

**SUBMISSION TO THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS UNIT
OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

26 January 2016

Petitioners:

Canadian Network on
Corporate Accountability



Polaris Institute



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1. PROFILE OF PETITIONERS

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The Canadian Network on Corporate Accountability (CNCA) brings together thirty environmental and human rights NGOs, faith groups, labour unions, and research and solidarity groups from across Canada around the common goal of ensuring respect for the environment and of the human rights of all peoples by Canadian extractive corporations, no matter where they operate. To that end, the CNCA advocates for the establishment of mandatory corporate accountability standards for Canadian extractive companies operating abroad, especially in developing countries.

Members:

Above Ground	Grandmothers Advocacy Network
Africa-Canada Forum	Inter Pares
Americas Policy Group	KAIROS: Canadian Ecumenical Justice Initiatives
Amnesty International Canada	Maritimes-Guatemala Breaking the Silence
Amnistie internationale Canada francophone	Solidarity Network
Asia Pacific Working Group	Mining Injustice Solidarity Network
Canada Tibet Committee	MiningWatch Canada
Canadian Council for International Co-operation	Projet Accompagnement Québec-Guatemala
Canadian Jesuits International	Public Service Alliance of Canada
Canadian Labour Congress	Publish What You Pay Canada
Canadian Union of Public Employees	Social Justice Connection
CoDevelopment Canada	Solidarité Laurentides Amérique centrale
Committee for Human Rights in Latin America	Steelworkers Humanity Fund
Development and Peace	Unifor
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The Polaris Institute is a public interest research organization based in Canada. Since 1997 Polaris has been dedicated to developing tools and strategies to take action on major public policy issues, including the corporate power that lies behind public policy making, on issues of energy security, water rights, climate change, green economy and global trade.

2. Introduction

The Canadian Network on Corporate Accountability (CNCA) and the Polaris Institute welcome the decision of IACHR's ESCR Unit to appoint a Special Rapporteur on economic, social and cultural rights. For the reasons we outline below, we strongly encourage the ESCR Unit to include business and human rights in the Special Rapporteur's mandate.

Business has a profound impact on human rights. The UN Secretary-General's Special Representative on Business and Human Rights noted that business operations impinge on all rights, including ESC rights.¹ According to Amnesty International, governments' failure to ensure that business respect human rights has resulted in populations being exposed "to danger through pollution, and to exploitation through denial of the right to a fair wage and decent working conditions". Moreover, large-scale private sector development projects often result in "widespread homelessness and violation of indigenous peoples' rights".² These violations persist, despite extensive endorsement of the UN Guiding Principles on Business and Human Rights, which articulate the international obligation of states to "respect, protect and fulfil human rights and fundamental freedoms" and the responsibility of companies "to comply with all applicable laws and to respect human rights".³

The global operations of Canada's oil, gas and mining companies are of particular concern. The IACHR has held multiple hearings on this issue, receiving submissions from a diversity of actors on the human rights impacts of Canadian multinationals in the Americas.

In 2013, civil society groups from across Latin America presented the IACHR with a study of 22 large-scale Canadian mining exploration and extraction projects in the region. Their findings point to "serious environmental, economic, social, and cultural harms" involving Canadian companies.⁴ They also identify Canadian policies that contribute to the negative impact of the mining industry.⁵

At a thematic hearing before the IACHR in 2014, the CNCA argued for the adoption of measures to address two issues:

- (i) Canada's promotion of the large-scale mining industry in Latin America through political, economic and legal support, and its failure to put into place effective mechanisms to ensure corporate and state accountability.
- (ii) The failure of voluntary standards and measures to provide effective recourse and remedies for victims of the negative human rights and environmental impacts of mining.⁶

¹ UN SGSR on Business and Human Rights, "United Nations Guiding Principles on Business and Human Rights", UN Document A/HRC/17/31 (Geneva: United Nations, 2011) at 14 [UN SCSR].

