

In the National Interest?

Criminalization of Land and Environment Defenders in the Americas



Full Discussion Paper, August 2015

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Cover Photo: A campesino woman protesting against Canadian mining operations in southern Ecuador watches police while she weaves; Photo: Jen Moore

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In the National Interest?

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“They use the law to do what they can’t do with their guns”

- Alfredo Molano, *The Dispossessed*¹

This discussion paper is a joint effort between the International Civil Liberties Monitoring Group (ICLMG) and MiningWatch Canada, with important contributions from several individuals who have accompanied the process who have experience in the extractive industry, civil liberties, human rights, law, and public policy. The goal of this initiative is to make connections between Canadian mining interests and the growing trend of criminalization against dissent and social protest involving land and environment defenders in the Americas from north to south.

This group, referred to as the Working Group, came together out of shared concern over the steady stream of urgent actions that our organizations were observing in their daily work as a result of stigmatization, threats, legal persecution, and violence against mining-affected communities and organizations, journalists, and others who are fighting for their lands, water, livelihoods, ways of life and a safe living environment. The frequency of these alerts led us to consider that we need to stop seeing each case in isolation and figure out how to talk about and address this trend of criminalization and violence.

By and large, what we are seeing is part of a concerted attack, oriented to avoid and limit debate on serious economic, social, and environmental policy questions, and to stop any meaningful challenge to established power and practices. It may be deliberately planned or opportunistic, but it is neither capricious nor accidental. Rather, it is taking place during a period in which demands for respect and recognition of individual and collective human rights, democratic participation, and especially Indigenous rights have expanded, notably, but certainly not exclusively, in post-dictatorship democratic transitions. Such struggles have collided with economic interests—long-established post-colonial ones as well as new and rapidly growing globalized neoliberal capital interests, including in the area of large-scale mining.

¹ Quote from citation in Peace Brigades International, “Criminalisation of Human Rights Defenders,” September 2010.

Social movements successes in defence of land and the environment

The intensification of criminalization and violence against mining-affected communities and other social movement actors is a response of states and industry to successful efforts to defend land and the environment. This is a shortlist of just a few successes against extractivism in the Americas:

Argentina

- Several provinces have banned open-pit mining and cyanide use and, in 2010, Argentina banned mining in glacier and peri-glacier ecosystems nationally.
- Organized communities in Esquel, Chubut and in the Famatina Mountain Range in La Rioja province have held individual projects at bay.

Canada

- In Ontario, Kitchenuhmaykoosib Inninuwug (KI), Wahgoshig and Ardoch First Nations prevented mining projects from getting past the exploration stage on their lands. Their successes contributed to opening up Ontario's 150-year-old mining act for reforms.
- The Prosperity copper-gold mine proposal that would have destroyed a lake of great importance to area First Nations in British Columbia was turned down twice after a twenty year fight.
- The James Bay Cree Nation's rejection of Strateco's Matoush advanced exploration uranium project opened the door to a possible province-wide ban on uranium mining in Québec.
- The Nunavut Impact Review Board turned down the Kiggavik uranium mine in Baker Lake, now awaiting a final decision from the Minister of Aboriginal Affairs.
- Cliffs' Ring of Fire chromite project collapsed in the face of First Nations' demands for meaningful environmental and social impact assessment (and lower metal prices).

Current criminalization is aimed at disciplining and quashing individuals and groups in diverse countries in the hemisphere where **considerable gains have been made** to stop or slow accelerated expansion of this industry and the serious social and environmental impacts which it entails. Often this is taking place in the name of the national interest or national security, when what is really at stake are matters of profound public interest urgently requiring broad debate and action.

We undertook this analysis with the hope of better coordinating a more effective response from organizations and networks that work in solidarity with mining-affected communities to these threats to the important work that Indigenous, environmental, media, church, farmer and other organizations are carrying out on the frontlines throughout the hemisphere. We also hope to inform and impel a larger challenge to the restriction of political space and democratic expression being undertaken by economic and political powers in the name of "security" and the so-called "national interest".

Recognizing that a considerable number of other civil society organizations and human rights bodies in the Americas, Europe and the UK have already started documenting this trend, we decided that rather than try to carry out exhaustive research into criminalization, we would work on bringing the issue home to Canada by highlighting connections between repression of dissent and the Canadian extractive industry in Latin America and within our own borders.

While criminalization of dissent is not limited to mining conflicts nor exclusively to Canadian economic interests in the Americas, it is the area in which the members of the Working Group collectively share the greatest amount of

experience. Furthermore, we believe that by focusing on the extractive sector, we can make North-South connections within the hemisphere to identify areas of common struggle around the impacts that aggressive mining expansion is having on diverse peoples and democratic processes and help build greater solidarity. In order to develop proposals for action and advocacy, we carried out a survey of recommendations from existing reports about criminalization in the Americas with the help of the University of Ottawa Human Rights

Research and Education Centre and then narrowed these down to a set of proposals and actions for further discussion and prioritizing.

In this document, we provide an introduction to the concepts and general issues, followed by five country case studies, beginning with four examples from Latin America, followed by recent trends in Canada. We conclude with a brief discussion of our findings, concluding with ideas for advocacy and action. A list of proposed recommendations concludes the document. A full list of recommendations based on the above-mentioned survey is available upon request.

Criminalization of Land and Environmental Defenders

Across the Americas, governments, industry, and related actors are increasingly using concepts of law and order to try to quash legitimate dissent related to efforts to defend land, the environment, and the wellbeing of communities against extractive industry activities or related harms. Such criminalization frequently entails a process of stigmatization, as well as the use of civil, criminal, or administrative law to undermine criticism, difference, or protest, that challenge projects and policies regarding the natural commons and ultimately question an economic development model premised on industrial natural resource extraction.

Here in Canada and throughout the Americas, many governments are embracing resource extraction as a key sector to fuel economic growth, leading to unprecedented demand for land and other resources, such as water, energy and capital investment. In Latin America, the term **“extractivism”** has emerged to describe this trend of economic dependence on extraction of primary resources. Svampa and Durand (2011) write: “extractivism must be understood as a mode of accumulation based on overexploitation of natural resources, mostly non-renewable.” According to these authors, this includes not only strict extractive industry activities (mining and oil) but also other activities (such as agrobusiness and bio-fuels) that encourage the extractivistic logic consolidating monoproduction.”²

When it comes to the demand for valuable mineral commodities, especially gold and silver, Canadian mining companies are often at the forefront with some 60% of mining companies in the world listed on Canadian

More social movements successes in defence of land and the environment

Chile

- Barrick Gold was forced to suspend its Pascua Lama project in 2013. The mine is located at 4500 metres above sea level in an area dense with glaciers. It was the first project approved under a binational mining treaty and straddles the border with Argentina. Affected indigenous and downstream agricultural communities made numerous efforts to stop this project, including getting the company to withdraw a request for financing from Canadian and US export development corporations. The company announced the project’s suspension after the new Chilean Environmental Superintendent ordered the halt of activities and fined Barrick over \$16 million, the largest environmental fine in Chilean history, for a number of serious breaches of its environmental licence. In October, Barrick Gold suspended activities on the Argentinean side as well.

Costa Rica

- A strong citizens’ movement pressured the Costa Rican government to close down Infinito Gold’s Crucitas project and pass ban on all future open-pit metal mining in 2010. In late 2011, a Costa Rican court annulled Infinito Gold’s concessions.

² Svampa Maristella et Durand George. Néo « développementalisme » extractiviste, gouvernements et mouvements sociaux en Amérique latine. *Problèmes d’Amérique latine*. Vol 3 # 81. 2011. P. 101-127.

More social movements successes in defence of land and the environment

Colombia

- Mining is prohibited in important wetland ecosystems for which reason the Environment Ministry refused an environmental licence for Eco Oro Minerals in 2011 following protests by a broad-based coalition.
- A 2009 Constitutional Court decision suspended all mining activities in the Mande Norte case, ordering the state to finalize environmental impact assessments and do prior consultation before issuing any licences.
- A 2010 Constitutional Court decision suspended all concessions in the community council of La Toma, Suarez, Cauca, until prior consultation leading to consent is undertaken with the affected Afro-descendant communities.
- Afro-descendant communities in the department of Cauca and Indigenous people of Taraira in the Amazonian department of Vaupés have successfully opposed Canadian company Cosigo Resources' efforts to enter without their consent.
- Several communities have declared their ancestral territories no-go zones for large-scale mining. The Resguardo Indígena Cañamomo Lomapietra in Riosucio and Supia, Caldas issued an internal resolution to this effect, which is constitutionally recognized under the Special Jurisdiction that Indigenous Peoples have.
- In July 2014, the municipality of Piedras, Tolima held a popular referendum with 99.2% of the population against the Colosa gold mining project proposed by the giant South-African company Anglo-Gold Ashanti.

stock exchanges and involvement of Canadian firms in an estimated 32% of reported mining conflicts.³ Latin America and the Caribbean are the principal destinations for Canadian mining investment beyond our borders and mining is the single activity for which Latin America and the Caribbean are the most important destination for Canadian overseas foreign direct investment.⁴

Over the last decade, the resource extraction boom has generated a host of resistance movements in defence of the environment, healthy communities and self-determination, which are put at risk by the arbitrary granting of mining concessions often overlapping with the lands of Indigenous, *campesino* and afro-descendent peoples, as well as water sources or ecosystems that are vital to ensuring livelihoods and ways of life.

Given the arbitrary way in which mining concessions have been granted over large swaths of territory throughout the Americas in the last 10 to 20 years, we also see urban and more recently settled rural communities organizing against industrial mining operations or related abuses that put at risk the protection of water supplies, the environment, and other elements essential to their wellbeing. Communities and their allies have made significant gains in a number of countries to stall or stop industrial resource extraction projects, including through the implementation of laws to ban open-pit mining, protect fragile ecosystems, and limit the use of toxins such as cyanide and other toxic substances in metal mining.

For their efforts to protect water sources, livelihoods, sacred places and ways of life from harm, Indigenous peoples, farmers, environmentalists, journalists, and other concerned citizens speaking out against resource extraction projects and their impacts are paying a steep price. They are frequently the targets of threats, accusations, and smears as well as attempts to label them as enemies of the state, opponents of development, delinquents, criminals, and terrorists. In the worst cases, they are targets of direct violence and assassination.

³ Canadian Centre for the Study of Resource Conflict, "Corporate Social Responsibility: Movements and footprints of Canadian mining and exploration firms in the developing world", October 2009.

⁴ Economic Commission for Latin America and the Caribbean (ECLAC), "Foreign Investment in Latin America and the Caribbean: Chapter 4, Canadian FDI in Latin America and the Caribbean", 2007.

Repression from state and non-state actors has often come in the form of drawn-out civil or criminal proceedings, in which they may or may not actually face charges, and which are often dropped or shelved, but which nevertheless waste scarce resources and aim to tire out, isolate, and demoralize those involved.

We observe these trends taking place under government administrations in the Americas of diverse political stripes, involving a range of legal mechanisms including, but not limited to, anti-terrorism frameworks.

A growing concern around the world

Several recent reports have documented the risk of direct violence that such land and environment defenders face. In the lead-up to the Rio+20 meetings in Brazil in June 2012, Global Witness published: *A Hidden Crisis?: Increase in killings as tensions rise over land and forests*. Based on an examination of available information from 2002-2011, this report found an average of one killing per week of people involved in land and forest struggles.⁵ The report found the highest numbers of killings in Asia-Pacific and the Americas, with Brazil, Peru, Colombia, and the Philippines revealing the highest rates.⁶

Overall, the report highlights a lack of systematic monitoring of abuses in cases related to land and the environment, and a corresponding high level of impunity leading to few convictions related to a “collusion of powerful vested interests and increasing competition to secure the use of land and forests.”⁷ In a report to the Inter American Commission on Human Rights in October 2010, the Center for International Environmental Law (CIEL) observed a similar trend identifying the risks that people face when they resist the imposition of Canadian mining projects in Mesoamerica. The Washington-based organization documented threats, beatings, kidnappings, violent attacks and murder against community activists involved in opposition to or investigation of Canadian mine

More social movements successes in defence of land and the environment

Ecuador

- Large-scale projects set to advance in 2008 continue to face delays due to opposition by environmentalist, campesino and indigenous organizations around the country, as well as policies of the current administration to bolster state participation.
- Since the 1990s, farming communities in the Intag valley in northwestern Ecuador have fought off Japanese and Canadian companies. They face an uphill struggle now against a Chilean-Ecuadorian joint venture.
- As part of a decade-long process of resistance, the community of Victoria del Portete, Azuay province expressed opposition to the Loma Larga mining project owned by Canadian firms INV Metals and IAMGOLD in a local vote held in 2011.
- In Santa Isabel, Azuay province residents boycotted a state consultation process in 2012, ensuring that Cornerstone Capital Resources could not obtain an environmental permit for exploration at its Shyris project.

El Salvador

- Since 2004, OceanaGold (formerly Pacific Rim Mining) has been unable to advance its El Dorado project in the department of Cabañas given local and now nationwide opposition.
- Since 2008, successive Presidents have committed to a moratorium on mining.
- Three municipalities in Chalatenango have held local plebiscites, declaring their territories free of mining.

⁵ This study looked at targeted attacks and violent clashes as a result of protests, investigating or taking grievances against mining operations, logging operations, intensive agriculture including ranching, tree plantations, hydropower dams, urban development and poaching.

⁶ The report attributes high rates in these countries to the concentration of land ownership with strong ties to business and government, substantial areas of land in dispute, considerable populations dependent on that land, and social movements reporting on such violence.

⁷ Global Witness, “A Hidden Crisis?: Increase in killings as tensions rise over land and forests”, June 2012.

More social movements successes in defence of land and the environment

Guatemala

- An estimated 1 million people in mining-affected communities have said no to mining in municipal or good faith community referendums. This has influenced Guatemalan public opinion with a reported 66% of the population opposed to mining as of January 2014.
- Three civil lawsuits are proceeding in Ontario courts against HudBay Minerals for security guard violence against Maya Q'eqchi' Indigenous communities in El Estor.
- A civil suit has also been brought in British Columbia against Tahoe Resources for security guard violence against peaceful protesters in San Rafael Las Flores.

Honduras

- Nationwide organizing led to 13 articles in the 1998 mining law being declared unconstitutional and former President Zelaya instituting a moratorium on new mining licences in 2006. The moratorium on new mining licences was only recently overturned after a military-backed coup and the passage of a new mining law in 2013 with backing from the Canadian government.
- Despite the extremely violent post-coup organizing environment, at least 10 municipalities have declared themselves free of mining in local votes and, as of 2011 an estimated 91% of Honduras opposed open-pit mining.

operations in an examination of cases from Mexico to Panama.⁸ Recently, Global Witness updated its earlier findings with the publication of *Deadly Environment* in April 2014, which documents a “dramatic rise in killings of environmental and land defenders” from 2002 to 2013.⁹ They report 908 land and environment defenders killed during this period, 760 of which were killed in Latin America. The deadliest countries in the region during this period were Brazil, Honduras, Peru, Colombia, Mexico and Guatemala, with a notable surge in killings since 2009, and the deadliest year being 2012. In only 1% of cases, or some ten perpetrators, “are known to have been tried, convicted and punished” during this period. Importantly, the authors indicate, “The death rate [...] points to a much greater level of non-lethal violence and intimidation.”¹⁰

In December 2011, both the UN Special Rapporteur on the situation of Human Rights Defenders and the Inter American Commission on Human Rights (IACHR) flagged special concern about criminalization against defenders of the land and the environment. The UN Special Rapporteur, Margaret Skeggaya, identified those working on land and environmental protection as a broad group, including those working on issues related to extractive industries and construction and development projects, as well as the rights of Indigenous and minority communities, women human rights defenders, and journalists. She found that those working on land and environmental issues in the Americas are under particular threat, including

of risk of death, in addition to “death threats, attacks, attempted killings, intimidation, harassment, as well as stigmatization and discrediting campaigns.”¹¹ She identified risks affecting not only their physical integrity

⁸ CIEL, “Environmental Defenders in Danger: The Situation in Mexico and Central America in the context of the mining industry”, report prepared for the 14th Session of the General Assembly of the Inter-American Commission on Human Rights, October 25, 2010.

⁹ Global Witness, “Deadly Environment”, April 25, 2014.

¹⁰ Global Witness’ methodology relied on a survey of 700 cases and 141 sources from the period 2002 to 2013 that included 74 countries. To be included, a killing needed to be reported in a “credible, published and currently publicly available online source of information”; “that the victim was named, that the type of act and method of violence was specified, and that the exact date and precise location of the killing was documented”; “that in each case, there was further biographical information about the victim, such as their occupation, organisational and political affiliations, and where relevant, their ethnic or indigenous identity”; “that there was a clear, proximity and documented connection to an environment or land issue”. See the full discussion of Global Witness’ methodology in their report.

¹¹ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggaya, to the 19th Session of the Human Rights Council, December 21, 2011, paragraph 71.

and that of their family members, but also including “the abusive use of legal frameworks against them and the criminalization of their work.”¹²

It is important to underline, as Skeggaya indicates in her report, that individuals and groups who are targeted by this trend of criminalization extend beyond the scope of people typically understood to be human rights defenders (HRDs). Human Rights Defenders are defined in the European Union Guidelines on Human Rights Defenders as “Those individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms. Human rights defenders seek the promotion, protection and realization of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as Indigenous communities.” According to this definition, whether or not they view themselves as such, individuals and groups who are fighting to protect their lands, their water supplies, a healthy living environment, and the self-determination of their communities — or who are contributing to such efforts through reporting or accompanying these struggles, for example by providing technical or legal support — are exercising and defending individual and collective rights. Notably, the legal definition of a human rights defender indicates that one must use lawful means to carry out one’s work. This is largely the case in the resistance of mining-affected communities to mining and related abuses, however, we note that individuals and groups may also resort to civil disobedience, particularly when their concerns are not heard or addressed through formal channels, as is very frequently the case. Recognizing the legitimacy and importance of civil disobedience in such asymmetrical conflicts in which the historic marginalization of Indigenous, Afro-descendent, and farming communities is often reinforced, we use the concept of land and environment defenders in this way, going beyond those who would fall under the legal definition of HRDs, considering the use of civil disobedience in these struggles to be an important and a legitimate expression of dissent where institutional and legal mechanisms fail for a variety of reasons to respond to their democratic mandates.

Other reports documenting the risks encountered by land and environment defenders include the IACHR’s second report on the situation of human rights defenders in the Americas published in December 2011, in which it dedicated an entire section to criminalization.¹³ The report states: “The ever more systematic and repeated way in which legal actions without basis are initiated against human rights defenders has led this

¹² Ibid, paragraph 117.

¹³ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.LV/II. Doc. 66 ,31 December 2011 Original: Spanish

More social movements successes in defence of land and the environment

Mexico

- In 2012, a federal court suspended more than 70 mining concessions in the area of the Wirikuta Natural Protected Area, a spiritually important area for the Wixárika Indigenous people.
- In 2012, the federal environmental authority denied a zoning permit for the Caballo Blanco project owned by Timmins Gold Corp and Goldgroup in Veracruz, which has faced strong opposition from environmental groups in particular because of its close proximity to the Laguna Verde nuclear power station.
- In 2013, the federal environmental authority denied the Esperanza project now owned by Alamos Gold an environmental licence. Area residents, environmental groups, and state authorities have opposed this project over risks to water, flora and fauna, and for its close proximity to the Xochicalco archaeological site.
- Dozens of communities with collectively held lands have declared themselves territories free of mining. For example, the Ejido Benito Juárez in Chihuahua voted to expel MAG Silver and prohibit any mining for 100 years on their lands after the murder of Ismael Solorio Urrutia and his wife Manuela Martha Solís Contreras in 2012. The respective municipal, agrarian and Indigenous authorities have made similar decisions in over seventy communities in the states of Guerrero, Colima, Morelos, Puebla, Oaxaca, and Chiapas.

