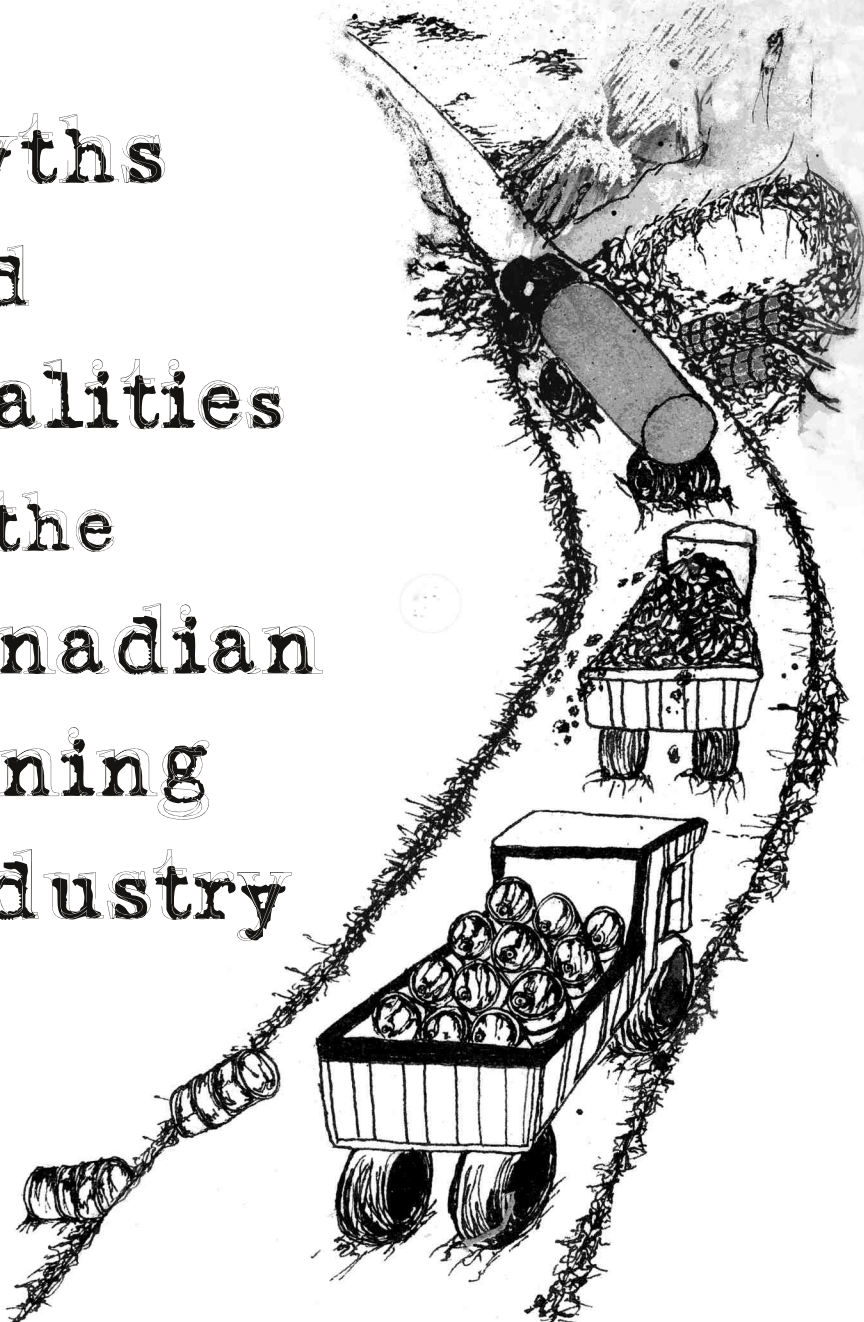


Myths
and
Realities
of the
Canadian
Mining
Industry



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Permanent Peoples' Tribunal

Session on the Canadian Mining Industry

The Permanent Peoples' Tribunal (PPT), founded in 1979 in Italy, is an international opinion tribunal which reports and disseminates information about cases of systemic violations of human rights that do not find recognition or response in official bodies. The case of transnational corporations, in particular in the extractive sector, is emblematic in this regard. In a context of widespread impunity for rights violations, the sessions of the PPT throughout the years have sought to bridge gaps in international law, assert peoples' rights and promote access to justice and the re-appropriation of human rights by peoples.

The Canadian mining industry: a major cause of human rights violations

From May 29th to June 1st, 2014, the PPT held a hearing on Latin America that launched its session on the Canadian mining industry. The hearing, held in Montreal, paid close attention to the role and responsibilities of the Canadian state. Canada is the most important state player in the global mining industry. In 2013, more than half of the mining companies in the world were headquartered in Canada. 1,500 Canadian mining companies operate in more than 100 countries¹. The initiative of the Peoples' Tribunal was supported by a broad coalition of forty civil society organizations from Quebec and Canada concerned about the socioenvironmental impacts of mining on communities, human rights defenders, ecosystems and local economies.

The Tribunal heard the testimony of more than twenty witnesses, experts and human rights defenders from Latin America, Quebec, Canada and Europe. The jury of the hearing was comprised of public figures with a diversity of expertise and backgrounds. The members of the Tribunal had the opportunity to hear, in particular, the testimonies of persons affected by the activities of Goldcorp (San Martin mine, Honduras), Tahoe Resources (Escobal mine, Guatemala), Blackfire Exploration (Payback mine, Mexico), Excellon Resources (La Platosa mine, Mexico) and Barrick Gold (Pascua Lama mine, Chile-Argentina)².

Mining: between myth and reality

Implementing mining projects within a territory causes multiple social and environmental disruptions. In the absence of un-biased, comprehensive and independent information sources on Canadian mining projects, the effects of mining processes are often difficult to assess. The discourse of mining companies and governments rarely contribute to understanding of the issues involved. The mining industry possesses an arsenal of public communication tools, allowing it to promise numerous benefits and to promote its own approach social responsibility programs. What do we know of the real impacts?