² Amnesty International, "Human Rights for Human Dignity", 2nd ed (London, UK: Amnesty International, 2005) at 17.

³ UN SCSR, *supra* note 1 at 1.

⁴ Working Group on Mining and Human Rights in Latin America, "The Impact of Canadian Mining in Latin America and Canada's Responsibility: Executive Summary of the Report Submitted to the Inter-American Commission on Human Rights" (2013) at 10, online: Due Process of Law Foundation <<http://www.dplf.org>> [Working Group].

⁵ *Ibid* at 25-29.

⁶ CNCA, "Human Rights, Indigenous Rights and Canada's Extraterritorial Obligations" (Submission to Thematic Hearing for 153rd Period of Sessions, IACHR, 28 October 2014) at 2 [CNCA].

During the hearing, Commissioner Rose-Marie Antoine, former head of the ESCR Unit, made the following comment: “Despite the assurances of Canada that there is good [corporate social responsibility] policy, we continue at the Commission to see a number of very, very serious human rights violations occurring in the region as a result of certain countries, and Canada being one of the main ones [...]. So we are seeing deficiencies of the policy.”⁷ Commissioner Antoine then asked Canada to better explain the mechanisms it employs to monitor companies.⁸ Canada requested time to reply in writing.⁹ To our knowledge, Canada has not yet replied.

In 2015, representatives of the Catholic Church were also granted a hearing before the IACHR. They presented the Church’s position on human rights and extractive industries in Latin America. Members of the Catholic Church delegation demanded accountability for Canadian mining companies operating in the region¹⁰ and attested to “the anguish and suffering of many brothers and sisters who in some circumstances are suffering the consequences of a devastating and increasingly threatening extractive activity that has no human face or ethics”.¹¹

Despite the attention of international authorities, and the sustained efforts of policy-makers, legislators and civil society actors in Canada, the Canadian government has failed to fulfill its duty to protect against human rights abuse by Canadian multinationals.¹² The petitioners strongly encourage the IACHR Special Rapporteur on ESCR to continue the important work that the IACHR has carried out regarding human rights and multinational corporations.

3. ESCR Violations Associated with Canadian Mining Companies

For decades and across the Americas, Canadian mining companies have faced credible allegations of human rights abuse. This abuse affects many ESC rights. We include several representative examples below.

→ *Right to work; Right to just work conditions; Right to organize trade unions*

Canadian mining companies face allegations regarding exploitive labour conditions, forced labour, child labour, health and safety violations, and the violation of trade union rights.

For example, in 2014 three Eritreans launched a legal action in Canada against the mining company Nevsun Resources Ltd. The plaintiffs claim that Nevsun approved the widespread use of forced labour by its local contractor at the Bisha mine in Eritrea. The plaintiffs allege that they endured appalling working and living conditions, and were subjected to severe punishment for perceived disobedience.¹³ In Chile, 17 miners were killed during work-site accidents at Barrick

⁷ IACHR, “Impact of Canadian Mining Activities on Human Rights in Latin America”, 153 Period of Sessions (28 October 2014), video recording at 53:42, online: OAS <<http://www.oas.org>>.

⁸ *Ibid* at 55:50.

⁹ *Ibid* at 1:07:18.

¹⁰ Michael Swan, “Make Mining Companies Accountable, Bishops Demand”, *The Catholic Register* (25 March 2015), online: The Catholic Register <<http://www.catholicregister.org>>.

¹¹ IACHR, Press Release, “IACHR Wraps Up its 154th Session” (27 March 2015), online: OAS <<http://www.oas.org>>.

¹² CNCA, *supra* note 6 at 13-14.

¹³ Canadian Centre for International Justice, “Nevsun Resources”, online: CCIJ <www.ccij.ca>.