More social movements successes in defence of land and the environment

Peru

- The Cerro Quilish and massive Conga expansion projects of the Yanacocha mine, jointly owned by the US company Newmont, Peruvian Buenaventura and the World Bank, have been stalled to local opposition over possible impacts, principally on water supplies.
- In 2002, residents of Tambogrande held a local vote demonstrating opposition to Manhattan Minerals' plans for an open pit gold mine that would displace half the town. Manhattan left, but other companies retain interests in the area.
- In 2009, Awajún and Wampis Indigenous people in the northern Peruvian Amazon came out in strong numbers for a 57-day blockade - in part - to demonstrate their opposition to Dorato Resources' attempts to explore for gold in their headwaters. The blockade ended in the death of 33 police, Indigenous and townspeople, but it also put the debate over community consent prior to any mining on the national agenda. Local resistance continues to create obstacles for gold mining in the northern Amazon.
- The Campesino Community of Cañaris organized against Candente Copper's plans for an open-pit copper project in the northern highlands principally over potential impacts on water supplies.
- In 2011, opposition from Aymara Indigenous communities to mining led to the cancellation of Bear Creek's Santa Ana project. In 2014, the company commenced international arbitration against Peru under the Canada Peru Free Trade Agreement.
- In 2011, the Municipality of Santiago de Chuco in La Libertad passed an ordinance to protect local water supplies and impede expansion of Barrick Gold's Lagunas Norte project.
- A UK High Court case led to a settlement for 25 campesinos tortured in 2005 during protests against the Rio Blanco project (formerly called Majaz) owned by Monterrico Metals and a Chinese consortium in the department of Piura.

obstacle to become ever more visible with increasing intensity in the region and constitutes a problem that deserves priority attention on the part of states, given that it threatens the important role that defenders play in the consolidation of the state of law and the strengthening of democracy, which at the same time, undermines the credibility and legitimacy of their activities in defence of human rights, making them more vulnerable to attacks.”¹⁴ The IACHR notes a particular relationship between this trend and those involved in disputes over mega-projects in the areas of mining, hydroelectricity and forestry.¹⁵ Environment defenders, it finds, have frequently been stigmatized as “enemies of development,” “backward peoples” or “ecoterrorists.” In a number of states within the region, the IACHR notes that these defenders are encountering “diverse judicial obstacles” to getting their complaints addressed, such as those related to environmental damages and related reparations. Such obstacles may include: “a) lofty sums required by judges as a guarantee before they will suspend industrial operations whose contamination could affect the health or lives of persons, b) failure to recognize the legitimacy of community efforts to demand protection of their right to live in a healthy environment, and c) reluctance to proceed with legal actions in order to prevent environmental deterioration, rather only after damage has already occurred.”¹⁶

The IACHR also observes “an important rise in the abusive use of the penal system on the part of companies that have extractive projects in the region through the use of concepts such as “sabotage”, “terrorism”, “rebellion”, “illicit association”, “instigation to be delinquent”, among others, against those who resist such industrial development. The IACHR finds that “such concepts are conceived in very broad and generic ways, which is taken advantage of by those interested in making life difficult for those who oppose extractive industry companies and mega-projects, sometimes in collusion with public

¹⁴ CIDH, Segundo informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas, 31 diciembre 2011, paragraph 78.

¹⁵ Ibid, paragraph 94.

¹⁶ Ibid, paragraph 323.

authorities, to extend the definition of such concepts to include acts of protest and public demonstrations that environmental defenders lead.”¹⁷ We note that it is not only companies that bear responsibility for this, but also states that accept to follow up on spurious charges, a starting point of impunity for perpetrators. In considering the impacts of criminalization, the IACHR finds that it has pernicious impacts on both individuals *and* collectives or groups involved as a result of stigmatization and marginalization of entire movements that can then expose them to further violence, threats, invasive policing, and militarization that might not have been otherwise politically viable beforehand. This is also detrimental, concludes the IACHR, to the rule of law and to building strong democracies.

The trend of criminalization of social protest of defenders of the land and the environment is also acknowledged in a growing body of academic research. Authors such as Le Bonniec (2003) and Mella (2014) have, for example, analysed the criminalization of the Mapuche Indigenous movement as a result of its struggle for territorial rights and natural resources. For Le Bonniec, a French anthropologist and researcher at the Catholic University in Temuco, Chile, the Mapuche movement has been criminalized because it has become an important political and social force that directly challenges economic powers (forest, energy, and tourism companies as well as large land owners). This criminalization has led to the “stigmatization of a large number of Mapuche people and communities considered as ‘terrorists’ and ‘offenders’.”¹⁸ For Mella, a Chilean researcher at La Frontera University in Temuco, faced with the struggles of the Mapuche movement, the Chilean State has not only ignored their demands but has chosen to favour corporate interests, pushing to exploit and seize those resources.¹⁹

Further, in an analysis of the “Water War” in Cochabamba, Bolivia in 2000, Rojas-Paez (2014) a legal scholar at the Universidad Libre in Colombia, explains how the Bolivian government of former dictator and then-president Hugo Banzer used the declaration of a state of siege to suspend the constitutional rights of protesters against a new water law that granted control over the city’s rural water systems to a subsidiary of a U.S. transnational corporation. For Rojas, this state of siege is representative of emergency criminal law, which, along with other legal mechanisms, is implemented in many Latin American countries to counter social mobilization, legitimize massive arrests and paint protest as a security threat.²⁰

Several cases of criminalization of dissent around the world, including in several Latin American countries, including those discussed by Mella and Rojas-Paez, are analysed in the document “Whose Nature, Whose Rights: Criminalization of Social Protest in a Globalizing World,” published in 2014. This is a collaborative effort of scholars and activists aiming at furthering the understanding of the process underlying criminalization of social protest.

Criminalization of Dissent and How it Occurs

The Working Group has come to understand that criminalization of dissent is not an isolated event. It is part of a continuum of repression wherein a variety of actions, ranging from public smear campaigns to physical attacks or threats of attacks, are part of the process of criminalizing individuals and — frequently in the case of land and environmental struggles — whole groups. Mella (2014) shares this understanding of

¹⁷ Ibid, paragraph 324.

¹⁸ Le Bonniec. Fabien. État de droit et droits indigènes dans le contexte d’une post-dictature : Portrait de la criminalisation du mouvement mapuche dans un Chili démocratique. *Revue de civilisation contemporaine Europe/Amériques*. Vol.3, 2003.

¹⁹ Mella S. Eduardo. La aplicación del derecho penal común y antiterrorista como respuesta a la protesta social de indígenas mapuche durante el periodo 2000-2010. *Whose Nature, Whose Rights: Criminalization of Social Protest in a Globalizing World*. Onati Socio-legal Series (online) . Vol. 4 # 1, 2014.

²⁰ Rojas-Paez, Gustavo. *Whose Nature, Whose Rights: Criminalization of Social Protest in a Globalizing World*. Onati Socio-legal Series (online) Vol. 4, # 1, 2014.

criminalization as a process and a series of targeted punitive acts, rather than a single act of persecution. In his above-mentioned analysis of the criminalization of the Mapuche movement, he argues that “many actors, state and private (non-state) are at play, weaving a web of relationships that serve different interests and finally agree that the answer to the demands of the Mapuche must be the full weight of the law as a punitive and efficient mechanism of social control in order to safeguard their corporate interests.”²¹

Based on our analysis, we have come to understand criminalization of dissent as the systematic manipulation of concepts of law and order — whether administrative, civil, or criminal — and the use of the punitive powers of the state and its organs of justice — whether initiated by state or non-state actors or some combination of the two — to forbid, dissuade and/or prosecute legitimate dissent that are portrayed by state/non-state actors as contrary to fundamental societal values. Such manipulation can give rise to the use of violent and sometimes deadly force. Government armed forces with heightened immunity for using violence during repressive events may be responsible. Stigmatization and criminalization of legitimate dissent can also lead to attacks from interested parties, hired assassins, or illegal armed groups.

Stigmatization is a key element in laying the groundwork for a process of criminalization. People in positions of authority, whether members of a government administration, media commentators, representatives from citizen or non-governmental organisations or representatives of the armed forces, publicly label legitimate dissent and those involved as troublemakers; as being manipulated, or as people from outside a given area with a vested interest; as terrorists or whose activities are likely to inflame the activities of armed groups; as enemies of the state, the national interest and/or political opponents. Such statements generate a climate of polarization and hostility, and aim to put the credibility of those who dissent and their claims into doubt and away from the top news headlines. They are also aimed at making those who do speak out or dissent in some way afraid to do so.

Community leaders, people protesting, or other dissenting individuals, groups, or organizations questioning or opposing a mining project or policy are then frequently subject to unfounded accusations and drawn-out legal processes. They are often released without charge, but nonetheless made to endure months and even years of burdensome stress. Such stress has ripple effects on their family and community, and affects the way broader society views them and their work.

They may also face harassment, investigation, detention, arrest, or abduction with or without charges being laid. State, company, or other non-state actors may lay charges which are often baseless or exaggerated. Existing, new, or modified statutes concerning offences such as illicit association, public intimidation, coercion, sabotage, invasion of private property, incitement to violence, kidnapping, and terrorism are interpreted broadly or modified to include lengthier prison sentences or debilitating fines, and used to charge and prosecute legitimate dissent. The police or judiciary may take spurious accusations at face value and/or fail to investigate threats and attacks against groups and individuals. Meanwhile, this serves to intimidate them and others who might be tempted to engage in such work. It also diverts energy and resources away from their work, as it requires them to engage in complex and time-consuming legal procedures.

There is a growing body of evidence that confirms that women human rights defenders (WHRDs) experience unique and often more intense forms of threat than their male counterparts. Because of their gender, women defenders are also the “target of gender-based violence and gender-specific risks.”²² Mr. Ivan Šimonović, Assistant Secretary-General for Human Rights, notes that they regularly receive reports of “women human rights defenders — including activists, journalists and bloggers — being subjected to inappropriate touching, invasive body searches, virginity testing, as well as insults and humiliations of a sexual nature while in

²¹ Mella, S. Eduardo, 2014.

²² Women Human Rights Defenders International Coalition, <http://www.defendingwomen-defendingrights.org/resources.php>

detention.”²³ In many societies, the socio-cultural normative role for women is passive. They are not expected nor encouraged to be public in their daily life or to speak out publicly on issues. These norms are maintained through religious and other belief systems, including through traditions such as honour and caste systems. Women who speak out are often targeted not just by State authorities, but also by male community leaders, faith groups, other organisations including NGOs, and even their own family members and members of their community. Likewise, the UN and other bodies have noted that many of their own human rights defender protection mechanisms do not robustly address the situation of women human rights defenders and that many States do not have legal mechanisms that are responsive to the needs of women.²⁴

Areas where people are resisting extractive projects become increasingly militarized. Vague or inappropriate criteria are used to justify military deployment or states of siege and the corresponding suspension of certain civil rights. Furthermore, police and military are increasingly coordinating with enhanced scope for their work and immunity from prosecution for abuses, particularly in civil courts. As Associate Professor Marie-Christine Doran at the University of Ottawa has found in her analysis of the legalization and legitimation of new forms of state violence in Latin American democracies, using the example of Mexico: “Increased militarization is legalized, and may involve police, secret police and elite forces, who enjoy protection under legal measures that permit members of the armed forces to escape civil justice in cases of human rights violations.”²⁵

What is Criminalization?

Based on our analysis, we have come to understand criminalization of dissent as a continuum of repression:

- Criminalization of dissent involves the systematic manipulation of concepts of law and order — whether administrative, civil, or criminal.
- It further entails the use of the punitive powers of the state and its organs of justice — whether initiated by state or non-state actors or some combination of the two.
- The aim of criminalization is to forbid, dissuade and/or prosecute dissent that is portrayed by state and/or non-state actors as contrary to fundamental societal values.
- Such manipulation can give rise to the use of violent and sometimes deadly force.
- Public armed forces with heightened immunity for using violence during repressive events may be responsible.
- Stigmatization and criminalization of dissent can also lead to attacks from interested parties, hired assassins, or illegal armed groups.

For an excellent overview of the ways in which criminalization takes place see: “Criminalisation of Human Rights Defenders” Peace Brigades International UK Section, 2012;

http://www.peacebrigades.org/fileadmin/user_files/groups/uk/files/Publications/Crim_Report.pdf

²³ Statement by Mr. Ivan Šimonović, Assistant Secretary-General for Human Rights at the special event at the 57th session of the Commission on the Status of Women on “Obligations and Practical Measures to Support Women Human Rights Defenders”, 12 March 2013, UN Headquarters, New York.

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13169&LangID=E>

²⁴ Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. “Addendum, Responses to the questionnaire on risks and challenges faced by women, human rights defenders and those working on women’s rights and gender issues, Human Rights Council, Sixteenth session, Agenda Item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, March 7, 2011.” http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44-Add3_AEFS.pdf

²⁵ Doran Marie-Christine. Violence, victimisation et État sécuritaire : une nouvelle légitimation pour la violence d’État?. Éléments à partir des cas latino-américains. Cahier des imaginaires. Vol. 7, # 10, 2012. P. 34-53.

Whose law? Whose peace and stability? Whose interest?

In the context of mining conflicts and processes of criminalization, states, companies and other related actors regularly accuse mining-affected communities and their allies of working against the so-called “national interest”. In this framework, mining-affected communities and their allies are alleged to be working against the nation and denying society what it needs for economic growth, jobs and social programs. In other words, in defending their land, their water, their livelihoods, their health, and their self-determination — which may have been stolen or systematically denied to them and that they want to protect for future generations — they are allegedly denying others employment, health care, or education programs.

Used in this way, the idea of the national interest obfuscates the challenge that resistance and opposition to mining poses to the current economic development model, which relies on the sacrifice of lands, livelihoods, ways of life and self-determination, in particular of Indigenous, peasant farmer and Afro-descendant communities. This neocolonial extractive development model is inherently conflictive. It pits the wellbeing and self-determination of mining-affected communities against an arbitrarily defined national good. It tends to jeopardize peoples who have been historically dispossessed and marginalized, and whose communities are forced to live with the long-term damage from mining — often with little or no guarantee of any clean-up. Even when some clean-up takes place, significant environmental damage is often irreparable and the social and economic fabric of communities can be left in tatters.

These struggles also pose a challenge as to who has a legitimate claim to lands and the minerals below them. With only a few exceptions, states in the hemisphere consider subsurface resources to belong to them and thus consider that the state can grant these minerals in concessions, leases, or other forms of claim or title, to individuals or corporations. This has been done across almost entire departments of Peru, along the Andes and southern Amazon of Ecuador and Colombia, by the hundreds of concessions in Honduras and Guatemala, and across an estimated 30% of Mexican national territory. In Canada acquiring mineral rights can be as simple as paying a nominal fee and clicking the area desired in an online map. Hundreds of companies are involved and there is virtually no government oversight in the acquisition process. In the province of Quebec there are approximately 250,000 individual mineral claims covering 8% of the provincial territory. As a result, beyond economics, mining resistance across the hemisphere very much calls into question who has a sovereign claim to lands and minerals, who can decide when and how to grant such lands and minerals to others and under what conditions or restrictions, and who sets the agenda and development plan according to which to do so.

Looked at this way, it is no wonder that those in power and with a big economic stake in industrial extractive projects react negatively to the protests of mining-affected communities, their allies, and those documenting and reporting on the issues. This perspective also helps clarify how criminalization of legitimate dissent tends to reinforce historic patterns of repression and marginalization. As such, in considering a way forward in solidarity with mining-affected communities who are facing heightened repression, we must reverse the accusation that they are acting against the national interest to ask what it will take to ensure jobs and livelihoods for all, prosperity, social wellbeing and self-determination for all peoples; and to make room for ways of life and visions of development that rely on the permanent integrity of the same land and water.

It is worth further noting that mining conflicts often reach public attention when communities initiate a blockade or other forms of public dissent and direct action. This often takes place after numerous attempts at using administrative, legal, and political channels have failed to work. For taking direct action, communities and groups are frequently characterized as disturbing the peace and putting public security at risk. In fact, legal repression often focuses on the acts of protest themselves, for example in Canada, through the use of pre-emptive injunctions leading to contempt-of-court charges, in order to avoid bringing the

underlying issues before the courts. Despite all efforts to stigmatize such actions as completely intolerable to a peaceful and law-abiding society, we appreciate such civil disobedience as part of legitimate dissent. It is further justified when considered in parallel to the rampant and seemingly systemic impunity that corporate and state forces enjoy for the harms that they have been inflicting on affected communities through the course of business-as-usual and repressive acts.

Why is one considered lawful and peaceful when the other is not? Why should actions such as the destruction of water supplies, sacred areas, forests, and productive land — jeopardizing the peoples that rely on them — not be considered criminal and violent and duly prosecuted? Ultimately, this raises questions about the legitimacy of pertinent laws, about who has designed them and for whom they have been designed.

Referring to the dynamics of legal knowledge from colonial times up to the current period of globalization, Rojas-Paez explains why, throughout history, “the prevailing legal structures legitimize the extraction of natural resources without any consideration for environmental or social harm”.²⁶ He argues that to a large extent “the answer lies in the way in which nature’s relationship with human beings has been theorized in social sciences and legal scholarship”.²⁷ Rojas-Paez quotes various authors who support his argument that “modern laws are based on a colonial assumption that all human beings value (land and resources) property in the same way and on a hierarchization of knowledge”²⁸ and that “through the lenses of law, the knowledge of the inhabitants of the Americas was inferior to that of the conquering powers”.²⁹ He quotes De Sousa Santos, for whom “modern legal thinking reproduces the systems of colonial thought by deeming inexistent the historical experience of the colonized peoples, their knowledge and forms of political organizing”.³⁰ Rojas-Paez also cites several authors who support his argument that “the neoliberal model of development replicated the idea that nature is private property, an idea from the colonial era, in contrast with the Indigenous peoples of the Americas’ view of nature as a living organism whose existence and integrity must be respected”.³¹ For Indigenous peoples, “land is the main source of cultural identity and not a commodity”.³²

²⁶ Rojas-Paez, Gustavo, 2014.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Rojas-Paez, Gustavo, 2014.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

Defining ‘Land and Environment Defenders’

Whether or not they view themselves as such, individuals and groups who are fighting to protect their lands, their water supplies, a healthy living environment, and the self-determination of their communities – or who are contributing to such efforts through reporting or accompanying these struggles, for example by providing technical or legal support – are land and environment defenders.

The legal definition of a human rights defender indicates that one must use lawful means to carry out one’s work. This is often the case in the struggles of mining-affected communities. However, we note that individuals and groups may also resort to civil disobedience, particularly when their concerns are not heard or addressed through formal channels, as is very frequently the case. Recognizing the legitimacy and importance of civil disobedience in such asymmetrical conflicts in which the historic marginalization of Indigenous, Afro-descendent, and farming communities is often reinforced, we use the concept of land and environment defenders in this way, going beyond those who would fall under the legal definition of Human Rights Defenders. We consider the use of civil disobedience in these struggles to be an important and a legitimate expression of dissent where institutional and legal mechanisms fail for a variety of reasons to respond to their democratic mandates.

For taking direct action, communities and groups are frequently characterized as disturbing the peace and putting public security at risk. In fact, legal repression often focuses on the acts of protest themselves, for example in Canada, through the use of pre-emptive injunctions leading to contempt-of-court charges, in order to avoid bringing the underlying issues before the courts. Despite all efforts to stigmatize such actions as completely intolerable to a peaceful and law-abiding society, we appreciate such civil disobedience as an important part of dissent. It is further justified when considered in parallel to the rampant and seemingly systemic impunity that corporate and state forces enjoy for the harms that they have been inflicting on affected communities through the course of business-as-usual and repressive acts.

Why is one considered lawful and peaceful when the other is not? Why should actions such as the destruction of water supplies, sacred areas, forests, and productive land — jeopardizing the peoples that rely on them — not be considered criminal and violent and duly prosecuted? Ultimately, this raises questions about the legitimacy of pertinent laws, about who has designed them and for whom they have been designed.

What we are seeing are efforts to quash, silence or obfuscate the direct challenges that resistance to mining poses to elite or dominant economic, legal, and political interests and structures. In each case these interests and structures have names and more specific histories and complexities. Nonetheless, in recognizing this pattern and trying to map out a more coordinated response within our organizations and among networks working in solidarity with mining-affected communities, we can perhaps start to see that our governments and those with direct interests are not easily going to concede to simply stop criminalizing legitimate dissent over mining. We can also appreciate that addressing the roots of stigmatization and criminalization of mining-affected communities will require taking action on a variety of fronts, including fighting the impunity of powerful economic, armed, and political actors, supporting the efforts of affected communities and their representative organizations to have a decisive say over decisions affecting their lives and lands, and fostering respect for the processes of self-governance that diverse peoples are undertaking to ensure that their own visions of development determine what happens on their lands and territories.

As Peace Brigades International (PBI) has observed, taking a stand against criminalization can present a challenge to the international community, since it can seem to imply “undue interference in internal affairs,”³³ something which is less of a concern for the international community in demonstrating solidarity when people are simply under physical attack or threat. But to ensure the wellbeing of communities and peoples in the face of the extractivist development model, we need to seriously wrestle with challenges to the impunity and the very legitimacy of existing economic, legal, and political frameworks while we work to build stronger solidarity with those people whose lives, families, and communities are on the line.

³³ Peace Brigades International, “Criminalisation of Human Rights Defenders,” September 2010.



Looking at Goldcorp's Los Filos mine in Guerrero, Mexico; Photo: Cristian Leyva

What is Extractivism?

Extractivism is the extraction of immense volumes of natural resources that are exported with no or little value-added processing to then be transformed into consumer goods for mass consumption. When this is prioritized, elements central for more inclusive forms of development are frequently abandoned or sidelined.

Extractivism is not limited to mining, oil drilling, logging, industrial fishing, or industrial agriculture. It is also used to understand other activities such as bottling water and bioprospecting, as well as other means of energy production, including fracking, hydroelectric dams, and even large-scale wind power farms.

Some characteristics of the Extractive Model:

1. It is promoted and enabled through a favourable political/legal framework.
2. It has access to capital, including transnational, private or even national (See Text Box: 'Extractivism or Neoextractivism?').
3. A single or similar method of extraction is used in order to:
 - a) Maximize yields — by price and cost,
 - b) Minimize the time frame — by managing speed/duration/volume,
 - c) With high technical efficiency, and
 - d) With heightened competition in all respects.
4. The chain of production is massive and directly or indirectly integrated with the primary product that is extracted. In other words, there tends to be a strong relationship between those who export the goods and those who import them to then convert them into consumer goods.