In the light of the cases presented before the Peoples Permanent Tribunal, this document seeks to encourage a critical examination of certain assumptions about the Canadian mining industry. Through the short presentation of eight myths related to mining, we aim to share alternative perspectives of the impacts as experienced by affected communities. Of course, the impacts of mining are not the same everywhere. The cases presented to the Tribunal, however, proved to be highly emblematic of the issues associated with the majority of mining projects and dominant norms of mining. This presentation of myths and reality also draws on various publications which have examined mining companies' discourse with a critical perspective. We invite you to consult these documents to continue reflection³.



The Canadian state adequately regulates Canadian mining companies operating abroad and provides remedies for victims of the activities of those companies

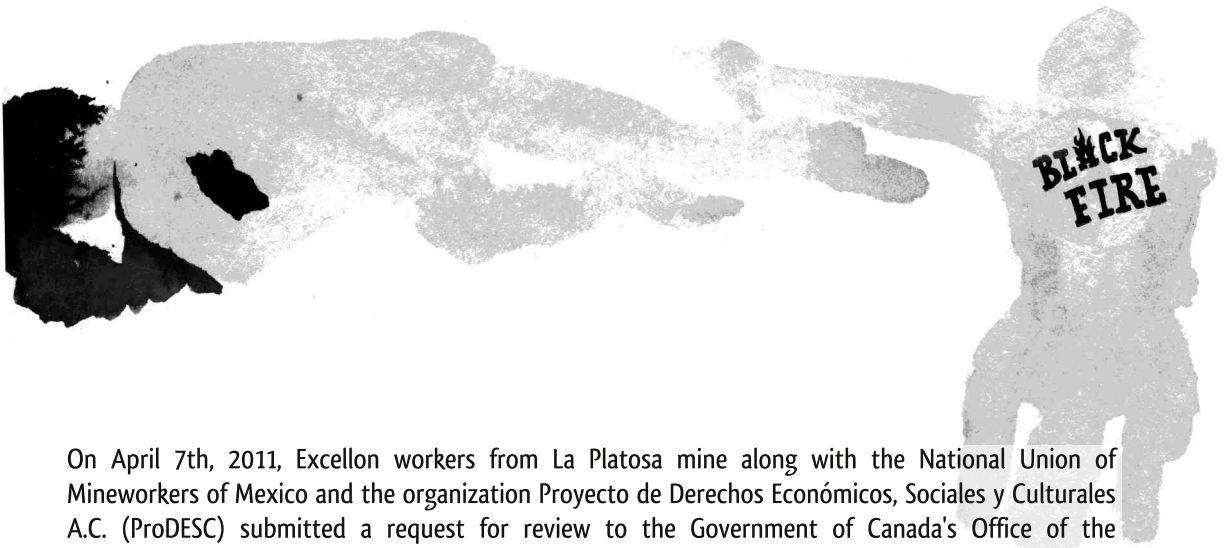
“The enhanced CSR strategy bolsters our commitment to helping our Canadian extractive companies strengthen their responsible business practices. We expect our Canadian companies to promote Canadian values and to operate with the highest ethical standards”

- Ed Fast, Minister of International Trade, 2014.⁴

The Canadian government does not supervise Canadian mining operations abroad. For many years, civil society organizations have been demanding the establishment of accountability mechanisms regarding human rights for Canadian extractive companies. In 2006-2007, a broad multi-stakeholder consultation convened by the Canadian government considered the matter and examined the ways in which Canada could promote accountability. The government strategy eventually adopted in 2009 nevertheless disregarded these recommendations, using a voluntary framework for corporate social responsibility (CSR)⁵.

The government established a mechanism for dialogue with companies, the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor, whose mandate is limited to the promotion of good practices for the implementation of voluntary CSR performance standards. As was documented by the PPT, this body's ability to act, that is to say its ability to regulate and monitor the activities of Canadian companies abroad, is very weak.

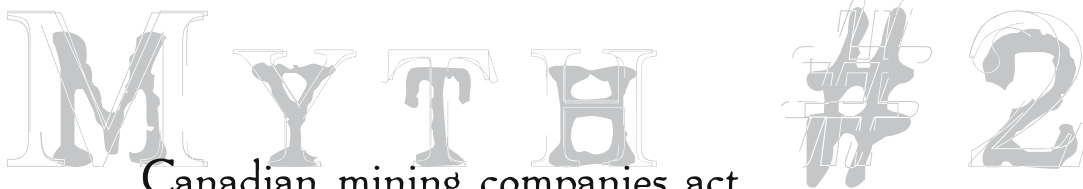
The Tribunal considered a complaint received in 2011 by the Office concerning Excellon Resources⁶. The way this complaint was managed has clearly shown the weaknesses of a non-judicial mechanism. The complainants denounced violations of the right to freedom of association and trade-union membership, the right to collective bargaining and the right to peaceful assembly at La Platosa mine site, an Excellon mine which has been operating since 2005 in the State of Durango, Mexico. The company signed contracts with employer unions without informing the mine workers of their existence, violating their right to freely choose their union membership. In 2010, union leader José Luis Mora was also dismissed by Excellon. At a union election, several irregularities were identified, including harassment and pressure on workers, layoffs, addition of workers who did not figure on the voter list and the on-site presence of the manager of the mine accompanied by forty armed men.



On April 7th, 2011, Excellon workers from La Platosa mine along with the National Union of Mineworkers of Mexico and the organization Proyecto de Derechos Económicos, Sociales y Culturales A.C. (ProDESC) submitted a request for review to the Government of Canada's Office of the Extractive Sector CSR Counsellor, which was accepted. The case was opened and the Office conducted a field visit. In return, the Office recommended that the company initiate a structured dialogue process with the complainants, which the company refused. Indeed, corporate involvement in a review process led by the Office is an entirely voluntary option. In late September 2011, the Office closed the file without being able to exercise any influence on the company⁷. The conflict with the workers and the community continued. In July 2012, during a peaceful protest camp, demonstrators were severely repressed and fifty workers were dismissed.

The other five cases submitted to the Office experienced a similar outcome. The Office has very little power. Its mandate is limited to making non-binding recommendations: it cannot conduct independent investigations, nor determine whether mistakes were made. It does not have the authority to assess damages caused by the company or to make recommendations for the withdrawal of government support for an offending company. Canada's "enhanced" CSR strategy, presented in November 2014, has not brought about any substantial changes to the operation of the Office. Canada's National Contact Point for the OECD Guidelines for multinational enterprises also presents several deficiencies and has not allowed justice to be served to the plaintiffs in the case of the La Platosa mine. Since 2005, a broad grouping of Canadian civil society organizations has been demanding the creation of an official ombudsman with powers to investigate the actions of Canadian extractive companies⁸.

