

CANADIAN MINING EXPLOITATION IN CHILE, COMMUNITY RIGHTS AND THE ENVIRONMENT

Recommendations for Canadian Legislation

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Introduction

Canadian mining companies have led the increase of mining investment in Chile since the 90s. The result of this increase has been the development of a series of mining projects in the country producing diverse economic, social, and environmental consequences, primarily for the agricultural, indigenous and small-scale fishing communities in the area of the mining activities.

In general, the financial impact of foreign mining investments has been negative due to the fact that the transnational companies do not pay revenue taxes.

This is primarily because the mining companies are subject to the regime of taxable gains. Demonstrating losses, the companies not only do not pay taxes, they accumulate credits with the state because of the negative tax deducted from those losses.

The fact that the mining companies could be established as “contractual mining societies” and be affected by a regime of revenue taxation, as any other commercial activity, has benefited them due to the fact that they can declare losses and not pay the stipulated taxes, even after decades of exploitation. We could ask: are there any commercial activities that operate at a loss across decades of activity?

The figures that independent researchers are looking at tell us that Chile has failed to collect in excess of 11,088 million dollars for the nine years in which revenue taxes were not paid on the part of the transnational mining corporations. (Alcayaga Julian, “The Black Book of the Red Metal”, Publications Aremi, Santiago 1999).

The military government made this situation possible with the issuing of the mining code on the one hand, and decree 600 that protects foreign investment and gives them a number of guarantees on the other.

In short, despite the fact that the Political Constitution of the State establishes in its 19th article, number 24, subsection 6 that: “The State has the absolute, exclusive, inalienable and indispensable domain of all the mines, including guano deposits, metaliferous sands, salt mines, hydrocarbons and coal deposits and all fossil substances...”, (Political Constitution of the State, 1980) the Organic Constitutional Law of Mining Concessions (LOCCM) reverses what is in the Constitution, creating the concept of the mining concession. (LOCCM, January 21, 1982).

This mechanism allows for the irrecoverable transfer of deposits from the hands of the state, creating the concept of “plain concession” that allows any individual to acquire a deposit and own it as private, negotiable, or inherited, property etc. without any cost.

Expropriation of such concessions confers the right to be compensated “by the patrimonial damage that effectively has been caused, consisting in the commercial value of initiation, extraction and appropriation of the substances that are the object of the concession.” (LOCCM 1982): in other words, compensating

what the company for what they perceive themselves not being able to exploit from the deposit. In the case of Barrick's Pascua-Lama, explained later, it would represent \$ 7 million U.S.

Law 20,026, recently promulgated by president Lagos and better known as "Royalty II", forces the mining companies to pay a 5% specific tax on operational gains for sold production of over 50,000 tons of fine copper or the equivalent in other minerals. Between 12,000 and 50,000 tons, the payment is differentiated and below 12,000 tons there is no royalty. (Ministry of Mining, May 27, 2005) It is important to mention that this is only valid for new foreign investment contracts and establishes stability for 12 years. In Chile, with the permissibility with which transnational companies have been treated, one has to wonder if this specific tax will become effective someday, or if the companies will manage to avoid paying this specific tax as well.

Socially, and from the employment perspective, mining employs slightly under 1.5% of the national workforce (Agacino Gonzales Rojas, "Transnational Capital and Work", Lom Publishing, Santiago, 1998) and compared to other activities is almost insignificant. It is important to mention that many mining workers are remunerated at a level higher than is the case for other jobs.

On the other hand, working conditions in the mining industry are precarious given the fact that many mining workers depend on the subcontract system, they experience poor working conditions, their social rights are not respected, and they are exposed to conditions that affect their health and dignity.

Very few workers are hired directly by the mining companies, but they have better working conditions than those who are hired by external companies. In both cases, their rights as stipulated in labour law are not respected. The denunciations and conflicts over poor working conditions are countless and there are permanent denunciations and strikes that affect mining production. (Kol, Hector, Ecology, Capitalism and the Workers, presentation November 2001 in the seminar organized by FETROCOMA-CHILE).

On the other hand, the expansion of transnational mining projects applying new technologies capable of processing great volumes of rock, for which the national mining company ENAMI had previously purchased mining concessions, have left thousands of small scale artisanal miners without employment, causing poverty in the sector. (Agacino, Gonzales y Rojas, op. cit) It is important to mention that neither the large mining companies nor the subcontractors hire small-scale miners. These miners are forced to dedicate themselves to other activities such as agriculture, construction and small-scale fishing, in which there was already insufficient employment.