By virtue of the above:

5. The environmental and social costs are high, including far too often at the expense of peoples' lives and with use of violence.
6. It tends toward monopolies over land ownership or other forms of territorial control.
7. It competes with other activities, for example between mining and agriculture.
8. The costs are not just local. Resources are depleted, economic dependency on the rents from natural resource extraction such as minerals tends to lead to disinvestment from other economic sectors, inflation in the value of a country's currency tends to have negative repercussions on manufacturing sectors, and the authoritarian tendencies of governments tends to be aggravated.

Corporate Globalization is the backdrop to the process that has propelled extractivism principally based on the territorial expansion of transnational corporations whose decisions and growth respond to the logic of financial capital that has, over the years, managed to install the conditions for political actors to implement policies in their favour.

Source: Miguel Angel Mijangos Leal, "El Modelo Extractivo", Presentation made in Mexico City on November 22, 2013.

The Extractivist Mining Model

In mining extractivism, the political and legal framework tends to follow a program promoted around the world by the World Bank and various rich governments, including Canada's. It led to mining code reforms in some 100 countries between the 1980s and the early 2000s.

It tends to follow a similar pattern, including:

- Privatization of state mining companies.
- An end to restrictions on foreign ownership and repatriation of profits.
- Lower rates of taxation and royalties.
- Greater flexibility within labour laws.
- Termination of performance requirements like local sourcing and hiring.
- Streamlining of administrative processes.
- Greater technical services for industry.
- Removal of "subjective" elements of bureaucratic discretion from the permitting and approvals process in order to make permitting easier. [1]

Parallel to these, additional reforms have taken place. Some have occurred to open up access to or purchase of collectively owned lands. Others have weakened environmental laws. Yet others were spurred by the signing of thousands of bilateral and multilateral free trade and investment protection agreements that cover a range of issues from tariff reductions to investment regulation and intellectual property rights. These trade and investment agreements have been described as a "mechanism through which market discipline is advanced and the power of investors in the dominant capitalist countries is consolidated." [2]

Since Canada, the US and Mexico signed onto the North American Free Trade Agreement (NAFTA) in 1994, these investor protection agreements tend to include investor-state provisions that enable companies to sue signatory governments. The governments can be sued if they take regulatory action that diminishes the company's expected earnings through an expanded concept of expropriation which obliges governments to compensate investors if they can demonstrate that their income will be adversely affected. [3] Such provisions are increasingly being used by oil, gas and mining companies to sue states for outlandish amounts of money when they make decisions that they do not like. For example, OceanaGold (formerly Pacific Rim Mining) is suing the state of El Salvador for \$301 million USD for not having granted it a permit to put a gold mine into operation, even though the company did not meet the regulatory requirements to obtain the permit. [4] As of March 2013, there were 169 cases pending at the most frequently used tribunal, the International Center for Settlement of Investment Disputes (ICSID), of which 60 (35.7%) were related to oil, mining, or gas. By contrast, in 2000, there were only three pending ICSID cases related to oil, mining, or gas. During the entire decades of the 1980s and 1990s, there were only 7 such cases filed. [5]

Sources: [1] David Szablowski, *Transnational Law and Local Struggles: Mining, Communities and the World Bank*, Hart Publishing, Oxford, 2007. [2] Liisa North, Timothy David Clark and Viviana Patroni, *Community Rights and Corporate Responsibility: Canadian Mining and Oil Companies in Latin America*, Between the Lines, 2006. [3] Canadian Network on Corporate Accountability, "Dirty Business, Dirty Practices: How the Federal Government Supports Canadian Mining, Oil and Gas Companies Abroad," Ottawa, May 2007. [4] International Allies with the National Roundtable on Metallic Mining in El Salvador, "Debunking Eight Falsehoods by Pacific Rim Mining/OceanaGold in El Salvador," March 2014. [5] Sarah Anderson and Manuel Perez-Rocha, "Mining for Profits in International Tribunals: Lessons for the Trans-Pacific Partnership," Institute for Policy Studies, April 2013. [5] Sarah Anderson and Manuel Perez-Rocha, "Mining for Profits in International Tribunals: Lessons for the Trans-Pacific Partnership," Institute for Policy Studies, April 2013.

Extractivism or Neoextractivism?

The inclusion of Ecuador in this discussion paper obliges us to raise an important debate over the nature of extractivism taking place under new left governments in Latin America that are challenging aspects of neoliberal deregulation while continuing to rely on intensive primary resource extraction for export.

Uruguayan analyst Eduardo Gudynas refers to this as 'neoextractivism': "Neoextractivism differs from extractivism in as much as governments have adopted more interventionist policies that strengthen the role of the state in the productive arena, change contractual arrangements with transnational investors, raise the royalties and/or taxes payable, and (in some instances) seek to increase levels of domestic processing." [1]

Bolstered state participation in extractivism runs counter to the reforms that international financial institutions like the World Bank and governments of industrialized countries like the US and Canada have promoted during the last few decades. Nonetheless, these countries remain subject to many of the same constraints of the global commodities market and those that dominate it.

Ecuadoran economist Alberto Acosta remarks, "It's not traditional neoliberalism anymore, but we remain within the extractivist logic. The form of production is still being over-defined by the primary products that we export, some are mineral resources, others are oil or other primary resources, but there is no change in the raw materials-exporting modality of this extractivism, and neither is our submissive form of insertion in the international market being questioned." [2]

Argentinian professor Maristella Svampa calls this a shift away from the 'Washington Consensus' — with its promotion of the so-called free market and neoliberalism — toward a 'Commodities Consensus'. Under the 'Commodities Consensus' countries continue to rely on "accumulation based on an over-exploitation of — largely non-renewable — natural resources as well as the expansion of frontiers to territories formerly considered 'unproductive'." [3]

This ongoing expansion of extractivist activities continues to marginalize other visions of development and to pit the state against social movements and affected communities that contest dependency on extractivism leading to their dispossession and the corresponding impacts on lands, water supplies, culturally-important areas, ways of life and self-determination.

Sources: [1] From *Extractives and Development in the Andes*, "Thinking about extractives: the contribution of Eduardo Gudynas," Accessed May 19, 2015; [2] Carmelo Ruiz Marrero, "The New Latin American "Progresismo" and the Extractivism of the 21st Century", February 17, 2011; <http://www.cipamericas.org/archives/4025>; [3] Maristella Svampa, "Resource Extractivism and Alternatives: Latin American Perspectives on Development," in *Beyond Development: Alternative Visions from Latin America*, Transnational Institute, 2013; <http://www.tni.org/briefing/beyond-development>.

Introduction to Country Case Studies

In this section, we provide a series of five country case studies that can be read on their own or together. Each case study provides a characterization of criminalization of social protest and dissent as described and documented by human rights organizations, social movement groups and commentators who know the particular country context. Guatemala, Ecuador, Peru, and Mexico were selected as the case studies from Latin America for two reasons: first, activist networks in these countries called for greater solidarity with mining-affected communities in connection with Canadian mining interests and second, movements have identified criminalization as one of the pressing obstacles that they are facing. In the near future, we hope to add chapters about Colombia and Honduras. Additionally, we devote a chapter to the criminalization of protest and dissent in connection with struggles over resource extraction in Canada in order to underline that mining-affected communities and organizations are facing repression for challenging the prevailing political and economic development model within our borders and beyond.

Each case study begins with a description of the general trends of criminalization and the nature of extractivism playing out each each country, with a particular examination of the role played by Canadian government representatives and companies in its development. Guatemala, Peru and Mexico provide insights into situations where there has been little pause in processes of neoliberal deregulation in the mining sector over the last twenty years and where the physical violence accompanying criminalization is pronounced. In Ecuador, where important measures have been achieved through social movement organizing under a new left government to depart from the neoliberal model, the role of the Canadian lobby to contain these changes and continued state dependency on extractivism have nonetheless contributed to a new wave of criminalization. Canada provides our final example, riding its own wave of deregulation, dependency and digression into a state increasingly intolerant of growing dissent over extractivism.

GUATEMALA



Under President Otto Pérez Molina in Guatemala, a former military general, the state pact with Tahoe Resources and other mining companies is blatant. San Rafael Las Flores where Tahoe's Escobal mine is located is site of a pilot military-led project that deems organized communities a threat to national security.; Photo: Oswaldo J. Hernández, Plaza Pública

In the last few years, human rights, Indigenous and other social movement organizations in Guatemala have been vigorously denouncing efforts on the part of the Guatemalan state, foreign corporations — including Canadian mining companies — and related actors to contain and silence their opposition to further entrenchment of a model for economic growth based on foreign owned industrial mineral extraction and energy production.³⁴ Particularly since the inauguration of President and former general Otto Pérez Molina, intensified stigmatization and criminalization of protest has been accompanied by increasing violence and militarization in their communities. During this same period, international allies with struggles for collective rights have also been targeted.

The Western Peoples' Council (CPO by its initials in Spanish) call this wave of extractivism in Guatemala "a new invasion of our territories that represents displacement, occupation, contamination, social control, repression and death for our communities."³⁵ Through a series of legal reforms, militarization and criminalization of protest, the CPO continues, "this model of 'false development' is being implemented by force" in violation of Indigenous and human rights.³⁶

Observer Jonathan Hafetz calls the current trend of criminalization "eerily reminiscent of the era of military rule that Guatemala had supposedly put behind it." An Associate Professor of Law at Seton Hall University School of Law, he notes that the discourse has shifted from Cold War rhetoric to the context of the War

³⁴ For example, Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEQUA by its initials in Spanish), "El Silencio es historia: Informe sobre situación de Defensoras y Defensores de Derechos Humanos Enero a Diciembre de 2013," Informe Anual 2013; http://www.udefegua.org/images/informes_anuales/informe_anual_2013.pdf. See also: American Bar Association, Robert F. Kennedy Center for Justice & Human Rights, and Human Rights Institute, "Tilted Scales: Social Conflict and Criminal Justice in Guatemala," November 18, 2013; <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/opportunities/upload/Tilted-Scales-Social-Conflict-and-Criminal-Justice-in-Guatemala.pdf>; And: Anabella Sibrián and Chris Van Der Borgh, "La Criminalidad de los Derechos: La Resistencia a la Mina Marlin," *Oñati Socio-Legal Series* [online], 4 (1), 63-82, (2014); <http://ssrn.com/abstract=2374310>

³⁵ Western Peoples' Council (CPO), "Convocatoria y Llamamiento: Marcha por la Paz, la Justicia y los Derechos Individuales y Colectivos de los Pueblos," April 2013.

³⁶ Ibid.

on Terrorism, "Just as opponents of the state were tarred as "communists" during the 1970s and 80s, they are today labelled "terrorists" to stigmatise them and delegitimise dissent."³⁷

The Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEGUA by its initials in Spanish) remarks in its 2013 annual report that "Once again, the interests of a minority, albeit politically and economically powerful, are being imposed against the interest of thousands of impoverished Guatemalans who do not enjoy the benefits of the business taking place between the state and national and foreign corporations. The model of pillaging national territory is left intact and the state, incapable of guaranteeing security for the citizenry with regard to matters related to the defence of economic interests, nonetheless demonstrates an operational capacity together with the use of security forces to impose these "development projects" by force."³⁸ In 2013 alone, UDEFEGUA recorded a significant increase in assassinations and violence, as well as 61 cases of spurious charges that state and non-state actors made against human rights defenders, often accompanied by illegal detentions.³⁹ They documented 40 cases of illegal detentions in 2013, up from 29 in 2012.⁴⁰ UDEFEGUA also notes the emergence of far right groups, such as the Foundation Against Terrorism, which have participated in stigmatizing groups fighting against impunity for crimes taking place during the 36-year civil war, including the trial against ex-military dictator Efraín Ríos Montt for genocide.⁴¹ This same group has also criticized organizations involved in struggles against mine projects.⁴²

Such reports about attacks, threats and frivolous criminal charges against human rights defenders in the context of disputes over megaprojects led the American Bar Association, the Georgetown University Law Center's Human Rights Institute and the Robert F. Kennedy Center for Justice and Human Rights to undertake a fact-finding mission to Guatemala to examine whether the judicial system is being used against human rights advocates. They found that despite many efforts to improve the judicial system, especially through the work of now former Attorney General Claudia Paz y Paz, the system "still does not effectively address, and in some instances, exacerbates social conflict."⁴³ In particular, they point out the problematic role that local and rural prosecutors have in pursuing charges against human rights defenders without sufficient or complete information. They raise concerns about the way that criminal allegations can work to delegitimize peaceful protest, that they divert time and energy away from other activities, and can have a serious chilling effect on freedom of expression and association.⁴⁴

In this context, we consider two cases of criminalization involving Canadian mining companies. We start with Goldcorp's Marlin mine in the northwestern department of San Marcos, the first industrial mine to get underway in the country after the end of the 36-year civil war. Next, we examine how stigmatization, criminalization, militarization and violence have intensified by examining repression associated with Tahoe Resources' underground silver mine in the southeastern department of Santa Rosa, which entered into operation in 2014.

First, a brief overview of the neoliberal economic model in Guatemala's mining sector and the implication of Canadian economic interests in this process.

³⁷ Jonathan Hafetz, Al Jazeera, "Guatemala's creep toward military rule and repression," October 26, 2012; <http://www.aljazeera.com/indepth/opinion/2012/10/201210239381341351>

³⁸ UDEFEGUA, Informe Annual 2013.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Front Line Defenders, "Guatemala: Artículo difamatorio contra organización de derechos humanos CALAS publicado en cuatro diarios nacionales," July 2, 2013; <http://www.frontlinedefenders.org/es/node/23191>

⁴³ American Bar Association, Robert F. Kennedy Center for Justice & Human Rights, and Human Rights Institute, November 18, 2013.

⁴⁴ Ibid.

Canadian Economic Interests and the Mining Model in Guatemala

Foreign investment in Guatemala's mining sector was stimulated following the passage of neoliberal reforms to the country's mining code in 1997, a year after the signing of peace accords between state and guerrilla forces that ended a thirty-six-year civil war. The 1997 Mining Code was approved under the government of Alvaro Arzú (1996-2000) with the blessing of the World Bank and transnational corporations in the sector.⁴⁵ The code dropped royalties payable on mining to their lowest level ever, from 6% to 1%,⁴⁶ while removing prohibitions on 100% foreign owned mining operations and permitting duty-free imports for corporations. The President and legal advisor of the Guatemalan subsidiary Montana Exploradora, now owned by Vancouver-based Goldcorp, were known to have been involved in the mining reforms.⁴⁷ The company obtained concessions for the Marlin mine in 1996 and became the first to put an industrial mine into operation during the neoliberal period, commencing in 2005. Over the last decade and a half, mining concessions have also been granted in many other areas of the country. As of April 2014, the Guatemalan Ministry of Energy and Mines reported 89 approved exploration and extraction stage mining concessions and another 352 in the process of being considered.⁴⁸

Prior to bringing its new mining code into effect, in 1995, Guatemala passed the Accord on Identity and the Rights of Indigenous Peoples as part of the Peace Accords that concluded the 36-year civil war⁴⁹ and, in 1996, ratified the International Labour Organization Convention 169 on the Rights of Indigenous and Tribal Peoples.⁵⁰ These agreements should ensure that communal lands are administered according to local norms and that Indigenous communities are consulted to obtain their free, prior, informed and culturally adequate consent prior to the approval of policies and projects that could negatively affect their territories such as natural resource extraction project.⁵¹ Nonetheless, in practice, corporate interests have trumped Indigenous rights.

As part of ensuring that Canadian companies could establish their projects and become the principal beneficiaries of Guatemala's mining sector, Canadian authorities have regularly acted in their defence. For example, on November 4, 2004, on the same day that a national Guatemalan newspaper released a survey finding that 95.5% of local residents opposed the Marlin mine, then Canadian Ambassador to Guatemala James Lambert published an opinion piece in the Guatemalan *Prensa Libre* where he cited the benefits of mining to 200 indigenous communities in Canada.⁵² "These communities are creating the economic, cultural and social infrastructure necessary to secure their future and the future of their children," Lambert wrote. The Ambassador also flew indigenous leaders from Canada to Guatemala to speak favourably about mining to try to delegitimize local resistance.⁵³

⁴⁵ Luca Martinelli, "Te Cuento el "Cuento" de la Mina Marlin: Guatemala," November 2, 2005; <http://www.ecoport.net/content/view/full/53470> Accessed September 19, 2014.

⁴⁶ Compliance Advisor Ombudsman, "Assessment of a complaint submitted to CAO in relation to the Marlin Mining Project in Guatemala," September 7, 2005, p13; <http://www.cao-ombudsman.org/cases/document-links/documents/CAO-Marlin-assessment-English-7Sep05.pdf>

⁴⁷ Luis Solano, Guatemala: Petróleo y Minería en las Entrañas del Poder, Inforpress Centroamericana, 2005.

⁴⁸ Guatemalan Ministry of Energy and Mines, <http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/estadisticas-mineras/>, Accessed September 20, 2014.

⁴⁹ Kay B. Warren, "The Indigenous Role in Guatemalan Peace," Cultural Survival, Issue 21.2 (Summer 1997); <https://www.culturalsurvival.org/ourpublications/csg/article/the-indigenous-role-guatemalan-peace>

⁵⁰ Guatemala ratified ILO Convention 169 on Jun 5, 1996; see: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314

⁵¹ "Acuerdo sobre identidad y derechos de los pueblos indígenas," Mexico City, March 1995; <http://www.guatemalaun.org/bin/documents/Acuerdo%20Pueblos%20Ind%C3%ADgenas.pdf> Retrieved September 20, 2014

⁵² Canadian Network on Corporate Accountability, "Dirty Business, Dirty Practices: How the Federal Government Supports Canadian Mining, Oil and Gas Companies Abroad," May 2007. <http://cnca-rcrce.ca/wp-content/uploads/CNCA-DirtyPractices-may2007.pdf>

⁵³ Jared Ferrie, "Mining Gold and Outrage in Guatemala", December 21st 2005, <http://theyee.ca/News/2005/12/21/GuatamalaOutrage/index.html> Accessed 20Aug10;

Later, when mining-affected communities in the area of the Marlin mine filed complaints over its negative impacts on their Indigenous rights to self-determination and free, prior and informed consent, and to their water and well-being, Canadian authorities refused to investigate. In December 2009, the Canadian National Contact Point, an interministerial committee for the administration of the OECD Guidelines for Multinational Enterprises received a formal complaint from the San Miguel Ixtahuacán Defense Front (FREDEMI by its initials in Spanish).⁵⁴ The Canadian office refused to undertake any independent investigation or to determine whether or not the company was living up to the guidelines, and offered only to facilitate dialogue between the communities and the company, despite FREDEMI's insistence that there were no conditions for dialogue.⁵⁵ This reluctance on the part of the Canadian state was particularly notorious given numerous reports and critical statements that were issued during this same period from important international bodies such as the International Labour Organization Committee of Experts,⁵⁶ the Inter American Commission on Human Rights⁵⁷ and the UN Special Rapporteur's office on the rights of Indigenous Peoples.⁵⁸

As of 2011, Natural Resources Canada reported that Canadian mining assets in Guatemala were about \$1.3 billion CAD, the highest among Central American countries and seventh highest in the region.⁵⁹ Goldcorp's Marlin mine constituted the bulk of this investment at the time, given that it was then the only mine in operation. Other Canadian companies with mining projects at earlier stages of development, two of which reported reaching commercial production in 2014, include: Radius Gold, which has an economic interest in the El Tambor project just north of Guatemala City⁶⁰ operated by Nevada-based Kappes, Cassidy & Associates (KCA),⁶¹ as well as exploration mining concessions in the southeast;⁶² Tahoe Resources, whose only project is the underground Escobal silver project in southeastern Guatemala, in the immediate vicinity of which it has four active exploration concessions and another 17 that it has requested;⁶³ and exploration firms such as Chesapeake Gold⁶⁴ and Goldex Resources Corporation.⁶⁵ Notably, HudBay Minerals owned the conflict-ridden Fénix nickel project in the eastern municipality of El Estor from 2008⁶⁶ until 2011, a property that passed through the hands of a number of Canadian companies before this time. In 2011, the company sold the project to the Cyprus-based Solway Group⁶⁷ after Guatemalan plaintiffs launched three lawsuits

⁵⁴ FREDEMI with the Center for International Environmental Law (CIEL), "Specific Instance Complaint Submitted to the Canadian National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises," December 9, 2009; http://www.ciel.org/Publications/FREDEMI_SpecificInstanceComplaint_December%202009.pdf

⁵⁵ OECD Watch, "FREDEMI Coalition vs Goldcorp: Case Overview," http://oecdwatch.org/cases/Case_172 Accessed September 20, 2014

⁵⁶ International Labour Office, "Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III (Part 1A)," International Labour Conference, 99th Session, 2010, Geneva; Available at: http://goldcorpoutofguatemala.files.wordpress.com/2010/07/wcms_123424.pdf

⁵⁷ Inter American Commission on Human Rights, "Comunidades del pueblo maya (Sipakapense y Mam) de los municipios de Sipacapa y San Miguel Ixtahuacán en el Departamento de San Marcos, Medida Cautelar MC-260-07, Guatemala," May 20, 2010; Available: http://goldcorpoutofguatemala.files.wordpress.com/2010/07/precautionarymeasures_iachr_may10.pdf

⁵⁸ James Anaya, "Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Preliminary note on the application of the principle of consultation with indigenous peoples in Guatemala and the case of the Marlin mine," July 8, 2010; <http://unsr.jamesanaya.org/special-reports/preliminary-note-on-the-application-of-the-principle-of-consultation-with-indigenous-peoples-in-guatemala-and-the-case-of-the-marlin-mine-2010>

⁵⁹ Natural Resources Canada, "Canadian Mining Assets", January 7, 2013.