Gold Corp.'s now paralyzed Pascua Lama project.¹⁴ In 2010, the on-the-job death of a worker spurred union organizing at Excellon Resources Inc.'s La Platosa mine in Durango, Mexico. In 2012, the company fired approximately 50 workers whom it identified as union supporters. In 2014, two mine workers were killed and another three injured in a mine accident.¹⁵

→ *Right to a healthy environment*

Mining can negatively impact the environment in a variety of ways. Open pit mining requires the removal of vegetation, topsoil and surface rock. This exercise disrupts ecosystems, threatens biodiversity and creates large volumes of toxic waste rubble.¹⁶ The mismanagement of this rubble and other hazardous waste by-products can lead to the acidification and contamination of watersheds, endangering aquatic life and degrading water sources for decades, even centuries.¹⁷ Furthermore, mining requires large quantities of fresh water for drilling, dust control and ore grinding. Water extraction can permanently disrupt groundwater movement and lead to loss of water supplies, as well as flooding and landslides.¹⁸

Canadian mining companies have been linked with serious environmental damage overseas. In 1995, the tailings dam at Cambior Inc.'s Omai mine in Guyana ruptured, spilling billions of litres of contaminated mine waste into the country's main waterway.¹⁹ At the time of the rupture, the amount of waste in storage was eight times greater than the allowable maximum, as specified in the project's environmental impact statement.²⁰ In 2013, Chile's environmental regulator fined Barrick Gold Corp. a record \$16 million for not complying with environmental requirements at the Pascua Lama mining site. In 2015, the company was charged with 10 new infractions, including failure to monitor the effects of mining activity on glaciers in the region.²¹

¹⁴ Grupo de Trabajo sobre Minería y Derechos Humanos en América Latina, "El impacto de la minería canadiense en América Latina y la responsabilidad de Canadá: Informe presentado a la Comisión Interamericana de Derechos Humanos" (Washington, DC: Grupo de Trabajo sobre Minería y Derechos Humanos en América Latina, 2014) at 36, online: Due Process of Law Foundation <www.dplf.org> [Grupo de trabajo].

¹⁵ Jen Moore, "Unearthing Canadian Complicity: Excellon Resources, the Canadian Embassy, and the Violation of Land and Labour Rights in Durango, Mexico" (Ottawa: MiningWatch Canada and United Steelworkers, 2015) at 6; Catherine Solyom, "Conflicts Surrounding Canadian Mines 'a Serious Problem'", *The Montreal Gazette* (16 December 2012), online: The Montreal Gazette <www.montrealgazette.com>; Jennifer Moore & Gillian Colgrove, "Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy" (Ottawa: United Steelworkers, Common Frontiers & MiningWatch Canada, 2013).

¹⁶ Sarah Beamish, "Extracting Accountability: The Need to End Impunity for Environment Crimes and Human Rights Abuses Committed by Canadian Mining Corporation Abroad" (New Haven, CT: One Justice Project, 2014) at 3 [Beamish].

¹⁷ Earthworks & Oxfam America, "Dirty Metals: Mining Communities and the Environment" (Washington, DC: Earthworks & Oxfam America, 2004) at 5-6, 9.

¹⁸ *Ibid* at 12; Beamish, *supra* note 16 at 3.

¹⁹ Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* (London: Amnesty International Ltd, 2014) at 65-69 [Amnesty International].

²⁰ Robert Repetto, "Silence is Golden, Leaden and Copper: Disclosure of Material Environmental Information in the Hard Rock Mining Industry" (New haven, CT: Yale School of Forestry and Environment Studies, 2004) at 8.

²¹ Reuters, "Chile Regulator Seeks New Sanctions Against Barrick's Pascua Lama", *Reuters* (22 April 2015), online: Reuters <ww.reuters.com>.