Environmentally speaking, Chile displays permissive legislation and lack of controls once an environmental impact study has been approved. The transnational mining companies, including Canadian companies, have convinced the state that the best regulation is self-regulation. This has given the mining companies a green light to contaminate and affect the rights of the communities, using deceptive mottos such as "the policy of good neighbors", "sustainable mining", "social responsibility" and other expressions that hide the real effects of mining in the country.

Despite the fact that Chile has signed a commercial accord with Canada that includes an environmental chapter, it is not adequate to handle the cases presented under the claims mechanisms contemplated by the accord, nor does it comply with national legislation. One of the cases in this study was presented to the Environmental Accord within the framework of the commercial accord between both countries without achieving resolution of the core environmental problems and the rights of the communities. (Padilla Cesar, Editor: "The Sin of Citizens Participation" OLCA, Santiago 2001)

The other case study is a gold, silver and copper project waiting to be classified within the Environmental Impact Evaluation System (SEIA), that has caused consternation because it is proposing the removal of part of the glaciers in which the vein of the mine is located.

CASE 1

AUR RESOURCES AND ITS CARMEN DE ANDACOLLO PROJECT:

ACID RAIN OVER HOUSES, TREES AND PEOPLE. THE SEEDS OF DISCORD

TECHNICAL FILE

Name: Carmen de Andacollo Mining Company

Ownership: Canadian Company Aur Resources (70% Canada Tungsten Chile Ltda. And 30% Pacific Mining Company)

Location: Chepiquilla, 2 km from Andacollo and 60 km from La Serena.

Community: Andacollo

Province: Choapa

Region: Coquimbo's 4th Region

Products: Copper

Present Volumes: 22 thousand tons of fine copper

Work Initiation: 1996

Estimated Time of Production: 11 years for the initial period and 25 years by extension.

Other work in the territory: Quebrada Blanca Mining Company, Tarapaca Region.

THE CONFLICT

The mining company Carmen received great support from the local authorities when it was announced that it would employ 85% of the population of Andacollo.

The project was approved under the environmental legislation, but without current regulations in place they obtained an environmental approval from the technical authorities from the Coquimbo region (CONAMA Coquimbo Region) who were not able to evaluate new projects under the new environmental criteria.

The neighbouring community began to feel the effects of mining exploitation from the start of company operations. At the same time, the claims also started, brought forward to the mining company and regional authorities by community organizations.

With operations primarily administrated by Canadian company Aur Resources, the claims that were brought forward by the leaders of the Chepiquilla community since 1996 not taken into consideration.

The evident indifference demonstrated by the authorities at the time left a series of community denunciations in regard to the sulphuric acid rain that comes from the leaching piles that the mining company Carmen de Andacollo placed only 200 metres from houses without response. Another notable effect that preoccupied the community was the severe impact produced by the explosions that were perceived as earth tremors reaching 5 on the Richter scale. (Corvalan, Marcela, "Piles of Discord", OLCA, Santiago 2003)

The heavy rains from 1997, unprecedented in the region for several decades, caused the piles to collapse, contaminating the water in the area.

Intervention and control from the municipality and regional authorities did not help to address the doubts and concerns of the community regarding the seriousness of the contamination, since the results of such control were not made public. The only evident reaction came from the Coquimbo Health Service, which

issued sanctions in response to damage to a piping system designed to collect lixiviated compound, and the resulting leakage of acid solution into a creek known as Chepiquilla that channels rain water to lower areas.

In January 1999, neighbors went again to the finance office of Coquimbo. The first time was due to the lack of response from the mayor to the denunciation that, according to the Communal Regulation Plan, it was illegal for the company to have installations within the urban area. Despite the fact that the Regional Office of Coquimbo agreed with the community, the Regional Counsel, presided over by the maximum authority, the mayor, attempted to modify the Regulatory Plan, extending the area to where the lixiviation piles were located, administratively resolving the problem without taking into consideration the environmental impact of the activity.

