

Permanent Peoples' Tribunal
Session on the Canadian Mining Industry
Charges
Hearing on Latin America



Organizing Committee
tppcanada.org

MONTRÉAL, MAY 2014

Charges

Canadian mining companies are accused of violating
fundamental human rights in Latin America

AND

The Canadian government is accused of contributing to human
rights violations by supporting the mining industry through
various mechanisms, while fostering impunity.

PREAMBLE

Tenemos el derecho a decir NO al desarrollo impuesto y a definir nuestras formas de producción económica, social, política y cultural. Por la defensa de nuestros territorios, Si a la Vida, No a la Minería.
Encuentro de Pueblos Mesoamérica: *Si a la Vida, No a la Minería*
January 2013, Capulalpam de Méndez, Mexico

Over the last 15 years, Latin America has experienced a significant mining boom due to substantial growth in the demand for mining resources.¹ Investments by transnational companies, a significant number of which are Canadian, are at the heart of this mining expansion. With 75% of the world's mining companies registered in Canada,² the country boasts favourable conditions for raising capital for the global mining industry, especially the venture capital needed to finance mining exploration. Latin America is a premier destination for Canadian mining capital. More than 230 Canadian mining companies operate there; with investments of more than 50 billion dollars in 2013 and almost 1,500 mining projects situated in Latin America were operated by companies registered at the Toronto Stock Exchange (TSX and TSX-V).³

On a global scale, the growing demand for natural resources, combined with particularly favourable conditions for investment and exceptionally high prices for metals, has given rise to an important expansion in mining activity since 2000⁴. Advances in technology have permitted identification of deposits that were formerly inaccessible to mining exploitation. Furthermore, open pit mining makes the extraction of previously unprofitable low-density ores possible. The rise of transnational megaprojects,⁵ for which new international laws are often necessary, is responsible for territorial fragmentation. This transforms state borders creating extractive enclaves directly linked to global markets.

International financial institutions promote the development of extractive industries, which benefit from the loans of the International Finance Corporation (IFC) and the insurance underwriting of the Advanced Marketing Group, Inc. (AMGI) of the World Bank Group.⁶ Canada actively supports the expansion of the Canadian mining industry throughout the world and constitutes the most important state actor in the

¹ "The main causes of this mining boom are associated with the growth logic of the model: rapid development of the neoliberal model and a tendency toward exaggerated consumption (particularly of technological devices that require minerals); the arms race (among other minerals, titanium, platinum and uranium are favoured); an important growth in the demand for aluminum, copper, zinc, lead and nickel, among others, from so-called emergent countries; a retreat to gold as a security value." Orellana, Isabel (2011). *Un fenómeno contemporáneo de expansión minera sin precedentes*. Launch of the book, *Minería al límite: Análisis de tres casos de minería de frontera en América Latina*, September 13, Biblioteca Nacional, Santiago (Chile).

² Government of Canada (2009), *Renforcer l'avantage Canadien : Stratégie de responsabilité sociale des entreprises (RSE) pour les sociétés extractives Canadiennes présentes à l'étranger*.

³ TMX, A Capital Opportunity for Mining: http://www.tmx.com/en/pdf/Mining_Presentation.pdf.

⁴ For example, we note that, around the year 2000, an ounce of gold sold on the international market for about \$300 before reaching a historic peak of \$1,800 in 2010. Currently, the price of an ounce of gold hovers around \$1,350.

⁵ For example, the mining sites of Pascua Lama (Chile-Argentina), Cerro Blanco (El Salvador-Guatemala) and Cordillera del Condor (Ecuador-Peru) are situated in cross-border zones.

⁶ Réseau canadien sur la reddition de comptes des entreprises (RCRCE) (2007), *Affaires douteuses, Pratique douteuses. Le soutien du gouvernement fédéral aux entreprises minières, gazières et pétrolières*.

mining industry.⁷ Canadian mining companies receive contributions from the state for their activities. At times these are direct, for example, through loans and guarantees, fiscal advantages or the support of the Canadian diplomatic corps and also indirect through, for example, the absence of constraining mechanisms requiring the Canadian mining companies to respect human rights.

Between 50 % and 70 % of mining activity in Latin America is in the hands of Canadian companies.⁸ A large number of these mining projects result in serious social and environmental conflicts and human rights violations. The Observatory of Mining Conflicts in Latin America (OCMAL) lists some 200 conflicts affecting local communities. Of these conflicts, more than 90 concern Canadian companies⁹. In addition, the *McGill Research Group Investigating Canadian Mining in Latin America* (MICLA)¹⁰ has documented 85 cases of conflicts that show significant impacts of Canadian mining projects on hundreds of communities on the continent. A growing number of communities, organizations, social movements and observers on the local and international level are concerned by these conflicts.

The activities of mining companies and other extractive industries in many cases infringe on rights recognized by international law as well as the emerging norms in customary international law.¹¹ Mineral extraction can pose threats to the environment, social and economic well-being, the survival of cultures, the health of people and even their physical safety.

In certain cases, violations of rights are directly attributable to mining companies. For example, when working conditions contravene fundamental labour norms, when people are forcibly displaced or when private security is used to threaten and repress local protest. In other cases, rights are violated with the complicity of the host countries, for example with the use of police and security forces in order to repress opposition. The country where the investment originates can also contribute to human rights violations by providing favourable conditions for the expansion of the mining industry without proper norms requiring companies to respect human rights. The Canadian state is, in this sense, emblematic: it intervenes in the development of the mining industry and interferes with democratic processes in host countries.

The implementation of mining projects, particularly large-scale projects, frequently infringes on the right to self-determination and the ability of the population to determine their way of life and future. The arrival

⁷ Blackwood, Elizabeth and Veronika Stewart (2012), *CIDA and the Mining Sector: Extractive Industries as an Overseas Development Strategy*, in Brown, Stephen (editor), *Struggling for Effectiveness: CIDA and Canadian Foreign Aid*, p. 217.

⁸ See the sources consulted by the 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.

⁹ http://basedatos.conflictosmineros.net/ocmal_db/. Consulted, April, 2014.

¹⁰ <http://micla.ca/conflicts/>. Consulted, April, 2014.

¹¹ With regard to the accusations and the studies carried out on the violations of human rights, see for example the website of the *Business and Human Rights Resource Centre*, <http://www.business-humanrights.org>; Human Rights Commission (2006), *Rapport intérimaire du Représentant spécial du Secrétaire général chargé de la question des droits de l'homme et des sociétés transnationales et autres entreprises*, Doc. Off. CES NU, 62e session, Doc. NU E/CN.4/2006/97, February, 22, 2006, p. 8; CEDHU, FIDH et Rights and Democracy (2010); *Large-scale Mining in Ecuador and Human Rights Abuses: The Case of Corriente Resources Inc.*, Rights and Democracy (2007); *Études d'impact des investissements étrangers sur les droits humains, Tirer les leçons de l'expérience des communautés aux Philippines, au Tibet, en République démocratique du Congo, en Argentine et au Pérou*, Montreal, Rights and Démocracy.

of mining companies upsets the life of the communities and brings tensions, distrust, divisions and conflicts.¹²

Mining projects often affect communities living in precarious conditions and in remote regions. They are frequently located within or near indigenous territories and affect the way of life and rights of indigenous peoples. Serious attacks on the right to cultural integrity, to self-determination, to consultation and to free, prior and informed consent as well as to land, territory and resources have been identified in several Latin American countries. Furthermore, mining activities tend to affect the rights of women, as they are particularly affected by social, economic and environmental disruptions which occur during the establishment of a mining project. The rights of future generations¹³ are likewise compromised, as is the right to work, to form unions and to defend these rights themselves (such as freedom of expression, the right to peaceful assembly, etc.)

Various factors contribute to the denial of justice for those affected by mining, while granting impunity to mining companies. For example, the asymmetrical power relations between the communities, transnational companies and states; the repression and criminalization of those who defend their rights; the structure of the transnational companies, e.g. the establishment of subsidiaries and frequent changes of ownership; the protection of investments guaranteed by free trade agreements.

In Latin America the assault by mining activities has led to the emergence of social movements that have mobilized to defend and protect the territories of affected communities. These communities claim the right to a healthy environment, the protection of ecosystems, water, cultural heritage (which is often indigenous) and of the right to determine local development priorities.

The organizing committee, representing all those who support this initiative, present to the Permanent People's Tribunal this document which includes charges of systemic and systematic human rights violations caused by Canadian mining projects in Latin America. These charges question the extractive model sustained and promoted by the Canadian mining industry and the Canadian government. It is characterized, among others, by an unconstrained exploitation of natural resources, a poorly regulated framework, massive investments, financial and fiscal support and large-scale on-site operations. This extractive model infringes with impunity on the rights of peoples and the integrity of the environment.

