEÑASQUITO MINING PROJECT
BY GOLCORP, ZACATECAS, MEXICO

obstacles. Public investment funds, including the CPPIB, generally choose not to withdraw their funds from companies facing documented allegations of human rights violations in order not to reduce the profitability of pension funds.

Karyn Keenan of the Halifax Initiative and the Canadian Network on Corporate Accountability (CNCA) brought to the attention of the Tribunal that **Export Development Canada** (EDC) lacks transparency and diligence when it comes to granting funds. EDC is an export credit Crown corporation that provides Canadian businesses operating abroad with financing through loans, loan guarantees and insurance. The extractive sector (mining, oil and gas) is the main beneficiary of financial support from this public institution. In 2013, the mining sector accounted for 29% of EDC exposure,⁵⁸ with a value of approximately \$25 billion. Export Development Canada has offices in Brazil, Chile, Colombia, Mexico and Peru.

Over the years this credit agency has provided financial support for projects that have caused devastating environmental and social impacts. The best known example is the Omai gold mine in Guyana, which in 1995 produced a major cyanide spill that contaminated drinking water sources. Cambior Inc. received insurance against political risk from Export Development Canada for the project. Although the socio-environmental risks and impacts associated with the mining industry are increasingly documented, EDC

continues to support investment in countries with limited institutional capacity, which hinders the application of adequate standards for human and environmental rights.

Export Development Canada relies on the performance standards of the International Finance Corporation (IFC) of the World Bank, as well as on the Equator Principles, which were developed by transnational corporations and are intended for financial institutions. Due diligence procedures implemented by the Canadian export credit agency are not, however, consistent with the requirements of international law on the matter. EDC's adherence to transparency rules is tenuous at best. On the grounds of confidentiality owed to its clients, little information is made available by EDC about its criteria governing the granting of funds. Likewise when it comes to implementation and monitoring of various internal policies, the agency says it follows standard practices with regards to environmental and social assessment. Furthermore, the use of performance standards and the Equator Principles is discretionary; no provision requires EDC to apply them effectively or to impose sanctions on its customers if they do not comply.

Karyn Keenan illustrated the limitations of EDC's approach by describing how the agency handled the request made by Barrick Gold for the binational Pascua Lama mining project in Chile and Argentina. In applying its obligation of due diligence, the credit

⁵⁸ Exportation and Development Canada specify that «exposure includes gross loans receivable, loan guarantees, investments at fair value through profit or loss, marketable securities and derivative assets», online: <http://www.edc.ca/EN/About-Us/Corporate-Reports/Documents/quarterly-financial-report-q1-2013.pdf>

reporting agency conducts field visits to check the accuracy of information submitted by a potential customer and, if necessary, requires additional information. The obligation to verify the information submitted in good faith should entail speaking with representatives of affected communities and with different civil society organizations. However, during its field visit to Chile and Argentina, EDC did not see fit to grant explicitly requested meetings to representatives of affected communities and civil society organizations. EDC only met with individuals from affected communities, without prior information about the objective of the meeting or the nature of EDC's work. Interviews were organized by Barrick Gold and took place in the offices of the transnational mining company. These meetings **do not constitute due diligence practices** under international law.

Alain Deneault, a researcher and professor who has extensively researched the Canadian state's support of the mining industry, told the jury that Canada offers various incentives to mining companies, accounting for the choice made by 75 % of them to establish their headquarters in Canada. Canada constitutes a regulatory and a tax haven for the global mining sector. Access to abundant liquidity, hedges against potential litigation, and various tax benefits encourage investors from a number of countries to look to Canada to raise funds for mining. This is especially true for exploration.

TMX Group (TSX and TSX-V) in Toronto is the world centre of mining finance. Over 60 % of the world's exploration and mining companies are listed there. This is where 90 % of transactions involving shares of mining companies are made, and where 44 % of the global industry's funds are held, far ahead of London, which holds 26 %. Toronto owes its leading position to the fact that in terms of disclosure, companies can add potentially existing "resources" to estimated proven reserves. In terms of risk, only those relating to the company's performance in the markets must be published. Disclosure of information on social, environmental or cultural risks is not required, leading to a lack of public information in terms of human rights. Canadian regulations take into account only the protection of the investors' interests and in no way those of affected communities.

The Canadian tax regime for the mining sector is complex and very opaque. Witnesses before the

Tribunal notably expressed the fact that for their operations, mining firms have a large number of deductions and deferrals of possible costs, allowing them to inflate profitability and hence boost the speculative realm of their activities. These practices are particularly useful for junior investors looking to enter the market. There is a need to make the tax system more transparent.

The Canadian government provides massive financial support for the Canadian and global extractive sectors. This is in clear contravention of the commitment it has made by signing numerous conventions, declarations and international agreements. These include the *Universal Declaration of Human Rights*, the *International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights* as well as the *UN Declaration on the Rights of Indigenous Peoples*, along with other instruments discussed in previous sections.

3.2.3. Free trade and the democratic deficit

There is a strong asymmetry between the binding nature of applicable norms in international economic law and the international law of human rights. Witnesses before the Tribunal stressed that bilateral investment treaties and free trade agreements (FTAs) undermine the ability of peoples to define their lifestyles and their future. Trade openness, strongly promoted by Canada at the hemispheric level for twenty years with a set of accompanying institutional reforms, has enabled the takeover by Canadian extractive transnational corporations of lands and mineral resources of host countries. Investment protection allowing for recourse to arbitration mechanisms for aggrieved businesses has resulted in locking in privileges granted to companies. Several states have been forced by arbitral tribunals to pay damages to transnational companies for having implemented public policies upholding human rights and socio-ecological equity.

Laura Lopez of the Institute for Research and socio-economic information (IRIS) illustrated this unfair situation with the example of the **prosecution of El Salvador** by the Canadian company Pacific Rim, a process that began in 2009. In 2007, due to various irregularities, El Salvador rejected the environmental impact study produced by Pacific Rim and refused to grant it a license in a context of strong grassroots mobilization against large-scale mining, in a country where water resources are particularly fragile. The company responded by

filing a lawsuit against El Salvador under Chapter 10 of the US-Central America Free Trade Agreement in April 2009, through a subsidiary with offices in the United States. Neither the rejection of the first procedure nor the purchase of Pacific Rim by the Canadian-Australian company OceanaGold in 2013 has ended the matter. The company filed a second complaint with another arbitration mechanism. The case is still not resolved and has so far cost El Salvador \$300 million, representing almost 2 % of its national GDP.

Over 3,000 free trade agreements and investment protections have been established around the world. According to **Pierre-Yves Serinet** of the Quebec Network on Continental Integration (RQIC), following nearly three decades of free trade, including the 20-year history of the North American Free Trade Agreement (NAFTA), **this model is not living up to its promises**. These agreements are based on the principle that two or more states mutually agree to give up some parts of their sovereignty (control, regulation, preferential rates, etc.) to promote exchanges, thus fulfilling the first promise of creating wealth and prosperity for both parties; a second of creating quality jobs, for example by privatizing public space; and a third of providing a framework to take on environmental challenges. Instead, today we in fact see a greater concentration of wealth, unprecedented climate and environmental challenges, and deteriorated quality-of-life conditions for the vast majority of the populations concerned.

Moreover, the binding clauses of these agreements protecting investments by transnational companies can be a deterrent for states wishing to adopt public policy measures. This framework, which puts economic and political interests in the hands of transnational corporations, has crippled the ability of states to implement public policies that respect human rights and environmental justice and is strongly anti-democratic.

3.2.4 Violation of the right of access to justice

Lastly, the charges presented allege a violation by the Canadian state of the **right to effective judicial or non-judicial remedies** for individuals and peoples whose rights are infringed as a result of the activities of Canadian mining companies. The right of individuals and communities to have

access to quick, simple, and effective recourse when confronted with violations – individual or collective – of their human rights, which can be processed by an impartial authority and which makes it possible to remedy said violations in an appropriate and efficient manner is recognized by the *American Convention on Human Rights (ACHR)*, as well as by the *United Nations Guiding Principles on Business and Human Rights*, and the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights*, among others.