Confronting the lack of a solution from the responsible environmental, health and population authorities, and after a string of demands, demonstrations and pressure actions, the Latin American Observatory of Environmental Conflicts (OLCA), representing three Non-Governmental Organizations (Neighbourhood Committee No.12 from Chepiquilla, Tongoy Ecology Action and the Centre Québécois de Droit de L'Environnement de Canada) denounced the series of transgressions committed by the government of Chile to the Environmental Cooperation Accord signed between Chile and Canada, framed within the commercial accord between both countries.

The reason given was that the environmental authority represented by Regional Commission for the Environment-Coquimbo lacked the competence to approve the project due to the fact that the Regulation for the Environmental Impact was not in effect.

It is important to mention that the company responsible for Carmen de Andacollo submitted itself voluntarily to an environmental impact evaluation, which was approved with great irregularities by the governmental authority without considering that the mining exploitation was located close to a human settlement, and one of its installations was located within the urban area, thereby rendering the activity illegal.

In the end, the company suspended the use of the urban area without producing any measurable changes to clean up the environment in response to contamination to the Chipiquilla sector.

More than a year ago the company started to expand the sector for the lixiviation piles, increasing the impact of acid rain and suspended dust contaminating the air, destroying the flora and now affecting caprine livestock. However, the power of the Canadian transnational seems to be stronger than the will of the authorities. (Corvalan, Marcela, op. cit)

DENUNCIATION TO THE CANADA-CHILE ENVIRONMENTAL ACCORD.

When Chile and Canada signed a Free Trade Agreement in 1997, two sections were annexed: an Accord for Environmental Cooperation and a Labour Accord that came into effect in July 1997.

The environmental accord has, among its objectives, to promote the protection and improvement of the environment and establishes a series of obligations between the signing parties such as the preparation of environmental reports, contingency measures, and promotion of environmental education and scientific and technological development in this area.

Also incorporated into the accord is the right for each contractual party to internally establish its own levels of environmental protection, as well as to adopt and modify in consequence its environmental laws and regulations. Each party must also guarantee that its laws and regulations will provide and improve high levels of environmental protection.

In order to comply with the above, the accord creates a Commission for Environmental Protection whose governing body is the Counsel composed by the Ministry of the Environment of Canada and the director of the National Commission for the Environment of Chile "CONAMA".

It also establishes a Public Consulting Committee with three participants from each country forming it, whose work is to support effective citizen participation, and which contemplates the creation of a Joint Petition Revising Committee that evaluates citizen petitions, deciding if they require response or the preparation of a dossier of facts. It also establishes the creation of two national secretarial positions that provide administrative assistance and collaborate with the Committee.

The text finally establishes a system for citizen petitions that becomes operative via denunciations, which is intended to effectively apply environmental legislation to one of the contractual parties so it can be investigated.

BEGINNING OF THE DENUNCIATION OF THE CHILENEAN STATE THROUGH THE CHILE-CANADA ACCORD

On March 30, 2001, the Neighborhood Committee of Chepiguilla, together with Tongoy Ecological Action and the Centre Québécois de droit de l'Environnement of Canada, represented by the Latin American Environmental Conflicts Observatory, presented a petition to CONAMA within the framework of the Chile-Canada Environmental Accord.

The Centre Québécois de droit de l'Environnement made the denunciation in Canada on April 18, during the summit of heads of state.

The argument presented was that the Chilean State had incurred omissions for the effective application of the current environmental legislation during the process of evaluating the environmental impact, regarding the resolution that authorized this project and subsequent contaminating activity by the mining company Carmen de Andacollo in the province of Elqui.

This was the second case presented.

The petition written by lawyer Yenive Cavieres, in charge of the legal area of OLCA, points out that "the mining company Carmen de Andacollo, property of the transnational Aur Resources Inc, based in the province of Ontario, Canada, exploits an open pit deposit located 200 metres from the houses of the population of Chepiguilla".

She adds that, "the work in progress extracts approximately 30,000 tons of material daily to be processed to extract up to 10,000 daily tons of copper through several stages: scrunching, piling up with a solution of sulphuric acid, lixiviation process with sulphuric acid in piles located in the flat sector of Chepiguilla, extraction using solvents, and electro-obtaining in a plant located south west of the deposit, while also contemplating the deposit of overload and sterile material in dumps located to the south and west of the Andacollo basin.

Furthermore, "the most significant contaminant activity is in the lixiviation piles located a few metres away from the population of Chepiguilla, that form a hill of copper with an area of approximately 520,000 square metres area and 6 metres high over imposed layers that are sprinkled with sulfuric acid".