⁶⁰ Radius Gold Inc, "Financial Review: Fiscal Year Ended December 31, 2013," April 29, 2014.

⁶¹ <http://www.kcareno.com/>

⁶² <http://www.radiusgold.com/s/Holly-Banderas.asp>

⁶³ <http://www.tahoeresourcesinc.com/>

⁶⁴ <http://chesapeakegold.com/guatemala.php>

⁶⁵ <http://goldex.ca/>

⁶⁶ HudBay Minerals, Press Release, "Hudbay Minerals Completes Business Combination With Skye Resources; Announces New Director and Chief Financial Officer," August 26, 2008; <http://www.hudbayminerals.com/English/Media-Centre/News-Releases/News-Release-Details/2008/Hudbay-Minerals-Completes-Business-Combination-With-Skye-Resources-Announces-New-Director-and-Chief-Financial-Officer/default.aspx>

⁶⁷ Winnipeg Free Press, "HudBay sells Guatemala stake," August 6, 2011; <http://www.winnipegfreepress.com/business/hudbay-sells-guatemalan-mine-stake-127059568.html>

against it in Ontario courts pertaining to violence against Indigenous community members in connection with its private security outfit.⁶⁸ The lawsuits are still proceeding.

The political and economic influence that companies such as Goldcorp have accumulated in Guatemala is considerable and was well illustrated when, in September 2012, the company flew a group of three Canadian parliamentarians and a senator to Guatemala on its private jet.⁶⁹ At this time, mining law reforms were being considered that could increase state participation in new mining projects up to 40%.⁷⁰ Guatemalan indigenous organizations had also just launched a constitutionality challenge against the current mining law for lack of prior consultation.⁷¹ Meanwhile, this well-heeled delegation obtained a closed-door meeting with the Legislative Commission for Energy and Mining presumably over proposed mining law reforms.⁷²

Nonetheless, lack of respect for communities and the impacts of the Marlin mine have given rise to considerable opposition to mining across the country, even in urban areas. In January 2013, a national newspaper carried out a public opinion survey in which it found that 66% of the population was opposed to mining.⁷³ Furthermore, an estimated 78 Mayan communities representing approximately one million Guatemalans have held votes over mining activities on their lands and territories, the results of which have been overwhelmingly against mining.⁷⁴ Mining-affected communities, both indigenous and non-indigenous, have also been winning important court decisions in favour of their right to pre-legislative consultation⁷⁵ and the legitimacy of community consultation processes on mining activities on their lands and territories.^{76,77} Mining opposition in Guatemala also led to a three year moratorium on new mining concessions under the Alvaro Colom government from 2009-2011.⁷⁸

The new government administration of former general Otto Pérez Molina, inaugurated in February 2012, lifted the moratorium on mining concessions and has reinforced state backing to promote and protect foreign mining interests. Several dozen new mining concessions have been granted,⁷⁹ and most notably, the government has provided essential backing — including helping to stigmatize, criminalize and militarize mining-affected communities and their allies. Foreign companies have put two more mines into operation and a third has been able to advance exploration work. In 2014 alone, Tahoe Resources and the Solway

⁶⁸ For more information: <http://www.chocversushudbay.com/>

⁶⁹ MiningWatch Canada, "Goldcorp Organizes Junket to Guatemala for Canadian Parliamentarians," August 28, 2012; <http://www.miningwatch.ca/news/goldcorp-organizes-junket-guatemala-canadian-parliamentarians>

⁷⁰ Ibid.

⁷¹ MiningWatch Canada, "Guatemala's Highest Court to Hear Landmark Indigenous Challenge Against Mining Law," July 20, 2012; <http://www.miningwatch.ca/news/guatemala-s-highest-court-hear-landmark-indigenous-challenge-against-mining-law>

⁷² La Hora, "Diputados canadienses cabildean en Guatemala por Ley de Minería," August 29, 2012; <http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/164612-diputados-canadienses-cabildean-en-guatemala-por-ley-de-mineria>

⁷³ Prensa Libre, "Encuesta: Aumenta rechazo a actividad minera en Guatemala," January 16, 2013; Available at: <http://www.noalamina.org/mineria-latinoamerica/mineria-guatemala/encuesta-aumenta-rechazo-a-actividad-minera-en-guatemala>

⁷⁴ LaPlante, J.P. and Catherine Nolin, "Consultas and Socially Responsible Investing in Guatemala: A Case Study Examining Maya Perspectives on the Indigenous Right to Free, Prior, and Informed Consent," *Society and Natural Resources: An International Journal*, (2014).

⁷⁵ Western Peoples' Council (CPO), "Corte de Constitucionalidad Dictamina Suspensión Definitiva del Reglamento para el Proceso de Consulta," December 9, 2011; <http://consejodepueblosdeoccidente.blogspot.ca/2011/12/corte-de-constitucionalidad-dictamina.html>

⁷⁶ Western Peoples' Council (CPO) and Maya Sipakapense Council, "Sistema de Justicia Ampara al Consejo Maya Sipakapense ante Licencia Minera 'Los Chocoyos'," July 23, 2014.

⁷⁷ La Nación, "Corte de Guatemala avala consulta popular por minas," December 9, 2013;

http://www.nacion.com/mundo/Corte-Guatemala-consulta-popular-minas_0_1383261825.html

⁷⁸ Dirección General de Minería, "Anuario Estadístico Minero 2013," Accessed September 18, 2014; <http://www.mem.gob.gt/wp-content/uploads/2012/05/ANUARIO-ESTADÍSTICO-MINERO-2013.pdf>

⁷⁹ Ibid.

Group reported initiating operations at the Escobal silver mine⁸⁰ and the Fénix nickel mine⁸¹ respectively. In May 2014, the Guatemalan armed forces forcibly dispersed a more than two-year long community protest to enable mining activities to resume at the El Tambor mine project.⁸² Finally, in the municipality of Sipakapa in the area of influence of Goldcorp's Marlin mine, despite the manifestation of strong opposition to mining during community-convened consultation processes in 2005, the Pérez Molina government granted Goldcorp an exploration licence to work on the 'Los Chocoyos' concession.⁸³

It is in this context that we look more in depth at two examples of criminalization, related to Goldcorp's Marlin mine and then Tahoe Resources' Escobal silver project.

Criminalization and Canadian Mining Operations

In their essay on resistance to Goldcorp's Marlin mine, Sibrián and Van Der Borgh observe a tendency during the recent neoliberal period to use legal concepts of "terrorism" and "illicit association" in the processes of criminalization while observing that this tactic tends to be employed as a tool when resistance is growing or tending toward success.⁸⁴ The following recounting draws heavily on Sibrián and Van Der Borgh's work which identified four key moments of criminalization at different points when resistance was gaining momentum against the Marlin mine.

The first moment occurs in late 2004 and early 2005, when Indigenous communities in the department of Quetzaltenango blocked mine equipment from traveling to the Marlin mine site after months of trying to get information from the national government about mining projects. From December 2, 2004 until January 11, 2005, they stopped a large cylinder for the mine mill along the highway at Sololá until some 1,000 police and military were brought in to repress the demonstration. Raúl Castro was killed and some twenty others injured as a result of the state's violent reaction to the protest. Then Minister of the Interior Carlos Vielman publicly accused Mayor Dominga Vásquez of having organized the protest, ordering her arrest and accusing her of "terrorism, sabotage, threats, injuries and damages to private property." Another 15 people also faced legal processes as a result.

The second instance of criminalization took place in response to growing resistance to the company's project around the same time, but in the immediate area in which it was working. The exploitation licence for the Marlin mine straddles the municipalities of San Miguel Ixtahuacán and Sipakapa where local residents recall that company representatives had not been transparent about their plans, having originally told them that they were looking for orchids, not silver and gold.⁸⁵ In the absence of any process of prior consultation to seek their consent, on June 18, 2005, thirteen communities in the municipality of Sipakapa held plebiscites during which those who participated overwhelmingly voted against mining on their territory.

⁸⁰ Tahoe Resources Inc., Press Release, "Tahoe Announces Commercial Production at Escobal," January 14, 2014; <http://www.tahoeresourcesinc.com/tahoe-announces-commercial-production-at-escobal/>

⁸¹ David Hill, The Guardian, "Central America's biggest nickel mine reopens amid violent clashes," July 24, 2014; <http://www.theguardian.com/environment/2014/jul/24/central-american-guatemala-biggest-nickel-mine-reopens-amid-violent-clashes>

⁸² Quimy De León, Santiago Bastos and Nelton Rivera, Prensa Comunitaria, "La Puya: el gobierno manda por un tubo el diálogo y desaloja violentamente," May 24, 2013; <http://comunitariapress.wordpress.com/2014/05/24/la-puya-el-gobierno-manda-por-un-tubo-el-dialogo-y-desaloja-violentamente/>

⁸³ Consejo Maya Sipakapense and Consejo del Pueblo Maya (CPO), "Sistema de Justicia Ampara al Consejo Maya Sipakapense ante Licencia Minera 'Los Chocoyos'," July 23, 2014.

⁸⁴ Anabella Sibrián and Chris Van Der Borgh, 2014.

⁸⁵ MiningWatch Canada, "Undermining human rights: A report back from northwestern Guatemala," December 22, 2010; <http://www.miningwatch.ca/article/undermining-human-rights-report-back-northwestern-guatemala>

For its part, the company undertook several legal challenges. First, it sought a court injunction against the Municipality of Sipakapa a week before the vote, questioning the constitutionality of the consultation process. This injunction was not granted. Concurrently, lawyers for the company initiated a legal process against the regulation for the consultation. Two years later, the Constitutional Court upheld the right of the municipality to convene the plebiscite, although it found that one article in the regulation establishing the consultation results as binding was unconstitutional. At the same time, the company tried to obtain an injunction against the Human Rights Prosecutor for having issued a resolution against the firm, without success.

Third, once the mine was in operation and in a context of increasing tensions from social divisions and negative impacts that the mine has had, the company used criminalization against local protests. In August 2007, seven people were arrested in connection with a confrontation between mine workers and residents earlier in the year. In December, five were absolved of charges and freed for lack of evidence, while two were fined and sentenced to two years of house arrest for crimes of coercion, instigation to commit a crime and causing injury. Meanwhile, during this same year, opponents to the mine reported further violence, including a raid, two people disappeared and the beheading of an activist, none of which were investigated further.

Then, in early 2008, Gregoria Crisanta Pérez asked the company to remove a post that had been installed on her land for high power electrical lines to the mine. When her complaint went ignored for six months, on June 11th, she short-circuited the power line, leaving the mine without power for several days. The company immediately filed a complaint with the Public Ministry and on June 14th, mine workers entered her property accompanied by police and restored power to the mine. Three days later, the District Attorney ordered the arrest of Gregoria Crisanta and seven other women from the community of Agel for the crime of aggravated usurpation. The company expanded the complaint a day later to include accusations of inciting to commit a crime, threats against security services of public utility and disobedience. By June 23rd, the National Police had an order to proceed with the arrests, which — while never executed — remained in place for four years.

As a result of these warrants, Gregoria Crisanta and the other women experienced ongoing stress and anxiety, as they faced tremendous stigmatization within their community. The local development committee even denied Gregoria Crisanta participation in a potable water project as punishment.⁸⁶ After a year-long drive undertaken by the women's organization *Movimiento Tzununija'*, their arrest warrants were finally overturned on May 18, 2012.⁸⁷ During this well-planned political, legal and socio-economic strategy, the women participated in a process of Mayan spiritual healing and political education in order to prepare to give their declarations in court.⁸⁸ As part of the court decision, the company finally removed the post from Gregoria Crisanta's property.⁸⁹

Sibrián and Van Der Borgh observe that these cases demonstrate the partiality of the justice system and public armed forces, given the promptness with which they respond to the company, while complaints from local community members about violence or criminal behaviour in connection with the conflict over the mine go unattended and remain in impunity. They add that even when community complaints gained international recognition, this failed to make a significant difference locally.⁹⁰

This brings us to the fourth stage of criminalization that Sibrián and Van Der Borgh identify, in the period after the Inter American Commission on Human Rights issued precautionary measures for 18 Maya Mam

⁸⁶ *Movimiento de Mujeres Indígenas Tx'ununija'*, "Sistematización: Caso legal de ocho mujeres de San Miguel Ixtahuacán, San Marcos," December 2012.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Anabella Sibrián and Chris Van Der Borgh, 2014.

communities in the immediate area of the Marlin mine in May 2010.⁹¹ The apparent likelihood that the mine would be shut down immediately aggravated tensions locally and in July 2010, Diodora Hernández Cinto was shot by two men with known connections to the mine, causing her to lose an eye as a result.⁹² The perpetrators were never fully investigated nor were IACHR's orders to ensure the physical integrity, health and adequate water supplies of the communities, including the immediate suspension of the mine, ever fully applied. Rather, the government initiated a dialogue with municipal authorities without any participation from those opposed to the mine and was thus able to bring about a modification in the IACHR's orders a year and a half later that dropped the suspension order.⁹³ The complaint before the IACHR continues, having been admitted for consideration on its merits in March 2014.⁹⁴

Sibrián and Van Der Borgh's accounting of events at the Marlin mine leads them to conclude that criminalization is "one of the tools that the powerful use to legitimate the displacement of subaltern groups, having on their side a fragile democracy and a past in which violence, infiltration of institutions and control of information have been used to exercise domination."⁹⁵ They view it as a strategy combining legal, political and psycho-social elements, such as is evident in the diverse ways that Goldcorp has sought to undermine local consultation processes, and has enjoyed privileged backing from armed forces and state agencies — including from the Canadian state as mentioned earlier — to assert their interests. This means that local complaints go unaddressed even when they gain international attention, and local opponents are made to suffer prolonged legal persecution and physical violence. The authors do not, however, see the exercise of power around mining projects as being monolithic or even well planned: "The reality is much more disorganized; although along the way new alliances are formed and modes of action discovered."⁹⁶

In this latter regard, we can only speculate about the strategies Goldcorp and Tahoe Resources may have shared and how these strategies may have influenced the way in which the Escobal project has been imposed on Indigenous and non-Indigenous communities in the southeastern departments of Santa Rosa and Jalapa. The two corporations have a close relationship such that Tahoe is effectively a spin-off company from Goldcorp. Former CEO and President of Goldcorp Kevin McArthur left the larger company to found Tahoe Resources in which Goldcorp is a majority shareholder with 40% of the company's shares.⁹⁷ Tahoe Resources purchased the Escobal project from Goldcorp in June 2010⁹⁸ and six of Tahoe's eight directors are or were close associates of Goldcorp or its predecessor Glamis Gold.⁹⁹

However, the corporate relationship is just one factor given that Tahoe's project has ramped up in tandem with former general Otto Pérez Molina's administration. In this context, we observe that criminalization around the Marlin mine and Tahoe Resources' Escobal project demonstrate some similarities, including the threatening of visible community leadership, legal challenges against community consultation processes and criminalization of acts of protest that target vulnerable community members. Further to this, at the Escobal

⁹¹ MiningWatch Canada, "OAS Human Rights Commission Urges Suspension of Mining Activity at Goldcorp's Marlin Mine in Guatemala," May 24, 2010; <http://www.miningwatch.ca/oas-human-rights-commission-urges-suspension-mining-activity-goldcorps-marlin-mine-guatemala>

⁹² Anabella Sibrián and Chris Van Der Borgh, 2014.

⁹³ CIEL and MiningWatch Canada, "Human Rights Commission's Climbdown a Wake-up Call for Human Rights Defenders in the Americas, Not Indicator of Goldcorp's Performance," January 5, 2012; <http://www.miningwatch.ca/news/human-rights-commissions-climbdown-wake-call-human-rights-defenders-americas-not-indicator>

⁹⁴ Inter American Commission on Human Rights, "Informe No. 20/14: Petición 1566-07 Informe de Admisibilidad: Comunidades del Pueblo Maya Sipakapense y Mam de los Municipios de Sipakapa y San Miguel Ixtahuacán, Guatemala," April 3, 2014.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Tahoe Resources, Corporate Presentation, September 2014; <http://www.tahoeresourcesinc.com/wp-content/uploads/2014/08/TahoeResources-Sep-Presentation.pdf>

⁹⁸ Tahoe Resources, Press Release, "Tahoe Resources Inc. Announces Closing of Initial Public Offering and Acquisition of Escobal Project," June 8, 2010; <http://www.tahoeresourcesinc.com/acquisition-of-escobal-project/>

⁹⁹ See: <http://www.tahoeresourcesinc.com/company-information/board-of-directors/>

mine, we observe what seems to be an intensification of repression in terms of the proliferation of cases of criminalization, violence and especially the militarization of local communities in order to generate fear, intimidation and distrust that has enabled the company to put its project into operation in 2014.¹⁰⁰

Since 2011, communities living in the area of the Escobal mine have peacefully resisted the project through marches and community referenda. More than half of the communities in the municipality of San Rafael Las Flores, where the Escobal project is located, have declared opposition to the mine.¹⁰¹ In five neighbouring municipalities, in the departments of Santa Rosa and Jalapa, tens of thousands of people have participated in formal municipal referenda and voted against the project.¹⁰²

Tahoe Resources, with the help of the Guatemalan government and the powerful Guatemala Chamber of Commerce, used three main strategies to try to prevent people from opposing the mine. The first strategy was to challenge the legality of municipal referenda in two lawsuits brought to the Constitutional Court. In both cases, the Constitutional Court dismissed the cases, finding that citizens have a right to express their views regarding whether or not they are in favour of mining.¹⁰³

The second strategy was to prevent referenda from taking place at all, as was the case where the Escobal mine has been installed: in San Rafael Las Flores, no official municipal referendum took place because the mayor refused to allow it¹⁰⁴ despite a community request. From late 2011 throughout the first half of 2012, numerous frivolous allegations were made against leaders of the Committee in Defense of Life and Peace of San Rafael Las Flores, including a complaint filed by a representative of Tahoe Resources' subsidiary on November 20, 2011 alleging kidnapping, terrorism and forceful entry by five leaders of the group. Legal representatives of the committee also faced accusations of violence against women and femicide.¹⁰⁵ As a result, by early 2013, local organizers decided to hold referenda at the village level in San Rafael Las Flores. The results of eight out of nine held to date have been overwhelmingly against mining.¹⁰⁶ Representatives of more than half of the communities in the municipality have also signed declarations against the mine.¹⁰⁷

¹⁰⁰ Tahoe Resources Inc., January 14, 2014.

¹⁰¹ Network in Solidarity with the People of Guatemala / NISGUA, Tahoe Investor Alert, (May 8, 2013).

https://www.nisgua.org/investor_alert_tahoe_8may13.pdf

¹⁰² Prensa Libre, Oswaldo Cardona, "Vecinos deciden sobre minería," August 7, 2011; http://www.prensalibre.com/santa_rosa/Vecinos-Casillas-deciden-mineria_0_531546964.html; Prensa Libre, "Realizan consulta Comunitaria sobre minería en Mataquescuintla," November 11, 2012; http://www.prensalibre.com/jalapa/Consulta-Mineria-Jalapa_0_808719174.html; La Hora, "Comunitarios de Jalapa rechazan minería," November 12, 2013; <http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/186632-comunitarios-de-jalapa-rechazan-mineria->

¹⁰³ Expedientes Acumulados No. 2432-2011 and 2481-2011, Constitutional Court, Guatemala, December 5, 2012; Expedientes Acumulados No. 4639 and 4646-2012, Constitutional Court, Guatemala, December 4, 2013; El Periódico, Álvaro Montenegro, "CC valida consulta sobre mina en Mataquescuintla," December 10, 2013; <http://www.elperiodico.com.gt/es/20131210/pais/239405/>

¹⁰⁴ NISGUA, "Tahoe Investor Alert," May 8, 2013, See appendix A, "Declaration of COCODES from San Rafael las Flores," December 6, 2012; https://www.nisgua.org/investor_alert_tahoe_8may13.pdf

¹⁰⁵ Diocesan Committee in Defense of Nature (CODIDENA), "Criminalización, Difamación y Estigmatización de las Comunidades a Causa de Minera San Rafael," no date.