The charge presented to the tribunal maintains that many of the Latin American states in which Canadian mining companies often operate are not endowed with adequate resources to address human rights violations perpetrated against persons or communities affected by mining operations. Because the Canadian state does not provide effective judicial or non-judicial remedies so that victims of human rights violations committed by the aforementioned foreign companies may have access to justice, numerous violations of human rights committed by these companies continue with impunity.

Article 8.1 of the *American Convention on Human Rights*, referring to **judicial guarantees**, affirms that “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.” Furthermore, article 25.1 of the same Convention, on judicial protection, indicates that “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

In accordance with the jurisprudence of the Inter-American Court of Human Rights, “article 25 [of the ACHR] guarantees the **right to a judicial remedy**, while article 8 establishes the manner in which to treat it.”⁵⁹ Thus, according to the Court, “in order to preserve the right to

⁵⁹ Corte I.D.H., Garantías Judiciales en Estados de Emergencia (arts. 27.2, 25 y 8 Convención Americana sobre Derechos Humanos). Opinión Consultiva OC-9/87 del 6 de octubre de 1987. Serie A No. 9, párr. 24; y Corte I.D.H., Caso Hilaire, Constantine y Benjamin y otros. Sentencia de 21 de junio de 2002. Serie C No. 94, párr. 148.

an effective remedy, according to the terms of article 25 of the Convention, it is essential that the said remedy be handled according to the rules of a just and fair process established in article 8 of the convention.”⁶⁰ Furthermore, throughout its jurisprudence, the Court has asserted that the concept of just and equitable guarantees also applies in areas concerned with the determination of the rights and obligations of a civil nature, of labour, of a fiscal nature, or of any other nature whatsoever, “and that, consequently, the individual has, in these sectors, the same right to a just and equitable process as applies to criminal law.”⁶¹

It is important to highlight that paragraph 2 of this same article indicates that “The States Parties [of the ACHR] undertake: a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b) to develop the possibilities of judicial remedy; and c) to ensure that the competent authorities shall enforce such remedies when granted.”

In accordance with the current state of international law and of the extraterritorial obligations of states, as recently codified in the *Maastricht Principles*, “All States must take action, separately, and jointly through international cooperation, to protect economic, social and cultural rights of persons within their territories and extraterritorially.” They must also “take necessary measures to ensure that non-State actors which they are in a position to regulate, [...] such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures” (Principles 23 and 24).

Finally, the *United Nations Guiding Principles on Business and Human Rights* and their “Protect, Respect and Remedy” framework have, for their part, invited states from which investments in third-world countries originate to adopt measures of prevention and remediation in order to prevent

their companies from committing violations of the rights of individuals and of communities abroad and to promote remediation when abuses have been committed (Principle 1).

Nevertheless, the Canadian state has **no legislation that proclaims its competency** to judge the extraterritorial activities of its companies. There are, however, exceptions to this rule, notably a law enshrining its competency to judge the crime of corruption of public agents abroad, and another concerning sexual crimes perpetrated by Canadians against minors abroad.

The *Maastricht Principles* stipulate that states violate their international obligations regarding human rights not only when they are the direct target of charges, but also when they fail in their duty to adopt adequate measures in order to prevent, investigate, punish, and remedy abuses perpetrated by private agents.

It is particularly worrisome to note that, in general, Canadian courts systematically refuse the claims of victims of abuses committed by Canadian mining companies abroad. On its second day of hearings, the Tribunal heard the expert testimony of jurist **Shin Imai**, member of the Justice and Corporate Accountability Project of Osgoode Law School at York University. Shin Imai highlighted recent progress with reference to a ruling of the Court of Ontario to acknowledge the admissibility of the proceeding *Choc v. Hudbay* (Guatemala).⁶² This case, which will be heard over the next few years, could constitute a precedent. He also underlined the long and difficult path by which victims from third-world countries must pass (refusal of jurisdiction, high financial costs, etc.) when they attempt to be heard by Canadian courts to assert their claims against mining companies. Canadian courts invoke to this effect a **lack of competency** in foreign jurisdiction and/or the **absence of a duty**

60 Corte I.D.H., El Derecho a la Información sobre la Asistencia Consular en el marco de las Garantías del Debido Proceso Legal. Opinión Consultiva OC-16/99, paras. 134 and 135.

61 Corte IDH. (Excepciones al agotamiento de los recursos internos (art. 46.1, 46.2.a y 46.2.b Convención Americana sobre Derechos Humanos). Opinión Consultiva OC-11/90 del 10 de agosto de 1990. Serie A No. 11, para. 28). Caso de la “Panel Blanca” (Paniagua Morales y otros) vs. Guatemala. Fondo. Sentencia de 8 de marzo de 1998. Serie C No. 37.

62 Members of the maya q’eqchi’ indigenous group of the El Estor municipality in Guatemala have, before the courts of Ontario, Canada, initiated a plea against the Canadian mining company HudBay Minerals for the brutal killing of Adolfo Ich, the gang rape of 11 women of the village of “Lote Ocho”, and allegations of abuses committed by security personnel of the company in the context of operations related to the Fenix mining project.



TESTIMONY OF SHIN IMAI, SESSION ON THE CANADIAN MINING INDUSTRY, PERMANENT PEOPLES' TRIBUNAL, HEARING ON LATIN AMERICA

of care, or indeed affirm that Canadian courts are not the appropriate forum to address these issues (a rule called “*forum non conveniens*”⁶³).

Although non-judicial mechanisms exist to address complaints in this area – for example, the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor and the National Contact Point (NCP) of the OECD – in practice, none of these can achieve the goal for which it was created. According to written documentation and expert testimony received by the Tribunal, non-judicial remedy mechanisms that exist in Canada are ineffective or extremely limited in their reach.

The Tribunal had the opportunity to hear, to this effect, the testimony of **Dante López**, a representative of the Mexican NGO ProDESC. He related the efforts undertaken by persons affiliated with Branch 309 of the *Los Mineros* National Union to obtain justice. The plaintiffs accessed non-judicial remedies in the hope of creating the conditions for a negotiation or an agreement with their employer, the Excellon Resources mining company, in order to remedy multiple violations of their union rights.

These strategies have not accomplished anything. The processes undertaken in April 2011 with the Office of the Extractive Sector CSR Counsellor of the Government of Canada stalled when the

company unilaterally decided to withdraw from the process before even undertaking the stage of dialogue with the union.⁶⁴ The Office of the Counsellor was unable to prevent the withdrawal of the company or to take measures to promote the remedying of abuses suffered by workers.

A similar situation took place when, in May 2012, the union brought a grievance to the National Contact Point of the OECD in Canada, alleging violations to the *OECD Guidelines for Multinational Enterprises*.⁶⁵ The company had merely to oppose the dialogue for the NCP to withdraw its services as an intermediary and to give up on launching an exhaustive investigation on the facts of the case. The **voluntary nature** of these proceedings, as well as the **absence of binding power over their decisions**, make having recourse to them fruitless: using these mechanisms or not is left to the discretion of companies.

According to documentation collected by the Tribunal, the difficulties encountered by communities and workers to attain justice in the Excellon Resources case are not an isolated phenomenon. The Tribunal learned that this inefficiency of the non-judicial mechanism reflects the norm rather than the exception; of the six open procedures before the Office of the *Extractive Sector Corporate Social Responsibility Counsellor*, created by the Canadian government

63 An example of the application of the rule of *forum non conveniens* is the verdict of the Court of Quebec in the matter of *Recherches internationales Québec vs. Cambior*, on the subject of abuses committed by the mining company Cambior in Guyana. The Court ruled that the Guyanese courts were better placed to hear the case (1998).