¹² Ubal, Sylvia (2008), *La minería a cielo abierto conlleva a la destrucción del medio ambiente*, On-line Ecoportal: mineria.ecoportal.net/content/view/full/83342

¹³ Mindful that an ethic of justice and responsibility for the future, a right of future generations, which is integral to the continuum of life and uncertainty, is emerging in international law: Among other things, we need to assure that future generations will have a free choice of their political and economic system, the continuance of human dignity, peace, cultural and religious diversity, equity in social, economic and ecological relations as well as the protection of the environment in order to preserve life on earth and biodiversity, among other elements, *Declaration on the Responsibilities of the Present Generations Toward Future Generations*, United Nations Educational, Scientific and Cultural Organization (UNESCO), 1997.

I. SUBJECT OF THE CHARGES

- Whereas the Permanent Peoples' Tribunal (PPT) is a public opinion tribunal¹⁴ based on the Universal Declaration of the Rights of Peoples (Algiers, 1976) and on all the instruments of international law;*
- Whereas the various chapters of the PPT have sought to struggle against impunity and to promote respect for human rights, access to justice and the re-appropriation of the human rights instruments;*
- Whereas the PPT is able to adjudicate flagrant, systemic and systematic violations of the rights of peoples, and of vulnerable individuals, regardless of whether the responsibility falls on governments, other authorities or private organizations;*
- Whereas the PPT is able to adjudicate international crimes of an economic, social or ecological nature, and to examine issues such as the concentration of capital and of corporate power, corporate social responsibility and the role of free trade agreements in strengthening a judicial order where the interests of corporations are prioritized to the detriment of human rights;*
- Whereas several previous sessions of the PPT have focused on the judicial void regarding transnational corporations and the need to provide a framework for the universal and effective respect of the rights of peoples, notably during the sessions on the policies of the International Monetary Fund (Berlin, 1988) and Madrid, 1994), the Bhopal disaster (Bhopal, 1991 and London, 1994), transnational textile corporations (Brussels, 1998), the irresponsible acts of transnational corporations (Warwick, 2001), the European Union and transnational companies in Latin America (2006-2010) and the on-going session on free trade in Mexico (2011-2014);*
- Whereas the mission of the Permanent Peoples' Tribunal is to promote universal and effective respect for the fundamental rights of peoples by determining if these rights have been violated, and in examining the causes of these violations as well as denouncing their authors before world public opinion;*
- AND*
- Whereas large-scale mining activity involves elevated risks of violations of the rights of peoples: human, social, cultural and economic rights that have important impacts on communities, territories and the environment;*
- Whereas 75% of mining companies in the world are headquartered in Canada, and 60% of these register their capital here;*

¹⁴ The TPP was founded on June 24, 1979 in Bologna (Italy), through the initiative of Italian lawyer and senator, Lelio Basso, and was inspired by the work of philosopher Bertrand Russell and the tribunal of opinion on the war crimes in Vietnam (1966). The TPP was initiated by committed jurists, human rights activists and recipients of the Nobel Peace Prize.

Whereas Canada sustains the mining industry through the establishment of an institutional, political, financial and judicial system that favours the development of this extractive model;

Whereas major obstacles exist for affected communities when seeking justice at the national and international level, which promotes impunity for human rights violations during the implementation of mining megaprojects.

We base these charges on international law, in particular, 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 (Convention 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 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). We address these charges based on three main components of interrelated rights, which 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**.

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 liberty, 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, right to determine one's own development goals, 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 effective remedy before a court, 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.

All three major components of human rights, which we are proposing as the guiding principles for a session of the PPT on the Canadian mining industry, include an important collective dimension and touch on substantive rights such as the right to life, the right to a healthy environment or the right to consent, as well as on procedural rights related to the means through which individuals and communities defend their rights, notably through freedom of assembly, the right to participation or freedom of association. We note that procedural rights are recognized as essential for the implementation of other rights, such as right to a

healthy environment.¹⁵ Several forms of direct violation of the dignity of peoples can be traced to mining activity, as well as the weakening of the very capacity to defend, validate and make claims regarding these rights.

We urge the Permanent Peoples' Tribunal to analyze the situation of the Canadian mining expansion in Latin America through five emblematic cases of human rights violations, presented in this document. These cases took place in Honduras, Mexico, Guatemala and Chile.

We are asking the Permanent Peoples' Tribunal to analyze the charges presented here regarding the respective responsibilities of two actors: **Canadian mining companies**, and the **Canadian state**, which sustains the mining industry through various actions, policies and the government programs of different agencies.

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

We ask the Permanent Peoples' Tribunal to examine with particular attention:

- 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 the mining companies registered in Canada.
- 7) The guarantee in the current international system to the right to justice for victims of violations of civil and political rights, the right to work and unionize, and to their territorial, economic, social, cultural and environmental rights when these are a result of Canadian mining activities.

¹⁵ *Rio Declaration on the Environment and Development* (1992), United Nations Conference on the Environment and Development, Rio de Janeiro, Brazil, June 3-14, 1992.

- 1) The impact of the establishment of mining companies on the **right to prior, free and informed consent** as well as to the **territorial rights of indigenous peoples**.

Numerous indigenous and rural communities, urban citizens, etc., who have been affected by the establishment of a mining project demand the right to consultation, consent and participation. However, the strategies of mining companies, host countries and the companies' countries of origin compromise these communities' **right to say no**: attempts to win over the communities, social investment, cooptation of local authorities, criminalization and repression of opposition to the project, among others, infringe on territorial rights, as well as the right to self-determination.

The extraction of natural resources is currently one of the primary concerns for indigenous people throughout the world, and possibly the most important threat to the full realization of their rights.¹⁶ In Latin America, mining concessions are often found on or near the collectively held territories of indigenous peoples, threatening their safety and well-being. Under the guise of "development," the way of life, traditional knowledge and economic and social processes unique to indigenous peoples are often undermined by large-scale extractive activities.¹⁷ Indigenous peoples' claim to the right to consent regarding development projects on their territory has led to the recognition of the right to consultation and consent present in various legal instruments such as *Convention 169 of the ILO on Indigenous and Tribal Peoples* (1989) and the *United Nations Declaration on the Rights of Indigenous Peoples* (2007). The right to free, prior and informed consent, associated with rights regarding land and territory, is crucial in this regard, but is far from being guaranteed. Moreover, experience shows that the consultations carried out to establish mining projects have, in several cases, been marked by manipulation and disinformation and have served to facilitate the implementation of mining projects.¹⁸ Finally, we note that, if the right to consultation and consent are at the core of the realization of indigenous rights, they represent, above all, "a means to realize these rights," which is "far from reflecting the full extent of indigenous rights."¹⁹ Numerous interrelated rights are particularly sensitive to the exploitation of natural resources, notably the right to property, the right to culture and freedom of religion, the right to non-discrimination regarding access to land, territory, natural resources, sacred places and objects, the right to health and to physical well-being in a healthy environment and the right to define and carry out one's own priorities for development while exercising one's right to self-determination.²⁰

¹⁶ United Nations Human Rights Council (2011), *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, July 11, 2011, par. 57.

¹⁷ Miguel Palacin Quispe (2014), *Extractivismo en los Andes: Impactos de la minería sobre los derechos de los pueblos indígenas*. See, on line: <http://mapuexpress.org/extractivismo-en-los-andes-impactos-de-la-mineria-sobre-los-derechos-de-los-pueblos-indigenas-por-miguel-palacin-quispe/>

¹⁸ Mining Watch and CENSAT-Agua Viva (2009), *Terres et conflits: Extraction des ressources, droits de la personne et responsabilité sociale des entreprises : les sociétés canadiennes en Colombie*, p.8.

¹⁹ United Nations Human Rights Council (2012), *Rapport du Rapporteur spécial sur les droits des peuples autochtones, M. James Anaya*, A/HRC/12/47, 21^e session, July 6, 2012, par. 51.

²⁰ *Ibid.*

2) The impact of large-scale mining projects on the **right to a healthy environment** and on the **rights of future generations**.

Rapid mining expansion in Latin America affects both traditional mining areas and regions that have, until recently, been free of mining exploration and exploitation. These include fragile ecosystems like the Amazon rainforest, deserts, glaciers, etc.

Modern industrial mineral exploitation has major environmental consequences at every stage of the production process. Some of the most significant environmental impacts include the contamination of rivers and water tables (acidic drainage, heavy metals, chemical agents such as arsenic and sulphuric acid, erosion and sedimentation), reduction and depletion water sources, such as aquifers, resulting from the use of large quantities of water, reduced air quality (suspended toxic particles, gas emissions including sulphur dioxide), ground contamination, deforestation and irreparable damage to landscapes (excavation of historic gravesites, residue accumulation), forests and fragile systems and loss of biodiversity.