→ *Right to health*

Mining activity has been linked to occupational illnesses in workers, including pneumoconiosis, respiratory problems and eye disease. Populations living in proximity to mine sites are often exposed to heavy metals and other toxins, as well as to excessive noise, vibration and dust, all of which can have adverse health impacts.²²

Communities near Goldcorp Inc.'s San Martin mine in Honduras have reported increased rates of skin and gastrointestinal problems, miscarriages and birth defects.²³ In Guatemala, a study conducted by Physicians for Human Rights found high levels of metals such as mercury, copper, arsenic and zinc in the urine of community members living adjacent to or down river from Goldcorp Inc.'s Marlin mine.²⁴ Chronic exposure to elevated levels of these metals can affect the central nervous system and various organ systems, and lead to pulmonary and gastrointestinal problems.²⁵

→ *Right to livelihood; Right to housing; Right to property*

The communities affected by Canadian mining operations overseas are typically rural and socio-economically marginalized. Many subsist from farming and fishing. Not only does mining disrupt these activities, but community members often lose access to land and water resources as a consequence of mining projects.²⁶ In many Latin American countries, subsoil and surface land rights are legally distinct. Even if communities are the rightful surface owners, subsoil rights are often granted to third parties and routinely take legal precedence over surface rights.²⁷ When the transfer or sale of surface land rights does occur, it is frequently the result of deception, fraudulent manipulation of property titles, pressure and forced eviction.²⁸

In 2001, residents from San Andrés Minas in Honduras were relocated to make way for Greenstone Resources Ltd.'s mining project. The residents were promised new homes and legal title to new plots of land. Soon after the relocation, the company mortgaged the new lands, leaving the community in legal limbo.²⁹ Since 2004, Maya Q'eqchi' communities in Guatemala have been involved in land disputes with Hudbay Minerals Inc. and its predecessor Skye Resources Ltd. The communities claim that lands currently constituting the Fenix project are their ancestral homelands, and that they were illegally expelled from these lands in the 1960s when the dictatorial military government began making way for mining in the area. When the communities reclaimed a portion of the lands in 2006-7, police, military and private security forces conducted a

²² Grupo de trabajo, *supra* note 14 at 37.

²³ *Ibid* at 38.

²⁴ PHR, "Toxic Metals and Indigenous Peoples Near the Marlin Mine in Western Guatemala: Potential Exposures and Impacts on Health" (Cambridge, MA: PHR, 2010) at 3.

²⁵ *Ibid* at 11.

²⁶ See, for example, Development and Peace, "Peru: Land and Rivers Threatened by Mining Activity" in *One Human Family: Food for All* (Montreal: Development and Peace, 2014) at 8.

²⁷ Marcus Colchester (ed), "A Report for the Land Tenure Service of the Food and Agriculture Organization" (paper prepared for the Food and Agriculture Organization of the United Nations (2001) at 18, online: Rights and Resources <rightsandresources.org>.

²⁸ Working Group, *supra* note 4 at 19.

²⁹ McGill Research Group Investigating Canadian Mining in Latin America (MICLA), "San Andres, Honduras", online: MICLA <<http://www.micla.ca>>; Michael Marsh (Rights Action), "From Quebec to Copan: Globalization and the Case of San Andrés Minas" (25 June 2001), online: MiningWatch Canada <www.miningwatch.ca>.

number of forced evictions. Community members claim that, during the evictions, several women were gang-raped, hundreds of houses were burned and goods were stolen.³⁰ In June 2014, police in Papua New Guinea evicted residents from a village located near Barrick Gold Corp.'s Porgera gold mine and burnt down approximately 200 houses. Victims claim they were not given warning or official notices prior to the eviction.³¹

→ *Indigenous rights*

Canadian mining companies frequently carry out their projects on the territories of indigenous peoples. In 2011, the UN Special Rapporteur on the Rights of Indigenous Peoples affirmed that extractive industry projects “on or near indigenous territories ha[ve] 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”.³²

Since 2004, at least 13 IACHR hearings have dealt with the extractive industry's infringement on the rights of indigenous peoples. At least two of these hearings dealt exclusively with the Canadian extractive industry:

- Extractive Industries and Human Rights of the Mapuche People in Chile (154 Period of Sessions, 17 March 2015);
- Impact of Canadian Mining Activities on Human Rights in Latin America (153 Period of Sessions, 28 October 2014);
- Human Rights Situation of Indigenous Peoples in Ecuador (153 Period of Sessions, 28 October 2014);
- Rights of Indigenous Peoples to Legal Recognition and Property in Peru (153 Period of Sessions, 28 October 2014);
- Human Rights Situation of Persons affected by the Extractive Industries in the Americas (144 Period of Sessions, 28 March 2012);
- Case:12.741 – Agricultural Community of Diaguita de los Huascoaltinos, Chile (143 Period of Sessions, 28 October 2011);
- Human Rights Situation of the Indigenous Communities Affected by Activities of the Mining Industry in the Andean Region (140 Period of Sessions, 29 October 2010);
- Rights of Indigenous Peoples and Energy and Extractive Industry Policy in Peru (140 Period of Sessions, 26 October 2010);
- Situation of Environmentalists in Mesoamerica (140 Period of Sessions, 25 October 2010);
- Situation of Indigenous Peoples' Collective Right to Property with regard to Land and Natural Resources in Central America (125 Period of Sessions, 19 July 2006);
- Situation of the Rights of Indigenous Peoples with regard to Mining in Guatemala (122 Period of Sessions, 3 March 2005);
- Situation of Indigenous Peoples with regard to Extractive Industries (119 Period of

³⁰ *Margarita Caal Caal et al. v Hudbay Minerals Inc. and HMI Nickel Inc.*, [2012] Court File No. CV-11-423077 (Amended Statement of Claim) at para 34-39, 48-76, online: Choc v. Hudbay Inc. & Caal v. Hudbay Minerals Inc. <chocversushudbay.com>.

³¹ MiningWatch Canada, “Villagers’ Houses Burnt Down Again at Barrick Gold Mine in Papua New Guinea” (11 June 2014), online: MiningWatch Canada <www.miningwatch.ca>.

³² James Anaya, Special Rapporteur on the Rights of Indigenous Peoples, “Extractive Industries Operating within or near Indigenous Territories” (Report to the UN Human Rights Council, 18th session, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development”, 11 July 2011, A/HRC/18/35) at para 57.

- Sessions, 4 March 2004);
- Situation of Indigenous Peoples in Mining Areas, Southern Venezuela (119 Period of Sessions, 4 March 2004).³³

In addition, in 2001 the UN Special Rapporteur on the Rights of Indigenous Peoples stated that “currently in Guatemala, the business activities under way in the traditional territories of the indigenous people have generated a highly unstable atmosphere of social conflict, which is having a serious impact on the rights of the indigenous people and threatening the country’s governance and economic development”.³⁴ Canadian companies account for 88 percent of that country’s mining activity.³⁵ A 2013 submission to the same rapporteur outlined how First Quantum Minerals Ltd’s Molejon mine in Panama was infringing on the rights of the Ngäbe Bugle peoples.³⁶ In 2014, the Chilean government suspended the development of Goldcorp Inc.’s El Morro mine because the company failed to consult with the local indigenous Diaguita community.³⁷

→ *Cultural rights*

Mining activity can also infringe on cultural rights. Mining projects are sometimes located on community burial grounds, sacred grounds or heritage sites. Mining activity can interfere with a community’s attachment to specific lands, landmarks or nomadic practices. Mining companies often employ temporary workers from outside the local community. The arrival of outsiders can lead to marked increases in prostitution and substance abuse, as well as the marginalization of local culture.³⁸

In Chile, the Diaguita Huascoaltinos Indigenous and Agricultural Community have rejected Barrick Gold Corp.’s Pascua Lama project because it occupies part of their ancestral territory: “[The project] takes away from us the possibility of protecting our natural and cultural heritage. This heritage is part of an integrated system that allows replication and maintenance of our culture over time.”³⁹ Barrick has also been accused of desecrating sacred aboriginal Wiradjuri

³³ IACHR, “IACHR Hearings and Other Public Events” (2015), online: OAS <<http://www.oas.org>>.