64 Office of the Extractive Sector Corporate Social Responsibility Counsellor, Canada (2011). Closing Report. Request for review file #2011-01-MEX, online: http://www.international.gc.ca/csr_counsellor-conseiller_rse/publications/2011-01-MEX_closing_rep-rap_final.aspx?lang=eng.

65 The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational companies operating in member countries or where they have their head offices. They contain non-binding principles and norms for responsible corporate conduct, in accordance with applicable laws and recognized international norms.

in 2009⁶⁶ as a non-judicial mechanism to collect grievances of persons and groups that feel harmed by the foreign activities of Canadian extractive companies, none of these has even reached the end of the dialogue process. The Office of the Counsellor has an extremely limited mandate. It is restricted to formulating non-binding recommendations after a voluntary dialogue with the parties involved. The Counsellor cannot undertake independent investigations, determine if wrongs were committed, evaluate the damage caused by the company or make recommendations concerning remedies or sanctions, such as the withdrawal of government support for an at-fault company. A dialogue is not initiated unless both parties agree to take part in the dialogue process. In three out of the six cases that have been brought thus far, mediation was brought to a halt when the company decided to abandon the process.

Thus, it appears that the victims, too often deprived of justice in their own countries, have no more access to judicial or non-judicial remedies in Canada. They are faced with a situation of total impunity for the violations of their rights.

As the Inter-American Commission on Human Rights has noted multiple times, “International human rights law has developed standards on the right of access to judicial and other remedies that serve as suitable and effective grievance mechanisms against violations of human rights. In that sense, States not only have a negative obligation not to obstruct access to those remedies but, in particular, a positive duty to organize their institutional apparatus so that all individuals can access those remedies. To that end, states are required to remove any regulatory, social, or economic obstacles that prevent or hinder the possibility of access to justice.”⁶⁷

Rights do not have the efficiency and the reach intended in legal documents if they are not supported by reliable mechanisms which can guarantee, beyond statutory declarations, the prevention of their constant violation. It is clear to the Tribunal that Canada does not offer

any guarantee to communities that experience negative impacts of the foreign investments of Canadian mining companies on a daily basis.

4. RESPONSIBILITIES

The Permanent Peoples’ Tribunal (PPT) has been convened in order to judge Canadian mining companies, which are accused of threatening the fundamental human rights of peoples in Latin America and to consider allegations against the Canadian state for having contributed, through act and omission, to human rights violations of peoples in Latin America through its support for the mining industry and by favouring these companies in a context of impunity.

With regard to the impacts of Canadian mining companies upon access to and enjoyment and exercise of human rights concerning nations in which they have invested and are operating and peoples they have affected, the PPT identifies several levels of responsibility:

First, the expert panel finds the **companies** responsible for having failed in their obligations to respect, protect and ensure human rights, as required by international human rights law. Second, the **Canadian state** and **Latin American states** are also responsible for the continued violation of human rights. In both cases, states have failed in their obligation to protect human rights and to prevent and sanction violations, particularly those related to Canadian mining companies.

The lack of fulfillment of this obligation leads to **responsibility by act and omission**. In the case of the Canadian state, it is responsible through its actions when it bolsters the presence of Canadian mining companies in other countries through political, economic, financial and diplomatic support; when it tolerates or covers up human rights violations that companies are perpetrating; and when it denies access to effective mechanisms to protect victims from these violations.

The Canadian state is responsible by omission when it abstains from adopting measures or from requiring that Canadian mining companies

66 The establishment of the Office of the CSR Counsellor was part of the Building the Canadian Advantage: A CSR Strategy for the International Extractive Sector of the Government of Canada (2009).

67 Inter-American Commission on Human Rights, “Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights”, par. 1. On-line: <https://www.cidh.oas.org/countryrep/AccessoDESC07eng/Accessodesci-ii.eng.htm>.

undertake measures to prevent or remedy human rights violations. This is a responsibility that cannot be avoided, considering that some 50 to 70% of mining activities in Latin America are undertaken by Canadian mining companies, and that many of these projects are the source of serious socio-environmental conflicts and human rights threats. Overall, as is well known, this is taking place because large-scale projects are frequently undertaken without respect for the right of self-determination of affected peoples or for the right of people to define for themselves their ways of life and their future. As a result, Canadian mining companies' operations entail serious impacts on the life of communities, thus generating tension, mistrust, divisions and conflicts.

In the case of the **host states** in which Canadian mining companies are invested, their responsibility is related to granting licences to operate and exploit mineral resources without consideration for the impacts that these activities have on human rights. Responsibility is also imputed when these authorities grant licenses for extractive industry activities without prior consultation and/or free, prior and informed consent of the communities and indigenous populations that will be affected by these operations; when they fail to set requirements to ensure these companies respect human rights; when they loosen labour, environmental and tax laws to favour the interests of mining companies; and when they tolerate or collaborate in these activities at the expense of the communities in which they operate.

They are also responsible when – arbitrarily undermining the democratic and social foundation of a democratic state – they directly criminalize the activities of individuals, activists, community leaders and/or human rights and environmental defenders who are legitimately and peacefully defending peoples' right to self-determination and opposing violations of human rights and fundamental freedoms. Social movements (frequently indigenous) are frequently stigmatized and criminalized for organizing in defense of and to protect the territories of mining-affected communities and the right to a healthy environment, and for promoting the

protection of nature, ecosystems, livelihoods, water, cultural heritage, and the right to decide the type of development that they desire.

States are responsible by omission when, as in the case of the Canadian state, they fail to take measures or to demand that Canadian mining companies adopt measures to prevent violations and/or to remediate violations that occur during their operations in the area of human rights and the environment.

The Permanent Peoples' Tribunal heard the testimony of numerous victims, in addition to specialists and experts, enabling an understanding of the practices of Canadian mining companies, as well as of the Canadian state and host states in which these companies are investing, all of which are taking place with disregard for human and social values of all kinds, and not infrequently, for life itself.

The cases examined by the Tribunal demonstrate human rights violations pertaining to its mandate, and the Tribunal considers that it has been shown – based on the documentation and testimonies presented – that Canadian mining companies based in Mexico, Honduras, Guatemala and Chile, whose behaviour has been examined during this session, have committed multiple human rights violations, as outlined in the original allegations, which can be grouped into three areas:

- First, the Tribunal finds that Canadian mining activities in Latin America lead to the **violation of the right to life**, which includes an adequate quality of life, nutrition, water, health, housing, the freedom and integrity of persons, security and a healthy and safe environment.
- Second, the jury considers that it has been demonstrated that these companies, according to the allegations made, have also violated the **right of peoples to self-determination** and, in accordance with this right, their right to land and territories in which they live and in which the resources on which they depend are located. The jury further considers that it has been demonstrated that the companies have violated the right to participation and to prior consultation and free, prior and



Photo : James Rodriguez, MiMundo.org, 2012

ANGELICA CHOC,
WIDOW OF ADOLFO ICH,
MURDERED FOR HIS
OPPOSITION TO THE
FENIX MINE, GUATEMALA

informed consent of communities, as well as to their own vision of development and the full exercise of their own culture and traditions.

- Third, the Tribunal considers that violations of the **right of these communities to full citizenship** that includes the right to human dignity, education, work, and just and equitable work conditions, as well as labour rights that include the right to free association and collective negotiations of their working conditions have been further demonstrated. The Tribunal also considers that unionized companies have violated the right to freedom of expression, association, peaceful gatherings, access to information, and participation and the right to effective, simple and efficient mechanisms that would guard against human rights violations. Additionally, the Tribunal considers that the companies have violated the right of persons and affected communities to not be discriminated against in any way and to defend their human rights.

The Permanent Peoples' Tribunal finds that *Canadian mining expansion in Latin America would not have been possible without the promotion and direct involvement of the Canadian state* to uphold the mining industry through

diverse political activities and government programs. Canadian state intervention has taken various forms.