In addition to infringement on the right to a healthy environment, environmental problems affect a series of interrelated rights including the right to health, to life, to food and also rights linked to the democratic process such as the right to information, participation and access to justice²¹, which are compromised for communities today but also for future generations.

Mining activities provoke an increase in high-risk situations. These risks are not always immediately apparent. However, they have disastrous and often irreversible consequences for the environment, human health and even for future generations. The *precautionary principle* presupposes that an activity should not be undertaken if there is uncertainty regarding eventual harmful effects:

In the case of serious or irreversible damage, the absence of absolute scientific certainty should be a pretext for putting off the adoption of effective measures to prevent the degradation of the environment.²²

Future generations are of particular concern when the impacts of mining on human health are linked, among other things, to reproduction or pregnancy and have impacts tied to lifestyles, common goods, territories and to cultural diversity.

3) The impact of mining activities on the **rights of women**.

A development model based on the extraction of natural resources also raises several issues regarding equality between women and men. Mining activities affect the rights of women, who are particularly sensitive to the impacts of a disruption in social relations occurring during the establishment of a mining project, particularly large-scale projects. The rights associated with equality between women and men, reproduction, family, children, water, land, food, health, security and freedom are especially affected by mining projects. The mining industry is overwhelmingly masculine, contributing to a system of

²¹ Prud'homme, Maude; Lysiane Roch, Sylvie Paquerot, Vincent Greason et Mélissa Leblanc (2013), *Les droits humains et l'environnement: Converger pour avancer ensemble*, Réseau québécois des groupes écologistes, Ligue des droits et libertés du Québec, Projet accompagnement solidarité Colombie.

²² Principle 15 of the *Rio Declaration on the Environment and Development*.

patriarchal (as well as colonial and racist) domination. Favouring its development tends to increase the economic marginalization of women²³ while exacerbating inequality between the sexes through the transformation of the sexual division of labour. In particular, the conflict dynamics that accompany the establishment of a number of mining megaprojects exacerbate social tensions and create a climate of violence, especially domestic and sexual violence. The deterioration of the community and social fabric (creating conflicts between pro-mine and anti-mine groups), which often reinforces the companies' strategies to gain approval for a project, tends to have more severe impacts on women.²⁴ Among these impacts are cases of rape or threats of rape that have used as a strategy of repression against women who are opposed to extractive activities.²⁵ A rise in prostitution accompanying the development of mining projects and the problems of reproductive health linked to contamination should also be noted.

4) The impact of mining expansion on the right **to defend one's own rights**.

The presence of mining megaprojects weakens the capacity to defend one's rights (including, among other things, the right to freedom of expression, the right to peaceful assembly, the freedom to unionize, the right to collective negotiation, the right to personal security, and so on). Substantial imbalances can be observed, with regard to power, resources, access to information and the capacity to influence decision-makers. Mining companies will often negotiate by mutual agreement with landowners whose land rights they wish to acquire. They also tend to negotiate directly with indigenous peoples to arrive at an agreement on the extraction of natural resources on their territory. The power imbalance in terms of access to information, resources and the ability to negotiate threatens the fairness of these negotiations. Companies' resources and their access to power allows them to employ various strategies that sabotage the process of consultation and negotiation such as the recourse to judicial prosecution in order to block community consultations or to silence critics, defamation of human rights defenders and organizations supporting resistant communities, cooptation, aggressive advertising, and so on.

The criminalization of opposition to mining projects is a phenomenon that is becoming increasingly common in Latin America. A number of Latin American countries have adapted their legal framework to criminalize social protest with the aim of legalizing the government's response or to ensure the impunity of the police and military personnel.²⁶ As reported by the Inter-American Commission on Human Rights in its report on the situation of human rights defenders in Latin America in 2011, the criminalization of dissent affects advocates both in an individual and a collective way.²⁷ The stigmatization of resistance movements caused by criminalization can trigger patterns of violence, besides sending an intimidating message to groups wishing to report abuse.

²³ International Women and Mining Network (IWMN) (2010). *Women from Mining Affected Communities Speak Out: Defending Land, Life & Dignity*, International Women and Mining Network /Red Internacional Mujeres y Minería (RIMM), International Secretariat-Samata, India, p. 68.

²⁴ IWMN (2010), *op. cit.* p. 69.

²⁵ Observatorio de conflictos mineros de América Latina (OCMAL) (2011). *Cuando tiemblan los derechos: extractivismo y criminalización en América latina*, p. 129; Viewed at <http://www.amnistie.ca/sinformer/communiques/international/2010/papouasie-nouvelle-guinee/violences-policieres-expulsion>.

²⁶ Observatorio de conflictos mineros de América Latina (OCMAL) (2011). *Cuando tiemblan los derechos: extractivismo y criminalización en América latina*, p. 20.

²⁷ Commission interaméricaine des droits humains (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. 31 diciembre 2011.

5) The impact of **investment protection agreements** on peoples' right to self-determination and to define their own way of life and future

Promotion of free-trade agreements and of different types of investment protection at the international level, particularly by Canada contributes to the establishment and strengthening of the mining industry's privileges. Bilateral investment agreements and free trade agreements in particular, institutionalize neoliberal reforms through binding investment protection clauses which weaken the rights of peoples significantly. Several free trade agreements, particularly the North American Free Trade Agreement (NAFTA), provide a means for settling investor-state disputes, which allows a company to pursue a State party that infringes on its investments. These trade rules have a deterrent effect on host governments that wish to create legislation to protect the environment or to guide investment based socially or according to a development model they wish to promote. Several arbitration proceedings against governments whose laws oppose the implementation of mining projects, including pending lawsuits against El Salvador and Costa Rica in cases concerning Canadian mining interests, raise concerns about a system which weakens the exercise of democracy and the right to self-determination.²⁸ Promoting voluntary reporting by the mining industry also contributes to the creation of a climate of impunity for this industry. Economic rights are prioritized by binding agreements while people's rights are subject to symbolic or voluntary agreements.

6) Is there evidence of Canadian **interference** in Latin American countries by using public institutions to promote the implementation of mining projects? Does Canada respect its **obligations as far as due diligence and regulation of mining companies** registered in Canada are concerned?

Canada offers different types of support to the mining industry. This is a key contradiction of neoliberal globalization: while mining is based on the paradigm of free trade as an engine of economic development, its deployment is made possible through various institutional arrangements and a supported public intervention. Can Canada's actions to promote the development of its mining industry in Latin America qualify as interference in the domestic affairs of a country?

The promotion and guarantee of human rights by Canada requires that it respect its commitments under international law. Funding and support for Canadian mining companies by federal agencies such as the Canadian International Development Agency (CIDA) and Export Development Canada (EDC) render the Canadian government liable for its actions.²⁹ Therefore, Canada must ensure that the activities of these companies are in accordance with international law.³⁰ In this sense, the concept of due diligence, which refers to "measures that an ordinarily reasonable and prudent person would take to detect and correctly

²⁸ Arbitration proceedings were initiated in 2009 by the Canadian mining company Pacific Rim against El Salvador, following the state's refusal to grant an environmental licence necessary to the exploitation of an open pit gold mining project. These proceedings were conducted under chapter 10 of the United States-Central America free trade agreement, the company using for this purpose an office in the United States. In 2013, the Canadian mining company Infinito Gold claimed Costa Rica 1 billion dollars under a bilateral investment treaty (BIT) with Canada, following the cancellation of a mining concession in regard of its potential negative impacts on environment.

²⁹ Narula, Smita (2006). « The Right to Food: Holding Global Actors Accountable under International Law ». *Columbia Journal of Transnational Law* 44 pp. 691-.

³⁰ McCorquodale, Robert et Penelope C. Simons (2007). « Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law ». *British Institute of International and Comparative Law* 70 (4): 598-625.

manage existing or potential risks to mitigate their negative impact and prevent damage",³¹ is increasingly common in international agreements, notably put forward by the *UN Guiding Principles on Business and Human Rights*. The obligation of due diligence, a concept for which there is still little consensus on the definition and how it can be operationalized, would add to the "negative" requirement to respect human rights.

7) Is **the right to justice** guaranteed in the current system for victims who suffer violations of their civil, political, labour, union, territorial, economic, social, cultural and environmental rights caused by Canadian mining?

The right to an effective remedy is well established in international law. Victims of human rights violations have the right to seek justice: any person or community whose rights have been violated must be able to go to court and have access to effective remedies for the violations suffered. However, international law is focused on state actors: the international system remains reluctant to recognize obligations to non-state actors. While the power of transnational corporations has increased dramatically over the past three decades in the wake of the liberalization of trade and investment, mechanisms that would render companies accountable for human rights violations have not been developed accordingly. The legal framework within which multinational corporations have been developing, has been described as "a vacuum between ineffective national laws and non-existent or unenforceable international law"³².