¹⁰⁶ Danilo Zuleta, "Consulta San Juan Bosco," Video Published, April 2, 2013; http://www.youtube.com/watch?v=G28A_eEHm0A; Prensa Libre, "Pobladores Organizan Consulta Comunitaria," February 28, 2013; http://www.prensalibre.com/santa_rosa/Pobladores-organizan-consulta-comunitaria_0_874112638.html; El Periódico, "La población de San Rafael Las Flores se opone a la minería," March 25, 2013; <http://www.elperiodico.com.gt/es/20130325/pais/226317>; Comunidades de Población en Resistencia, "Tres Consultas de Buena Fe se llevarán a cabo este 21 de Abril en San Rafael las Flores," April 17, 2013; <http://cpr-urbana.blogspot.ca/2013/04/tres-consultas-de-buena-fe-se-llevaran.html>; CERIGUA, "Continúan consultas de buena fe, resisten explotación minera," April 16, 2013; http://cerigua.org/1520/index.php?option=com_content&view=article&id=13294:continuan-las-consultas-de-buena-fe-poblacion-resiste-a-la-explotacion-minera-&catid=65:santa-rosa&Itemid=38; El Periódico, "Tensiones en Jalapa tras asesinato de líder xinca," March 19, 2013; <http://www.elperiodico.com.gt/es/20130319/pais/226108>; Panorama Noticias, "Continúa consulta comunitaria de buena fe en la Aldea Sabana Redonda," January 12, 2014; <http://panoramanoticias.com/?p=8232>

¹⁰⁷ NISGUA, "Tahoe Investor Alert," May 8, 2013; https://www.nisgua.org/investor_alert_tahoe_8may13.pdf

Intentions to carry out further consultations have been stymied by militarization in the area, described in detail below.

The third strategy was to use force to quell social protest against the mine. Since 2011, there have been nearly 90 legal cases filed against peaceful protesters and community leaders.¹⁰⁸ An incident report dated July 2012 and attributed to Alberto Rotondo, the former security manager for Tahoe Resources, appears to recommend that a criminalization strategy be undertaken against those opposed to the mine, urging “a strategic legal and public media communications campaign to prove the involvement of the groups responsible for these actions, especially the involvement of the Catholic Church so that the authorities are forced to take legal action against them.”¹⁰⁹ On September 17, 2012, 31 people were arrested during a peaceful protest. According to the Network in Solidarity with the People of Guatemala (NISGUA), “community members, many active members in the local Catholic parishes, were charged with terrorism and arson, accusations that were finally thrown out more than six months later when a judge ruled there was insufficient evidence to proceed to trial.”¹¹⁰ Another 26 were detained on April 11, 2013, reportedly on private property and without an arrest warrant.¹¹¹ People were protesting at the time because the Ministry of Energy and Mines had just approved the exploitation license for the Escobal project, dismissing without due process over 200 official complaints that local residents had filed against the license based on their concerns about the potential environmental and health impacts of the mine.¹¹² All 26 were freed without charge four days later.¹¹³

Finally, militarization and violence have also been used to stifle protests against the Escobal project. Notably, in June 2012, Tahoe filed a suit against the Guatemalan government stating that protests were hindering its operations and claiming that the State was not doing enough to allow its exploration and construction activities to proceed.¹¹⁴ The Constitutional Court dismissed the suit in February 2013. Nonetheless, on March 26, 2013, the Guatemalan government secretly commenced a pilot initiative in San Rafael Las Flores called the “Interinstitutional Group on Mining Affairs” that frames opposition to mining as a threat to national security.¹¹⁵ The Governmental Accord drawn up to create the group was presented to the General Attorney’s office, but never officially published. It states that the group’s purpose is “To draw up recommendations, policies, strategies and political, social, economic and security projects for the National Security Commission in order to provide holistic attention to the security problems created by natural resources exploration and extraction.”¹¹⁶ Coronel Ricardo Bustamante, Technical Secretary for the National Security Commission oversees the group.¹¹⁷ Locally, it is a low profile office on the edge of San Rafael Las Flores that was

¹⁰⁸ NISGUA, Communications with the Center for Environmental Legal and Social Action in Guatemala City, April 2013 and April 2014; NISGUA, “Criminalization of violence erupt in the shadow of the Escobal mine,” September 25, 2012; http://nisgua.blogspot.com/2012/09/criminalization-and-violence-erupt-in_25.html; NISGUA, “Guatemalan gov’t declares state of siege in municipalities surrounding Tahoe Escobal mine,” May 3, 2013; <http://nisgua.blogspot.com/2013/05/guatemalan-govt-declares-state-of-siege.html>; NISGUA, “Communities of Santa Rosa and Jalapa denounce criminalization of leaders opposing Tahoe Resources’ Escobal mine,” July 5, 2013; <http://nisgua.blogspot.ca/2013/07/communities-of-santa-rosa-and-jalapa.html>

¹⁰⁹ Ibid.

¹¹⁰ NISGUA, “Report reveals company strategy to criminalize opposition to Escobal mine,” October 7, 2013; <http://nisgua.blogspot.ca/2013/10/report-reveals-company-strategy-to.html>

¹¹¹ CODIDENA, no date.

¹¹² MiningWatch Canada, NISGUA and Center for International Environmental Law (CIEL), “Guatemala: Tahoe’s Mining Licence Approved in Wake of Violence; Investigation into Murder Pending,” April 8, 2013; <http://www.miningwatch.ca/news/guatemala-tahoes-mining-licence-approved-wake-violence-investigation-murder-pending>

¹¹³ CODIDENA, no date.

¹¹⁴ Expediente 2728-2012, Corte de Constitucionalidad, Guatemala, February 26, 2013, Apelación de Sentencia de Amparo

¹¹⁵ Plaza Pública, Oswaldo J. Hernández, “El Gobierno crea en secreto un Grupo Interinstitucional de Asuntos Mineros,” July 16, 2014; <http://www.plazapublica.com.gt/La%20oposición%20a%20la%20miner%C3%ADa%2C%20la%20nueva%20amenaza%20a%20la%20seguridad%20nacional>

¹¹⁶ Ibid.

¹¹⁷ Ibid.

established with the help of Tahoe Resources¹¹⁸ and that goes under a different name: “The Interinstitutional Office for Comprehensive Development.” Guatemalan Minister of the Interior Mauricio López Bonilla has remarked, “Its role is to figure out what has failed” and, “We believe as a state, when we attract foreign investment, it is important to provide accompaniment from start to finish.”¹¹⁹ Tahoe Resources refers to it as a “High Level Commission [...] to address community issues and oversee security matters.”¹²⁰ Guatemalan activists call it “counterinsurgency” and “a military intelligence operation.”¹²¹

That same month, on April 27, 2013, Tahoe’s private security group shot and injured seven men who were peacefully protesting outside the mine site.¹²² While Tahoe blamed outside influences,¹²³ Tahoe’s head of security, Alberto Rotondo, was arrested as he was trying to leave the country.¹²⁴ Rotondo remains under arrest awaiting trial for his alleged role in the attack.¹²⁵ On May 2nd, the Guatemalan government imposed a state of siege for about a month in municipalities that had voted against the project.¹²⁶ The state blamed delinquency as necessitating this action, but it is widely held that the state of siege was intended for the communities that had been peacefully protesting the mine project through protests and community consultation processes. Twelve members of the *Committee in Defense of Life and Peace of San Rafael* had their homes raided by police and military forces, and at least 18 had warrants issued for their arrest.¹²⁷ Five were arrested and made to suffer months in jail.¹²⁸ All eighteen have been absolved of charges for lack of evidence.

Tension and a climate of fear persist given ongoing militarization. A military post remains in the area since the stage of siege¹²⁹ and the *Interinstitutional Group on Mining Affairs* continues to be present.¹³⁰ This, and continued violence, have slowed organization of community consultations. Notably, on April 13, 2014, a well-known leader of the Mataquescuintla youth movement against mining, Merilyn Topacio Reynoso Pacheco, was murdered. She was 16 years old. Her father, Alex Reynoso, a community leader and key representative of the *Peaceful Resistance in Defense of Natural Resources of Mataquescuintla*, was shot four times and is in intensive care in the hospital.¹³¹ Alex Reynoso is recognized for his role in organizing a community consultation in this municipality. Guatemalan authorities have yet to arrest anyone in connection with this crime.¹³²

¹¹⁸ Tahoe Resources Inc, Annual Information Form, March 12, 2014, p12.

¹¹⁹ Plaza Pública, July 16, 2014.

¹²⁰ Tahoe Resources Inc, March 12, 2014.

¹²¹ Plaza Pública, July 16, 2014.

¹²² Prensa Libre, “Incidente deja seis heridos de bala frente a mina San Rafael,” April 29, 2013;

http://www.prensalibre.com/santa_rosa/personas-resultan-incidente-San-Rafael_0_909509181.html

¹²³ Tahoe Resources, Press Release, “Tahoe Clarifies Reports Regarding Incidents Near Escobal Project,” May 1, 2013;

<http://www.tahoeresourcesinc.com/tahoe-clarifies-reports-regarding-incidents-near-escobal-project/>

¹²⁴ Ministerio Público de Guatemala, “Juez autorizó orden de aprehensión contra ex jefe de seguridad de Mina San Rafael,”

January 23, 2014; <http://www.mp.gob.gt/2014/01/juez-autorizo-orden-de-aprehension-contra-ex-jefe-de-seguridad-de-mina-san-rafael/>

¹²⁵ La República, Peru, “Justicia de Guatemala solicita captura de ex marino peruano,” February 8, 2014;

<http://www.larepublica.pe/08-02-2014/justicia-de-guatemala-solicita-captura-de-ex-marino-peruano>

¹²⁶ El Periódico, S.Menchú/A.Montenegro/ O.Archila, “Estado de Sitio se decretó por hechos delictivos, dice Pérez,” May 3, 2013;

<http://www.elperiodico.com.gt/es/20130503/pais/227769>

¹²⁷ Network in Solidarity with the People of Guatemala (NISGUA), “Communities of Santa Rosa and Jalapa denounce criminalization of leaders opposing Tahoe Resources’ Escobal mine,” July 5, 2013;

<http://nisgua.blogspot.ca/2013/07/communities-of-santa-rosa-and-jalapa.html>

¹²⁸ Emisoras Unidas, “Capturados en estado de Sitio en Jalapa aún no son escuchados,” May 13, 2013;

<http://noticias.emisorasunidas.com/noticias/nacionales/capturados-estado-sitio-jalapa-aun-no-son-escuchados>; Prensa Comunitaria, Nelton Rivera, “Sufrimos mucho, pero sabemos que pronto nos vamos a reponer,” November 27, 2013; <http://comunitariapress.wordpress.com/category/jalapa/>

¹²⁹ MiningWatch Canada, Personal observations during visit to San Rafael Las Flores and Mataquescuintla, August 1-4, 2014.

¹³⁰ Plaza Pública, July 16, 2014.

¹³¹ Nina Lakhani, “Guatemala’s growing mining sector brings violence against indigenous communities with it,” April 29, 2014;

<http://www.globalpost.com/dispatches/globalpost-blogs/rights/guatemala-growing-mining-sector-violence-against-indigenous-communities>

¹³² Network in Solidarity with the People of Guatemala / NISGUA, “International organizations demand justice in deadly attack against opponents of Tahoe Resources’ mine,” May 1, 2014; <http://nisgua.blogspot.com/2014/05/international-organizations-demand.html>

PERU

On World Environment Day 2009, a fifty-eight day stand-off on a road that connects Peru's northern highlands with the Amazon ended in violence, leaving at least 33 dead, including 23 police officers and 10 civilians, and an estimated 200 people wounded, mostly civilians.¹³³ The 'Baguazo' as it is now known — named after the nearby town of Bagua — revealed a system in crisis. The Awajún and Wampi Indigenous people who made up the majority of demonstrators were not just protesting large-scale oil, mining and logging projects on their territories (including a Canadian-owned gold exploration project),¹³⁴ but rather a whole series of legislative reforms that threatened to open up their lands to exploitation under the pretext of implementing the US Peru Free Trade Agreement.¹³⁵



In Peru, police now have a licence to kill. From 2006 to 2014, 230 people were killed and 3,318 wounded in connection with socio-environmental conflicts.; Photo: Thomas Quiryren and Mariike Deleu. CATAPA

Since the Baguazo, few lessons have been put into practice. The bloodshed and the national and international attention on the conflict did compel the government to develop a law for prior consultation of indigenous peoples that was passed in 2011. Nonetheless, modifications were made almost immediately to this law after its passage to ensure that consultation with Indigenous peoples would not upset state economic development plans.¹³⁶ Furthermore, criminal investigations following the events at Bagua in which 52 people are implicated have put "the Awajún and Wampi peoples on trial."¹³⁷ Legal processes have

¹³³ Jennifer Moore, Upside Down World, "Peru and Ecuador: A Common Enemy," July 30, 2009;

<http://upsidedownworld.org/main/peru-archives-76/2021--peru-and-ecuador-a-common-enemy>

¹³⁴ Marco Huaco, Servindi, "Peru: Aportes para una cronología creíble sobre Bagua y que la Comisión oficialista ocultó," January 5, 2010; <http://servindi.org/actualidad/21112>

¹³⁵ Andrew Miller, Amazon Watch, "No Justice for Amazon Massacre in Peru: Trial marks five-year anniversary of Bagua tragedy," June 5, 2014; <http://amazonwatch.org/news/2014/0605-no-justice-for-amazon-massacre-in-peru>

¹³⁶ José De Echave C., Cooperación and The North-South Institute, "Guests at the Big Table? Growth of the Extractive Sector, Indigenous/Peasant Participation in Multi-Partite Processes, and the Canadian Presence in Peru," December 2010.

¹³⁷ Patricia Wiese and Gerardo Saravia, "El Banquillo de los inocentes (y el solaz de los culpables)," *Ideele Revista* No. 239, September 6, 2014; <http://revistaideele.com/ideele/content/el-banquillo-de-los-inocentes-y-el-solaz-de-los-culpables>

proceeded far more rapidly against Indigenous suspects than against a handful of police.¹³⁸ Not one politician is being investigated, despite widespread belief that the orders to fire came from the executive government.¹³⁹ Furthermore, lack of evidence, trumped up charges and possible life sentences for some half dozen Indigenous people are just some of the aspects of these cases that lay bare the biases within the Peruvian justice system.¹⁴⁰ And these cases are just one example of hundreds today in which people from mining-affected communities are being criminalized, punished and killed for their efforts to defend their land, water, and community life. The discriminatory policies of the Lima and transnational elite, being imposed through police and military force on Amazonic and Andean communities, represent a tremendous threat, graphically illustrated in the exponential increase of mining and oil concessions and related activities on campesino and indigenous lands.

In 2007, then President Alan García published a widely read, highly polarizing editorial in *El Comercio* entitled "The Dog in the Manger" in which he vilified anyone who contested his policies. He deemed Indigenous, highland farming and artisanal fishing communities as the main obstacle preventing Peru from benefiting from economic growth through resource extraction, calling these communities obstinate, uneducated, and lazy. He continued by adding that environmentalists are dressed-up communists and another barrier to contend with.¹⁴¹ Under García's presidency, from 2006 to 2011, some 196 people were killed and another 2,369 wounded in connection with repression of socio-environmental conflicts.¹⁴²

High levels of violence and repression against mining-affected communities, frequently smeared as terrorists, prompted Canadian independent journalist Stephanie Boyd to comment: "It feels as though we've slipped through a time warp to the early 1990s when Peru was embroiled in a bloody civil war with leftist guerrillas [...] However, today Fujimori's 'dirty war' methods have been privatized [...] we've exchanged iron-fisted dictators and state terrorism for executives in pin-striped suits orchestrating corporate terrorism."¹⁴³

The current administration of President Ollanta Humala promised change, but Boyd more recently remarked that despite electoral promises of a "Great Transformation," in which the government committed to "listen to farming and indigenous communities" and said "water was more important than gold,"¹⁴⁴ the results have been disappointing with criminalization and violent repression still the norm.¹⁴⁵

As of mid 2014, the Peruvian Observatory of Mining Conflicts, an NGO consortium, reported the toll against those who dissent: 40 dead under Humala's administration¹⁴⁶ and 949 wounded¹⁴⁷ with 400 facing legal persecution under accusations that companies, company staff or public prosecutors have made, including for

¹³⁸ Juan José Quispe Capacyachi, "A cinco años del Baguazo... ¿hay justicia para todos?" June 4, 2014; <http://servindi.org/actualidad/106531#more-106531>

¹³⁹ Patricia Wiese and Gerardo Saravia, September 6, 2014.

¹⁴⁰ Ibid. See also: Servindi, "Peru: Analizan criminalización de protestas indígenas," July 3, 2014; <http://servindi.org/actualidad/107962>

¹⁴¹ Alan García Pérez, *El Comercio*, "El síndrome del perro del hortelano," October 28, 2007.

¹⁴² Grupo de formación e intervención para el desarrollo sostenible (GRUFIDES), Society for Threatened Peoples Switzerland, Human Rights without Frontiers and the National Human Rights Coordinating Committee (CNDDHH), "Police in the Pay of Mining Companies: The responsibility of Switzerland and Peru for human rights violations in mining disputes," December 2013; http://assets.gfbv.ch/downloads/report_english_def_2_12_13.pdf

¹⁴³ Stephanie Boyd, *New Internationalist*, "The ticking bomb," Issue 427, November 1, 2009; <http://newint.org/features/2009/11/01/state-corporate-terror/>

¹⁴⁴ Stephanie Boyd, *Al Jazeera*, "Peru's great transformation," June 18, 2012; <http://www.aljazeera.com/indepth/opinion/2012/06/2012614113713713304.html>

¹⁴⁵ Ibid.

¹⁴⁶ Cooperación, Grufides and Fedepaz, "14° Observatorio de Conflictos Mineros en el Perú: Reporte primer semestre 2014," July 15, 2014.

¹⁴⁷ Red Muqui, "Red Muqui rechaza aprobación de la Ley 30151," January 17, 2014; <http://derechoshumanos.pe/2014/01/red-muqui-rechaza-aprobacion-de-la-ley-30151/>

rebellion, terrorism and violence among other charges.¹⁴⁸ Furthermore, states of emergency have been imposed in two regions where communities have been resisting or protesting project impacts, and one local governor, who had been calling for dialogue, was jailed while his involvement in a local strike was investigated.¹⁴⁹ Whether communities are resisting extractive projects or trying to negotiate better conditions near existing operations, mainstream media commentators continue to smear them as terrorists¹⁵⁰ or as “a small minority of violent extremists.”¹⁵¹ Journalists and trade unionists have also been targets of a range of threats.¹⁵² And while Humala has argued that he is “defending the rule of law,”¹⁵³ it is clear who the law has been designed to protect and who public and private security forces now serve.

Boyd, who has lived in Peru since the mid 90s, has observed how former officials from Fujimori’s former bloated intelligence service and military — highly trained in counterinsurgency tactics and surveillance techniques - now lead private security firms that contract out to foreign firms across the country.¹⁵⁴

A recent report co-authored by Swiss and Peruvian human rights and environmental groups examined the implications of a law introduced under Fujimori in 1999 that permits companies to contract police or soldiers for protection services and who may use their state-issued uniforms and weapons while on the job.¹⁵⁵ According to this law, companies can request permanent police presence, rapid deployment of large-scale forces in the case of suspected protests, as well as routine patrols with the aim of “preventing, detaining and neutralizing threats.”¹⁵⁶ The report identified at least 13 such contracts with different companies, including several Canadian firms,¹⁵⁷ and analyzed 8 of these. Seven were pacted with the national police and 1 with the army.¹⁵⁸ Frontline Defenders remarks that “the perception that the police force is on the side of mining companies and against the community is compounded by the reported use by police of means and resources, including vehicles, provided by those companies.”¹⁵⁹

Turning the Law Against Communities

Criminal code reforms to criminalize dissent and protest have been gradually put in place, beginning with anti-terrorism measures enacted under the Fujimori regime, including vague definitions established for crimes such as extortion and kidnapping.¹⁶⁰ The administration of Alejandro Toledo (2001-2006) also enacted several reforms aimed at stiffening penalties and making it more difficult to organize road blockades.¹⁶¹

Under Alan García’s presidency (2006-2011) a series of decrees — which were justified as part of a crack down on organized crime — broadened the already vague definition of extortion to include actions not

¹⁴⁸ Frontline Defenders, “Environmental Rights Defenders at Risk in Peru,” June 2014; <http://www.frontlinedefenders.org/peru-reportonhumanrightsdefenders>

¹⁴⁹ Stephanie Boyd, Al Jazeera, June 18, 2012.

¹⁵⁰ José De Echave C., Cooperación, “Todos Son Terroristas,” February 1, 2013; <http://www.cooperacion.org.pe/opina/43-cooperacion-opina/91-todos-son-terroristas>

¹⁵¹ Frontline Defenders, June 2014.

¹⁵² Ibid.

¹⁵³ Stephanie Boyd, Al Jazeera, June 18, 2012.

¹⁵⁴ Stephanie Boyd, New Internationalist, November 1, 2009.

¹⁵⁵ Lynn Holland, The Council on Hemispheric Affairs (COHA), “The House on the Mountain: How Mining Corrodes Democracy in Peru,” July 30, 2014; <http://www.coha.org/the-house-on-the-mountain-how-mining-corrodes-democracy-in-peru/>

¹⁵⁶ GRUFIDES, Society for Threatened Peoples Switzerland et al, December 2013.