- First, through **political support and meddling in the legislative processes of host states**. For example, through inappropriate interference in the reforms of mining and environmental legislation, diplomatic lobbying, support for companies' social projects, and negotiating investment agreements that protect Canadian investments abroad.
- Second, the Canadian state has also provided **economic and financial support** channeled through the Export Development Corporation and the Canadian Pension Fund Investment Board. It has also failed to ensure transparency in the regulation of the Canadian stock exchanges, installed favourable tax regimes, and supported trade missions, among other initiatives.
- Finally, the Canadian state has also imposed or tolerated **barriers to justice** in Canada for individuals and communities affected by the activities of Canadian mining companies.

The international promotion of Canadian trade and investment cannot ignore the supremacy of human rights as established in international law or, least of all, allow favourable conditions for the



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promotion of private interests to be established at the expense of human rights in Canada, Latin America or anywhere else.

Based on these considerations, the Permanent Peoples' Tribunal declares that the following companies are responsible for human rights violations as described in this summary: Barrick Gold and its subsidiary Nevada Spa Mining; Goldcorp and its subsidiary Entre Mares; Tahoe Resources and its subsidiary Minera San Rafael S.A.; Blackfire Exploration and its subsidiary Blackfire Exploration México S.A. de C.V.; and Excellon Resources Inc. and its subsidiary Excellon de México S.A. de C.V. The Canadian state and the countries in which these companies are operating are also at fault for not having prevented and for having facilitated, tolerated or covered up these human rights violations, as well as for having impeded in practice access to adequate mechanisms that would protect the victims from these violations.

5. RECOMMENDATIONS

Accordingly, the PERMANENT PEOPLES' TRIBUNAL

Considering international treaties and other instruments for the protection of human rights in their entirety, which include economic, social, cultural and environmental rights, as well as civil and political rights,

Considering jurisprudence of international tribunals and positions adopted by treaty and non- treaty human rights protection entities,

Considering the *Universal Declaration of the Rights of Peoples* adopted in Algiers in 1976,

Considering the *United Nations Declaration on the Rights of Indigenous Peoples* adopted by the United Nations General Assembly in September 2007,

Considering the *Guiding Principles on Business and Human Rights* adopted by the United Nations Human Rights Council in its resolution 17/4 of 16 June 2011,

Considering the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, adopted at the instance of the Maastricht University and the International Commission of Jurists in September 2011,

Considering documentary and testimonial evidence presented at this hearing, in its entirety,

Recalling that the law can only be guaranteed by the peoples, true subjects of the law, who are represented by citizens and not by transnational companies or by states that depend upon them,

And indicating, in general terms, that it is necessary that Canada reaffirm the primacy of human rights over economic interests and redefine its political actions in a manner that is consistent with this principle,

Recommends the following and asks the corresponding entities to:

5.1 To the Canadian state

1. Adopt all legal, administrative, investigative or other measures needed to ensure that companies under its jurisdiction do not hinder, in Canada or abroad, the realization of fundamental human rights, which Canada is committed to protecting through various international treaties.

2. Refrain from exerting pressure and from providing governmental assistance, particularly through its embassies, in an effort to facilitate the adoption of a regulatory framework that is flexible and propitious for mining investments, to the detriment of its obligations to protect human rights or the environment in the countries where extractive projects take place.

3. Make all public assistance – whether economic, financial, fiscal, diplomatic, political or legal – to Canadian companies conditional upon these companies' respect of international standards on human rights, labour rights and environmental protection; in particular, refrain from supporting any company that cannot clearly demonstrate the existence of free, prior and informed consent of communities affected by a given project.

4. Block companies' access to all public assistance when there is sufficient evidence that these companies have committed, or are very likely to commit, major violations of human rights or serious damage to the environment without providing adequate reparations.

5. Refrain from making use of situations of armed conflicts, political instability or widespread impunity in order to promote Canadian mining investments and appropriate the wealth and common goods of host countries.

6. Support Canadian investments only in host states in which the mining industry is legally obliged to undertake independent, complete and publicly accessible impact studies, thus enabling citizens, particularly indigenous peoples and communities, to learn the short, medium and long-term impacts of the projects, and to give their free, prior and informed consent for each of these.

7. Guarantee that the official agencies which provide credits and investments, such as Export and Development Canada (EDC) and the Canadian Pension Plan Investment Board (CPPIB), carry out their activities in accordance with the obligation to protect human rights which is incumbent upon them as public institutions, and show the necessary due diligence and transparency throughout their activities in order

to ensure adequate accountability relating to decision-making processes for project financing and support to companies.

8. Undertake an in-depth review of its international development policy and dissociate its official development assistance from the promotion of commercial interests and the establishment of Canadian companies abroad, and conform to the criteria set in the 2008 Official Development Assistance Accountability Act, by using aid funds to reduce poverty, in full respect of peoples' will and choices regarding development and of international human rights instruments.

9. Ensure that staff from Canadian embassies and other agencies responsible for promoting and providing assistance for the activities of Canadian companies working abroad be trained to provide the said companies with clear information regarding their duty to refrain from undermining human rights and their obligation to carry out due diligence and reparation procedures.

10. End its policy of "economic diplomacy" whereby the entire Canadian diplomatic corps works to promote private interests, and guarantee the transparency of activities carried out by Canadian embassies for the promotion of Canadian investments abroad, namely with respect to lobbying governments. Furthermore, that it make public the procedures used by Canadian diplomatic officers to ensure that their activities align with their obligation to protect the rights of human rights defenders and of persons and communities affected by Canadian mining activities.

11. Establish clear norms for provincial securities commissions, whereby Commissions should

- a) require extractive companies registered at Canadian stock exchanges to provide information on local communities' consent and the companies' record with respect to human rights and environmental norms, and
- b) receive complaints from affected communities and civil society organisations regarding these companies' human rights abuses.

12. Ensure that Canadian mining companies adopt all necessary measures to identify and prevent social, environmental and cultural risks and impacts of their activities on human rights. For this purpose

- a) establish mechanisms requiring private and state-owned companies to present periodic and publicly available reports concerning the impact of their activities on human rights and the environment.
- b) produce a communication and outreach strategy that clearly explains what is required of companies with respect to human rights, according to standard

reference guidelines, particularly for companies which have benefited from financial, diplomatic or other types of public support. This strategy should apply to all levels of decision making including the board of directors, the management team and shareholders.

13. Commit to taking action to protect human rights defenders, in any situation in which it becomes aware, namely through its embassies, of threats or attacks on these defenders in relation to advocacy for the rights of persons and communities affected by Canadian mining companies' activities.

14. Create a legal mechanism independent of political power – for instance, an ombudsman or permanent supervisory Commission – with a mandate to oversee and investigate activities conducted by Canadian extractive companies abroad and the governmental agencies which support them. Contrary to the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor and Canada's National Contact Point for the Organization for Economic Development and Cooperation (OECD) Guidelines, both of which appear to have largely inadequate mandates and powers, this new entity should have full authority to investigate complaints without having to rely on the companies' voluntary participation in the process, and to make binding recommendations, including placing a moratorium on harmful activities and suspending or ceasing Canadian government support for companies that do not respect international norms.

15. In order to efficiently combat the impunity enjoyed by the Canadian mining industry abroad, a law which improves victims' access to justice before Canadian jurisdictional organs, so that victims of human rights abuses or environmental damage caused by Canadian businesses overseas may obtain justice, truth and full reparation.

In particular, the state should

- a) Affirm through this proposed law that Canadian courts are competent to judge the actions of companies headquartered in Canada or registered with Canadian financial markets, to enable civil and criminal prosecution of natural or legal persons responsible for actions or omissions which have led to human rights violations abroad.
- b) Review, within the scope of the division of powers in Canada, the applicable norms and standards on extracontractual civil liability, in order to identify and eliminate the legal and practical impediments to claims addressed to a company or its subsidiaries.
- c) Review the legislation in order to guarantee that public prosecution can take place in Canada, in instances where there are sufficient indications that a company or its

employees have been involved in serious human rights violations, by ensuring the implementation of prompt, comprehensive and impartial investigations and the end of any persistent violations, as well as adequate reparation including, as needed, restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition.

d) Consider, in order to avoid irreparable damages, the availability of interim measures and the capacity of judicial or non-judicial organs to adopt such measures and to ensure that they are applied.

e) Take steps to increase the Canadian state's capacity to ensure the application of laws allowing prosecution in Canada of natural or legal Canadian persons who are charged with corruption or crimes against humanity committed abroad, and significantly increase resources allocated to the implementation of the *Crimes Against Humanity and War Crimes Act* (2000) and the *Corruption of Foreign Public Officials Act* (1998), namely by adequately training staff in charge of their application and by increasing funding available for the Royal Canadian Mounted Police's special units which investigate corruption crimes abroad.