In July 2015, the United Nations Human Rights Committee summoned Canada to adopt the necessary measures to ensure that its companies, especially those in the mining sector, respect international human rights standards in their operations abroad. The Committee requested that Canada establish an independent mechanism authorized to investigate complaints of violations by companies and a legal framework to provide remedies to victims of the activities of these companies abroad. Similar requests were also addressed by United Nations Committee on the Elimination of Racial Discrimination in Canada in 2007 and 2012⁹.



Canadian mining companies act with social responsibility

**"Many Canadian companies are committed to high ethical, environmental and social standards - indeed, Canadian industry associations and extractive companies have been recognized domestically and internationally for their leadership on these issues. These companies embody the Canada brand."
– Government of Canada, 2014 CSR strategy¹⁰**

The Canadian government argues that internationally recognized standards and guidelines on CSR, such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, among others, are promoted and applied in the Canadian mining sector. In fact, companies have set up their own programs, projects and strategies to promote the social legitimacy of their investments.

The PPT, having considered how Canadian mining companies are acting abroad, demonstrated that while companies have implemented CSR measures, these do not necessarily prevent serious human rights violations and violations of the rights of peoples from occurring. There are numerous socio-environmental conflicts associated with mining. The Environmental Justice Atlas database has mapped and listed around 1800 socio-environmental conflicts on five continents, of which a significant portion is related to mining¹¹. For Latin America alone, the McGill University Research Group Investigating Canadian Mining in Latin America (MICLA), has documented 85 cases of social conflicts involving Canadian mining companies¹². Striving for the protection of the environment and of territories is often very dangerous. According to a report by Global Witness, 185 people were killed worldwide in 2015 because of their actions in defence of the environment¹³. The vast majority of these crimes remain unpunished.

PPT hearings raised a variety of serious cases committed against people's rights by companies that are actively promoting social responsibility¹⁴. Murders of environmentalist leaders, criminalization and repression of opponents to mining projects, denial of civil and political rights, negative impacts on the environment and human health : these are but a few of the numerous violations of rights and destruction of the social fabric of affected communities that have been identified. For example, the Court explicitly documented violations of the right to life and to a healthy environment by Goldcorp in Honduras and Barrick Gold in Chile. Both of these companies have CSR policies; however, their

social and environmental track records are worse than dismal. Their actions raise several questions about the scope of CSR strategies and how they are used by enterprises primarily to penetrate new territory.

As part of their operations from 2000 to 2007, Goldcorp and its subsidiary Entre Mares contaminated with heavy metals water sources used by Siria Valley communities surrounding the open-pit gold mine in San Martin, Honduras.

Various studies of the health of the local population revealed abnormally high levels of lead, arsenic, mercury, iron and cadmium in blood tests. There was no action on the part of the government of Honduras or the Canadian company to address this major public health problem.

In Chile, drilling and blasting for the construction of the Pascua Lama mine in the Huasco Valley by Barrick Gold and its subsidiary Nevada SpA caused irreversible damage to glaciers. This has put water sources supplying the agricultural communities of the area seriously at risk. Also, investments in CSR dedicated to cultural promotion of the Diaguita people have been strongly questioned for having in fact divided the community. In 2013, the Chilean court suspended Barrick Gold's business activities for non-compliance with environmental legislation. Indeed, according to the terms of the environmental impact study, the Canadian company was required to build a treatment plant to prevent acid drainage caused by the release of chemicals into the water system of Andean glaciers. However, this commitment has not been met. To this day, the project is inactive, while the social and environmental impacts, for their part, remain.

In its verdict, the PPT jury questioned the compatibility of a system based on voluntary CSR policies with respect for rights. Indeed, CSR programs promoted by the government and implemented by various mining companies rely on voluntary codes of conduct which have shown to be incapable of ensuring justice, transparency and accountability. Considering the range of rights affected by mining, an approach based on a binding implementation framework is needed to ensure respect for the comprehensive, collective rights of peoples.



MYTH #3

Technical progress allows mining operations to have fewer negative impacts on the environment

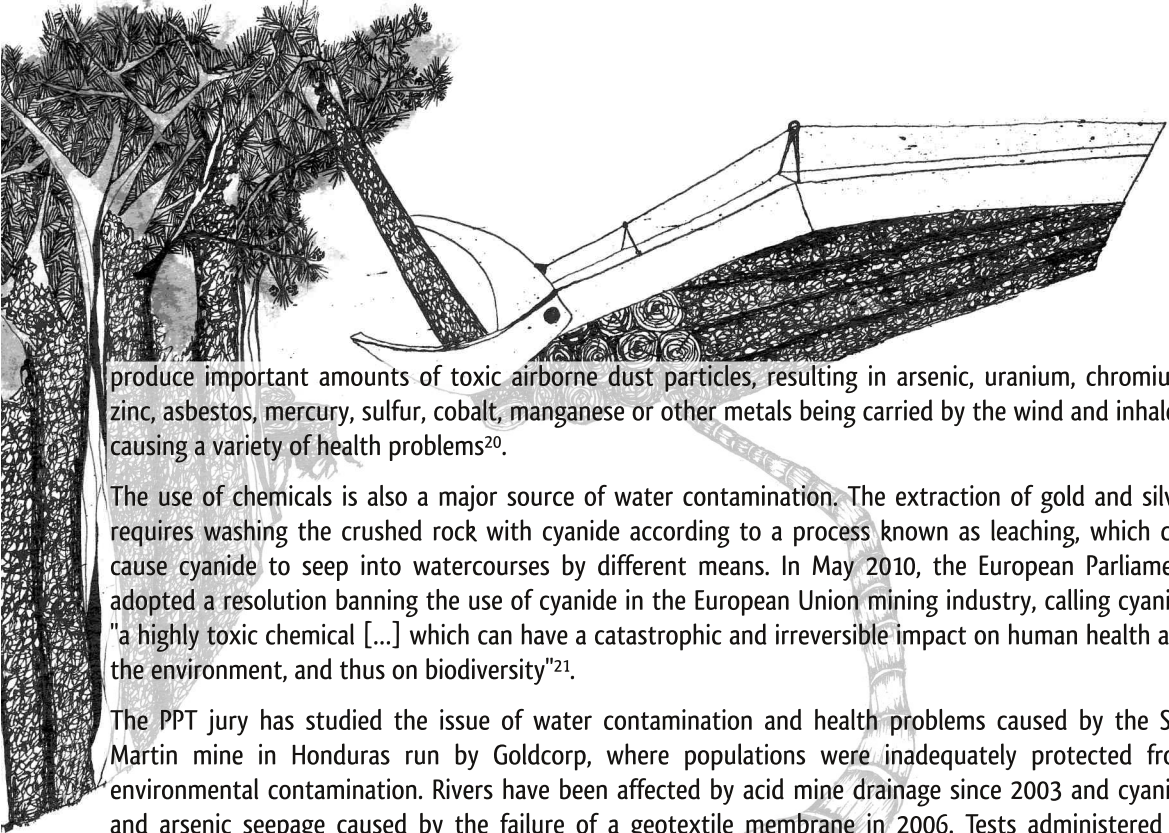
Canada is a world leader in the use of advanced mining technology and sustainable environmental practices designed to minimize the impacts of mining exploration and development on the natural environment and the communities in which they are located.¹⁵