¹⁵⁷ These include Teck as a part owner of the Antamina mine, Sulliden Gold Corp as full owner of the Shahuindo project, and Xiana Mining Inc (formerly Dorato Resources Inc.) and its Cordillera del Condor project.

¹⁵⁸ GRUFIDES, Society for Threatened Peoples Switzerland et al, December 2013.

¹⁵⁹ Frontline Defenders, June 2014.

¹⁶⁰ Wilfredo Ardito Vega, Servindi, “Peru: La criminalización de la protesta en el gobierno de Alan García,” August 26, 2008; <http://servindi.org/actualidad/4549>

¹⁶¹ Ibid.

intended to obtain an economic advantage, which could include many acts of protest, with possible sentences of up to 25 years in prison.¹⁶² His reforms also put elected officials at risk of jail for participating in protests;¹⁶³ extended the period of preliminary detention up to seven days and preventative detention up to seventy two months;¹⁶⁴ enabled the deployment of the armed forces in public security operations, including related to protests and demonstrations;¹⁶⁵ permitted evidence from cases already closed to be used in legal processes;¹⁶⁶ and instituted rules aimed at national and international NGOs such that they should orient their work with government policy or risk losing their legal status.¹⁶⁷ Military forces were also permitted to intervene in police operations to maintain order and the use of lethal force was allowed in order to protect private property and “in fulfillment of the assigned mission,” which is left poorly defined.¹⁶⁸

Most recently, in January 2014, Humala’s administration was criticized for giving armed forces ‘a licence to kill’ with the passage of Law No. 30151.¹⁶⁹ According to Frontline Defenders, this law “granted members of the armed forces and the national police exemption from criminal responsibility if they cause injury or death, including through the use of guns or other weapons, while on duty.”¹⁷⁰ Humala, a former army captain during Fujimori’s rule, who himself has been accused of crimes of torture and forced disappearances, has also named other former army friends to high posts, including Víctor Gómez, former head of security at the Antamina copper mine, to head the National Intelligence Service. The Antamina mine is owned 33.75% by Glencore (Switzerland), 33.75% BHP Billiton (Australia), 22.5% Teck (Canada) and 10% Mitsubishi Corporation (Japan).¹⁷¹

In this context, we turn to look at the model of mineral extraction that has been installed in Peru since the start of the Fujimori dictatorship, and the role of Canadian companies and the Canadian state in this process.¹⁷²

Canadian Economic Interests and the Mining Model in Peru

In June 2009, when state armed forces cracked down on Awajún and Wampi people demonstrating near Bagua, Canadian legislators gave the Canada Peru Free Trade Agreement final approval and royal assent.

Canadian government representatives remained silent about the violence at Bagua.¹⁷³ Then Minister of State for Foreign Affairs Peter Kent wasn’t worried: “There were no Canadian companies involved or affected, so the linkage that folks might make shouldn't be made, because our free trade agreement and this tragedy don't have any obvious or visible connections.”¹⁷⁴ This was not, however, true, given that a Canadian mining company, Xiana Mining Inc. (formerly Dorato Resources Inc.), and its mining project in the northern Amazon

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Frontline Defenders, June 2014.

¹⁶⁶ Stephanie Boyd, *New Internationalist*, November 1, 2009.

¹⁶⁷ Wilfredo Ardito Vega, *Servindi*, August 26, 2008.

¹⁶⁸ Ibid.

¹⁶⁹ Frontline Defenders, June 2014.

¹⁷⁰ Ibid.

¹⁷¹ Stephanie Boyd, *Al Jazeera*, June 18, 2012.

¹⁷² Cooperación, GRUFIDES and Fedepaz, “Observatorio de Conflictos Mineros en Perú: Reporte primer semestre 2014,” July 15, 2014; http://www.cooperacion.org.pe/OCM/XIV_OCM_2014-07-15.pdf

¹⁷³ Dawn Paley, *Georgia Straight*, “Canada ratifies Peru trade agreement, stays silent on Amazon massacre,” June 18, 2009; <http://www.straight.com/article-233864/canada-ratifies-peru-free-trade-agreement-stays-silent-amazon-massacre>

¹⁷⁴ Michelle Collins, *Embassy Magazine*, “Peruvian Violence Prompts Concerns Over Canada’s Push for Free Trade Deals,” June 24, 2009; http://www.embassymag.ca/page/view/puruvian_violence-6-24-2009

along the border between Peru and Ecuador was one of the flashpoints for protests.¹⁷⁵ Also, the model that Canada has been promoting in Peru is part of the same neoliberal project that the García government was trying to entrench through diverse pieces of legislation to privatize Indigenous and campesino lands and territories.

Peru adopted a neoliberal mining law in 1992, under the authoritarian regime of the now imprisoned ex dictator Alberto Fujimori (1990-2000). The World Bank, the Inter-American Development Bank, and the International Monetary Fund had conditioned new loans to Peru based on a commitment to implement the structural adjustment program, with the World Bank providing technical and financial support for reforms in the mining sector. The General Mining Law of 1992 entered into force at a time when Fujimori had suspended the Constitution, dissolved the Congress, and weakened the judicial system.¹⁷⁶ The reforms kicked off a process to privatize state mining operations. Administrative procedures were simplified to make permitting easier and conditions upon which companies could lose mining titles, and convert mineral rights to property rights was limited. This meant that companies could not be seized without ensuring economic compensation and due process of law. The agrarian sector was deprioritized in the 1993 political constitution and the Ministry of Energy and Mines was charged with responsibility for all decisions related to the mining sector, including environmental licenses.

Canadian investments in Peru grew between 1993-1997 and then again in tandem with rising commodity prices starting in 2003.¹⁷⁷ Canadian mining companies played a role in every single privatization process in the mining sector with varying success,¹⁷⁸ and a number of Canadian major mining companies gained a key stake in the Peruvian mining sector. For example, Barrick Gold's two open-pit gold mines are only second to the Yanacocha mine¹⁷⁹ in terms of gold extraction. Today, HudBay Minerals is currently a top investor in the mining sector,¹⁸⁰ given investments the company is making to build the new Constancia open pit copper mine, part of current copper mining expansion in southern Peru.¹⁸¹

As of 2011, Natural Resources Canada reported approximately \$4 billion CAD in mining assets in Peru. Today, Canada is the third most important foreign investor in the Peruvian mining sector after China and the US.¹⁸² In 2014, the Department of Foreign Affairs, Trade and Development estimated that there were 89 Canadian companies operating in country,¹⁸³ the majority of them exploration companies with an estimated 225 projects.¹⁸⁴ In addition, there is substantial Canadian involvement in technical and financial advisory services to the mining sector.¹⁸⁵

Increasing mining rents and mineral production have not been a panacea for rural and indigenous communities. Peru is now the world's third producer of copper, silver, and tin, fourth of molybdenum, and

¹⁷⁵ Marco Huaco, Servindi, January 5, 2010.

¹⁷⁶ Bonnie Campbell, Etienne Roy-Grégoire and Myriam Laforce, "Regulatory Frameworks, Issues of Legitimacy, Responsibility, and Accountability: Reflections drawn from the PERCAN initiative," in *Governance Ecosystems: CSR in the Latin American Mining Sector*, Ed. Julia Sagebien and Nicole Marie Lindsay, Palgrave Macmillan, November 2011.

¹⁷⁷ José De Echave C., Cooperación and The North-South Institute, December 2010.

¹⁷⁸ José De Echave C., Cooperación and The North-South Institute, "Guests at the Big Table? Growth of the Extractive Sector, Indigenous/Peasant Participation in Multi-Partite Processes, and the Canadian Presence in Peru," December 2010.

¹⁷⁹ The Yanacocha mine is jointly owned by Newmont (51.35%), Minas Buenaventura (43.65%) and the International Finance Corporation (5%).

¹⁸⁰ Ministry of Energy and Mines, Boletín Estadístico del Subsector Minero, November 2014.

¹⁸¹ Alfredo C. Gurmendi, U.S. Geological Survey, October 2014.

¹⁸² Alfredo C. Gurmendi, U.S. Geological Survey, October 2014.

¹⁸³ DFATD, August 15, 2014.

¹⁸⁴ El Comercio, "La Bolsa de Valores de Toronto quiere captar mineras peruanas," May 31, 2013; <http://elcomercio.pe/economia/1583436/noticia-bolsa-valores-toronto-quiere-captar-mineras-peruanas>

¹⁸⁵ José De Echave C., Cooperación and The North-South Institute, December 2010.

fifth of gold and lead.¹⁸⁶ In Latin America, it is first for gold, tin and lead, and second for copper, silver and molybdenum.¹⁸⁷ Between 2001 and 2012, Peru sustained an economic growth rate averaging 6.3%, largely driven by mining.¹⁸⁸ However, Oxfam's 2013-2014 annual report for Peru underlines that inequality in the country remains comparable to that of the 1980s and 1990s. Furthermore, Oxfam notes that poverty is concentrated in rural areas, as well as in certain regions, including where extractive industries are well installed, such as Cajamarca. The report also observes that the heavy focus on extractive industry "does not create significant numbers of quality jobs nor chains of production that have a significant impact in the rest of the economy" thus contributing to high levels of inequality.¹⁸⁹

Tied Aid

The history of Canada's engagement supporting the neoliberal agenda in Peru dates back to at least 1998. Since that time, the focus of Canadian-supported programs and projects have been largely premised on corporate self-regulation, emphasizing corporate social responsibility, multistakeholder dialogue and, increasingly, partnerships between mining companies and non-governmental organizations in mining-affected areas.

From 1998-2011, CIDA had a \$17.7 million CAD agreement with the Peruvian Ministry of Energy and Mines (MEM) for the Peru-Canada Resources Reform Project (PERCAN).¹⁹⁰ The project's main objective was "the mitigation of 'violent crises,' in which the desirability of carrying out mining activity and its priority over the other uses of the soil and its resources has been determined *a priori*."¹⁹¹ As such, PERCAN focused on projects to develop things like a handbook about mining for Indigenous communities, and to propose technical fixes and multistakeholder dialogue, rather than cultivating respect for community rights to self-determination and a decisive say over their land and futures.¹⁹²

Despite its central objective, during the period that the PERCAN project was underway, the number of conflicts and levels of violence in mining-affected communities rose dramatically in tandem with the exponential rise in mining investment in Peru that followed skyrocketing commodity prices. From 2004 to 2014, total mining investments in Peru rose from \$396 million USD to \$9,724 million USD, an increase of some 2300%, which the Peruvian government hopes to more than double in coming years as it aspires to compete with Chile for copper extraction. Parallel to this, socioenvironmental conflicts rose to an estimated 211 today, including latent and active conflicts.¹⁹³ The extent of the territorial threat becomes apparent in the vast extent of mining concessions that have been granted during this time, covering an estimated 25.7 million hectares or some 20.2% of the surface area of Peru's national territory.¹⁹⁴ In 2007, when just two thirds of the current area had been granted in mining concessions, already some 55% of Peru's some 6,000

¹⁸⁶ Alfredo C. Gurmendi, "The Mineral Industry of Peru," in 2012 Minerals Yearbook: Peru, U.S. Geological Survey, October 2014, <http://minerals.usgs.gov/minerals/pubs/country/2012/myb3-2012-pe.pdf>

¹⁸⁷ Proinversión, "Por qué Invertir en el Perú?", January 2015, http://www.proinversion.gob.pe/RepositorioAPS/0/0/JER/PRESENTACIONES_GENERAL/PPT_Por%20que%20invertir%20en%20Peru_enero%202015.pdf

¹⁸⁸ Roberto Machado, "La agenda de equidad en el Perú: mucho más que un tema ético," in Buscando El Cambio: Apuestas Para un Perú Más Incluyente: Informe Annual Perú 2013-2014, Oxfam, April 2014.

¹⁸⁹ Ibid.

¹⁹⁰ Bonnie Campbell, et al, November 2011.

¹⁹¹ Ibid.

¹⁹² Bonnie Campbell, et al, November 2011.

¹⁹³ Cooperación, Grufides and Fedepaz, July 15, 2014.

¹⁹⁴ Ibid.

campesino communities were in affected areas.¹⁹⁵ It is worth noting that some 65% of Amazonian indigenous communities are affected by hydrocarbon concession blocks.¹⁹⁶

Ten years of unsuccessful Canadian interventions led Lima-based Cooperación and the former North-South Institute in Ottawa to conclude: “Canada’s — and particularly CIDA’s — approach, priorities and actions are not innovative but instead tend to repeat schemes that have proven unsuccessful. The emphasis on corporate social responsibility and self-regulation has led to projects focusing on the short-term need of companies to obtain the social-license to operate, rather than on the medium- or longer-term vision of sustainable development and peace. The project-site interventions overshadow the key role that should be played by the region’s social organizations as well as by local authorities, who represent the Peruvian state in these locations.”¹⁹⁷

Nonetheless, since 2011, Canadian aid to Peru’s extractive sector has increased and its focus is little changed. As of 2009, Canada was the top aid donor to Peru’s mineral extraction sectors,¹⁹⁸ and currently has commitments of some \$67 million CAD in overseas development aid to projects aimed at influencing natural resource management at the national, regional and local levels in Peru and to foster partnerships between NGOs and mining companies in mining-affected areas.¹⁹⁹ This total does not include contributions to the energy sector. Mining companies involved in partnership projects to date include Canadian and other foreign firms, such as Barrick Gold, Antamina (joint-owned by BHP Billiton, Glencore, Teck and Mitsubishi Corporation), Rio Tinto and others.

Peru is also a priority country for the recently established Canadian International Resources and Development Institute (CIRDI, established 2012),²⁰⁰ a Canadian government funded initiative to further influence policies and institutions governing the natural resource sectors in other countries.²⁰¹ Being very clear about whose interests this institute is supposed to serve, former International Development Minister Julian Fantino promised industry at a meeting of the Mining Association of Canada in 2013 that the Institute “will be your biggest and best ambassador.”²⁰²

The Public-Private Partnership Model

Barrick Gold and World Vision have had a partnership since 2007 at the company’s Lagunas Norte project in the department of La Libertad. Recently, the project obtained Canadian aid funding, although the mine

¹⁹⁵ Anthony Bebbington, Michael Connarty, Wendy Coxshall, Hugh O’Shaughnessy and Mark Williams, “Mining and Development in Peru with Special Reference to the Rio Blanco Project, Piura,” Peru Support Group, March 2007.

¹⁹⁶ José De Echave C., Cooperación and The North-South Institute, December 2010.

¹⁹⁷ José De Echave C., Cooperación and The North-South Institute, December 2010.

¹⁹⁸ Canadian International Development Agency, “Peru: Country Strategy,” Effective as of 2009; <http://www.international.gc.ca/development-developpement/assets/pdfs/countries-pays/Peru-Country-Strategy-2009.pdf>

¹⁹⁹ This is the total amount of funds committed to projects in Peru through seven projects funded with Canadian overseas development aid, including projects numbered A034599-001, A034599-002, A034537-003, A034222-001, A035352-001, A034591-001 and D000359-001 on the Canadian International Development Project Browser. See: <http://www.acdi-cida.gc.ca/cidaweb/cpo.nsf/fWebCSAZEn?ReadForm&idx=00&CC=PE>

²⁰⁰ See: <http://cirdi.ca/>

²⁰¹ MiningWatch Canada, “Brief: The Canadian International Institute for Extractive Industries and Development (CIEID),” March 4, 2014; <http://www.miningwatch.ca/article/brief-canadian-international-institute-extractive-industries-and-development-cieid>

²⁰² Kim Mackrael, The Globe and Mail, “‘Huge opportunities’ for Canadian mining industry to work in developing countries,” June 19, 2013; <http://www.theglobeandmail.com/news/politics/huge-opportunities-for-canadian-mining-industry-to-work-in-developing-countries/article12670581/>

project remains the subject of persistent complaints over contaminated water supplies²⁰³ and jobs.²⁰⁴ This is an example that illustrates how NGO-mining company partnerships and the Corporate Social Responsibility (CSR) approach can undermine community attempts to address the negative impacts from large-scale mining.

In 2012, the Interprovincial Association for the Defence of Environmental Rights, a committee involving communities from three provinces affected by Barrick's Lagunas Norte gold project, complained to the Canadian Minister of International Development that as a result of Barrick's CSR projects: "communities have been divided, and parallel organizations to those that already existed have been formed, through which existing organizations have been denied representation in projects that [Barrick's local subsidiary] planned."²⁰⁵ They added, "Multiple times we have provided technical studies that demonstrate that their activities are contaminating our water sources. But they do not want to recognize these studies, for which reason we believe that they will most likely continue their contaminating practices [...] We feel cheated by these and other so-called social responsibility activities because this has not helped to reduce poverty nor to address exclusionary processes."²⁰⁶ The Association concluded its letter asking CIDA to stop funding partnerships and to "monitor the activities of this company in our country, and coordinate with the state such that the rights of those affected by its activities would be respected."²⁰⁷

Mining diplomacy

In addition to tied aid and the promotion of partnerships with mining companies, the Canadian government asserts its influence in Peru through the Canadian Embassy. So far, Wikileaks has provided us with one of the most telling insights.

Toward the end of the Toledo administration, in August 2005, a Wikileaks cable from the US Embassy in Lima laid out how Canadian and US Ambassadors lobbied on behalf of major mining companies operating in Peru, encouraging measures to criminalize growing dissent. The cable describes a meeting between a group of diplomats and major mining companies, the purpose of which was "to review their operating difficulties... and to coordinate efforts to improve the investment climate."²⁰⁸ Representatives from major companies such as Newmont, BHP Billiton and Toronto-based Barrick Gold were present, and Swiss, Australian and British diplomats attended, along with Canada and the US. The US cable calls this set of embassies, a "diplomatic mining group."²⁰⁹

According to the leaked cables, the company representatives described their projects as under attack, blaming leftist political parties, local campesino organizations, as well as drug traffickers and NGOs. The company representatives asked the group of diplomats to urge the Peruvian government to encourage a rotation of teachers in conflictive mining communities, and for the Catholic Church to rotate bishops in these regions. They also complained that political parties had not spoken out about what they described as "anti-mining violence." Without any hint of concern for violence communities were facing, the "diplomatic mining group"

²⁰³ David Hill, "Canadian mining doing serious environmental harm, the IACHR is told," The Guardian, May 14, 2014; <http://www.theguardian.com/environment/andes-to-the-amazon/2014/may/14/canadian-mining-serious-environmental-harm-iachr>.

²⁰⁴ Reuters, "Peru villagers end protest at Barrick gold mine," February 27, 2013; <http://www.reuters.com/article/2013/02/27/barrick-peru-idUSL1N0BR5TE20130227>.

²⁰⁵ Letter to the Honorable Bev Oda signed by representatives of Interprovincial Association for the Defence of Environmental Rights and sent on April 12, 2012.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Guardian, "US Embassy Cables: Mining companies worry about security" January 31st 2011, <http://www.guardian.co.uk/world/us-embassy-cables-documents/38881>

²⁰⁹ Ibid.

signaled that they could help out. The US Ambassador said embassies could do more to promote the benefits that mining brings to the country and that, “pending key information from the mining companies,” they were “ready to meet as a group with the [government of Peru], Catholic Church and political party leaders.”²¹⁰

Shortly after this meeting, the Canadian Embassy approached at least one Canadian NGO working in Peru. According to one account, the Embassy notified Canadian Lutheran World Relief that “it had to end its funding of Peruvian NGOs that questioned forms being taken by mining development, and that did legal defence work for affected populations. This work, it was told, was a foreign relations problem for Canada. If CLWR did not end support to these NGOs, it would lose its co-financing support from the Canadian government. Peruvian NGOs receiving this support were informed of this termination in October 2005.”²¹¹

In recent years, since the 2009 ratification of the Peru Canada Free Trade Agreement and most concerted between 2012 and 2014, Peru and Canada have held a considerable number of high level meetings. Governor General David Johnston²¹² and Minister of International Development Diane Ablonczy visited Peru during 2012.²¹³ In 2013, Prime Minister Harper became the first standing Canadian Prime Minister to visit Peru²¹⁴ and in April 2014, President Humala followed with a visit to Ottawa.²¹⁵ The official press release announced pacts, including “to improve the environmental impact assessment process for mining and energy projects as well as support to natural resource governance.”²¹⁶ While Canada’s direct role is unclear, shortly after Humala was in Ottawa, he rushed through reforms to weaken Peru’s nascent and still weak environmental institutions, justified as necessary to remove red tape to help attract investment.²¹⁷

On July 3rd, while the FIFA World Cup captured the attention large numbers of Peruvians, the Humala administration rushed through a package of laws. Among other things, these laws stripped the Ministry of the Environment (MINAM) of its jurisdiction over air, soil and water quality standards and of its ability to establish protected areas,²¹⁸ and the Organization for Environmental Monitoring and Inspection (OEFA) was ordered to put a cap on fines, which will now be issued only under exceptional circumstances, when human life or health is affected.²¹⁹ Furthermore, as of August 2014, at least 14 companies are suing Peruvian Government over increases in a tax meant to cover costs of environmental inspections and oversight.²²⁰ Notably, MINAM was only created in 2008, without sufficient budget and with a limited range of responsibilities, while OEFA only took over environmental monitoring of approved mining projects in 2010.²²¹

²¹⁰ Guardian, January 31, 2011.