16. Guarantee effective access to justice and to non-judicial mechanisms by creating a fund to provide legal assistance to persons affected by abuse abroad and adopt the necessary dissemination measures to guarantee that citizens in general, and interested parties, know and understand existing judicial and non-judicial grievance mechanisms.

17. Refrain from negotiating, signing and ratifying any new investment or trade agreement with other states, where there are unequal conditions, or where these agreements would strengthen the rights of investors at the expense of human rights; not renew these types of treaties when they expire; avoid implementing regressive measures; and take all necessary steps to review trade agreements currently being implemented, in order to include provisions on the protection of human rights along with mechanisms to guarantee their effective application, including labour and environmental rights, the right to self-determination and the right to participate in decision-making, and the principles of non-discrimination and equality, including gender equality, transparency and accountability.

5.2 To Canadian mining companies

5.2.1 To the Canadian mining industry, including companies working in the sector as well as the associations representing them:

1. Recognize the responsibility incumbent upon mining companies to respect human rights under international law, including as stated in the United Nations Guiding

Principles on Business and Human Rights, and that it apply a high standard of respect for human rights and the environment.

2. Bring its practices, including those of their subcontractors, into conformity with its obligations to respect human rights, and demonstrate in all activities the transparency and due diligence necessary to prevent and, if necessary, make reparations for any violations of human rights arising from its operations.

3. Recognize and guarantee the primacy of human rights, human dignity, and environmental protection over economic interests.

4. Recognize, respect and guarantee the right to self-determination enjoyed by aboriginal people and communities under *Convention 169 of the International Labour Organization concerning Indigenous and Tribal Peoples* (1989) and the *United Nations Declaration on the Rights of Indigenous Peoples* (2007), which includes the right to say no to any mining project, and that it agree to withdraw any project if the relevant populations clearly express, in the exercise of their right to free, prior and informed consent, their right to refuse to allow a mining company in their territory, and their right to live in peace.

5. Cease all practices of corruption, co-optation and division of populations and social actors and recognize as legitimate the institutions representing local communities, as well as organizations working in defence of human rights and the environment.

6. Cease practices of one-on-one negotiations with respect to land acquisition or other transactions and negotiate directly with affected communities through their representative institutions, following models of negotiation as chosen by the communities themselves.

7. Cease using policies of corporate social responsibility with the sole purpose of improving its image, promoting social acceptance of its projects, and/or co-opting social actors and local authorities, and assume as the basis of its reporting practices all the human rights obligations which are incumbent upon it.

8. Cease practices of criminalization, repression, intimidation, persecution and prosecution with respect to opponents of mining projects and ensure the effective protection of human rights defenders in accordance with the relevant United Nations resolutions, including the *Declaration on the Right and Responsibility of*

Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998).

9. Establish protocols and effective operating mechanisms to ensure that adequate attention is paid to any claim by people affected by human rights violations or environmental damage.

10. Assume, once the operational phase of any mine site is complete, the costs of the most complete possible restoration of all components of the environment that may have been affected.

11. Recognize and respect cultural rights, including the spiritual and ancestral practices of communities affected by mining operations, in conformity with the *UNESCO Universal Declaration on Cultural Diversity*.

12. Ensure the adoption of employment practices that meet high standards of health and safety at work, and that it respect and guarantee labour and trade union rights, as well as the right to non-discrimination and equality at work, in accordance with the relevant conventions of the International Labour Organization.

13. Adopt practices of transparency and accountability with respect to any payment made to governmental authorities in a country where they are carrying out mining operations and ensure respect for economic rights and benefits for affected local populations.

14. Put an end to any practice of lobbying the Canadian government and other states to adopt policies, laws, and regulations in accordance with its interests and having an adverse effect on human rights, and refrain from blocking legislative or regulatory reforms on these issues.

15. Assume, in cases of proven human rights violations or environmental damage, an obligation of restitution, compensation and rehabilitation, and offer guarantees of non-repetition to the victims.

16. Refrain from all legal proceedings or arbitration against a state which has legislated to protect human rights or the environment, including proceedings permitted under provisions of free trade agreements.

5.2.2 To Barrick Gold and its subsidiary, Nevada SpA, Chile

Given the environmental damage associated with operations of the Pascua Lama mine in the Huasco Valley in Chile, especially the reduction of water resources in the region, and the apparent lack of consent from the Diaguita indigenous community of the Huascoalinos, that the Canadian enterprise and its subsidiary make the following commitments:

1. Acknowledge all wrongs and damages suffered by the populations in the Huasco Valley in Chile, especially the Diaguita indigenous communities;

2. Comply with all Chilean and Argentinean laws and regulations regarding the protection of the environment, water sources and glaciers, and the rights of indigenous people and, otherwise, cease resumption of mining operations in light of the resulting suspension of the project;

3. Cease immediately all activities that threaten or affect the lifestyles and livelihoods of communities in the Huasco Valley;

4. Respect the rights and self-determination of populations in the Huasco Valley, especially the Diaguita indigenous communities, and formally renounce, should the communities refuse to give their consent for the implementation of a mine on their territory, any mining project in the area concerned, in accordance with the right of free, prior and informed consent, to say no to any mining project;

5. Assume the costs of the most complete possible restoration of all components of the environment that may have been affected, and compensate the victims for any damages suffered; and

6. Assume the responsibility to respect human rights that is theirs under international law and demonstrate throughout their activities transparency and due diligence to prevent, and if necessary compensate, any violation of human rights arising from their operations, and allow victims to receive justice, truthful accounts, and full reparations.

5.2.3 To Goldcorp and its subsidiary, Entre Mares, Honduras

Given the negative impact of mining on the environment and people, notably the decrease and contamination of water sources for populations located near the mine, as well as serious health problems associated with the San Martin mine in the Siria Valley in Honduras, that the Canadian company and its subsidiary make the following commitments:

1. Acknowledge all wrongs and damages suffered by populations in the Siria Valley as a result of the San Martin mine, and respond to their needs;
2. Assume the costs for the most complete restoration possible of the mining site and components of the environment which may have been affected but not adequately restored during the closing process from 2007 to 2010; notably, that they take charge of all costs connected to the cleaning of water sources and reforestation of the Valley;
3. Cease definitively any practice of repression, intimidation, criminalization, defamation, and violence against opponents of the mining project and social organizations acting to defend those rights;
4. Provide governmental and judicial entities with all documents required to establish the facts; act transparently, collaboratively and in good faith in the course of any judicial inquiry underway in Honduras or abroad; and comply with any sanction and redress determined at the end of this process;
5. Provide compensation for victims who suffered damages, and provide land titles to all persons and communities displaced by this project; and
6. Assume the responsibility to respect human rights that is theirs under international law and demonstrate through their activities the transparency and due diligence necessary to prevent human rights violations and, if necessary, compensate any violation of human rights resulting from their operations and allow victims to receive justice, truthful accounts, and full reparations.