Quite often, the host country does not provide effective remedy for victims who are denied justice. In countries where Canadian mining companies operate and where misdeeds are committed, human rights protection systems are often inadequate in ensuring respect for rights, or they are unable or unwilling to enforce protection measures, despite international legal obligations to which the State is committed. At various times, Canada has relied on the principle of non-interference to justify the failure to take action with respect to the activities of companies operating outside of Canadian territory.³³ However, the Canadian government intervenes in various ways to promote the establishment of Canadian mining projects in Latin America.

As a consequence of limitations in access to justice in host countries and at the international level, the international community tends to acknowledge that the countries where investments originate should play a greater role in ensuring respect for fundamental rights when it comes to the actions of multinationals. This responsibility has not yet been formalized in binding international law, and increasingly, non-judicial mechanisms that are promoted by governments, states and transnational corporations.³⁴ In November 2013, a hearing of the Inter-American Commission for Human Rights hearing on the responsibility of host countries and countries where mining investments originate for the first time discussed the notion of

³¹ Fischer, Santiago et Frédéric 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.

³² « *Multinational corporations operate in what has been described as a vacuum between ineffective national laws and non-existent or unenforceable international law* ». Fowler (1995), cité dans Amao, Olufemi (2011). *Corporate social responsibility, human rights, and the law : multinational corporations in developing countries*, Milton Park, Abingdon, Oxon ; New York, Routledge, p. 1.

³³ Comisión Ecuémica de Derechos Humanos (CEDHU) et Federación Internacional de Derechos Humanos (FIDH) (2010), *Intervención minera a gran escala en Ecuador y vulneración de derechos humanos. Caso Corriente Resources*. p. 25.

³⁴ Coumans, Catherine (2012). « Mining and Access to Justice : from Sanction and Remedy to Weak Non-Judicial Grievance Mechanisms », *UBC Law Review*, vol., 45, p. 655.

responsibility for countries where investments originate. Commissioners urged the IACHR to further explore this concept. With respect to international law, it is essential to develop the concept of responsibility by a country that promotes, through action or omission, violations of human rights abroad by a company domiciled in its territory.

II. CHARGES

These accusations are emblematic of different types of abuse and various situations of impunity. They do not address all the human rights abuses perpetuated by these companies, but some of the iconic violations for each case. A considerable number of cases of mining projects in Latin America deserve a thorough examination of the facts through international law. The selection process for these specific cases was the result of collective reflection by national and international partners, in Canada and Latin America. The references on which the charges are based are listed in the Appendix. The testimonies, expert presentations and written records to be presented at the hearing will complete the documentation.

A. CHARGES AGAINST CANADIAN MINING COMPANIES FOR VIOLATING HUMAN RIGHTS AND FOR CAUSING ENVIRONMENTAL DEGRADATION

First component – The right to life and to a healthy environment

Charge 1: The Canadian company Goldcorp and its subsidiary Entre Mares have violated the **right to health, the right to water and the right to a healthy environment** in communities surrounding the open pit gold mine of San Martin, in the Siria Valley in Honduras, during their operations between 2000 and 2007.

Abnormally high levels of **heavy metals** (lead, arsenic, mercury, cadmium, iron) were detected in blood tests of members of communities surrounding the mine (the presence of 173 ug/dl and 263 ug/dl of lead and arsenic in the blood while the levels accepted by the World Health Organization are between 10 and 30 ug/dl.) There is evidence³⁵ of the **contamination of water sources** due to unauthorized acid mine drainage where excessive discharges of contaminated water in treatment reservoirs were recorded. The presence of heavy metals is due to the explosion of sulfurous rocks in the crust during detonations, as well as the release of cyanide into the atmosphere and the soil during the extraction and contamination of water due to acid mine drainage. Members of the community said that the water had a reddish color and a strong smell of sulfur, indicating the presence of heavy metals. The people of San José de Palo Ralo consumed water from contaminated wells for 5 years. Contamination has caused a variety of serious health problems among the local population, such as respiratory problems, lung cancer, pneumoconiosis, gastrointestinal diseases, unusual frequency of miscarriages, and genetic diseases. At the same time, there were impacts on mental health related to the constant noise emitted by machinery and living near a contaminated area. There was no

³⁵ Paul Younger, professeur de génie hydrogéochimique de l'Université de Newcastle, a observé des signes de drainage minier acide à proximité du site de la mine (2008). Adam Jarvis et Jaime Amezcaga, également de l'Université de Newcastle (2009), ont vu des preuves sans équivoque qui montrent que de l'eau acide et avec une concentration élevée de métaux lourds a été déchargée de la partie supérieure de la mine (Tajo Palo Alto) vers un cours d'eau local.

action on the part of the State of Honduras or the Canadian company to solve this **public health** problem said to affect more than 60% of the 7,000 persons living close to the mining project.

Operations have also had very negative impacts on air quality, landscapes, water sources, and the flora and fauna of the Siria Valley. Mining operations - which require the daily use of a large amount of water – have limited the **amount of water available for human consumption**. Entre Mares used between 143,000 and 195,000 gallons per day in the Siria Valley.³⁶ Eighteen of the twenty-one water sources around the San Martin mine experienced a drying due to mining activities, resulting in an important deterioration in sanitary conditions, a decrease in agricultural production and an impact on local resources.

Charge 2: The Canadian company Barrick Gold Corporation and its subsidiary Nevada SpA have infringed on the **right to water and the right to a healthy environment** in the communities of Huasco Valley in Chile, through the Pascua Lama project.

Construction operations began in 2009 in the binational Pascua Lama mining project on the border of Argentina and Chile. The Veladero project in Argentina, also run by Barrick Gold, started in 2006. These operations are located in a glacial and periglacial Andean region and have had significant impacts on water and natural resources. Satellite images taken in January 2013, presented in a report by the Center for Human Rights and Environment (CEDHA) show a **significant decrease in the area of several glaciers**, especially in the glaciers Toro 1, Toro 2 and Esperanza, which is mainly due to dust and debris deposited on the glaciers following the drilling and blasting. The albedo effect (cooling of the atmosphere due to the reflection of sunlight by a white surface) has also suffered alterations, and the glaciers have warmed up and melted faster. The decrease in glacier area alters the water balance of the region and affects water supply which is necessary for the agriculture and livestock upon which the communities of the Huasco Valley depend. Due to the arid and semi-arid climate of the region, the nearby community represents a particular group under Comment no. 15 of the Committee on Economic, Social and Cultural Rights of the United Nations, which states that "some groups or individuals need water in larger amounts due to climate [...] conditions".

In 2000, during the presentation of the Pascua Lama project in Chile's Environmental Impact Assessment System (SEIA), the company did not mention the impact or risk of the destruction of glaciers, which directly affects the water cycle in this region, which is indigenous territory, endangering their traditional subsistence activities and access to water (declared a basic human right by the UN in 2010). In 2006, Nevada SpA committed to not to destroy the glaciers in the Environmental Qualification Resolution (CAR 24/2006). The Court of Appeal of Copiapó in April 2013, based on the infringement of the right to life and an environment free of contamination, ordered the indefinite suspension of construction of the Pascua Lama mine due to non-compliance of the CAR following the **contamination of rivers of Estrecho Huasco** and to **damage to glaciers**. This decision was ratified in September 2013 by the Supreme Court of Chile.³⁷ It recognizes the grave and serious threat to the environment negatively affecting the well-being and livelihood of human beings of not only a particular community and individuals, but also of future generations.

³⁶ Center for Economic and Social Rights (CESR) (2001). *Honduras. The Price of Gold*.

³⁷ Cour suprême du Chili (2013). *Resolución n° 69037*, 25 septembre.

Second component – The right to self-determination

Charge 3: Operations exploration and construction of the Pascua Lama mine by the Canadian company Barrick Gold, since the acquisition of the concession in 1994, were initiated without the consent of the people of Huasco Valley, Chile, and without consulting the Diaguita Huascoalina indigenous community, whose traditional territory is affected and partly occupied by the Pascua Lama mine. The facts constitute a violation of **the right to self-determination** and the **right to free, prior and informed consent** of the Diaguita Huascoalinos. The implementation of the mining project is a breach of the exercise of their traditional economic activities, their customs and ways of life, their land and natural resources.

The consent of the population of the Huasco valley regarding the implementation of the Pascua Lama mining megaproject was not obtained prior to the mining operations. There was no consultation. The population was confronted with *faits accomplis*. No prior consultation mechanism has been implemented with the Diaguita people in Huasco Valley, officially recognized by the Chilean government authorities as an indigenous community since 2006. The aboriginal organization *Comunidad Agrícola de los Diaguita Huascoalinos*, whose ancestral territory (which is formally recognized by the State) is affected by the mining project, filed a complaint against the Chilean government in 2007 with the Inter-American Commission on Human Rights (IACHR). Following the failure of the Chilean mechanisms to guarantee justice, it turned to this forum to denounce the violation by the Chilean state of various articles of the Inter-American Convention on Human Rights (Article 21 pertaining to the right to private property, Article 8 pertaining to judicial guarantees and Article 25 on judicial protection). The IACHR recognized the denial of justice to Diaguitas Huascoalinos.