The industry argues that technological advances allow ever more effective control of risks and the extraction of ore in ways that are consistent with environmental protection. Technology can indeed contribute to improving the environmental performance of certain processes; however, from a global point of view, the sector's negative environmental impact continues to worsen. The mining industry operates increasingly large deposits, thus increasing the volume of inputs used (water, energy, chemicals) as well as waste produced¹⁶.

In the early 2000s, a meteoric rise in the price of metals and advantageous investment frameworks provided an exceptionally favourable environment for the mining industry. While an ounce of gold was trading around \$300 in the early 2000s, the price reached a record level of \$1,800 an ounce in 2011. This boom, described by economists as a "super cycle", saw global investments in exploration multiply five-fold, going from 2.6 billion USD in 2000 to as much as 13.8 billion USD in 2008¹⁷. This has promoted the multiplication of new projects and the onslaught of mining in territories which had been free from exploitation.

Indeed, the increasing sophistication of technology permits the exploitation of deposits which were previously considered unprofitable because of their low gold value, or their inaccessibility, particularly in fragile ecosystems. There is a constant, visible downward trend in ore concentration across the globe. In Australia, for example, gold and copper contents in mines exploited for 150 years have decreased by a factor of 40 and 20 respectively¹⁸. Increased digging and more waste generation are therefore required to produce the same amount of metal. Each year, more than 180 million tons of hazardous mining waste products are released into rivers by mining companies¹⁹.

Industrial extraction processes are also extremely energy-intensive and polluting. In open-pit mines, mineral extraction requires exploding and grinding the rock, followed by leaching and centrifugation to separate ore from rock. These methods require massive volumes of water, as well as explosives and chemicals which affect the environment and human health in many ways. Mining operations



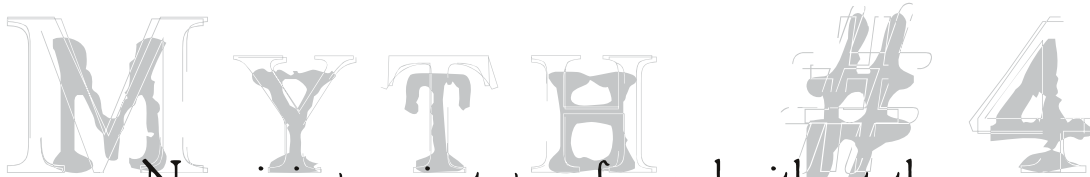
produce important amounts of toxic airborne dust particles, resulting in arsenic, uranium, chromium, zinc, asbestos, mercury, sulfur, cobalt, manganese or other metals being carried by the wind and inhaled, causing a variety of health problems²⁰.

The use of chemicals is also a major source of water contamination. The extraction of gold and silver requires washing the crushed rock with cyanide according to a process known as leaching, which can cause cyanide to seep into watercourses by different means. In May 2010, the European Parliament adopted a resolution banning the use of cyanide in the European Union mining industry, calling cyanide "a highly toxic chemical [...] which can have a catastrophic and irreversible impact on human health and the environment, and thus on biodiversity"²¹.

The PPT jury has studied the issue of water contamination and health problems caused by the San Martin mine in Honduras run by Goldcorp, where populations were inadequately protected from environmental contamination. Rivers have been affected by acid mine drainage since 2003 and cyanide and arsenic seepage caused by the failure of a geotextile membrane in 2006. Tests administered to people living near the mine detected abnormally high levels of heavy metals, and a dozen displaced and resettled families consumed arsenic-contaminated water from a well built by the mine over a period of 4 years. Lastly, water availability for human consumption and agriculture has decreased. These operations require between 550 000 and 740 000 litres of water per day. By 2003, 18 of the 21 water sources surrounding the mine had dried up²².

To these "normal" impacts, we must also add the mining industry's particularly accident-prone nature. Since 1985, thirty major accidents linked to cyanide spills caused by mining activities across the globe have been recorded²³. The most important accident occurred at Baia Mare, Romania, in 2000, where 100 000 cubic meters of cyanide-contaminated water spilled into the water systems of the Tisza and Danube rivers.

These risks are not about to disappear. Rather than dwindling, the number of accidents and infrastructure breakdowns causing hazardous mine tailing spills are rising, despite modern technology²⁴. Moreover, the mining industry has still not found a substitute for cyanide in gold mining, and long-term impacts of this type of extraction are difficult to assess. For example, acid mine drainage can begin to occur only once operations are complete and the mine is closed, but its effects will be felt for hundreds of years. Reflections on the exploitation of non-renewable resources must incorporate long-term impact analysis. More often than not, the information available to communities is insufficient; in addition, prevailing economic analyses are far from considering the entire life cycle of ecosystems.



No mining project goes forward without the consent of indigenous peoples

After engaging with some of our external stakeholders, we updated our Human Rights Policy to include clauses on grievance mechanisms; the Conflict-Free Gold Standard; free, prior, and informed consent; rights of Indigenous Peoples; resettlement planning; and potential measures in the event of non-compliance. In addition, in early 2016, we became a signatory to the Voluntary Principles on Security and Human Rights and will continue to ensure we comply with the Principles in our operations.