²¹¹ Anthony Bebbington et al, Peru Support Group, March 2007.

²¹² The Governor General of Canada, “Official Visit to Peru,” November 30 to December 2, 2012; <http://www.gg.ca/document.aspx?id=14856&lan=eng>

²¹³ Tiempo Minero, “Perú y Canadá acuerdan promover programas de inclusión social y minería responsable,” March 21, 2012; <http://www.tiempominero.com/peru/3029-peru-y-canada-acuerdan-promover-programas-de-inclusion-social-y-mineria-responsable->

²¹⁴ Stephanie Boyd, “Harper in Peru: What Media Failed to Report,” The Tyee, May 30, 2013; <http://thetyee.ca/Opinion/2013/05/30/Stephen-Harper-Peru/>

²¹⁵ Prime Minister of Canada, “Canada-Peru Relations, Delivering on Commitments and Moving Forward,” April 10, 2014; <http://pm.gc.ca/eng/news/2014/04/10/canada-peru-joint-statement>

²¹⁶ Government of Canada, “Canada-Peru Joint Statement,” May 22, 2013; http://www.canadainternational.gc.ca/peru-perou/highlights-faits/2013/2013-05-22_JointStatement_DeclarationConjointe.aspx?lang=en

²¹⁷ Isabel Calle, “Paquete de medidas para el crecimiento significan un grave retroceso ambiental,” Servindi, June 24, 2014; <http://servindi.org/actualidad/107393>

²¹⁸ Lynn Holland, The Council on Hemispheric Affairs (COHA), July 30, 2014.

²¹⁹ Ivan Lanegra, “Ambiente bajo control,” June 20, 2014, <https://ensayosestado.lamula.pe/2014/06/20/ambiente-bajo-control/ilanegra/#>

²²⁰ Milagros Salazar, IPS, August 14, 2014.

²²¹ Milagros Salazar, “Mining Firms in Peru Mount Legal Offensive Against Inspection Tax,” IPS, August 14, 2014, <http://www.ipsnews.net/2014/08/mining-firms-in-peru-mount-legal-offensive-against-inspection-tax/>

Canadian companies at the centre of conflict

Throughout, and despite the pretensions of Canadian aid sponsored projects to “mitigate ‘violent crises,’” the violence and criminalization of dissent has gotten worse, with Canadian-owned mine projects as a source of conflict. This includes mines in operation, mines about to be put into operation and mineral deposits that are in the process of exploration.

Barrick Gold’s Pierina open-pit gold mine in the department of Ancash impacts a number of Quechua indigenous communities who have raised ongoing complaints about water contamination and water sources drying up. In operation since 1998, and now in the process of closure, police responded to a protest in September 2012 over the lack of clean water in the community of Marinayoc with tear gas and bullets. Nemesio Poma Rosales was wounded in the attack and died later in hospital, while six others were injured.²²² Protests in 2005 and 2006, over mine wages, environmental impacts and inadequate tax and royalty payments ended in police repression when three were killed and some 20 wounded.²²³ As of November 2014, Peru’s Ombudsman’s office was still reporting two conflicts between communities and Barrick Gold over lack of adequate water supplies.²²⁴

Mere weeks before HudBay Minerals announced that it began production at its Constanca open-pit copper mine in December 2014, local communities protested. And not for the first time.²²⁵ In November, several hundred people protested on the future site of the open-pit because of the company’s failure to live up to promises related to environmental monitoring, jobs and social projects.²²⁶ Women in particular claimed of having been left out of talks with the company and were in disagreement with a contract signed in 2012.²²⁷ Community members demanded the presence of company management saying that trust had deteriorated with local company officials. Human Rights Without Borders in Cusco carried out a visit to the protest in front of the company’s mine in mid November and observed how national police were both inside and outside of the company gates, some dressed in ponchos with company logos and others using company vehicles.²²⁸ Police behaviour sent a clear message to protesters about whose side they were on. So did the provincial governor, who refused protective measures for community members, but was willing to grant them for company representatives.²²⁹

Protesters complained that on November 10, 2014 two youth were detained and beaten by police within the mine site.²³⁰ According to the Peoples’ Ombudsman Office, on November 13, 2014, police again repressed protesters and seventeen were hurt.²³¹ The protest ended when the community entered into negotiations with the company, insisting that they would protest again if the dialogue breaks down.²³² One television media interview blamed people from outside for organizing the protest and characterized it as an “invasion”

²²² Luis Manuel Claps, “Surviving the Pierina Mine: The Marinayoc Community and its Struggle for Clean Water in the Andes,” in *Debunking Barrick*, protestbarrick.ck, April 2013.

²²³ CAOI, “Vulneración de derechos y conflictos sociales: Barrick en Ancash,” June 22, 2011, <http://alainet.org/active/47522&lang=es>.

²²⁴ Defensoría del Pueblo, “Reporte de Conflictos Sociales No 129,” November 2014.

²²⁵ La República, “Chamaca se opone al proyecto minero Constanca y pide más aporte económico,” April 3, 2013; <http://www.larepublica.pe/03-04-2013/cusco-chamaca-se-opone-mina-constanca-y-pide-mas-aporte-economico>

²²⁶ Stephanie Boyd, “Conflict at Canadian mines in Peru highlights empty promises of climate talks”, December 5, 2014; <http://www.straight.com/news/784546/stephanie-boyd-conflict-canadian-mines-peru-highlights-empty-promises-climate-talks>

²²⁷ Derechos Humanos Sin Fronteras – Cusco, “Informe Conflicto Comunidad Campesina Ucchucarco y la Empresa Minera HudBay,” November 14, 2014.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Defensoría del Pueblo, “Reporte de Conflictos Sociales No 129,” November 2014.

²³² Ibid.

and the community members as “enemies of development” who want to “stop the country’s progress.”²³³ For its part, the company also challenged the legitimacy of the protest in statements to a Flin Flon, Manitoba paper in which HudBay’s representative claimed that the protest was “manipulated by outside interests.”²³⁴ Meanwhile, the Ombudsman Office continues to report two active conflicts over HudBay’s Constancia operation, including with Uchucarco and a second community in the area complaining about environmental impacts.²³⁵

The known risks of large-scale mining to water supplies, lands and lives has also led numerous communities in Peru to oppose mining projects well before they start.

Opposition from the town of Tambogrande, Piura gained notoriety after the murder of leading community activist Godofredo García Baca in 2001 and the municipal plebiscite in 2002 in which townspeople voted overwhelmingly against Manhattan Minerals’ plans to displace half the population to build an open pit gold mine.²³⁶

The Baguazo (as detailed above) is another potent illustration of the costs to life when governments refuse to listen and respect the self-determination of affected peoples. The Baguazo is now engrained in popular awareness in Peru and is what ultimately drove the Peruvian government to develop a prior consultation law that was passed in 2011. The law presumes to address “the need to achieve consent between the State and Indigenous or Aboriginal Peoples regarding legislative or administrative measures that affect them directly.”²³⁷ Nonetheless, a month after its approval, under pressure from the Executive Branch, the law was modified, including an observation that stated that “consultations should not hinder or prohibit the State from establishing measures in the general interest of the Nation [...] [adding] that the law on consultation ‘implies the risk of delaying or hindering the country’s development.’”²³⁸ This heralded the limited way in which this law would be applied (or not) while the Peruvian state, with strong backing from close associates such as the Canadian government, fail to premise decisions on respect for peoples self-determination and prior consent before mining concessions are granted and projects undertaken. As such, principally highland communities facing the onslaught of new exploration projects in Peru continue to be targets for stigmatization, police repression, criminalization, and social division.

The struggle of the Quechua Indigenous community of San Juan de Cañaris in the northern department of Lambayeque against Canadian-based Candente Copper company is emblematic of how state-backed violence and criminalization persists – even forcing Indigenous people to prove their Indigeneity – while these underlying issues go unaddressed.

²³³ La Hora con Jaime de Althaus, “Conjura radical contra la mina Constancia en el Cusco,” Published on November 21, 2014; <https://www.youtube.com/watch?v=5DxduAM1YqA>

²³⁴ Jonathan Naylor, “In brief: Hudbay resolves occupation of Constancia mine, Peru,” Flin Flon Reminder, December 12, 2014; <http://www.thereminder.ca/news/local-news/in-brief-hudbay-resolves-occupation-of-constancia-mine-peru-1.1661891>

²³⁵ Defensoría del Pueblo, Website accessed January 26, 2015: <http://www.defensoria.gob.pe/conflictos-sociales/conflictosactivos.php?it=8>

²³⁶ Kaitlyn Duthie, “Local Votes and Mining in the Americas,” May 14, 2012; <http://www.miningwatch.ca/article/local-votes-and-mining-americas>

²³⁷ José De Echave C., Cooperación and The North-South Institute, December 2010.

²³⁸ Ibid.

Cañaris: “We are community members and we want to defend our lands”

Vancouver-based Candente Copper has been exploring for copper and gold in the community of San Juan de Cañaris, in the province of Ferrnafa, a largely Quechua-speaking agricultural community. The company’s proposal to construct an open-pit mine near the principal source of water for downstream communities in San Juan de Cañaris has given rise to local opposition for which the community has been criminalized and respect for its processes of self-determination denied, despite the new prior consultation law.

In July 2012, a judge with clear intentions to favour the mining company convened a local vote that was poorly attended, with an estimated 200 out of 3,562 on the electoral registry in Cañaris participating.²³⁹ In contrast, on September 30, 2012, a community convened consultation was held by secret ballot with national police and journalists observing. *El Comercio* reported that over 3,000 participated and the vote was 95% against Candente Copper’s proposed open-pit mine and other activities in the zone that threaten the water supplies of these principally agricultural communities.²⁴⁰ Since then, the community has been demanding respect for the results of the September 30, 2012 vote and the annulment of a water permit granted by the National Water Authority, while the company continues to rely on the July 2012 results.

In December 2012, the community announced that it would begin demonstrations against the project. The community called for an indefinite strike to begin on January 20th, based on five demands: respect for the results of the September vote, rejection of a water permit that the National Water Authority had granted to the company (presumably without consideration of current water users), opposition to how the National Dialogue Office had set up talks behind the back of the community, and that the community would welcome dialogue if certain conditions were met. The conditions for such dialogue included: that the company should suspend its activities, that meetings take place in Cañaris, that representatives from their local committee participate together with members of government who are empowered to make decisions, and that talks begin after January 20th.²⁴¹

But the National Office for Dialogue led by Vladimiro Huaroc had already started a dialogue with members of the central and regional government, the company and select community members in favour of the project. It was clear to outside observers and the community that this dialogue was designed to look for a way to get the mining project underway.²⁴² Meetings were taking place in the city of Chiclayo and, in January, when the community San Juan de Cañaris initiated their protest, Huaroc publicly announced that any question about the future of the company’s project was not on the table. The company’s project, he said, “is not stopped and will not stop,” discarding demonstrators as “a radicalized minority.”²⁴³

Some 300²⁴⁴ to 500²⁴⁵ police were sent in to defend the mine site when the protest began on January 20th. On January 24th, the province of Jaen Attorney’s office ordered police to evict people from the road leading

²³⁹ Milton López Tarabochia and Jorge Agurto, “Cañaris, un pueblo al que se le insiste en desconocer su condición originaria,” *Servindi*, February 27, 2014; <http://servindi.org/actualidad/102016>

²⁴⁰ *El Comercio*, “Lambayeque: Población votó en contra del proyecto minero Cañariaco,” October 1, 2012; <http://elcomercio.pe/peru/lima/lambayeque-poblacion-voto-contra-proyecto-minero-canariaco-noticia-1477037>

²⁴¹ *Servindi*, “Perú: Policía provoca a manifestantes pacíficos que defienden Cañaris de presencia minera,” January 22, 2013; http://servindi.org/actualidad/80885?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+Servindi+%28Servicio+de+Información+Indígena%29

²⁴² *Otra Mirada al Día*, “Lección no aprendida: Cañaris,” January 24, 2013; <http://www.otramirada.pe/content/leccion-no-aprendida-cañaris>

²⁴³ *Servindi*, January 22, 2013.

²⁴⁴ *Ibid.*

²⁴⁵ Christian Reynoso, “Somos campesinos y no terroristas,” *La Mula*, January 23, 2013; <http://lamula.pe/2013/01/23/somos-campesinos-y-no-terroristas/noticiasser>

to the proposed mine site²⁴⁶ at which time twenty five community members were injured, five of them seriously. One man, Santos Tantarico Manayai, was reportedly shot with live ammunition.²⁴⁷ The regional chief of police, however, told the media that the police used tear gas and rubber bullets, a version of the story that Vladimir Huaroc sided with.²⁴⁸

Meanwhile, public officials, media commentators and the company tried to discredit the protests, denying that the community had legitimate concerns over their water supply or their future livelihoods, and that the community was being manipulated by outside interests, former members of terrorist groups and people with political interests.²⁴⁹ Candente CEO Joanne Freeze herself blamed the conflict on “underlying ‘business interests’” and people that “have been linked to terrorist groups.”²⁵⁰

Rosa Huamán, the leader for women’s issues in San Juan de Cañaris, responded to the slanderous comments, stating, “We are not led by terrorists nor by leaders from another region. We are all community members and we want to defend our lands, our customs, our cloud forests and water.”²⁵¹ José de Echave from the Lima-based organization Cooperación observed how such an approach, together with the quite explicit assumption from some media commentators that you cannot dialogue with illegitimate protestors or terrorists leaves one alternative: “a heavy hand and further repression.”²⁵²

The heavy hand of the state

While the demonstration was still taking place, the Ministry of the Interior publicly announced that police fronts would be established in mining zones, particularly in northern Peru. He remarked that “mining conflict will persist, so we need to create police fronts in order to protect this activity for the citizenry, to protect mining investment and to ensure that protest is peaceful where it takes place, because protesting is legal.”²⁵³ The Minister could not have been more blatant about whose interests the Peruvian police are expected to serve. *Otra Mirada* commented that the Minister failed to see that “It isn’t the mining conflicts that are the problem, but rather the investments and the concessions that are being granted without due process or popular support. A police front will not ensure that social conflict is suppressed, but rather that there is ever greater possibilities of fatal confrontations.”²⁵⁴ They continued, “If the government would like to stop the protests, it would be better off listening to the affected population, beginning a dialogue before mining concessions are granted and advocate protections for people and the environment.”²⁵⁵

Rosa Humán recently indicated that the police presence persists. Speaking at a hearing before the Inter American Commission on Human Rights in Washington D.C. in October 2014, she remarked, “They won’t

²⁴⁶ Servindi, “Perú: Represión policial en Cañaris deja cinco comuneros heridos de gravedad,” January 25, 2013; http://servindi.org/actualidad/81070?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+Servindi+%28Servicio+de+Información+Indígena%29

²⁴⁷ Servindi, January 25, 2013.

²⁴⁸ Ibid.

²⁴⁹ Cooperación, “El inicio del año, los conflictos y el anuncio de los frentes policiales en zonas mineras,” Boletín Actualidad Minera del Perú, January 2013; <http://www.cooperacion.org.pe/actualidad-minera-nd-164/el-inicio-del-ano-los-conflictos-y-el-anuncio-de-los-frentes-policiales-en-zonas-mineras.html>

²⁵⁰ Tiffany Grabski, “Ombudsman calls for application of prior consultation law at Candente’s Cañariaco Norte,” Business News Americas, January 31, 2013; <http://www.minesandcommunities.org/article.php?a=12127&l=1>

²⁵¹ Cooperación, Boletín Actualidad Minera del Perú, January 2013.

²⁵² José De Echave C., “Todos Son Terroristas,” February 1, 2013; <http://www.cooperacion.org.pe/opina/43-cooperacion-opina/91-todos-son-terroristas>

²⁵³ La República, “Wilfredo Pedraza: Se busca crear frentes policiales en zonas mineras,” January 22, 2013;

<http://www.larepublica.pe/22-01-2013/wilfredo-pedraza-se-busca-crear-frentes-policiales-en-zonas-mineras>

²⁵⁴ Otra Mirada al Día, “Lección no aprendida: Cañaris,” January 24, 2013; <http://www.otramirada.pe/content/leccion-no-aprendida-cañaris>

²⁵⁵ Ibid.

leave us in peace. The government has installed a police post that follows our activities and reports to the mining company and the government.”²⁵⁶ The community’s legal advisor has also reported that after the protests some 200 community members faced legal processes “for presumably having altered the public order during protests against the Cañariaco mining project,” based on complaints filed by representatives of the company, including against one person who has been paralyzed in bed for 10 years.²⁵⁷

While the community was being stigmatized, repressed, criminalized and policed, their Indigeneity was also thrown into question, even though the community of Cañaris has been registered with the state as indigenous since 1956 and has certificates dated 1714 and 1744 that recognize collectively held land title belonging to the Indigenous community of San Juan Bautista de Cañaris.²⁵⁸ Almost immediately after the January 2013 demonstrations, public officials and media commentators started to question whether or not the new Prior Consultation Law should apply to San Juan de Cañaris. One commentator said: “there haven’t been indigenous peoples in the Peruvian highlands or coast since the 16th century,” arguing that the Prior Consultation law could only apply in the Amazon region.²⁵⁹ The Ministry of Energy of Mines refused to give a straight answer, indicating in the press that at least 14 mining projects in the highlands should be subject to prior consultation, but would bypass the process.²⁶⁰ For his part, President Humala questioned the presence of Indigenous peoples in the Peruvian highlands, stating, “In the highlands, the majority are agricultural communities, a result of the agrarian reform process.”²⁶¹

Other, less powerful figures, have been more supportive. The Peoples’ Ombudsmans office stated that the population is Quechua indigenous and should be consulted, arguing however that prior consultation does not constitute a veto.²⁶² The former Viceminister of Interculturality, who dared to publish a list of Indigenous peoples in Peru that includes four highland Andean Indigenous peoples (albeit without the same level of supporting detail included for the forty eight amazonic Indigenous peoples), resigned days after Humala gave this interview.²⁶³ His resignation was one of the most telling indicators on the depth of internal divisions over the applicability of the prior consultation law. It is important to note that this dispute has to do with a lot more than just San Juan de Cañaris: “49.6 percent of the territory of the rural communities in the highlands have mining concessions, as opposed to 1.4 percent for native Amazonian communities.”²⁶⁴

San Juan de Cañaris has not rejected the idea of a state-led consultation process, if it is carried out in good faith.²⁶⁵ However, they reiterate that their consultation of September 2012 should be respected together with their right to free, prior and informed consent, which is not guaranteed in the prior consultation law. This is evidence of the considerable discontent and concern among communities and organizations in Peru that consultations undertaken based on the law will not be binding and will likely fail to guarantee that their input or outright opposition will be respected. In May 2013, San Juan de Cañaris filed a complaint with the

²⁵⁶ Stephanie Boyd, “Conflict at Canadian mines in Peru highlights empty promises of climate talks”, December 5, 2014; <http://www.straight.com/news/784546/stephanie-boyd-conflict-canadian-mines-peru-highlights-empty-promises-climate-talks>

²⁵⁷ Christopher Navarro, “CIDH se pronunció sobre Cañariaco,” July 15, 2013; <http://diariocorreo.pe/ciudad/cidh-se-pronuncio-sobre-canariaco-89359/>

²⁵⁸ La Mula, “Cañaris reconocida como comunidad indígena desde 1956,” May 22, 2013; <https://redaccion.lamula.pe/2013/05/22/canaris-reconocida-como-comunidad-indigena-desde-1956/admin/>

²⁵⁹ Gestión, “Miguel Santillana: “A Cañaris no le corresponde la consulta previa,” January 28, 2013; <http://gestion.pe/politica/miguel-santillana-canaris-no-le-corresponde-consulta-previa-2057641>

²⁶⁰ Nelly Luna Amancio, “ Gobierno sabe que 14 proyectos mineros requieren consulta,” El Comercio, May 5, 2013.

²⁶¹ Ibid.

²⁶² Servindi, “Perú: Defensore del Pueblo ratifica posición sobre consulta en Cañaris y pasivos ambientales,” April 25, 2013; <http://servindi.org/actualidad/86279>

²⁶³ Ibid.

²⁶⁴ Magali Zevallos Rios, “Setback in the implementation of the Prior Consultation law,” May 24, 2013; <http://www.lapress.org/articles.asp?art=6831>

²⁶⁵ Christian Reynoso, La Mula, January 23, 2013.

Interamerican Commission on Human Rights demanding that they be respected as an Indigenous community and that the persecution against community leaders who have been denounced by the company stop.²⁶⁶

In the meantime, this project remains a latent concern in the community²⁶⁷ and this case a glaring example about how the law and the justice system in Peru continues to work in favour of corporate interests.