The company has sought the support of the people of the valley who are opposed to the project. Barrick Gold and the *Junta de Vigilancia del Valle del Huasco* concluded an agreement in 2006 providing for the payment of \$60 million U.S. dollars by Barrick Gold over a period of 20 years, for the purpose of compensation of potential impacts on agricultural production. In return, the agreement provides the final consent of the organization of peasant land owners that require the use of irrigation. The fundamental components of the right to consultation and free, prior and informed consent are not met by this agreement. The amount paid represents a form of pressure from the company, and thereby violates the "free" standard, according to which any consent should be obtained independently of the exercise of the balance of power.

The agreement with Barrick Gold, which has not been unanimously approved by the *Junta de Vigilancia del Valle del Huasco*, has created **internal division** in the organization. According to a report of the Working Group on Mining and Human Rights in Latin America, presented to the Inter-American Commission on Human Rights in April 2014, this action, highly publicized by the company, is perceived by the local population as an attempt to divide the communities affected by this project. Both the actions of the company and the Chilean state are at play here. Indeed, the Chilean government, through CONADI (*Corporación Nacional de Desarrollo* Indígena), has established programs of cultural recovery for "landless" Diaguita. In support of these programs, Barrick Gold funds weaving and ceramic workshops, often in partnership with schools in the valley. The beneficiaries of these programs are implicitly required to join the Pascua Lama project and turn away from the *Comunidad Agrícola Diaguita de los Huascoalinos*, sometimes selling their *derechos de estancia*, in other words their territorial rights passed from generation to generation and maintained through community organization. CONADI has also failed to address the issue of **territory preservation** of the Diaguita Huascoalinos, while the community had adopted, in 2006, a proposal for conservation of indigenous territories by creating a protected natural area. The actions of Barrick Gold and the Chilean state are a form of interference in the people's **process of self-determination** due to the fact that

they create a division amongst the communities of the valley, and constitute form of manipulation of processes of the construction of identity through financial, cultural or political support for the purposes of promoting the Pascua Lama mining project.

Charge 4: The company Tahoe Resources and its subsidiary Minera San Rafael SA started operations of the Escobal mining project in Guatemala, despite the opposition of the communities located in the departments of Santa Rosa and Jalapa, manifested in five municipal consultations and nine community meetings. The mine also operates in the absence of the consent of the Xinca people, whose communities are located near the mine and are affected by its operations. Finally, the Escobal project is still active despite the suspension of its operating license in July 2013 by the Court of Appeal of Guatemala. Operating conditions of the Escobal project are marked by irregularities and constitute a violation of **the right of peoples to free, prior and informed consent**.

There was **no consultation** by the national government before granting operating licenses to Tahoe Resources. Five municipal consultations were held in the departments of Jalapa and Santa Rosa, and the communities themselves carried out nine community consultations. A massive rejection of the mining project was found in each of these *consultas de buena fe*. For example, in the municipality of Villa de Mataguescuintla (department of Jalapa), over 10,000 people voted against the mining project in a municipal referendum in November 2012, while 100 people were in favor. In the municipality of Jalapa (department of Jalapa), 98.3% of the 23,000 people who participated in the referendum of November 2013 were against the Escobal mine.

Over 200 people filed complaints against the mining project prior to granting of the operating license. The Guatemalan government should have organized a public hearing on each complaint. The Ministry of Mines and Energy has instead treated all complaints in one go, unanimously rejecting them on April 3, 2013 before granting the same day, the license to Tahoe Resources. The Canadian ambassador was present at the ceremony of the permit granting. Following legal proceedings initiated concerning the rejection of these complaints, an **order of suspension** of the project was ordained by the Court of Appeal of Guatemala in July 2013, which states that the Guatemalan government must provide adequate follow-up to the complaints. The Government of Guatemala and the company 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 made a final decision.

Third component – The right to full citizenship

Charge 5: The company Excellon Resources Inc. and its subsidiary Excellon de México SA de CV have violated the **right to freedom of association**, the **right to collective bargaining** and the **right to peaceful assembly** in their operations on The Platosa site in the State of Durango, Mexico, in operation since 2005.

In 2005, Excellon signed a collective labor agreement with the union "Vicente Guerrero". The company Servicios Mineros San Pedro, responsible for the administration of the company, signed a contract with the union "Adolfo Lopez Mateos". These two contracts with employers' associations were signed without the

mine workers of The Platosa being informed of their existence, thereby violating the right of workers to **freely choose union representation**. In November 2010, Excellon workers created a union in Section 309 of the Trade Union "Los Mineros"³⁸ that represents thousands of workers in the Mexican mining industry. A few weeks after the creation of the union, on December 15, 2010, the General Secretary of Section 309, José Luis Mora, was laid off without justification. In the months preceding the union vote of July 5, 2012, which would determine the union majority that would be able to negotiate a collective labor contract, the company and its unions lobbied various ways for workers **to promote the election of a workers association**. Several deficiencies were identified during the vote, which Section 309 lost by one vote: harassment and pressure on workers, layoffs, addition of workers on the voters list, presence on the scene of the vote of the general manager, and forty men armed with sticks arrived in trucks belonging to the union "Napoleon Gomez Sada", etc..

On July 10, 2012, Section 309 workers joined a peaceful protest camp initiated by the community members of the *ejido* La Sierrita de la Galeana. Through this peaceful protest camp, initiated after several attempts of a dialogue with the company, *Ejidatarios* denounced the non-compliance of the contract the company signed with the community in 2008, in relation to land issues, the contamination of water used by communities in their agricultural activities, and the failure to construct a promised water purification station. Members of Section 309 joined the protest to demand respect for their right of association and collective bargaining. On August 29, 2012, the armed forces intervened to dissolve the event. When the mine resumed operations and the workers reported to work, those who took part in the protest were denied access by company management. They decided to continue the protest. On 24 October 2012, more than two hundred members of one of the employers' associations, armed with sticks and stones, dislodged the protesters under the coordination of the Director of Operations of Excellon with equipment belonging to the company, violating the workers' right to **peacefully assembly**. In January 2013, fifty workers affiliated with Section 309 were notified by mail of their dismissal. The company's claim is that they did not report to work and that therefore, they were refused access.

Charge 6: The Canadian company Tahoe Resources and its subsidiary Minera San Rafael SA violated the **right to peaceful assembly** and the **right to security** in the course of the operations in the Escobal project in Guatemala.

Social conflict related to the implementation of the mine generated a **climate of violence** in neighbouring communities, attributable to a clandestine security group, some of which are employees of the mine and police officers. An investigation is currently underway on the accusation that this group acted as an instigator during a demonstration in September 2012 that resulted in the arrests of 32 people opposed to the mine. Local activists are the target of various criminal acts because of their opposition to the mine, including threats, intimidation, violence, kidnapping and even murder. Since 2011, more than 100 people involved in the resistance against the Escobal project were the subject of lawsuits that have subsequently been rejected for being unfounded.

On April 27, 2013, security guards at the mine opened fire on members of the San Rafael las Flores community, who were peacefully protesting, resulting in six injured protesters. Alberto Rotondo, at that time head of security of Tahoe Resources, was arrested at the airport in the capital of Guatemala while attempting to flee the country. Alberto Rotondo is accused of ordering the attack and obstructing justice, but is still awaiting trial. Between March and May 2013, a camp of peaceful protesters was violently

³⁸ *Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana.*

evicted twice by the police. In May 2013, the President of Guatemala declared a state of siege in four municipalities neighboring the Escobal Project (Jalapa, Mataquescuintla, San Rafael las Flores and Casillas), followed by a state of emergency, which resulted in the suspension of certain constitutional rights. The climate of violence and tension associated with the implementation of the Escobal project violates the **right of peaceful assembly and the right to security** of members from the surrounding communities.

Prosecution 7: The Canadian company Blackfire Exploration and its subsidiary Blackfire Exploration Mexico S. de RL de CV has violated the **right to life** under the operations related to the barite mine Payback in Chicomuselo, Chiapas, Mexico. The mine has created a climate of violence, especially in the location of opponents to the mine, which led to the murder of Mariano Abarca Roblero in November 2009.