– Goldcorp, 2016²⁵

According to James Anaya, Special Rapporteur on the Rights of Indigenous Peoples at the United Nations from 2008 to 2014, the implementation of natural resource extraction projects “has become one of the foremost concerns of indigenous peoples worldwide and possibly also the most pervasive source of the challenges to the full exercise of their rights”²⁶.

The assertion by indigenous peoples in the past decades of their “right to free, prior and informed consent” regarding development projects on their territory led to the recognition of a whole set of rights linked with self-determination. These rights are enshrined, notably, in the Convention no. 169 on Indigenous and Tribal Peoples of the International Labor Organization (ILO) (1989) and the UN Declaration on the Rights of Indigenous Peoples adopted by the General Assembly of the UN in 2007 and by Canada in 2010.

The adoption of the UN Declaration reflects the integration over time of the “right to consent” into customary international law. This right, however, is far from guaranteed, and it is subject to highly conflicting interpretations. For some stakeholders, the legal duty of states amounts to an obligation to seek the consent of indigenous peoples, not to obtain it. In this view, states must act “with a view to obtaining their consent”. Another example is the shift occurring in some official spaces from a “right to consent” towards a “right to consultation”. For instance, while the Extractive Industries Review of the World Bank in 2003 had recognized the importance of indigenous peoples’ right to consent as a key element that should inform the decision to go ahead with a project, the official World Bank policy that followed in 2005 refers instead to a right to “free, prior and informed consultation”²⁷.

However, regardless of the definition we adopt, the conclusion is the same: local communities are not properly consulted. A hypothetical “right to say no” to an extractive development project remains a fiction. In a regional report brought to the attention of the jury of the PPT, an international working group which has analyzed the impacts of twenty-two Canadian mining projects in nine countries in

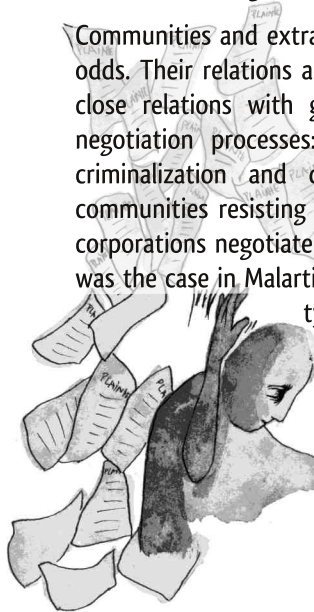
Latin America emphasized that the absence of an appropriate consultation to seek the consent of the indigenous peoples tends to be the rule rather than the exception²⁸.

The cases of indigenous communities affected by the activities of Tahoe Resources/Goldcorp in Guatemala and Barrick Gold in Chile were examined by the PPT as emblematic of violations of the right to self-determination. In the case of Pascua Lama, the construction of the mine took place without consulting the populations of the Huasco Valley at any time in the process from the early exploration drillings after the acquisition of the concession in 1994 to the present. Barrick Gold led its project without the consent of the Diaguita de los Huascoalinos indigenous community, whose ancestral territory is affected and partially occupied by the mine. Under the discourse of "social responsibility", the ethnicity of the Diaguita was instrumentalized by the company through various strategies to foster the approval of the project by local populations²⁹. This produced division within Diaguita communities, which are at the same time among the main opponents to the project and among the main beneficiaries of the company's CSR programs. In 2010, the Inter-American Court of Human Rights received a formal complaint of the Huascoalinos addressing the denial of justice they were subject to including the infringement on their rights to ancestral property and to free, prior and informed consent.

In Guatemala, opposition to the Escobal mine started to grow from the very beginning of the project when Tahoe Resources obtained an exploration permit in 2011 without consultation. The communities set up their own consultations between 2012 and 2014: five municipal consultations and nine community consultations expressed a massive rejection of the mining project. In Villa de Mataquescuintla, over 10,000 people voted against the project in a municipal referendum, while 100 people were in favour. In the city of Jalapa, 98.3% of the 23,000 participants to the consultation expressed opposition. In the municipality of San Rafael las Flores, located within 3 km of the mine, for three years residents demanded a consultation under the municipal code. Local authorities denied their request, with the consultation being systematically obstructed by legal actions initiated by Tahoe Resources workers or people having a business relationship with the company. Representatives of the Xinca indigenous people, whose territory was also affected, stood up to denounce the breach of their rights to consultation and to consent.

Communities and extractive companies often find themselves defending visions of development that are at odds. Their relations are marked by unmistakable asymmetry. The corporations' resources, as well as their close relations with governments, allow them to use various strategies to disrupt consultation and negotiation processes: legal actions to block community consultations or to silence critical voices, criminalization and defamation against human rights defenders and organizations accompanying communities resisting mining, cooptation, high-visibility advertising campaigns, etc. In many cases, mining corporations negotiate on a one-on-one basis with the owners of the plots of land they wish to acquire, as was the case in Malartic in Quebec and San Miguel Ixtahuacán in Guatemala. Given power imbalances, these types of negotiations are likely to be biased in favor of the transnationals. The Inter-

American Commission on Human Rights (IACHR) also highlighted in a report of 2009 on the rights of indigenous peoples and natural resources that the increasing frequency of cases of persecution, stigmatization and criminalization of indigenous leaders and traditional authorities defending their territories is a highly worrying trend³⁰.



MYTH #5

The local development generated by mining contributes to the improvement of women's living conditions

The latest initiative [led with Global Vision and the Canadian government] will support the people of Quiruvilca, particularly women, youth and people with disabilities, in their efforts to achieve long-term sustainable development. It is another example of how the public and private sector can collaborate with communities to maximize the benefits of mining

- Aaron Regent, Barrick's president and CEO³¹

The documentation submitted to the PPT reported gender differentiated impacts. Several analyses report that the arrival of a mine causes major changes in communities, transforming labour and community relations as well as relations with nature and social roles³². These impacts do not have the same outcome for each person or social group. For women, the implementation of large-scale mining is often accompanied by a rise in socioeconomic inequalities and violence, with a particular vulnerability to be dispossessed of their lands or livelihoods, or specific impacts on health or on their non-monetary work. The intersections are combined: aboriginal women, for example, may experience specific impacts.