It also states " the operation regularly generates alterations to the environment, underlining that at least two lixiviation piles collapsed, affecting the population's well water that was previously fit for human consumption".

Air quality has also been affected due to particles in suspension – a white dust – coming from the mine that damages plants and fruit trees, directly affecting the mental and physical health of the population of Chepiquilla and contaminating the ground.

The denunciation points out that despite the contaminant character of these hills of lixiviated material, the authorities allowed the installation a few metres from the population in an area within the urban limits classified as ZE3 that is zoned to be used for housing and equipment on a communal and neighbourhood scale, not for industrial or mining use.

It also maintains that “the mining company and its activities are based on a illegal environmental permit since the Study of Environmental Impact presented by the company was full of procedural illegalities:

1. Omitting the existence of the regulation that, according to the Base Law of the Environment, should compulsorily regulate the evaluation of environmental impact.
2. Omitting the lack of competence of the Regional Commission for the Environment of the IV Region.
3. Omitting the participation of the population as established by the mentioned law.
4. Omitting the legislation that regulates the use of the land”.

In its conclusions, the presentation specifies that “this case show how persistent illegal norms have been configured that are maintained up to the present despite conclusive reports from the Comptroller’s Office of the Republic.

Nevertheless, not being exactly an illegality, the delay and lax attitude on the part of the administration of the Chilean state in this case, constitutes a form of lack of effective application of the Chilean environmental legislation, given that although the potential legal or administrative instruments were in place, this has not been done”. (Cavieres, Yenive: Presentation to the Chile-Canada Environmental Accord)

Finally, it delivers a list of regulations defined as “environmental legislation” in our country that are applicable to this case and that have been ignored, among them, The Political Constitution of the Republic, the Base Law for the Environment and the General Law for Construction and Urbanism.

In a public press release issued on April 20 of that year by the neighbors and OLCA, it is pointed out that “The arguments demonstrate that the action of the company shows the lack of will by the Chilean party to comply with the policies tending to externalized entrepreneurial costs in deterioration of the population and the environment. It also adds that there were existing illegalities in the environmental permit that was issued by of the municipal and regional authorities of the IV region.

Administrative denunciations, legal actions and mobilizations that the communities have maintained for the last nine years (since the beginning of company operations) have exhausted the available avenues at the national level, and therefore the community and its advisors at OLCA decided to undertake a legal international presentation to the Chile-Canada Environmental Cooperation Accord.

In the end, the Commission for the Environmental Accord disregarded the presentation of the case, arguing that there was no justification for following up on the claim. The mechanism is defective, allowing omission of an appropriate explanation to the affected communities and their representative advisors.

The inefficiency of this specialized mechanism to resolve social and environmental problems has increased the state of neglect of the affected communities, setting a precedent for the evaluation of new presentations.

With regard to this mechanism, Cavieres makes the following comments:

- a) *It is a very complex procedure, difficult, with formal requirements of great juridically technical nature, in spite the fact that it does not require the attestation of a lawyer, not does its preparation require a jurist or a team of jurists.*
- b) *It does not allow access to environmental justice. It is a difficult procedure for citizens to directly access, including the communities affected by environmental problems, institutions, NGO's, etc.*
- c) *It is expensive since it requires study and preparation by environmental specialist jurists.*
- d) *It does not contemplate the possibility of re-access to resources by the parties.*
- e) *It is slow. This slowness fails to acknowledge the urgency that the issues hold for the petitioners who raised the environmental problems. The denounced party does not carry an obligation to comply with final decisions, which have the character of a moral sanction only.*
- f) *It does not establish terms that would allow for agility and expediency.*
- g) *There is partiality on the part of the organisations that receive the petition and make decisions with regard to the final outcomes.*
- h) *The procedure does not provide democratic public access, since the information provided via the Internet is restricted to those who have computers and access to the system.*
- i) *The procedure is not effective in terms of complying with the objectives of the agreement or the expectations and the aspirations of the citizens.*

CASE 2

BARRICK GOLD PASCUA LAMA MINING PROJECT BORDERING CHILE AND ARGENTINA

Removal of glaciers and the use of sodium cyanide at the source of the rivers threaten life and production in the Huasco Valley

TECHNICAL FILE

Name: Pascua-Lama/Veladero

Property: Mining Group Barrick Gold Corporation (Toronto, Canada)

Location: On the Chilean side, 150 kilometres south east of Vallenar; Argentinean side, 300 kilometres north west of San Juan city.