November 27, 2009, Mariano Abarca Roblero was shot and killed outside of his home. He had previously suffered various injuries due to his opposition to the mine (violence, arrest without legal justification for his participation in a peaceful protest). A few days before his assassination, Mr. Abarca filed an administrative complaint against two employees of the Canadian company Blackfire, because of **death threats** against him and urging him to abandon his campaign against the mine. People who were arrested after his **assassination** had links with the mining company (employee, subcontractor, etc). The circumstances of the killing have not been fully investigated. There is consensus within the community about the responsibility of Blackfire in the spiral of violence following the installation of the mine and which culminated in the murder of Mr. Abarca. In addition to violating the right to life, Blackfire operations are also apparent breaches in the *Bribery Act of Foreign Public Officials of Canada*, 1998 c 34, as Blackfire allegedly bribed to the mayor of Chicomuselo, known for his approval of the mine. Documents demonstrating payments made between March 2008 and April 2009 by Blackfire Mexico in the mayor's personal account, amounting to nearly \$20,000, were announced in the media. The case is currently under investigation by the Royal Canadian Mounted Police (RCMP).

B. CHARGES AGAINST THE CANADIAN GOVERNMENT

Canada contributes to projects that are subject of detailed complaints. Indeed, Canada has failed in its responsibility to prevent human rights violations by **directly supporting the expansion of mining activities causing human rights violations**, in addition to contributing to impunity through **inefficient mechanisms** of accountability and access to justice.

Thus, the Canadian state **interferes with the rights of peoples** affected by mining by providing policy support for corporations (charges 8 and 9), interfering in the laws of host countries (charge 10), providing economic and financial support for mining companies (charges 11 and 12) and by failing to ensure access to justice mechanisms (charge 13).

Political support and interference in the legislative process of the host State

Charge 8: The Canadian government exerts undue political influence through its **diplomatic network** to facilitate the expansion of the Canadian mining industry abroad. Diplomatic support for Canadian mining companies is granted without requiring appropriate safeguards to ensure the respect of human rights.

Diplomatic support for the Canadian mining industry is manifested in different ways: by facilitating interviews and meetings with policy makers in the host country, by publicly taking a stand in favor of a mining project, by exerting political pressure on host governments for them to take a position favouring a Canadian mining project, or by lobbying for law reform. This privileged access to the authorities in the country of operation is particularly sought after during key moments in the development of a mining project, such as permit acquisition, mitigation of social tensions or when public decisions are jeopardizing a mining project. However, Canada's diplomatic network **lacks a mechanism to guarantee the respect of the rights of individuals and communities as a condition for political support granted to Canadian companies**. Moreover, Canadian embassies have supported mining projects after being notified of important social conflicts, lack of social legitimacy and even human rights violations. In its relationships with the host countries, Canada focuses on investment at all costs, despite the fact that it should emphasize that human rights violations will not be tolerated and that said violations could put mining projects at risk.

For example, in **Mexico**, after Mariano Abarca was murdered in Chiapas for his opposition to a mine run by Blackfire Exploration, a company exposed in the media through evidence of the corruption of the Mayor of Chicomuselo. In addition, once the mine was closed due to lack of compliance with environmental regulations, Canadian officials, at the request of the company, advised Blackfire Exploration on the remedies available under NAFTA investment protection and defended the company when questioned by Mexican legislators. Four months before his assassination, Mr. Abarca filed a complaint to the Canadian Embassy regarding the presence of armed workers in the mine threatening those who opposed operations. A few months later, Mr. Abarca was arrested by police on the basis of an unfounded complaint filed by the company; the Embassy did not respond to protect the life of Mr. Abarca, even after receiving 1400 letters of solidarity from various regions in the Americas. When support to protect the life of Mr. Abarca was required the embassy acted in defense of the interests of the company, despite having been informed of death threats against Mr. Abarca. The documents obtained under the *Access to Information Act* by organizations of Canadian civil society have shown that the Canadian embassy's political support for Blackfire Exploration did not require the respect of corporate social responsibility or human rights. In addition, the embassy did not seek out the point of view of the affected communities during the social conflict until the climax of the conflict, that is to say the murder.

These practices violate, among others, the *Guiding Principles on Business and Human Rights of the United Nations* which stipulates 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); and “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).

Charge 9: The Canadian State **uses funds allocated to official development assistance** to provide political support for the implementation of mining companies abroad and to foster communities' approval of mining projects at the expense of the respect of the rights of peoples.

Budgets allocated by Canada to international cooperation and development are increasingly oriented towards the **promotion of mining as a central development strategy**. The Canadian governments' strategy for international cooperation and development places the private sector at the core of international aid policies. Evidence for this can be found in a November 2012 report of the Standing Committee on Foreign Affairs and International Development (SCFAID) which advocates positive public-private partnerships as a major component of Canada's development program. The extraction of natural resources is presented in this context as a key sector capable of generating sustainable economic growth in developing countries. Direct support to the mining industry as a strategy for international development stems from growth-oriented economic prosperity of a neoliberal ideology rather than to endogenous development strategies that focus on poverty reduction, the promotion of human rights and respect for the environment.

Various initiatives initiated under the guise of official development assistance (ODA) are facilitating the establishment of Canadian mining projects and the approval of the local population and authorities. For example, in 2011 the Andean Regional Initiative of the Canadian International Development Agency (CIDA), announced aims to "*promote the effective implementation of corporate social responsibility*" with three pilot projects in Colombia, Peru and Bolivia. In Peru, the Canadian Ministry of Foreign Affairs, Trade and Development funds a project of "corporate social responsibility" through the partnership between Barrick Gold and the non-governmental organization World Vision. Thus, the local project for social responsibility put in place by Barrick Gold, one of the world's largest transnational mining companies, is funded by the Canadian Agency for International Development with a grant of nearly half a million dollars.

Several observers have brought attention to the fact that these programs are implemented in countries where there is a marked opposition to the mining industry. In many cases, the real goal of these programs, under the guise of "corporate social responsibility" is to promote the approval of the community. These partnerships create divisions and tensions within communities. Similarly, Canada announced the creation of a Canadian International Institute for Extractive Industries and Development (ICIIED) in 2012, funded at \$25 million by CIDA, through which Canadian universities contribute to define good management of natural resources in developing countries. The consultations that led to its creation were fast and lacked transparency. Some uncertainty exists between the objectives of international cooperation and the promotion of Canadian trade interests, when Canada, a global mining power, becomes involved in the promotion of social acceptance of mining projects at the local level in Latin American countries. These actions contravene the *Official Development Assistance Accountability Act* (2008), indicating that all Canadian ODA must focus on poverty reduction, taking into account the perspectives of the poor while respecting international human rights instruments.

Charge 10: The Canadian State demonstrated **interference in the legislative processes of the host countries** of mining investments, thereby interfering with the right of peoples to define their own lifestyle and development model in the short and long term.

In **Honduras**, Canada (through CIDA, the Department of Foreign Affairs and International Trade and the Embassy of Canada) **interfered in the legislative process** by exerting undue influence in favor of Canadian mining companies in the reform of the Mining Act between 2010 and 2012. This influence was manifested during a period of extremely limited public participation which resulted from the severe democratic deficit which exists Honduras since the *coup d'état* in June 28th, 2009.

The coup has greatly undermined the efforts of Honduran civil society to establish a new mining law banning open pit mining. In 2004, a moratorium on new mining projects was adopted in the wake of numerous complaints and a major social mobilization due to the shortcomings of the mining law to regulate the impacts of large scale mining on human health and the environment. A 2006 ruling of the Supreme Court declared thirteen articles of the Mining Act of 1999 unconstitutional, including the provision that granted mining companies unlimited access to water. Communities affected by mining activities and the Honduran civil society put forward a draft mining law – including a ban on open pit mining – which was expected to be in the agenda of debates in Congress since 16 August 2009. The debate in the legislative chamber never occurred because of the coup of June 28th. Shortly after, the process of reform of the mining law was initiated, regardless of public interest issues raised by civil society. Canadian Commercial diplomacy and CIDA have provided technical support for the reform, and have had a significant influence on the reform process and content of the new mining code adopted in January 2013 by Congress. The new mining law ended the moratorium in 2004 on new mining projects and reduced the capacity of the Honduran State to oversee the development of mining so that it respects the right to health, right to water and the right to a healthy environment and international human rights conventions, including the rights of indigenous peoples. Moreover, the chapter on investment protection of the free trade agreement signed between Canada and Honduras in November 2013 has strengthened the presence of Canadian investment in the country and has compromised the ability of Honduran civil society to oppose the establishment of a mining project.

In **Colombia**, Canada, through CIDA, has been **interfering in the legislative process** by exerting undue influence to favour Canadian trade interests in the reform of the *Mining Act* between 1996 and 2001. Through its *Energy, mines and environment* project, CIDA has contributed financially to the development of a new mining code in conjunction with multinational corporations such as: BP Canada Energy, Cargill, Chevron Canada, Conoco, Dow Chemicals, Exxon Mobil, Shell, Total Fina ELF, UNOCAL, among others. For the development of this new mining law, the Canadian Energy Research Institute (CERI) has hired lawyers from the firm Martinez-Cordoba and Associates, which represented, at the time, more than half of the listed companies in Canadian registry of mining companies. This reform encourages foreign investment and undermines the ability of the Colombian State to regulate mining development to ensure that it respects the right to health, right to water, the right to a healthy environment and rights of indigenous peoples. The new mining code involved a tax reduction for transnational mining companies, a more binding framework for small and medium scale mining activities, the liquidation of the national public mining company Minercol, and the opening of mining areas that were previously excluded.