Mining is a predominantly male sector of employment, and its development tends to increase the economic marginalization of women. The sector offers women few job opportunities and those who do find work face diverse obstacles and low-paid, precarious jobs, mostly in services. In Canada, for example, women comprised only 14% of the workforce in the mining sector in 2010³³. Added to this are the difficulties caused by the remoteness of mining sites. For example, atypical working schedules in northern Québec mines make it difficult to combine family obligations with work in the mining sector. Several cases of harassment have been identified in non-traditional employment sectors, notably towards indigenous women³⁴.

Mining megaprojects also monopolize land and water resources that are essential for women. In Sub-Saharan Africa it is estimated that 60 to 80% of the food consumed by rural families is produced by women³⁵. Loss of land and dwindling water resources caused by mining therefore has a particular impact on women's economic activities and on food supply. In many cases, this is

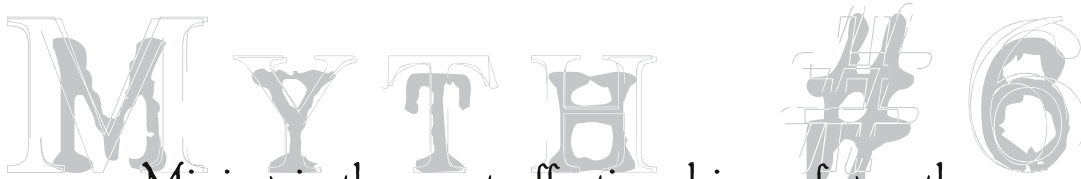


compounded by the fact that women often have less formal land titles derived from user rights on common land, which are more difficult to claim.

The tensions and conflicts that accompany the implementation of the vast majority of mining megaprojects exacerbates social tensions and creates an environment conducive to both private (domestic, sexual) and institutional (repression) violence³⁶. In particular, the strategies used by companies to obtain project approval contribute to the deterioration of the social and community fabric³⁷. The development of prostitution networks near mining areas, which prevails in every corner of the world, is another risk factor contributing to increasing violence against women.

Several cases of violence against women opposing mining projects were also brought to the attention of the PPT. In fact, women are often at the heart of the resistance to mining megaprojects. Cases of arbitrary detention of women in resistance movements in Ecuador, physical assaults and threats against opponents of Goldcorp's Marlin mine in Guatemala, or rape perpetrated by security officers of a subsidiary of the Canadian company HudBay Minerals against indigenous Q'eqchi women in the forced displacements linked to the Fenix project in Guatemala, for example, have been raised before the Tribunal. Rapes were also committed during the forced eviction of a community affected by Barrick Gold's Porgera project in Papua New Guinea.

A more fundamental criticism of the development model, which reflects a masculine vision of territory, is also at stake. Aboriginal women, in particular, are speaking out against the fact that impact studies pay insufficient attention to the views of indigenous communities, and even less to those held by women³⁸. Many women feel alienated from mining promoters' promises of economic development. They see that the jobs created are temporary and usually destined for men. But the cost of living in mining communities increases considerably with the implementation of a mine. It is very difficult therefore for people whose income does not come from the mining windfall to continue living in their homes.



Mining is the most effective driver of growth for local and national economic development

[L]ocal economic development has become an area of increasing CSR activity, as companies use their human and financial resources to foster self-reliance and help economically disadvantaged groups to establish a sustainable source of income. [...] In Chile and Argentina, communities are preparing to take advantage of the economic spin-offs that will be generated by the Pascua-Lama project. [...] The mining project will bring much-needed jobs to a region that has witnessed declining prosperity and high unemployment rates.

– Canada-Chile Chamber of Commerce, 2010³⁹

The PPT has documented the local effects of several mining projects. Despite the high figures companies present regarding their contribution to economic growth and the royalties they disburse, we must also consider the real cost of the impacts of their projects including irreparable damage affecting territories and the future of populations. These impacts are multifold: they affect the environment, cultural and social life systems and local economies. Many critical voices are questioning this limited perspective of development.

First of all, mining projects have a lifespan of about 20 years, that is, a relatively short-term perspective considering projections of territorial development for future generations. Although a significant increase in jobs for the local population for building the infrastructures generally occurs in the early stages of a mining project, employment rates tend to decrease steadily in the following phases, for which a highly specialized labour force is required⁴⁰.

The mining sector is characterized by increasing levels of automation and by a very high level of capitalization. Mining operations bring specialized and non-specialized workers to a region from other areas, and the economic benefits related to wages are often very limited for local people. Moreover, data about the companies' profitability and their contribution to national and local development do not take into consideration the social, environmental and economic costs caused by the displacement of mining-affected communities, the economic conversion of families formerly dedicated to farming, or the restoration of contaminated sites. Natural resource extraction, in fact, generates a large amount of toxic substances that persist beyond the productive life of a mine.

The imposition of mining projects also infringes on the rights of local populations to self-determination and to define their own development models. The communities' demands to be

Desarrollo = trabajo = mejor calidad de vida

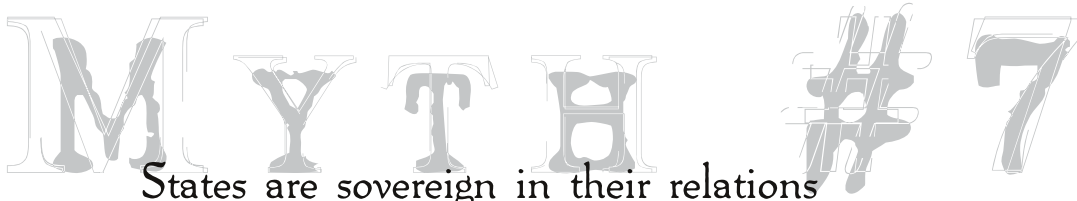


heard in decision-making spaces are directly related to their struggles to defend local livelihoods, while local forms of development are undermined by the short-term perspective of the financial system. In this regard, members of the PPT discussed the cases of communities affected by Tahoe Resources/Goldcorp in Guatemala (Escobal project) and Barrick Gold in Chile (Pascua Lama project). The testimonies and evidence submitted show that the implementation of transnational mining most often takes place by force, with the denial of the right of peoples to participate in collective decisions and the establishment of asymmetrical relations with local communities. Tahoe Resources and Barrick Gold deeply alter the territories in which they operate. They affect the natural resources of the communities and, by extension, their traditional economic activities, customs, ways of life and their right to health – all fundamental elements of local and national development.