Community: Vallenar

Province: Huasco

Region: 3rd Atacama Region

Products: Gold, silver, copper concentrate and mercury

Annual Production Goal: 615 thousand ounces of gold and 18.2 million ounces of silver; 5 thousand tons of copper concentrate; 2 thousand annual tons of mercury.

Initiation of work: 2006

Initiation of production: 2009

Production Time: 20 years

THE PROJECT

The initial project presented by Barrick Gold to the environmental authorities was approved in 2001.

In its evaluation, the regional representation from the National Commission for the Environment did not pay attention to the fact that the vein of the mine was covered by three glaciers and that the company was planning to remove 300,000 cubic metres of ice belonging to three glaciers in the high Andes, Toro 1, Toro 2 and Esperanza, in order to be able to commence exploitation.

It was the farmers, who are the most knowledgeable about the Andes, and who were dismayed for the development of the project, who first protested against the company and the environmental authorities due to the imminent destruction of the glaciers that brought water to their cultivation. These glaciers had already been disturbed during the exploration stage of the project.

It was only later and thanks to a report prepared by experts from the Ministry of Water and Public Works that it became public knowledge that the glaciers had already diminished by 50 to 70% of their volume as a consequence of mining exploration in the area.

The farmers' denunciation with regard to the impact of mining on the glaciers forced CONAMA to demand an explanation from the company about the removal of the glaciers, receiving as a response the explanation that the glaciers were going to be relocated to a similar place for their conservation. It was the only thing that the company could come up with as a potential solution at the time. CONAMA proceeded to demand the presentation of a Plan for Handling the Glaciers three months before the start of the operation.

After the approval of the project, the fall of gold prices forced Barrick to postpone the start of work until prices went back up. However, activities for the regular maintenance of the installations were maintained in the surrounding area. Three years later, with more convenient metal prices, the company decided to re-launch the project, incorporating an expansion of the deposit resulting from the finding of the existence of larger volumes of minerals in a neighbouring area: Penelope.

With larger work volumes, the company had to present a new environmental impact study that, since December 6, 2004, is awaiting approval by CONAMA regional.

GOLDEN SOUNDS

From the beginning, estimates from the company indicated that the deposit would produce a total of 15 million tons of mineral annually (615 thousand ounces of gold and 18.2 million ounces of silver); 5 thousand tons of copper concentrate; as well as allowing the commercialization of mercury as a by-product present in the mineral that was going to be volatilized and captured in collectors, reaching up to two tons a year.

Despite the delays produced by low and unstable gold prices in the international markets, the delay in which Pascua-Lama was immersed during the first months of 2001 ended with the announcement that Canadian company Barrick Gold Corporation – initiator of the project – had merged with its counterpart in the U.S.A., Homestake, producing a development plan that combined the work in Pascua-Lama with the Veladero deposit, a property belonging to American capital that operates in the territory of Argentina.

A gigantic investment that would be well in excess of \$950 million U.S. was announced at the beginning, putting the communities of Alto Carmen, San Felix, El Transito and Vallenar on the alert, since they had already been preoccupied with concerns about the transportation generated to and from the project, along with doubts about the location and design of the tailing dam and sterile deposits that would be required.

In effect, the new project presented for consideration by the environmental authorities talks about an investment of between 1,400 and 1,500 million dollars due to the incorporation of Penelope, to be located about 2.5 kilometres from the main one in Argentinean territory.

Some inhabitants in the region have designated the project as El Dorado because of its size and unknown definitive magnitude.

What is true is that it is one of the largest mining projects in the south Andean region, which underlies the questioning on the part of the community and environmental organizations, generating more than one concern for the mining sector, concerns that intensified after the experiences of Tambogrande and Quilish in Peru.

THE CONFLICT

The lukewarm reaction generated by the initial project as approved in 2001 began to grow in volume and intensity as the community became better informed.

The company received a rejection from the community in every meeting in which the project was presented as well as in those that were part of the citizen participation process within the Environmental Impact System Evaluation, SEIA.