5.2.4 To Tahoe Resources and its subsidiary, San Rafael S.A., Guatemala

Given the absence of consent from local communities and acts of violence associated with the Escobal mine that affect communities of the Santa Maria and Jalapa departments in Guatemala, that the Canadian company and its subsidiary make the following commitments:

1. Acknowledge all wrongs and damages suffered by populations affected by the Escobal project in the Santa Rosa and Jalapa departments;
2. Cease immediately, pending more complete evaluations and adequate consultation of affected populations, all activities that threaten or affect the lifestyles and livelihoods of impacted communities;
3. Provide governmental and judicial entities with any document required to establish the facts related to the quality of the environment, and attacks or threats perpetrated against people and communities exercising their rights; act transparently, collaboratively and in good faith in the course of any judicial investigation underway in Guatemala or abroad; and comply with any sanction and redress determined at the end of this process;
4. Acknowledge and respect the right of self-determination for populations in the region, especially the Xinka indigenous peoples, which includes, among others, the right to say no to any mining project; and formally renounce, should the communities refuse to give their consent for the implementation of a mine on their territory, any mining project in the area concerned;
5. Cease definitively all practices of repression, intimidation, criminalization, defamation and violence against opponents of the mine and social organizations acting to defend those rights;
6. Comply with all Guatemalan legislation and regulations regarding the protection of the environment, the rights of indigenous peoples and constitutional rights pertaining to the full enjoyment of civil, political, economic, social and cultural rights;
7. Provide compensation for victims who have suffered damages and assume the costs of the most complete possible restoration of the mine site and components of the environment that may be affected, including the landscape; and
8. Assume the responsibility to respect human rights that is theirs under international law and demonstrate throughout their activities the transparency and due

diligence necessary to prevent human rights violations and, if necessary, compensate any violation of human rights resulting from their operations and allow victims to receive justice, truthful accounts, and full reparations.

5.2.5 To Blackfire Exploration and its subsidiary, Blackfire Exploration Mexico R.L., C.V., Mexico

Given the corruption, violence, conflict within the community, and the assassination that occurred during the phases of development and operation of the Payback mine in Chicomuselo, in Chiapas, Mexico, that the Canadian company and its subsidiary make the following commitments:

1. Acknowledge all wrongs and damages suffered by local communities and acknowledge that these actions have violated the right to life;
2. Testify in Mexican tribunals concerning criminal acts caused directly or indirectly – with their consent – by the mining company and provide entities empowered to conduct investigations with any document required to establish the facts relative to the assassination of Mariano Abarca on November 27, 2009; that they act transparently, collaboratively and in good faith in the course of any judicial investigation underway and comply with any sanction and/or redress determined at the end of this process;
3. Provide the Royal Canadian Mounted Police with any document and/or relevant information in the context of the ongoing criminal investigation, in accordance with the *Law on Corruption of Public Foreign Agents*, concerning allegations of corruption;
4. Cease definitively all practices of repression, intimidation, criminalization, defamation and violence against opponents of the mining project and social organizations acting in defense of those rights;
5. Formally renounce, considering the flagrant absence of justice and redress for abuses committed, any mining concessions on the territory of the Chicomuselo or neighboring municipalities;
6. Repay victims for damages suffered and assume the costs of the most complete restoration possible of the mining sites and components of the environment that may have been affected, including the landscape; and
7. Assume the responsibility to respect human rights that is theirs under international law and demonstrate through their activities the transparency and due diligence necessary to prevent human rights violations

and, if necessary, compensate any violation of human rights resulting from their operations and allow victims to receive justice, truthful accounts, and full reparations.

5.2.6 To Excellon Resources and its subsidiary, Excellon of Mexico S.A. C.V., Mexico

Given violations of labour rights and of freedoms of unionization, association and collective bargaining, and given the conflicts with impacted communities and environmental damages observed at the Platosa mine, in the Durango State in Mexico, that the Canadian company and its subsidiary make the following commitments:

1. Acknowledge all wrongs and damages suffered by local communities;
2. Recognize and respect the rights of workers to freely choose their union representation and rights to collective bargaining and the right to peacefully organize union workers and the population of the ejido La Sierrita;
3. Respect the commitments laid out in the agreement outlined in 2008 with the ejido La Sierrita;
4. Comply with all Mexican legislation and regulations regarding protection of the environment, the rights of indigenous peoples, and constitutional rights pertaining to the full enjoyment of civil, political, economic, social and cultural rights;
5. Cease definitively all practices of repression, intimidation, criminalization, defamation and violence against opponents of the mining project and social organizations acting in defense of those rights;
6. Collaborate with any judicial or non-judicial investigation underway in Mexico or abroad and provide entities empowered to undertake an investigation with any document required to establish the facts, all with transparency and good faith; and comply with any sanction and redress determined at the end of the process;
7. Provide compensation for victims who have suffered damages and assume the costs of the most complete possible restoration of the mine site and components of the environment that may be affected, including the landscape; and
8. Assume the responsibility to respect human rights that is theirs under international law and demonstrate throughout their activities the transparency and due diligence necessary to prevent human rights violations

and, if necessary, compensate any violation of human rights resulting from their operations and allow victims to receive justice, truthful accounts, and full reparations.

5.3 To Host states

1. Ensure, as part of the cooperative relationship of economic and trade integration with Canada, respect of sovereignty, self-determination and dignity of peoples ahead of the economic interests of the mining sector, including by preventing the privatization of basic elements for life, such as water, air, land and biodiversity; and to introduce the required reforms in their domestic legislation concerning water, mineral resources, fishing, and other land resources, or resources relating to access to basic services.

2. Establish, if they have not yet done so, a legal framework to guarantee the effective compliance by foreign companies with their legal obligation to respect human rights and the environment in the territory covered by the Permanent Peoples Tribunal and to take the measures necessary to establish adequate administrative capacities in order to carry out their role of oversight and monitoring of the activities of these companies.

3. Adopt and effectively implement within their domestic legislation, in particular, the right to consultation of indigenous peoples and affected communities, as well as the obligation to obtain the consent of these parties before granting any concessions or permits required for a mining project that may affect their livelihoods and traditional ways of life, and to ensure their participation in decisions that affect them.

4. Immediately halt all projects whose development is planned on the territory of indigenous people which have not been subject to a process of consultation and which have not received the free, prior and informed consent of these peoples, until such a procedure can be appropriately implemented.

5. Ensure the effective protection of human rights defenders in accordance with the relevant United Nations resolutions and to take effective measures to end all acts of intimidation, persecution, stigmatization, and prosecution directed against them.

6. Ensure fast, effective and fair access to justice, as well as the enforcement of international human rights standards, including the right to equality and non-

discrimination, rights relating to labour norms and those of indigenous peoples, and the protection of the environment.

7. Promote and support national legal systems with all resources necessary, so that they might ensure the implementation of the process of investigation of offences and punishment for crimes by judicial apparatuses, in particular those crimes committed in violation of the rights of peoples and communities.

8. Review and raise tax obligations of national and foreign mining companies to avoid their disproportionate enrichment and obtain fair compensation for the environmental costs related to the intensive exploitation of exhaustible natural resources.

9. Restrict mining and extractive areas, prohibiting them in inhabited areas, in particular of indigenous peoples, where communities would oppose exploitation in agricultural and water-producing areas, in areas protected for environmental reasons, in areas recognized as national heritage, and in areas recognized as UNESCO World Heritage sites.

10. Ensure, where there is consent from local peoples and a mining project goes ahead, that the mining companies have a plan for the closure and post-closure phases of the project, accompanied by a guarantee fund to cover the costs of the most complete restoration possible of the mining site and to cover the restoration costs of the long-term environmental damage of the project, including damage unanticipated by the environmental impact study.

16. Refrain from negotiating, signing or ratifying any new investment or trade agreements with third states where there are unequal conditions, or where these agreements would strengthen the rights of investors at the expense of human rights; not renew these types of treaties when they expire; avoid implementing regressive measures; and take all necessary steps to review trade agreements currently being implemented, in order to include provisions on the protection of human rights along with mechanisms to guarantee their effective application, including labour and environmental rights, the right to self-determination and the right to participate in decision-making, and the principles of non-discrimination and equality, including gender equality, transparency and accountability.