³⁴ James Anaya, Special Rapporteur on the Rights of Indigenous Peoples, “Observations on the Situation of the Rights of the Indigenous People of Guatemala with relation to the Extraction Projects, and other Types of Projects, in their Traditional Territories” (Report to the UN Human Rights Council, 18th session, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development”, 7 June 2011, A/HRC/18/35/Add.3) at 1.

³⁵ Amnesty International Canada, “Don’t Undermine our Rights: Background: Mining and Indigenous Rights in Guatemala” (2014), online: Amnesty International Canada <<http://www.amnesty.ca>>.

³⁶ Justice and Corporate Accountability Project, MiningWatch Canada and Professor Daviken Studnicki-Gizbert, “Supporting Communication to the Special Rapporteur on the Rights of Indigenous Peoples” (July 2013).

³⁷ The Associated Press, “Chile’s Top Court Halts Goldcorp’s El Morro Mine” *The Globe and Mail* (7 October 2014), online: The Globe and Mail <www.theglobeandmail.com>.

³⁸ Forest Peoples Programme, Philippine Indigenous Peoples Links & World Rainforest Movement, “Undermining the Forests: The Need to Control Transnational Mining Companies – The Canadian Case Study” (2000) at 32, online: MiningWatch Canada <<http://www.miningwatch.ca>>.

³⁹ Diaguita Huascoaltinos Indigenous and Agricultural Community, “Huascoaltinos Claim is Admitted by the Inter-American Commission on Human Rights: A Statement from the Diaguita Huascoaltinos” (23 February 2010), online: Protest Barrick <protestbarrick.net>. See also *Agricultural Community of Diaguita de los Huascoaltinos, Chile* (2011), Inter-Am Comm HR, Case 12.741, online: OAS <<http://www.oas.org>>.

sites at Lake Cowal in Australia.⁴⁰ In 2011, the Wixárika people of Mexico presented a letter to the shareholders of First Majestic Silver Corp. expressing concern about the impact of a proposed silver mine on their ancestral ceremonial sites, known as Wirikuta.⁴¹ The Wixárika Regional Council reiterated their call for First Majestic to abandon its La Luz project in November 2014.⁴²

→ *Civil and political rights of ESCR defenders*

In December 2011, both the IACHR and the UN Special Rapporteur on the Situation of Human Rights Defenders raised concerns about the criminalization of ESCR defenders working on issues connected with extractive industries.⁴³ People who oppose mining projects on the grounds that they infringe on ESC rights often endure serious violations of their civil and political rights. They are frequently stigmatized as radicals or criminals. During protests or in areas where resistance to mining is strong, there may be a sudden increase in unwarranted police or military presence to discourage opposition. Furthermore, governments, industry and related actors may bring frivolous legal proceedings against opponents in an attempt to silence their dissent.⁴⁴

In 2012-13, as Tahoe Resources Inc. awaited the final permits required to begin production at its Escobal mine in Guatemala, the Guatemalan government deployed 8,500 military and police personnel to the four municipalities surrounding the mine site and declared the area a state of siege. The government issued at least 18 arrest warrants for individuals allegedly involved in delinquent acts, and a dozen others had their homes raided by police and military forces.⁴⁵ During that time, there were more than 70 legal processes against individuals who had peacefully opposed the mine.⁴⁶ Seven individuals claim that they were shot by Tahoe security forces while they engaged in peaceful protest.⁴⁷ Militarization of the area continues.⁴⁸

In June 2014, approximately 400 community leaders and ESCR defenders in Peru were facing legal proceedings initiated by mining companies, company staff or the public prosecutor on the basis of such charges as rebellion, terrorism, trespassing and obstructing roads. The international

⁴⁰ Friends of the Earth International, Press Release, “Friends of the Earth International Joins Protests Against Barrick Gold – Barrick Gold Clean Up Your Act! Right to Life Over Gold Profits” (27 April 2011), online: FOEI <<http://www.foei.org>>.