In the case of Pascua Lama, the Diaguita de los Huascoalinos community denounced the effects of the mine on the glaciers that supply water throughout the Huasco Valley, providing the main source of water for agriculture and livestock. The project threatens in particular an area dedicated to grape cultivation that is especially important to the region. The mine's operations entailed significant risks to water, the main source of living systems in the region. The Chilean authorities recognized the damages to the two glaciers observed in the construction phase, and the Supreme Court of Chile suspended the project for non-compliance with environmental legislation.

In Guatemala, the Escobal mine was granted an operating license even though nine community consultations and five municipal consultations in the affected departments of Jalapa and Santa Rosa had expressed a massive rejection of the project. Opposition to the mine was primarily related to concerns about the social and environmental impacts of the project, especially water contamination. Despite various ongoing studies about its impacts and a temporary suspension of its operating license by the Guatemalan Court of Appeal in July 2013, the Escobal mine pursued its operations and started production in 2014.

Canadian mining companies whose actions have been examined by the Peoples' Tribunal did not demonstrate respect for local forms of development of the communities and territories where they extract minerals from the ground⁴¹. Various forms of sustainable economies existed long before the arrival of the mines. Yet, these economies were deeply altered as a result of transnational mining given, notably, the environmental impacts of the projects. Significant and often irreversible water contamination, in particular, is a core concern.



States are sovereign in their relations with mining companies and can decide whether mineral resources will be exploited on their territory

Our core business is building partnerships of real depth and trust with host governments, local communities, NGOs, indigenous people, and others. At their invitation and with their support, we take their minerals out of the ground, and in so doing, create wealth for all.

– Barrick Gold, 2015⁴²

There is a strong asymmetry between the binding nature of applicable norms in international economic law and the international law regarding human rights. Witnesses before the Tribunal stressed that bilateral investment treaties (BITs) and free trade agreements (FTAs) undermine the ability of peoples to determine their future. The architecture of free trade and investment protection strongly promoted by Canada and other countries over the past twenty years has allowed extractive transnational corporations to take over lands, territories and mineral resources. These agreements contain different provisions that secure the rights of investors. They typically set up dispute resolution mechanisms that provide corporations with the possibility to sue a state for implementing a public policy viewed as an obstacle to the "right" of the company to make profits.

The jury of the PPT analyzed the case of the lawsuit filed in 2009 against El Salvador by the Canadian mining company Pacific Rim (now OceanaGold). In 2007, due to various irregularities, El Salvador rejected the environmental impact study produced by Pacific Rim and refused to grant it a license in a context of strong grassroots mobilization against large-scale mining, in a country where water resources are particularly fragile⁴³. The company responded by filing a lawsuit against El Salvador under Chapter 10 of the US-Central America Free Trade Agreement in April 2009, through a subsidiary with offices in the United States. Neither the rejection of the first procedure nor the purchase of Pacific Rim by the Canadian-Australian company OceanaGold in 2013 ended the matter. The company filed a second complaint, this time with the International Centre for Settlement of Investment Disputes

(ICSID), claiming \$250 million from El Salvador. The dispute is still not resolved and the legal fees incurred have so far cost the Salvadoran government \$12 million dollars. In parallel with this legal offensive, the company set up a non-profit organization, the El Dorado Foundation, which promotes mining with the Salvadoran population. Indeed, opposition is strong. In 2015, a national survey showed that 80% of the population opposed metal mining in their country⁴⁴.

Other similar cases were documented. In 2014, the Canadian mining company Infinito Gold initiated legal proceedings against Costa Rica following the revocation of a concession because of its environmental impacts. The company brought the case to arbitration at the ICSID, reclaiming from Costa Rica to pay \$100 million in damages. These investor-state dispute resolution mechanisms are problematic at different levels. First, they give precedence to the rights of companies on economic, social, cultural and environmental human rights. Second, they limit the capacity of states to adopt measures for the collective interest. In the case of mining, not only do trade regulations make it possible for a company to contest a state decision, but they also have a deterrent effect on governments willing to legislate to protect the environment or to include specific requirements when granting a permit, for example to ensure a minimum ratio of local jobs. In short, these mechanisms have resulted in locking in privileges granted to companies, at the expense of democratic processes⁴⁵.

Over 3,000 free trade and investment protection agreements have been established around the world. It is increasingly difficult for states to regulate the mining industry and to be able to reject a project deemed contrary to the public interest. A recent report noted that extractive companies are particularly likely to initiate arbitration proceedings⁴⁶. At present, there are 109 cases of disputes relating to mining and natural resources extraction in the world. Regarding the 44 cases for which information is available, mining companies are suing states for a total amount of 53 billion dollars⁴⁷.





The government of Canada supports only mining companies that respect human rights

We value and promote the protection of internationally recognized human rights, consistent with the policies of the Government of Canada. Our screening mechanisms, pre-signing due diligence and ongoing project monitoring help ensure that Canadian companies conduct their international operations to universally acceptable standards.
– Exportation and Development Canada⁴⁸

The Canadian state supports the mining industry through a number of policies and programs including loans and guarantees, insurance products, specific tax incentives and assistance from Canadian embassies⁴⁹. Is public support to mining projects made conditional upon respect for human rights? The documentation submitted to the PPT shows that this is not the case. The existing framework does not provide for an independent body to investigate complaints or an effective mechanism for revoking government support when a company fails to comply with human rights standards.

In many cases, Canadian embassies have continued to support mining projects even after being made aware of social conflicts, lack of social legitimacy, and even human rights violations. The government of Canada explicitly places "economic diplomacy" at the centre of its international presence. Its Global Markets Action Plan, announced in 2013, stated in that regard that "all the diplomatic assets of the Government of Canada are harnessed to support the pursuit of commercial success by Canadian companies and investors in key foreign markets"⁵⁰. Diplomatic support can take various forms: facilitating interviews with policy makers, supporting publicly a project or lobbying for a legislative reform. In all the cases submitted to the Tribunal, and at various stages of the deployment of business activities, embassy staff was involved.