One of the contributions made by OLCA to prepare the community to confront the challenge to protect the valley from the imminent impact of the mine was the publication of a book that presents the effects of

the mining treaty between Chile and Argentina, which was an instrument prepared by the transnational mining companies with exploitation rights on the border straddling both countries.

The book's name is "The Exile of the Condor", its name indicating that the mining treaty between Chile and Argentina creates a geographical area with a special administration by a bi-national commission with transnational companies' participation. A sort of virtual country at the service of mining transnational exploitation, and for 30 years nonetheless. (Luna, Padilla and Alcalá: "The Exile of the Condor, Transnational Hegemony at the Border. OLCA, Santiago, 2004)

The presentation of The Exile of the Condor that took place on August 30, 2004 in the locality of El Transito, one of the first regarding risk of contamination resulting from mining, gave rise to the preoccupation of the community that was reunited at the main square. After September 12, as a result of an expanded meeting in the locality of Alto del Carmen, a Coordination for the Defence of the Valley of Huasco was constituted with the participation of many localities from the higher and lower valley sectors.

The exposure of the conflict was one of the most important tasks organized by the members of the Coordination and implied that the zone of the high valley as well as the city of Vallenar would produce billboards about the destruction of the glaciers, the contamination of the valley and the threat that mining posed to agriculture, the environment and the health of the people. Later, a march that took place on March 21, 2005 drew more than 500 people in the city of Vallenar to protest against the Barrick threat.

Actions in front of the head office building of the mining company which was located in Santiago had the support of many organizations and people who, through the campaign for the protection of the Huasco valley, rejected the mining exploitation in the Andes' 3rd region.

The great interest generated by the risk of the destruction of the glaciers and the contamination of the valley through the use of cyanide and other substances by Barrick for the mining exploitation in Pascua-Lama has grown like a snowball since August 30, when the community of the valley learned of the re-activation of the project.

A WORRISOME PRECEDENT

With its head office in Toronto, Canada, Barrick Gold Corporation has as a precedent for its mining actions in Chile, the work undertaken up to 2001 in the deposit of El Indio in the 4th Region, which has been closed due to the exhaustion of the deposits and the high costs of gold exploitation.

Some of the episodes related to that deposit are infamous: in July 1993, the quality of the water of the Elki River was seriously affected by filtrations from the tailing dam of the El Indio plant that affected wide sectors from the cities of Vicuña, La Serena and Coquimbo, whose populations were forced to restrict the use of water due to the risk of cyanide and arsenic contents. A similar alarm was issued in 1995.

These are some of the reasons that cast a shadow on the exorbitant figures and promises made about this new project.

In addition, there are denunciations made by communities and organizations in Australia in response to Barrick's involvement in environmental contamination in that country. At the same time, the infamous intervention of Barrick Gold in Tanzania made the community of Valle del Huasco think that allowing the risk of contamination of the valley from the source of the rivers was not tolerable. The history of the company, the frequent mining accidents, and the irresponsibility of the mining industry eluding their responsibilities are reasons enough to reject the project.

If it is true that the company tried to argue that the greatest risk is posed to the Argentinean side, since the facilities to process minerals using dangerous substances are located there, it is also true that those substances will be transported through the dangerous roads of the valley and the Andes on the Chilean side, posing risks to waters for farming irrigation and human consumption.

Communication, cooperation and mutual support between the communities on both sides of the border permitted them to distinguish the discourses used by the company to the affected communities on both sides of the border between Chile and Argentina.

The concerns related to the transportation of toxic substances are based on official information delivered by the project (*):

TRAFFIC:

120 truckloads/month of copper concentrate
2 truckloads/year of mercury
70 truckloads/month of reagents for the plant
17 truckloads/month of sodium cyanide
200 truckloads of explosives
1 truckload of benzene
180 truckloads/month of petroleum
(*Data from the Environmental Impact Study)

The project also contemplates a waste rock dump, a primary crusher, a complex for the maintenance of mining equipment, and an explosives store.

On the Argentinean side, located 300 kilometres to the north west of San Juan city, in the province of the same name, a small sector is being contemplated to be used as a dump for sterile material along with the installation of a processing plant, a tailing dam, facilities for operation and construction, and an existing private airfield constructed on a water reserve. This damage has already had great impact due to the fact that these high altitude water reserves are formed by humidity ecosystems of great fragility.