5.4 To Human rights treaty and non-treaty bodies

1. The Permanent Peoples' Tribunal, reiterating a petition already made in its past sessions, demands that the United Nations Human Rights Council develop mandatory standards for multinational companies, which take into account the responsibilities and obligations relative to human rights as outlined by the relevant United Nations bodies, the International Labour Organization (ILO) and the Organisation for Economic Co-operation and Development (OECD), as well as in binding draft standards previously developed at the United Nations. In this sense, the Tribunal expresses support for the proposed adoption of an international treaty codifying and developing a binding set of standards of behavior with which multinational companies must comply.

2. The Tribunal also asks the United Nations Human Rights Council to provide an appropriate international mechanism to oversee its compliance, which could take the form of an international economic court with jurisdiction over cases of human rights violations and environmental damage caused by economic activity, with the authority to determine civil and criminal compensation and with jurisdiction to process individual and collective complaints.

3. The Tribunal asks the Inter-American Commission on Human Rights, as per the request of the Working Group on the Mining and Human Rights in Latin America and other civil society groups in recent years,

- a) to adopt measures to give the highest priority to the issue of extraterritorial responsibilities of the states of origin of extractive companies;
- b) to quickly address petitions and cases associated with human rights violations caused by extractive companies;
- c) to consider the appointment of a Special Rapporteur in charge of the issue;
- d) to draft a regional thematic report on the impact of the extractive industry on human rights and the international responsibility of the states of origin of extractive companies;

4. The Tribunal asks the various special rapporteurs and other mechanisms of the Human Rights Council connected with the facts reported in this hearing to intensify their activities as regards condemning violations and protecting victims.

5.5 To organized civil society

1. That in all cases of a Canadian mining company setting up operations, the employees and affected communities systematically contact the company's employees and labour unions of the parent company, as well as organizations working in the fields of environmental protection, human rights promotion and protection, and international solidarity

in Quebec and in Canada. This aims to create permanent channels of communication, facilitate information-sharing and establish joint solidarity strategies.

2. That in all contentious situations, employees of Canadian mining companies and affected communities use the mechanisms provided by international institutions and agreements (e.g. ILO, OECD, NAFTA) to voice their grievances, make their demands known publicly, and obtain appropriate and satisfactory responses from the authorities in charge, when these mechanisms are available and when affected individuals believe that it might succeed in bringing them justice and/or compensation.

3. That all social organizations in Canada, Quebec and Latin America continue their ongoing effort of identifying and tracking mining companies that violate human rights and that from such a list, they share information and organize actions that seek to hold Canada's public authorities as well as the mining companies and their subsidiaries accountable.

4. That Canadian civil society organizations continue their awareness-raising and information-sharing work with pension funds investors about high-risk operations. That they continue their research, information, reflection and advocacy work on what are supposedly ethical funds and the criteria used for selection of companies that make up these funds.

5. That Canadian civil society organizations continue their research and information work on fiscal advantages and regulatory frameworks provided to extractive companies by Canada and the jurisdiction's different provinces, with a focus on the impact of these tax benefits on human rights.

6. That all 50 organizations involved in the Tribunal's current session continue their research and documentation of high-risk situations and systematic and systemic human rights violations associated with foreign operations of Canadian mining companies, and related more broadly to a development model based on unrestrained extractivism. In particular, that the organizations deepen their understanding of this model's implications for the rights of women, indigenous peoples and future generations.

7. That all 50 organizations involved in the Tribunal's current session incorporate all the recommendations from the Tribunal's current session in their respective action plans and develop a program centered on information, training and advocacy in order to profoundly transform the relationship between the Canadian mining sector and communities in Latin America.

APPENDIX 1

PEOPLES' TRIBUNAL ON THE CANADIAN MINING INDUSTRY HEARING ON LATIN AMERICA



PROGRAM

May 29th – June 1st, 2014, Montreal, Canada

Thursday, May 29th, 2014

Opening Conference of the Tribunal, 6:00pm-9:00pm, Adams Auditorium, McGill University, 3450 rue University

Welcoming Address on behalf of the Organizing Committee

6:20-6:40pm Presentation by Gianni Tognoni, Secretary of Permanent Peoples' Tribunal

6:40-7:05pm Presentation of the members of the jury:

Maude Barlow (Council of Canadians)

Mireille Fanon-Mendès-France (Frantz Fanon Fondation, France)

Nicole Kirouac (Comité de vigilance de Malartic, Québec)

Gérald Larose (Université du Québec à Montréal)

Viviane Michel (Quebec Native Women)

Javier Mujica Petit (Centro de Políticas Públicas y Derechos Humanos, Peru)

Antoni Pigrau Solé (Universitat Rovira i Virgili, Spain)

Gianni Tognoni (Permanent Peoples' Tribunal, Italy)

7:05-7:25pm Presentation of the prosecutors and the charges

7:25-8:30pm Presentations on the context of mining expansion:

« Les enjeux politiques de la reprimarisation des économies latino-américaines », Nancy Thède, Chaire Nycole-Turmel, Université du Québec à Montréal

« Le modèle d'expansion minière questionné : impacts, conflits et enjeux », Isabel Orellana, Centre de recherche en éducation et formation relatives à l'environnement et à l'écocitoyenneté, Université du Québec à Montréal

« El impacto de la minería canadiense en América latina y la responsabilidad de Canadá », Pedro Landa, Centro Hondureño de Promoción para el Desarrollo Comunitario (CEHPRODEC), Honduras

8:30-9:00pm Questions and discussion

Friday, May 30th, 2014

Hearing on human rights violations and the socio-environmental impacts of Canadian mining activity in Latin America, 9:00am-5:00pm, CEDA, 2515 Delisle

- 9:00-9:15am Opening and presentation of the charges against the Canadian mining industry, Paul Cliche, prosecutor
- 9:15-11:00am First component: The right to life and to a healthy environment**
- 9:15-9:20am Presentation of the main issues and charges, Nadja Palomo, prosecutor
- 9:20-9:25am Impacts of industrial mining on the human right to water, Meera Karunanathan, Council of Canadians
- 9:30-9:50am The mining industry and the violation of the human right to water: the case of Pascua Lama ([charge 2](#)), Nancy Yañez, Observatorio ciudadano, Chile
- 9:50-10:15am Valle de Siria and the right to health: the case of San Martin ([charge 1](#)), Pedro Landa, CEHPRODEC and Carlos Amador, Representative of the Comité ambiental Valle de Siria, Honduras
- 10:15-10:30am Impacts of industrial mining activity on the environment, Bruno Massé, Réseau québécois des groupes écologistes (RGQE)
- 10:30-10:40am Impacts of mining in Central America and the right to life, Juliana Turqui, Oxfam America
- 10:40-11:00am Questions from the members of the jury
- 11:00-11:20am Pause
- 11:20-1:00pm Second component: The right to self-determination**
- 11:20-11:25am Presentation of the main issues and charges, Paul Cliche, prosecutor
- 11:25-11:45am Testimony on the right to self-determination and the right to informed consent ([charge 3](#)), Sergio Campusano, Representative of the Diaguita Huascoaltinos community, Chile
- 11:45-11:50am Presentation of the Escobal case in Guatemala, Jackie McVicar, Breaking the Silence
- 11:50-12:10pm Testimony on the right to informed consent ([charge 4](#)), Oscar Morales, Representative of the Comité en Defensa de la Vida y la Paz, San Rafael las Flores, Guatemala
- 12:10-12:15pm Testimony by a representative of the Xinca Parliament, Guatemala (by video)
- 12:15-12:35pm Impacts of the mining industry on indigenous rights, Nancy Yañez, Observatorio ciudadano, Chile
- 12:35-1:00pm Questions from the members of the jury
- 1:00-2:30pm Lunch
- 2:30-5:00pm Third component: The right to full and complete citizenship**
- 2:30-2:35pm Presentation of the main issues and charges, Paul Cliche and Nadja Palomo, prosecutors
- 2:35-2:55pm Women's rights and the mining industry, Lina Solano, Frente de Mujeres Defensoras de la Pachamama, Ecuador
- 3:00-3:40pm Testimony on the right to work and the freedom of association: The case of la Platosa, Mexico ([charge 5](#)), Representative of Section 309 de Los Mineros and Dante Lopez, Proyecto derechos económicos, sociales y culturales (ProDESC), Mexico
- 3:50-4:00pm Presentation on the criminalization of resistance movements against mining projects in Latin America, Jennifer Moore, Mining Watch
- 4:00-4:20pm Testimony on the repression and the violation of the right to peaceful assembly ([charge 6](#)), Representative of the Comité en Defensa de la Vida y la Paz, San Rafael Las Flores, Guatemala
- 4:20-4:35pm Testimony on the right to life: the Payback case in Chicomuselo, Mexico ([charge 7](#)), José Luis Abarca, Chicomuselo, Chiapas (video)
- 4:35-5:00pm Questions from the members of the jury