⁴¹ MiningWatch Canada, “Wixárika People Deliver Letter to Mexican President Calderón and Shareholders of First Majestic Silver” (20 May 2011), online: MiningWatch Canada <<http://www.miningwatch.ca>>.

⁴² Kabopro Films, Press Release, “Wixárika Leaders to First Majestic Silver Corp: Follow IDM Mining Ltd Example, Abandon Mining Project in Sacred Lands” (28 November 2014), online: Huicholes Film <<http://huicholesfilm.com>>.

⁴³ IACHR, “Second Report on the Situation of Human Rights Defenders in the Americas”, OEA/Ser.L/V/II. Doc.66, 31 (Washington, DC: OAS, 2011) at pp 28-32; UN SR on the Situation of Human Rights Defenders, “Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya”, A/HRC/19/55 (Geneva: United Nations, 2011) at para 71.

⁴⁴ *Ibid.*

⁴⁵ Network in Solidarity with the People of Guatemala, “Guatemala Gov’t Declares State of Siege in Municipalities Surrounding Tahoe Escobal” Mine (3 May 2013), online: NISGUA <<http://nisgua.blogspot.nl>>.

⁴⁶ Network in Solidarity with the People of Guatemala, “Communities of Santa Rosa and Jalapa Denounce Criminalization of Leaders Opposing Tahoe Resources’ Escobal Mine” (5 July 2013), online: NISGUA <<http://nisgua.blogspot.nl>>.

⁴⁷ Above Ground, “Transnational Lawsuits in Canada against Extractive Companies, 1997-2015” (5 July 2015), online: Above Ground <<http://www.aboveground.ngo>>.

⁴⁸ Wojtek Gwiazda, “Guatemalan Militarization to Protect Canadian Mining Company, Tahoe Resources” *Radio Canada International* (28 April 2015), online: RDI <<http://www.rcinet.ca>>.

human rights organization Front Line Defenders referred to these charges as “a form of judicial harassment”.⁴⁹

4. Canada and Extraterritorial Responsibilities: Failure to Fulfill International Human Rights Commitments

As described above, the Canadian government is failing to protect against economic, environmental, social and cultural abuse by Canadian companies overseas. The Canadian government has not adopted adequate policy and legal mechanisms to hold Canadian companies to account or to provide access to justice for victims of human rights abuses committed by these companies.

In 2009, the Canadian government released a Corporate Social Responsibility (CSR) strategy aimed at improving “the competitive advantage of Canadian extractive sector companies operating abroad by enhancing their ability to manage social and environmental risks”.⁵⁰ In 2014, the government released a revised strategy, “Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada’s Extractive Sector Abroad”.⁵¹ In the latter document, the government purported to “strength[en] its commitment to enhance the ability of Canadian extractive sector companies to integrate CSR into their practices” through the promotion of CSR guidelines and the creation of government supports for companies facing CSR issues.⁵²

However, as explained in detail in the CNCA’s 2014 submission to the IACHR,⁵³ existing policy and legal mechanisms do not address the state and corporate accountability gaps that persist regarding the overseas operations of Canadian companies. Not only are there significant hurdles for people from outside of Canada who have been harmed by Canadian companies abroad to get a court hearing in Canada,⁵⁴ but existing non-judicial grievance mechanisms, such as the OECD National Contact Point or the Office of the Extractive Sector CSR Counselor, are non-binding and have no teeth. Furthermore, Canada lacks legal and administrative mechanisms to ensure that the state agencies that support corporations operate in a way that is respectful of economic, social and cultural rights. The result is continued impunity for human rights abuse.

Moreover, the Canadian government actively facilitates corporate activity often associated with human rights abuse. For example, Foreign Affairs, Trade and Development Canada promotes and supports Canadian mining operations overseas through a wide range of mechanisms, including political support, economic support and the negotiation of commercial treaties.⁵⁵ Export

⁴⁹ Front Line Defenders, “Environmental Rights Defenders at Risk in Peru” (Dublin: Front Line Defenders, 2014) at 2, online: Front Line Defenders <<https://www.frontlinedefenders.org>>.