Financial support

Charge 11: The Canadian government **provides financial support** to mining companies in the form of loans, guarantees and insurance through Export Development Canada (EDC), as well as shares held by the Canada Pension Plan Investment Board (CPPIB) without requiring the recipient to provide sufficient safeguards to ensure compliance with clear standards for human rights, in a transparent process.

Export Development Canada (EDC) is an export credit agency and a Crown corporation governed by the *Export Development Act*, which provides Canadian companies operating abroad with funding through loans, guarantees and insurance. Mining companies were the primary beneficiary of the services of this Crown corporation in 2013. EDC has offices in Brazil, Chile, Colombia, Mexico and Peru, located in Canadian embassies or consulates. The main threats to the accountability of EDC accounts result from the considerable

discretionary powers left to the corporation, as well as the lack of transparency for grant funding. EDC disposes of various internal policies to assess the social and environmental risks of projects it supports, including an *Environmental Review Directive* (2001) as well an *Environmental Policy* (2005). The Directive establishes different categories of environmental risk for projects, which determines how in-depth the risk evaluation will be. The Crown corporation is based primarily on *OECD Common Approaches on Environment and Officially Supported Export Credit*, the *Equator Principles* and the guidelines set by international finance corporation performance standards. Before providing funding, EDC must determine whether the project will have significant environmental impacts even with the implementation of mitigation measures, and if this is the case, if it is justifiable to provide funding. However, EDC has a great deal of discretion in the conduct of environmental assessments and in the final decision to support a project. The lack of transparency of the organization also undermines accountability. Despite being subject to the *Access to Information Act*, EDC withholds information provided by its clients on the grounds of confidentiality. It therefore offers very little public information on its internal processes, the criteria on which the analysis of proposals is based and the methods used for continuous compliance verification.

The **Canada Pension Plan Investment Board** (CPPIB) is a Crown corporation created by the *Canada Pension Plan Investment Board Act* (1997) to manage one of the country's largest investment funds. The funds managed by the CPPIB, which come from Canadian taxpayers' savings, is one of the largest pension funds in the world, with assets totalling 172.6 billion dollars in December 2012. The CPPIB stock portfolio includes shares in several hundred mining companies, including several of those that led controversial projects resulting in various human rights violations and abuses. The CPPIB holds shares in Goldcorp, active especially in Honduras where serious public health problems are evident in areas neighbouring the San Martin mine, and Argentina, where environmental damage resulting from the Alumbrera mine led local organizations to initiate criminal proceedings against the company in 2008. The CPPIB has had a *Policy on Responsible Investing* since 2005, which includes economic, social and governance criteria in its analysis. In practice however, the CPPIB does not apply selection criteria to favour investing in companies with a positive record on the respect of the environment and human rights.

The financial support granted to Canadian mining companies, be it through loans, guarantees and insurance or by shares held by CPPIB, is not tied to effective and transparent mechanisms that would ensure that funding is not granted to high-risk mining projects according to environmental and human rights standards. These distinct limits regarding due diligence exercised by government bodies that financially support the mining companies violate, among other things, the obligation described in Principle 4 of the *UN Guiding Principles*: “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.”

Charge 12: The Canadian State promotes the development of speculative mining projects through its passivity in the **supervision of its financial markets**, including the Toronto Stock Exchange, and through various **tax benefits** for extractive companies.

Nearly 60% of exploration and mining companies in the world are listed on the **Toronto Stock Exchange (TMX Group)**. TMX Group, which includes the TSX and the TSX Venture Exchange (TSX-V), is the leading centre for financing and investment in mining. In 2011, 90% of the shares issued by mining companies were traded on the Toronto Stock Exchange. In terms of the funding obtained, from 2009-2013

44% of funds raised in the global mining industry through equity financing were on the TMX, far ahead of the London Stock Exchange which ranks second with 26%³⁹.

The Toronto Stock Exchange provides the "venture capital" needed to finance mining exploration by *junior* companies and allows the discovery of deposits abroad to be listed. Nowhere else is so much capital raised for the mining industry through the sale of securities. Canada does not use its power to favour corporate accountability. National Instrument 51-102, a directive on the disclosure obligations of securities in Canada, only requires managers to disclose risks and uncertainties regarding the performance of the company in the market. Thus, environmental, social, cultural or political risks are to be disclosed only if they are likely to have an impact on the market. As a result, information is disclosed to protect the investors' interests rather than those of affected communities. In addition, no penalty may be invoked against a company on the grounds that it does not respect human rights in the territories where it operates. Lax Canadian regulation is also reflected by the ambiguity of the use of the terms "resource" (estimate of total ore endowment) and "reserves" (accurate estimation of economically recoverable ore). While the United States, through the Security and Exchange Commission, tries to mitigate speculation by allowing only the release of estimated "reserves", Canada maintains a *loophole* that benefits *juniors*.

In terms of **taxation**, a range of tax measures allows mining companies to benefit from significant discounts and advantages (rules in the *Income Tax Act* granting various tax deductions for mineral exploration expenses abroad, anti-double taxation treaties signed with tax havens, etc.). Complex and non-transparent, these tax benefits granted by Canada encourage market speculation in the extractive sector and facilitate the establishment of venture capital required for the development of new mining projects.

Gaps in access to justice

Charge 13: The Canadian State does not provide **effective judicial or non-judicial remedies** to ensure that victims of human rights violations committed by Canadian mining companies abroad have access to justice. Therefore, many human rights violations committed by these companies go unpunished, when they are not answered by national legal systems.

As a result of frequent obstacles in access to justice in the host countries and at the international level, the international community tends to acknowledge that the States where investment originates should play a greater role in ensuring respect for fundamental rights with respect to the conduct of multinationals. In particular, the Guiding Principles of the United Nations, encourage States of origin to implement measures to prevent human rights violations and provide remediation when they are committed by a company operating abroad (Principle 1). In this respect, Canada **lacks a law proclaiming its jurisdiction** over the extraterritorial conduct of its Canadian companies, except for in specific circumstances, such as laws with extraterritorial application regarding bribery abroad and sexual abuse of minors committed by Canadians. To date, communities and individuals affected by Canadian mining companies have faced various obstacles when seeking justice in Canada. For the most part, these cases were dismissed, without Canadian courts ruling on the validity of the allegations. Cases regarding the jurisdiction of Canadian courts are to be transferred to a court outside of Canada, as it is believed that Canadian courts are not an "appropriate forum" for decisions regarding this issue.

Three principles have been appealed by the courts to reject the admissibility of these disputes: the lack of court jurisdiction, the absence of a duty of care and the rule of *forum non conveniens*, which is invoked by

³⁹ TMX. A Capital Opportunity Mining, http://www.tmx.com/en/pdf/Mining_Presentation.pdf.

Canadian courts to avoid assuming extraterritorial jurisdiction. According to this argument, there is another court (usually the state in which the violation occurred), which is more appropriate to judge the facts. In addition to these issues of admissibility, other obstacles also exist. Victims must cope with the high costs of litigation, and the problem of the corporate veil, related to the structure of transnational corporations and their lack of transparency, which can make it difficult to establish a relationship between the parent company and its subsidiary in Canada. As a result, too often are victims denied justice because of a lack of access justice in their countries, in the international justice system or in the country of investment.

Subsequently, existing mechanisms for non-judicial remedies in Canada have a very limited coercive mandate and do not meet the requirements for effective remedy. The **Office of the Extractive Sector Social Responsibility Counsellor** was created by the Canadian government in 2009 as a non-judicial mechanism to deal with complaints from individuals and groups who had been adversely affected by the foreign operations of Canadian extractive companies. The counsellor's mandate is limited to recommendations following a voluntary dialogue with the parties concerned. The counsellor cannot undertake independent investigations, determine whether mistakes were made, or assess the damage caused by the company or make recommendations on reparations or sanctions, such as a withdrawal of government support to companies that are guilty of wrongful conduct. Due to the fact that it is a voluntary mechanism, it is only effective if the target company and the affected people agree to discuss the case; the few cases that have been presented have generally ended in failure as the company decided to withdraw from the process. On three occasions, the process was interrupted when the company decided to abandon the mediation process. This was the case, for example, following a complaint filed in April 2011 about the actions of Excellon Resources Inc. in Mexico. To date, of the six complaints received by the Office none of the dialogue processes have been completed.