The PPT examined the actions of the Canadian embassy in support to the Blackfire Exploration in Mexico. The analysis of official documents obtained by civil society organizations under the Access to Information Act showed that the embassy gave constant political support to the company without requiring from the latter that it respect human rights or CSR standards. Nor did the embassy seek to know the points of view of affected communities about the ongoing social conflict⁵¹.

The presence of the mine, in operation in Chiapas between 2007 and 2009, resulted in significant social tensions that reached an apex with the assassination of the ecologist leader Mariano Abarca in November 2009. Everything indicates that the embassy has been closely monitoring the tensions surrounding the establishment of the mine. Having made a few visits in the region and having received



Gilles Pilette

many communications regarding the threats suffered by opponents, embassy officials were fully aware of the tensions in Chicomuselo and the lack of prior consultation with affected communities. While the conflict developed embassy staff continued to support the company without questioning its actions. Even after the death of Mariano Abarca, and after that evidence of payment of bribes by Blackfire to the Mayor of Chicomuselo was unveiled in the media, Canadian officials, at the request of the embassy, advised the corporation on recourses available under Chapter 11 of the North American Free Trade Agreement (NAFTA) to sue Mexico for loss of profits following closure of the mine. Similar actions of the embassy in support Excellon Resources were also documented⁵².

Another case examined by the People's Tribunal was the allocation of funding by the public agency Export Development Canada (EDC). EDC is an export credit Crown corporation that provides financing to Canadian companies operating abroad in the form of loans, loan guarantees and insurance products. Extractive corporations account for a significant part of its beneficiaries. EDC relies on the performance standards of the International Finance Corporation (IFC) of the World Bank, as well as on the Ecuador Principles for financial institutions. However, on the grounds of confidentiality owed to its clients, little information is made available by EDC about the criteria governing the granting of funds and its monitoring processes⁵³.

A closer look at how the credit institution handled a request made by Barrick Gold for the bi-national project Pascua Lama, one of the cases examined by the Tribunal, clearly shows the shortcomings of EDC's approach. In applying its obligation of due diligence, the credit agency conducts field visits to check the accuracy of information submitted by a potential customer. Carried out in good faith, the obligation to verify the information should entail speaking with representatives of affected communities and civil society organizations. However, during its field visit to Chile and Argentina, EDC did not see fit to grant explicitly requested meetings to representatives of affected communities and civil society organizations. EDC met only with individuals from affected communities, without prior information about the objective of the meeting or the nature of EDC's work. Interviews were organized by Barrick Gold and took place in the offices of the transnational mining company⁵⁴.

Making compliance with human rights standards a condition for public support to extractive companies is a longstanding demand of the Canadian civil society. It was also one of the recommendations of the report of the Advisory Group published in 2007 following the national roundtables convened by the government, which brought together industry representatives, NGOs and academics. In 2009, the bill C-300 introduced in the Parliament had the specific goal of introducing a mechanism for the cessation of all types of government support to a company failing to meet its human rights obligations. The bill was eventually defeated by a few votes. Despite civil society efforts, Canada is still far from accountability. To date, the Canadian government's strategy is limited to promoting CSR voluntary codes and does not provide for a legal framework requiring Canadian corporations to respect human rights abroad.

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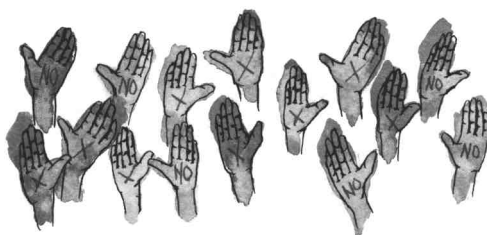
THE HOLDING OF THE PPT AND THE PRODUCTION OF EDUCATIONAL TOOLS WERE

PARTNER ORGANIZATIONS

Alternatives

Association des juristes progressistes
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Blue Planet Project
Canada Save Rosia
Centrale des syndicats du Québec (CSQ)
Centre de recherche en éducation et formation relatives à l'environnement et à l'écocitoyenneté (Centr'ERE), UQÀM
Centre international de solidarité ouvrière (CISO)
Cercle des Premières Nations de l'UQÀM
Coalition québécoise sur les impacts socio-environnementaux des transnationales en Amérique latine (QUISETAL)
Coalition pour que le Québec ait meilleure mine
Comité pour les droits humains en Amérique latine (CDHAL)
Comité UQAM-Amérique latine
Common Frontiers
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Council of Canadians
Dignidad Migrante
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Groupe de recherche sur les espaces publics et les innovations politiques (GREPIP), UQAM
Immigrant Workers Centre
International Alliance of Women (IAW)
Justice transnationales extractives (JUSTE)
L'Entraide missionnaire

Latin American and Caribbean Solidarity Network's (LACSN)
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McGill Research Group Investigating Canadian Mining in Latin America (MICLA)
Mexican@s Unid@s por la Regularizacion
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MiningWatch Canada
Mouvement des travailleuses et travailleurs chrétiens (MTC)
Observatoire des Amériques, UQÀM
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Quebec Native Women (FAQ-QNW)
Réseau québécois sur l'intégration continentale (RQIC)
Réseau œcuménique justice et paix (ROJeP)
Réseau québécois des groupes écologistes (RQGE)
Rights Action
Salvaide
Solidarité Laurentides Amérique centrale (SLAM)
Solidarity with Native People
Temporary Foreign Workers Association (TFWA)
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Women of Diverse Origins



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transnationales en Amérique latine

Permanent Peoples' Tribunal

Session on the Canadian Mining Industry

The formal petition and the charges presented to the Permanent Peoples' Tribunal, as well as the ruling of the hearing on Latin America and other information materials are available online: www.tppcanada.org.

The PPT ruling highlighted that the Canadian state has a clear responsibility with regard to the respect of human rights by mining companies domiciled in its territory. The judges of the Peoples' Tribunal stressed that this responsibility must be reflected through the implementation of appropriate mechanisms to make government support conditional on compliance with human rights and to ensure access to an effective remedy for communities affected by the operations of Canadian mining companies.

We invite social movements and civil society organizations to adopt and include in their action plans the recommendations made by the Permanent Peoples' Tribunal to the Canadian government, host governments and relevant international institutions.

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