We also have to mention that the property acquired by the company is re-claimed by the “huascalinas” communities composed of descendants of the indigenous Diaguita people who inhabit the high Andes.

CANADIAN RESPONSIBILITIES

The affected mining communities have frequently stated that the transnational mining companies, that they strictly respect the environmental, social and labour regulations in their countries of origin but display different conduct in the south. It is possible that this is true, however, it is also known that the mining companies require strict monitoring and external control together with severe sanctions for them to demonstrate effective concern for aspects that differ from their central activity: the largest production at the lowest price.

In our country we have not even seen that the mechanisms contemplated by the Chile-Canada Commercial Accord provide environmental protection or effective reception and processing of claims by the affected communities. We have to ask ourselves, which would be the effective mechanisms to protect the vulnerable social, cultural and environmental rights of the affected communities from mining activities, be they national or foreign.

For any consideration of general conditions to regulate mining investments in the south, the ideas and reflections produced in discussions between organizations and communities affected by mining activity in

the south Andean Region or Latin America should be included, and should also be taken into consideration in Canadian legislation abroad. (see annex 1) Nevertheless, we are presenting here some ideas to be converted into legislation that could help resolve the problems facing the communities in Chile from Canadian mining investments:

- The effective application of environmental and labour law, together with complementary accords and other available instruments – or the best aspects of the country that has the most optimal conditions and guarantees – and severe sanctions for non-compliance.
- Undertaking of compulsory studies or evaluations of the environmental impact, with resources for independent analysis by the affected communities, and consideration of the “zero option” (indication of positive and negative consequences for not undertaking the project)
- Socially informed licensing that is transparent, participatory and autonomous. The company would make resources available to the community to undertake analysis of the convenience of the mining project and determine whether or not to award the corresponding license.
- A mechanism to corroborate entrepreneurial social responsibility as a compulsory regulation taken into consideration in the corresponding legislation, with the pertinent financial sanctions applied in Canada.
- Implementation of the precautionary principle in cases of doubt about the effects of the proposed mining project.
- Creation of Canadian State insurance to take responsibility for the environmental liabilities produced by Canadian mining activity that, despite the previous point, have damaged the environment or the communities without corresponding reparation.
- Prohibition of the transportation, importation, commercialization and consumption of minerals from foreign countries that have not been produced according to the criteria and conditions mentioned above.

ANNEX 1

GENERAL EXCLUDING PRINCIPLES

- No mining activity will displace communities or pre-existent activities.
- Prohibition of any mining activity at the head of any basin where glaciers, rivers or bodies of water and underground aquifers could be affected.
- Prohibition of any mining activity that uses cyanide, sulphuric acid, mercury or any other dangerous chemical substance that produces acid drainage.
- Prohibition of any mining activity near agricultural or protected areas.
- Prohibition of any mining activity close to urban areas.
- Mining for uranium or any radioactive substance is excluded.

GENERAL CONDITIONS

- Accounting for short, medium and long-term resource losses due to mining should be determined to allow or prohibit the mining activity.
- Every mining project should incorporate the “null option” to evaluate its impact.
- Every mining project should respect agreement 169 from the ILO, whether or not it has been signed and ratified by the country in question.
- No mining activity will use existing national policy if it privileges mining over agriculture.
- No mining project will affect the sovereignty of national states and their people using taxable accords or guarantees or other kind, directly or indirectly.
- Transnational mining will be the last option for a party of the state after evaluating exploitation and considering every point applicable in this document.
- Every mining project, whether national or transnational, should seek the direct or indirect approval of the affected population. It should not affect indigenous populations, their premises, roads or geographic connections to any other place.
- Authorization on the part of the informed population, with the support of independent organizations and with complete knowledge of the reach of the project during every stage, within the affected area and in the region, will constitute a condition for the development of the mining project.
- In addition, every mining company will establish a cash guarantee, deposited in a national or foreign bank, that will provide reparation for possible damage to the environment, the population and the company’s workers or national assets, be they cultural, natural, physical or spiritual.
- Precarious or subcontracted employment shall be prohibited for the mining industry and annexed activities.
- Any indication of illegal actions of corruption, influence trafficking, illegitimate pressure, or false information delivered to the state or the communities, will signify the suspension of the mining project and work will be immediately halted, and in such cases the guarantee shall be made available to a special commission that will implement a closing and abandonment plan for the project.

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