The **OECD National Contact Points (NCP)** was established in 2000 as a mechanism to promote the *OECD Guidelines for Multinational Enterprises*. This mechanism of non-judicial remedy also has limitations when it comes to meeting the needs of victims of human rights violations by Canadian mining industries. Similar to the Office of the CSR Counsellor, the National Contact Points lacks the power to impose sanctions, and cannot comment on whether there has been a violation of the *Guidelines*. The NCP has limited power to create change in corporate behaviour and to provide victims of human rights violations committed by mining companies with an effective appeal mechanism. In short, concerning voluntary mechanisms, which are based on "indirect" punishment for a transnational damaging their reputation, these two non-judicial mechanisms are ineffective to provide effective remedy for individuals and communities whose rights are violated by Canadian mining companies.

CONSEQUENTLY, WE CHARGE:

THE CANADIAN MINING INDUSTRY of causing large-scale violations of the rights of peoples in Latin America. The rapid expansion of Canadian mining tends to systemically violate interrelated rights that each have an impact on the full realization of other rights, infringing, among others:

- On the **right to a healthy environment**, recognized notably by the Protocol of San Salvador (art. 11, 1988), the Universal Declaration of the Rights of Peoples (art. 16, Algiers, 1976) the Stockholm Declaration on the Human Environment (Principle 1, 1972): “*Man 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, Stockholm Declaration on the Human Environment, 1972) (**charges 1 and 2**);

As well as the **right to participation and information** that are central to achieving this, recognized particularly by the Rio Declaration (1992) and the Aarhus Convention (Article 1, 1998): “*Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.*” (Principle 10, Rio Declaration, 1992).

The Inter-American Human Rights Commission recognizes that many fundamental rights require, **as a necessary precondition for their full realization, a healthy environment**, and they are deeply affected by the degradation of natural resources.⁴⁰

The **precautionary principle** is an emerging principle of international environmental law which made its first appearance in 1982 in the World Charter for Nature, which states that an activity where there is uncertainty regarding potentially adverse impacts, should not be undertaken (Article 11 (b)). The Rio Declaration on Environment and Development (1992) established that: “*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, Rio Declaration, 1992).

- On the **right to water**, as determined by General Observation # 15 of the Committee on Economic, Social and Cultural Rights of the United Nations, the interpretation of Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) includes the components of availability, quality and accessibility and affordability, without discrimination. The right of access to drinking water and sanitation, as required by Resolution 64/292 of the United Nations on the right to water and sanitation (2010): “*the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights*” (**charges 1 and 2**)
- On the **right to health** under section 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that everyone has the right to “*the highest attainable standard of physical and mental health*” (Article 12, ICESCR) (**charge 1**).
- On the **right to life** as enshrined in the Universal Declaration of Human Rights (art. 3, 1948) and the International Covenant on Civil and Political Rights (art. 6, 1966) “*Everyone has the right to life, liberty and security of person.*” (art. 3, Universal Declaration of Human Rights, 1948) (**charge 3**)
- On the **right of self-determination** of peoples, recognized, inter alia, in the Universal Declaration of Human Rights (art. 5, 8, 11, Algiers, 1976) and the two UN Covenants: “*1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources*” (art. 1 of the Pact, 1966), as well as the United Nations Declaration on the Rights of Indigenous Peoples: “*Indigenous 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. 3, United Nations Declaration on the Rights of Indigenous Peoples, 2007). (**charges 3 and 4**)
- On the **right to free, prior and informed consent**, recognized in particular by the United Nations Declaration on the Rights of Indigenous Peoples (art. 19, 2007) and Convention 169 concerning Indigenous and Tribal Peoples of the International Labour Organisation (1989), which states in Article 6 that the State must “*consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to*

⁴⁰ Commission interaméricaine des droits de l’homme (2011), *op.cit.*, para. 309.

legislative or administrative measures which may affect them directly” in order to obtain their consent, all according to the principle of good faith, a recognized principle of international law. Also, indigenous peoples have the *“the right to decide their own priorities for the process of development”* and to give their consent concerning the exploitation of the underground wealth within their territory, even if it belongs to the State (art. 15) (**charges 3 and 4**)

- On the **rights associated with freedom of association** and the **freedom to unionize** (art. 8 of the ICESCR, 1966, art 22 of the ICCPR Article 16 of the American Convention on Human Rights, 1969. 1 of art. . Convention 98 of the ILO right to Organise and Collective bargaining Convention, 1949, Article 2 of the Convention 87 of the ILO freedom of Association and Protection of the right to Organise, 1948): *“everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”* (art. 22, International Covenant on Civil and Political Rights, 1966); and the right to collective bargaining (Convention 98 of the ILO Convention 154 of the ILO Collective Bargaining, 1981) (**charge 6**)
- On the rights associated with **freedom of expression** and **freedom of peaceful assembly and association** recognized by the Universal Declaration of Human Rights (art. 20, 1948), the International Covenant on Civil and Political Rights (art. 19, 21 and 22, 1966), the American Convention on human Rights (art. 13 and 16, 1949), the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to promote and protect human rights and fundamental freedoms universally recognized, General Assembly, A/RES/53/144 (1999): *“Everyone has the right to freedom of peaceful assembly and association”* (art. 20, Universal Declaration of Human Rights, 1948); *“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”* (art. 19 (2), International Covenant on Civil and Political Rights, 1966). (**charges 6 and 7**)
- On the **right to security of his or her person** (Article 9 of the International Covenant on Civil and Political Rights): *“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”* (**charge 6**)

WE ALSO ACCUSE:

THE CANADIAN STATE for contributing to the violation of the rights of peoples in Latin America and for supporting the mining industry and facilitating impunity.

The Canadian State violates its obligations to protect and guarantee human rights from abuses committed by companies. Canada's actions violate standards such as Guiding Principles on Business and Human Rights of the United Nations. These principles stipulate that States have a duty to **protect human rights from violations committed by companies**, especially by adopting measures to prevent human rights violations, as well as respecting its obligation to investigate and punish those which occur (Principle 1). The Canadian government must also **enforce laws requiring companies to respect human rights** (Principle 3) and to **ensure proper management of its business and its public officials** (Principles 2, 4 and 8). In addition, the State must guarantee the **right to effective remedy** (principle 25) and provide measures to ensure the effectiveness of these actions (principle 26).

- The Guiding Principles of the UN report that:

States should make clear that they expect all companies **domiciled in their territory and / or under their jurisdiction** to respect human rights in all their activities (Principle 2) (**charges 8 and 11**).

States should take more rigorous measures to provide protection against human rights violations committed by **companies that are owned or controlled by them, or who receive substantial support and services to government agencies** such as agencies export credit agencies and official insurance or investment guarantees, including, requiring the exercise of due diligence on human rights (Principle 4) (**charge 11**)

States should ensure that government departments, state agencies and other public institutions that affect the behavior of firms **understand the obligations of the State in matters related to human rights and observe them** when they fulfill their mandates, particularly by providing these entities with information, training and support desired (Principle 8) (**charges 8, 9, 10 and 11**)

Under their obligation to provide protection against human rights abuses committed by corporations, states should take appropriate measures to ensure, through judicial, administrative, legislative or otherwise, that affected parties have access to **effective remedy** when such breaches occur on their territory and/or on their jurisdiction (Principle 25) (**charge 13**)

- Canada also violates section 4 (1) of the Official Development Assistance Accountability Act (SC 2008, c. 17), which clearly states that all Canadian Official Development Assistance (ODA) must focus on poverty reduction, and take into consideration the views of the poor and to promote respect for human rights (**charge 9**).
- The Canadian State violates the **right to access justice** as guaranteed by Articles 8 and 25 of the American Convention on Human Rights and the American Declaration of the Rights and Duties of the rights (art. 18, 1948): "*Every person may resort to the courts to ensure respect for his legal rights*" (art. 18, American Declaration of the Rights and Duties of Man, 1948) (**charge 13**).
- The Canadian State also violates the **duty of non-intervention** recognized by the Charter of the Organization of American States (art. 19): "*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*" and the **right to democracy** recognized by 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.*" (Inter-American Democratic Charter, Rés. A.G. Rés. 1., XXVIII-E/01, 11 septembre 2001, art. 1, para. 1) (**charge 10**).
- The Canadian government violates the **right to self-determination** of peoples, recognized in particular by Article 5 of the Algiers Declaration on the Rights of Indigenous Peoples, the first of two articles in the UN Covenants and the Declaration of United Nations on the rights of Indigenous Peoples. Canada also infringes the exclusive **right of peoples to their wealth and natural resources** and the **right to choose their economic and social system** (Article 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*" (**charges 8 and 10**).

**WE ASK THE PERMANENT PEOPLES' TRIBUNAL TO EXAMINE THE FACTS EXPOSED IN ORDER TO
MAKE APPROPRIATE RECOMMENDATIONS FOR THE FULL REALIZATION OF THE FUNDAMENTAL
RIGHTS OF PEOPLES IN LATIN AMERICA.**

Appendix

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