Saturday, May 31st, 2014

Hearing on Canadian policies contributing to the violation of human rights and environmental damage,

9:00am-5:00pm, CEDA, 2515 Delisle

9:00-9:10am Opening and presentation of the charges against the Canadian government, Paul Cliche, prosecutor

9:10-9:30am Efforts of civil society in Canada and the responsibility of the State of origin

9:10-9:15am Presentation of the initiatives of civil society in Québec and in Canada (TBA)

9:15-9:30am Roundtable process in 2006, recommendations and follow-up by the Canadian government, Karyn Keenan, Halifax Initiative

9:30-9:50am Responsibility of the country where investments originate according to international law, Ana Maria Suarez Franco, Consorcio ETO

9:50-11:40am Political support and interference in the legislative process of host countries

9:50-9:55am Presentation of the main issues and charges, Nadja Palomo, prosecutor

9:55-10:15am The practices of embassies and the case of Chicomuselo ([charge 8](#)), Mexico, Jennifer Moore, Mining Watch

10:15-10:35am Mining code reform in Colombia in 2001 ([charge 10](#)), Maude Chalvin, Projet Accompagnement Solidarité Colombie (PASC)

10:35-10:55am Mining code reform in Honduras in 2013 ([charge 10](#)), Pedro Landa, CEHPRODEC, Honduras

10:55-11:15am Pause

11:15-12:20am International Aid

11:15-11:20am Presentation of the main issues and charges, Paul Cliche, prosecutor

11:20-11:40am Commercialization of Canadian aid and the use of Official Development Assistance to promote trade interests ([charge 9](#)), Stephen Brown, University of Ottawa

11:40-12:10am Questions from the members of the jury

12:10-1:50pm Lunch

1:50-3:05pm Canada's economic support for the mining industry

1:50-1:55pm Presentation of the main issues and charges, Paul Cliche, prosecutor

1:55-2:10pm Export Development Canada's accountability ([charge 11](#)), Karyn Keenan, Halifax Initiative

2:10-2:20pm Canadian public pension funds and ethical criteria ([charge 11](#)), Laurence Guénette, Projet Accompagnement Québec-Guatemala (PAQG)

2:20-2:40pm Mechanisms of economic support, tax incentives and supervision of the Toronto Stock Exchange ([charge 12](#)), Alain Deneault, author and researcher (video)

2:40-3:00pm Questions from the members of the jury

3:00-4:10pm Access to justice

3:00-3:05pm Presentation of the main issues and charges, Nadja Palomo, prosecutor

3:10-3:30pm Obstacles in access to justice and a brief introduction on access to justice in Canada for affected individuals and communities ([charge 13](#)), Shin Imai, Osgoode Hall Law School, York University

3:35-3:55pm Experience with the Office of the CSR Counsellor and National Contact Points for the OECD, the case of Mexico, ([charge 13](#)), Dante Lopez, ProDESC

3:55-4:10pm Questions from the members of the jury

4:10-5:00pm Free Trade and the Rights of Peoples

4:10-4:15pm Presentation of the main issues, Paul Cliche, prosecutor

4:15-4:35pm Free trade, protection of mining investments and the rights of peoples, Pierre-Yves Sérinet, Réseau québécois d'intégration continentale (RQIC)

4:35-4:55pm Lawsuit and arbitration against El Salvador by a mining company, Laura Lopez, Institut de recherches et d'information socio-économique (IRIS)

Saturday evening, May 31st, 2014

Cultural Event

Cabaret du Mile End, 5240 Avenue du Parc, 8:30pm

Featuring:

Juan Sebastian Larobina,

Yves Desrosiers,

Tomas Jensen,

Darundäi,

Kinokewin,

Les Bottes gauches

Sunday, June 1st, 2014

Discussion and announcement of the verdict, CEDA, 10:00am-5:00pm

9:30am Reception, snacks and coffee

10:00-11:30am Bloc 1 – workshops and discussion groups

11:45-1:15pm Bloc 2 – workshops and discussion groups

11:00am-1:00pm « **Trous de mémoire** », **Forum-théâtre sur l'extractivisme** with Projet Accompagnement Solidarité Colombie (PASC)

Discussion groups and workshops:

Migrations et industrie minière (Centre des travailleurs et travailleuses immigrantes – CTI; Asociación de Guatemaltecos Unidos por Nuestros Derechos -AGUND)

El proceso de obtención de una audición sobre las compañías mineras canadienses a la CIDH : discussion with Pedro Landa (CEHPRODEC)

Résistance des femmes face à l'agression des minières, with Lina Solano (Alliance internationale des femmes, Femmes de diverses origines, CDHAL)

National Sovereignty, "Investors' Rights" and Saying "No" to Mining: Looking for lessons from El Salvador's struggle vs. Pacific Rim/Oceana Gold (Salvaide, Social Justice Connexion)

The Role of International Coalitions in Supporting Communities Affected by Canadian Mining in Guatemala (CAMIGUA, the International Coalition Against Unjust Mining in Guatemala)

1:15-2:15pm Lunch

2:15-4:15pm Public assembly: Building a movement for mining justice in Canada: campaigns, projects and ideas for strategic collaboration.
Full public participation.

4:30-5:00pm Announcement of the verdict by the jury (trilingual)

www.tppcanada.org

www.facebook.com/tppcanada

www.twitter.com/TPPCanada

Financial partners : Ministère des Relations internationales, de la Francophonie et du Commerce extérieur (MRIFCE), via the Fonds d'éducation et d'engagement du public en solidarité internationale (FEPSI), administered by the Association québécoise des organismes de coopération internationale (AQOCI); Caisse d'économie solidaire Desjardins, qui contribue à bâtir un Québec plus juste dans la perspective d'un développement durable (www.caissesolidaire.org); Fondation Béati, la Confédération des syndicats nationaux (CSN), United Steelworkers Humanity Fund, students associations (AFESPED, ABICEP - UQAM); Public Service Alliance of Canada (PSAC-AFPC); Centrale des syndicats du Québec (CSQ); le Conseil central du Montréal métropolitain de la CSN (CSN-CCMM); Development and Peace; Inter Pares; Mercier MP, Assemblée nationale du Québec.

Media partners : Radio Centre-Ville, CUTV and CKUT.

APPENDIX 2

LIST OF REFERENCES AND DOCUMENTS SUBMITTED TO THE PERMANENT PEOPLES' TRIBUNAL JUDGES

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The testimonies and documents submitted to by the Tribunal identified mining development in Latin America as a major factor in local conflicts, environmental damages and human rights violations, namely of the right to self-determination and those rights associated with political expression and human rights protection. These impacts also reinforce existing dynamics of discrimination and inequality affecting indigenous peoples and women.

By using its political and economic leverage to promote Canadian mining interests, Canada interferes with the enjoyment of human rights in Latin America and with their protection by host states. The Canadian state does not require from extractive companies that they respect human rights to obtain services or financial products from the government of Canada. The state by contrast implements laws, policies and practices that facilitate mining operations, thus contributing to their expansion and to the perpetuation of exactions.