⁵⁰ Department of Foreign Affairs, Trade and Development, “Building the Canadian Advantage: A Strategy to Advance Corporate Social Responsibility in Canada’s Extractive Sector Abroad” (Ottawa: Government of Canada, 2009) at 1.

⁵¹ Department of Foreign Affairs, Trade and Development, “Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada’s Extractive Sector Abroad” (Ottawa: Government of Canada, 2014).

⁵² *Ibid* at 2.

⁵³ CNCA, *supra* note 6.

⁵⁴ In a handful of cases, companies have successfully argued that hearings are better held in courts where the injury took place. In another case, a parent company in Canada has argued that it should not be responsible for the actions of its subsidiary in the foreign country.

⁵⁵ CNCA, *supra* note 6 at 7.

Development Canada (EDC), Canada's export credit agency, provides financing and insurance to Canadian and foreign companies to facilitate investment and exports. The extractive sector is the single greatest beneficiary of EDC support, representing 30% of EDC's exposure with a value of over CDN\$28 billion in 2014.⁵⁶ The Canada Pension Plan Investment Board, which manages a public pension worth close to CDN\$227 billion, holds equity investments worth hundreds of millions of dollars in Canadian extractive companies that operate overseas.⁵⁷

The Canadian government's failure to protect against overseas ESCR abuse by Canadian companies overseas has not gone unnoticed. Governments are under increasing international pressure to fulfill their extraterritorial responsibilities when corporations domiciled in their territory are involved in human rights abuses in another state.⁵⁸ In addition to the IACHR, several other international authorities have noted Canada's failure to protect human rights when its companies operate overseas and have called on the Canadian government to fulfill its legal duty.⁵⁹

For more information about these issues, see the CNCA's 2014 submission to the IACHR.

5. Criteria for Mechanisms for State and Corporate Accountability in Canada

The CNCA and the Polaris Institute seek an effective system to prevent human rights abuse and to hold accountable multinational extractive sector companies that are domiciled in Canada and the government departments and agencies that promote and defend these corporations. As outlined in the CNCA's 2014 submission to the IACHR, this includes the adoption of clear standards to regulate corporate activity overseas, well-publicized accountability mechanisms, independent third-party evaluations of the factual basis of complaints, remedy for victims, and mechanisms to address the failure of government departments and agencies to respect economic, social and cultural rights.⁶⁰

6. Recommendations for the Commission

The CNCA and the Polaris Institute urge the IACHR Special Rapporteur on ESCR to prioritize the issue of business and human rights in the SR's mandate. The Special Rapporteur is well-positioned to build on the important contributions that the Commission has made in this area by providing further guidance aimed at preventing and addressing the serious human rights violations associated with multinational companies. We urge the SR to pay particular attention to the global operations of Canadian oil, gas and mining companies.

⁵⁶ EDC, "About Us", online: EDC <<http://www.edc.ca>>; EDC, *Reaching for our Export Potential: 2014 Annual Report* (Ottawa: EDC, 2014) at 78, online: EDC <<http://www.edc.ca>>.

⁵⁷ Canada Pension Plan Investment Board, "Canadian Publicly-Traded Equity Holdings" (31 March 2014), online: CPPIB <<http://www.cppib.com>>.

⁵⁸ See Amnesty International, *supra* note 19.

⁵⁹ Commission on Human Rights, "Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, Addendum: Mission to Canada, 17-30 October 2002" (Report submitted by Ms. Fatma-Zohra Ouhachi-Vesely to the Commission on Human Rights, 59th session, 14 January 2003), E/CN.4/2003/56/Add.2 at para 126; Committee on the Elimination of Racial Discrimination, "Concluding Observations", CERD/C/CAN/CO/18, 25 May 2007, at para 14 & 17; Committee on the Rights of the Child, "Concluding Observations", CRC/C/CAN/CO/3-4, 6 December 2012 at para 29.

⁶⁰ CNCA, *supra* note 6 at 21-22.