²⁶⁶ Cooperación, "CIDH pide al estado peruano presentar descargos por caso Cañaris," June 2013; <http://www.cooperacion.org.pe/actualidad-minera-del-peru-169/64-actualidad-minera-del-peru-169/902-cidh-pide-al-estado-peruano-presentar-descargos-por-caso-canaris>

²⁶⁷ RPP Noticias, "Lambayeque: comuneros de Cañaris alertas por reinicio de actividades mineras," January 30, 2015; http://www.rpp.com.pe/2015-01-30-lambayeque-comuneros-de-canaris-alertas-por-reinicio-de-actividades-mineras-noticia_764877.html

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Since Ecuador's new Political Constitution passed in 2008, the state has begun an intense process of legal reform to enable extractive industry expansion in ecologically and culturally important areas of the country. Human rights, environmental and Indigenous organizations have been sounding the alarm about a new wave of criminalization against social protest and dissent.

The 2008 Constitution incorporates important proposals from Indigenous and other social movements in the country. It declares Ecuador to be a plurinational state - a longtime proposal of the Indigenous movement — while promoting food sovereignty, recognizing the right to water, granting rights to nature and enshrining the right to resist acts or omissions of public officials that violate or could violate their rights.²⁶⁸



"We are not terrorists; we defend life and nature". In Ecuador, where most or all companies should have lost their projects in 2008 on the basis of an important constitutional decree, community leaders have been jailed on charges of terrorism. The new mining law provides companies with recourse to Administrative Injunctions that oblige the state to defend them if their activities are impeded.; Photo: Jen Moore

Nonetheless, during successive mandates of the most stable government administration that Ecuador has seen in two decades and one that came to power promising "to bring an end to the long neoliberal night,"²⁶⁹ communities who have long opposed large-scale extractive industry developments in defence of water and ways of life dependent on the land have faced stigmatization from the central government. Community leaders have been criminalized on charges of terrorism, with greater use of arbitrary detention and preventative prison sentences.²⁷⁰ There is well-grounded concern that heightened social control measures could threaten the future of Indigenous and civil society organizations in the country, both national and international.²⁷¹

²⁶⁸ Constitución del Ecuador, Articles 1, 10, 12, 13, 71-83, 98, etc., 2008.

²⁶⁹ El Mundo, "El izquierdista Correa dobla en votos a su rival conservador en Ecuador," November 27, 2009.

²⁷⁰ Amnesty International, "'Para Que Nadie Reclame Nada' ¿Criminalización del Derecho a la Protesta en Ecuador?," July 2012.

²⁷¹ Ivonne Yáñez, Acción Ecológica, "Urgencia del gobierno ecuatoriano por controlar a las organizaciones sociales," September 23, 2013; <http://desinformemonos.org/2013/09/urgencia-del-gobierno-ecuatoriano-por-controlar-a-las-organizaciones-sociales/>

In 2011, Ecuadorian organizations including the Regional Human Rights Advisory Foundation (INREDH), Acción Ecológica and the Ecumenical Human Rights Commission (CEDHU) undertook a detailed analysis of 26 such cases of criminalization. They found that since 2008, 187 individuals have been implicated and have faced charges under criminal, administrative and civil law.²⁷² They observed that community leadership was singled out and allegations made to open up legal processes were made by both the state and companies, including Canadian firms.²⁷³

In July 2012, Amnesty International issued a report which focused on 24 indigenous and campesino leaders criminalized between 2009 and 2010. These cases relate to disputes over the new mining law and the still unapproved new water law that also bears a significant relationship to enabling the nascent mining sector to get underway.²⁷⁴ Amnesty found that “among the methods used in what seems to be a deliberate attempt to block the right to freedom of expression, association and meeting are baseless charges, prolonged investigations, repeat legal actions undertaken by prosecutors to extend the duration of the processes, restrictive bail conditions and charges related to terrorism or illegal obstruction of roads.”²⁷⁵

In November 2012, the UN Committee on Economic, Social and Cultural Rights raised concerns “about investigations and criminal charges against social and Indigenous leaders who have participated in public demonstrations over state legislative initiatives which would impact on natural areas.”²⁷⁶ The committee recommends that Ecuador “establish full guarantees for the right to assemble and demonstrate peacefully, and to regulate the use of force on the part of public forces in the context of social protest.”²⁷⁷ Both Amnesty International and the UN Committee point to the absence of prior consultation and the lack of free, prior and informed consent of Indigenous communities over extractive industry projects as a source of problems.

At the heart of these conflicts are fundamental disagreements between the state, the interests of national and foreign capital in the industrial extractive industry sectors, and Indigenous, environmental and other social movement organizations over what constitutes the best development model for communities and the country. This is characterized as a struggle between the modernization and strengthening of the state based on an economy reliant on intensive primary resource extraction for export, on the one hand. On the other, affected communities, environmental groups and human rights organizations that reject large scale mining and oil expansion, given the steep costs to the future and wellbeing of affected communities, call instead for other development models reliant on effective redistribution of water and land to be favoured.²⁷⁸ Various activists and observers have commented that the costs are not just localized, but have serious repercussions on political life throughout Ecuador.

²⁷² INREDH, Acción Ecológica, CEDHU, “Criminalización a Defensores de Derechos Humanos y de la Naturaleza,” September 2011.

²⁷³ Ibid.

²⁷⁴ Amnesty International, July 2012.

²⁷⁵ Ibid.

²⁷⁶ UN Committee on Economic, Social and Cultural Rights, E/C.12/EQU/CO/3, November 3, 2012.

²⁷⁷ Ibid.

²⁷⁸ This was exemplified during the 2013 Presidential elections in the analysis of differences between the incumbent President Rafael Correa and economist Alberto Acosta who as the candidate for the Plurinational Unity coalition of parties. For example, see: Pablo Ospina Peralta, “Primeras reflexiones sobre una derrota,” February 22, 2013; <http://ecuadorlibrerred.tk/index.php/ecuador/politica/2081-primeras-reflexiones-sobre-una-derrota>. See also: Eduardo Gudynas, Centro Latino Americano de Ecología Social (CLAES), “Alternativas al desarrollo después de las elecciones en Ecuador: Efectos, lecciones y tareas futuras,” *Aportes para las Transiciones: Documentos de Trabajo*, No. 3, March, 2013, p 1-10.

Following the issuing of a highly controversial Executive Decree in June 2013 that aims to clamp down on social organizations of all sorts,²⁷⁹ Ivonne Yáñez from the environmental justice organization Acción Ecológica describes the current context in severe terms: “In order to implement this model of development, which argues that ‘it is necessary to undertake extractivism in order to move away from extractivism,’ the government has to quash resistance, control organizations and social movements, eliminate dissenting voices on environmental issues, annihilate organized sectors on the left and, finally, depoliticize the Ecuadorian population.”²⁸⁰

Several Ecuadorian criminal lawyers and a human rights advocate were asked to comment on reforms to Ecuador’s Criminal Code that went into effect in August 2014. They describe the creation of conditions that further criminalize legitimate social protest and dissent.²⁸¹ Criminal lawyer Ramiro Ramón remarks on the installation of a “state of repression” through legal reforms oriented toward greater social control of all sectors that might express dissent, including broad definitions for crimes such as terrorism that could encompass almost any manner of legitimate protest.²⁸²

NACLA commentator Bret Gustafson is careful to distinguish between the nature of violence against human rights advocates and communities in resistance under neoliberal regimes in Latin America and the kind of oppression seen in a left-leaning country like Ecuador. He nonetheless observes a high cost in terms of political and civil rights in exchange for reentrenched dependency on natural resource extraction: “The crackdowns undermine citizen rights in favor of industry rights: once the state deems extraction inevitable and legal, it can brand even moderate citizen opposition as outside the law. Whether this happens under right-leaning or left-leaning governments in the Americas [...] a government dependent on a narrow-based fossil fuel economy tends to rely on narrow-based legal and political orders – in other words, the erosion of democracy.”²⁸³

Important to the focus of this report, Canadian representatives and corporations have played a significant role in containing the debate over large-scale mining in Ecuador and in participating in and benefiting from the crackdown against mining-affected communities and their allies. Canadian corporations continue to work to open up mineral deposits in long-disputed areas where community leaders and organizations are being criminalized. The following section provides a brief examination of Canadian state and corporate interference in the emergence of Ecuador’s still nascent mining sector.

Canadian Economic Interests and the Mining Model in Ecuador

Early in President Rafael Correa’s first mandate and while the 2008 constitution was being written, the question of whether or not Ecuador should pursue large scale mining at all was on the national table for debate. At that time, Canadian mining companies were the dominant players in Ecuador’s as of yet undeveloped mining industry, in which no mine project had gotten past the advanced exploration stage. Canadian companies felt threatened by proposals being defended in the streets and debated at the National Constituent Assembly (NCA). In response, the Canadian Embassy in Quito “tirelessly” lobbied on behalf of

²⁷⁹ Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador (ECUARUNARI), Demanda de inconstitucionalidad del Decreto Ejectivo Numero 16, August 2013.

²⁸⁰ Ivonne Yáñez, September 23, 2013.

²⁸¹ Plan V, “De disidentes a delincuentes,” February 17, 2014; <http://www.planv.com.ec/historias/politica/disidentes-delincuentes>

²⁸² Ibid.

²⁸³ Bret Gustafson, NACLA, “Close the NGOs: Asserting Sovereignty or Eroding Democracy?” December 31, 2013; <http://nacla.org/blog/2013/12/31/close-ngos-asserting-sovereignty-or-eroding-democracy>

Canadian mining companies to ensure a privileged seat for Canadian mining companies at the dialogue table concerning the new mining law²⁸⁴ and to ensure that their projects were not much affected by a decree to annul most mining concessions in the country.

At that time, Ecuador's mining sector reflected neoliberal mining reforms passed in 2000 with support from the World Bank. Similar to other parts of the region, these gave rise to a largely indiscriminate granting of mining concessions across large expanses of the Ecuadorian highlands and southern Amazonian region. The mining code had also eliminated royalty payments, streamlined environmental assessment procedures, and only permitted Ecuadorian authorities to annul existing mining concessions in cases of failure to meet minimal administrative requirements without consideration for environmental or social impacts. As of 2008, an estimated 20% of Ecuadorian territory was under mining concessions and Canadian mining companies - especially exploration firms²⁸⁵ - dominated the sector.²⁸⁶

A national movement against large scale mining gathered momentum throughout 2007 and 2008, made hopeful by a profound shift away from extractivism during Correa's first mandate.²⁸⁷ The movement united mining-affected communities from the highlands and the southern Amazon were resisting proposed mining projects at the local level. It is a result of their efforts that the prohibition of large-scale mining in Ecuador was considered by the NCA.²⁸⁸ In early 2008, the movement made important gains.

First, in March 2008, the NCA granted amnesty to 357 community activists, recognizing that "men and women in our country have organized in defence of life, natural resources and the environment against companies that have devastated ecosystems; motivated by the lack of care and neglect, affected communities have carried out diverse actions of resistance and protest."²⁸⁹ It acknowledged that charges brought against them were acts intended to repress their defence of "life with dignity and a healthy environment free of contamination."²⁹⁰ Beneficiaries of the amnesty included mining-affected community members involved in conflicts with Canadian companies Copper Mesa Mining,²⁹¹ Aurelian Resources,²⁹² Corriente Resources,²⁹³ Salazar Resources,²⁹⁴ IAMGOLD,²⁹⁵ and the International Minerals Corporation.²⁹⁶

²⁸⁴ Jennifer Moore, The Dominion, "How Good is Canada's Word?: Canada's Corriente Resources is in deep in Ecuador," November 10, 2008; <http://www.dominionpaper.ca/articles/2054>

²⁸⁵ Exploration mining companies, frequently called 'juniors', tend to specialize in the early stages of mining before extraction takes place. Their role often involves characterizing a mineral deposit, laying the social conditions and obtaining the necessary permits to get a project underway. Most sell their projects at a profit to larger mining companies with better access to capital that will mean putting an actual mine into operation. Canadian stock exchanges have specialized in financing this aspect of the globalized mining sector, which is one of the reasons that a large number of exploration firms register in Canada and list on Canadian stock exchanges.

²⁸⁶ Moore, J. and Velásquez, V., "Sovereignty negotiated: anti-mining movements, the state and multinational mining companies under Correa's '21st Century Socialism'", In: *Social Conflict, Economic Development and Extractive Industry: Evidence from South America*, Ed. Anthony Bebbington (2012), London and New York: Routledge.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Amnesty, signed in Montecristi, Manabí by Alberto Acosta then President of the National Constituent Assembly and Dr. Andrés Chávez P., Secretary on March 14, 2008.

²⁹⁰ Ibid.

²⁹¹ Formerly Ascendent Copper, whose Junín project has been renamed Llorimagua and taken over by the state corporate Enami in conjunction with the Chilean state company Codelco.

²⁹² Sold in July 2008 to Kinross.

²⁹³ Sold in August 2010 to Chinese consortium CRCC Tongguan.

²⁹⁴ See: <http://www.salazarresources.com/>

²⁹⁵ IAMGOLD sold its project to INV Metals in which it remains the majority shareholder, in order to continue work on its Quimsacocha project, renamed Loma Larga. For more details about the agreement see INV Metals, Press Release, "INV Metals Announces Closing of the Quimsacocha Project Acquisition," November 12, 2012; <http://www.invmetals.com/s/NewsReleases.asp?ReportID=557321& Type=News& Title=INV-Metals-Announces-Closing-of-the-Quimsacocha-Project-Acquisition>

²⁹⁶ IMC sold its projects in Ecuador to the Chinese company Junefield in April 2013.

Then, a month later, in April 2008, the NCA issued the Mining Mandate, ordering the suspension of all large scale mining activities and the revocation of most mining concessions based on various criteria. Criteria to be applied included for lack of prior consultation with mining affected communities, overlap with sources of water and natural protected areas, and/or owing to additional criteria such as influence trafficking or companies holding title to more than three mining concessions. The decree, which has constitutional ranking, also ordered a new mining law to be written within six months.²⁹⁷

Indicative of the considerable pressure the government was under from the Canadian Embassy and mining companies, Ecuadorian authorities would not wait for the debate over the country's new Magna Carta to finish before launching a dialogue process about the new law. Mere days after the mandate was issued, the Canadian lobby achieved a privileged seat for companies at the table, and it had already been made clear that at least five projects, all belonging to Canadian companies at the time, would not have key concessions revoked.²⁹⁸

While mining-affected communities and social movement organizations were effectively marginalized from the mining law debate, an important shift took place: in order to promote large-scale mining, the public relations campaigns of Canadian mining companies took a back seat to the President's campaign to champion the sector and publicly delegitimize the movement that had risen up against it.²⁹⁹

By October 2008, weeks after Ecuadorians resoundingly approved the new constitution, President Rafael Correa issued a public threat against anyone who questioned the national economic agenda and its heavy reliance on the extractive industry. The view he presented was that Indigenous, campesino and environmental organizations who protested a mining project were either being manipulated or were outright imposters, posers from the city, representatives of NGOs, or foreigners. He stated they would have to face the strong arm of the law for interrupting the country's progress and for denying development to Ecuador's poor majority. Correa countered their claims that fragile areas, water supplies, and agricultural activities or other forms of livelihood might be threatened as a result, believing that risks could be addressed through regulation, improved technology and corporate social responsibility.³⁰⁰

Perversely, despite the conflict that Canadian mining companies had generated and the fact that they had not consulted with communities about their projects which overlapped with important water supplies and fragile ecosystems, the companies were effectively rebranded as good corporate citizens serving the national interest.³⁰¹ As anticipated, the Mining Mandate was not applied to the mining concessions of key Canadian-held projects.³⁰² Rather, mining concessions were principally revoked for non-payment of concession fees and where there was reportedly little potential for significant mineral deposits.³⁰³ Copper Mesa Mining's Junín project in northwestern Ecuador is a notable exception where more than a decade of resistance achieved revocation of the company's two key mining concessions.³⁰⁴

²⁹⁷ Moore, J. and Velásquez, V., 2012.

²⁹⁸ Alonso Soto, "Ecuador plans mining overhaul; wants new deals," January 30, 2008; companies included Aurelian Resources (Fruta del Norte project now sold to Kinross), Corriente Resources (Mirador project and others now sold to Chinese consortium CRCC Tongguan), IAMGOLD, Dynasty Metals, and International Minerals Corporation.

²⁹⁹ Moore, J. and Velásquez, V., 2012.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Amnesty International, "'Para Que Nadie Reclame Nada' ¿Criminalización del Derecho a la Protesta en Ecuador?," July 2012.

³⁰³ Environmental Defenders Law Center (EDLC) and MiningWatch Canada, "Canadian and Chinese-Owned Mining Concessions in Ecuador Illegal – Report," February 5, 2014; <http://www.miningwatch.ca/news/canadian-and-chinese-owned-mining-concessions-ecuador-illegal-report>

³⁰⁴ Latin American Herald Tribune, "Ecuador Pulls Mining Concession from Canada's Ascendant Copper," November 21, 2008; <http://www.laht.com/article.asp?ArticleId=321082&CategoryId=14089>

It is worth speculating whether the limited application of the Mining Mandate could be related to another important aspect of the mining model in Ecuador: the threat that Canadian corporations could sue the state under the Foreign Investment Protection Agreement between Ecuador and Canada (FIPA-EC). The FIPA-EC allows Canadian corporations to bring multi-million dollar suits against the state in foreign arbitration tribunals.³⁰⁵ Evidence that this might have played a role in the limited application of the mining mandate includes lawsuits brought by Copper Mesa Mining and Zamora Gold against Ecuador under the FIPA-EC in July 2010 and December 2009 respectively.³⁰⁶ A third mining company, RSM Production Corporation based in the US, also filed a suit in October 2009 under a US bilateral investment agreement with Ecuador. According to documents from the National Prosecutor's office, only the Copper Mesa suit — a claim for \$120 million — has proceeded past the initial stage.³⁰⁷ The tribunal's final decision is pending.³⁰⁸

The highly partial application of the Mining Mandate is an expression of the tremendous asymmetry in the ways that laws and justice are applied in Ecuador.³⁰⁹ This difference is noted in contrast to the use of the justice system against community and social movement leaders who have faced a new wave of criminalization, despite fighting against mining projects that are illegal according to the Mining Mandate, which remains in effect.³¹⁰

Ultimately, the mining law that was approved in January 2009 did depart from the earlier World Bank-backed law in terms of the creation of a state mining company, the reintroduction of royalties, the creation of a windfall tax and tighter regulatory controls on mining. But it fell far short of the expectations raised by the Mining Mandate in terms of binding community consultation and prohibiting large-scale mining from areas overlapping with water supplies and protected areas, let alone a clear decision to prohibit large-scale mining altogether.³¹¹ Furthermore, it introduced a provision that permits mining companies to file for injunctions to protect their mining activities, in response to which “the Agency for Regulation and Mining Controls will grant an administrative injunction to the title holders of mining rights in response to complaints of entry, looting, invasion or *any disturbance that could impede* their mining activities”³¹² (emphasis ours). This provision is a novel mechanism that mining companies can now use to criminalize local opposition to their mines as has already been done in ten documented cases.³¹³

Furthermore, the mining industry in Ecuador has already successfully pressured the Ecuadorian government to weaken the 2009 mining law, once again with Canadian companies playing a key role.³¹⁴ In June 2013, without prior consultation with Indigenous organizations or any other sector outside of government and industry, the Ecuadorian legislature passed reforms to put a ceiling on royalty payments, to implement the windfall tax only after companies recuperate their investment, to substantially loosen permitting requirements, and to allow mining to take place anywhere in the country, regardless of land use plans.³¹⁵

³⁰⁵ Department of Foreign Affairs, Trade and Development, “Agreement Between the Government of Canada and the Government of the Republic of Ecuador for the Promotion and Reciprocal Protection of Investments,” 1997; <http://www.treaty-accord.gc.ca/text-texte.aspx?id=101522>

³⁰⁶ Procuraduría General del Estado, Dirección Nacional de Asuntos Internacionales y Arbitraje, “Hoja Maestra de Casos: Arbitrajes en Curso,” February 17, 2012.

³⁰⁷ Procuraduría General del Estado, “Cuadro de Casos Dirección Nacional de Asuntos Internacionales y Arbitraje,” May 15, 2014.

³⁰⁸ Ibid.

³⁰⁹ EDLC and MiningWatch Canada, February 5, 2014.

³¹⁰ Ibid.

³¹¹ Moore, J. and Velásquez, V., 2012.

³¹² Asamblea Nacional, Comisión Legislativa y de Fiscalización, “Ley de Minería: Ley 45,” July 16, 2013, Article 63.

³¹³ INREDH, Acción Ecológica, CEDHU, September 2011.

³¹⁴ Xavier Ramos and Katherine Villavicencio, El Universo, “La sinuosa vía hacia la reforma minera,” June 9, 2013; <http://www.eluniverso.com/noticias/2013/06/09/nota/1005836/sinuosa-hacia-reforma-minera>

³¹⁵ Acción Ecológica, INREDH, CEDHU, Asamblea de los Pueblos del Sur, and others, “Pronunciamento por el proyecto de reforma a la ley de minería,” May 31, 2013; <http://www.accionecologica.org/editoriales/1704-pronunciamento-por-el-proyecto-de-reforma-a-la-ley-de-mineria>

Canadian firm Kinross Gold is viewed as having been key to pressuring the Ecuadorian legislature, in which Correa's Alianza País party now enjoys a majority,³¹⁶ especially to limit implementation of the windfall tax.³¹⁷ A group of community-based, environmental and human rights organizations called these latest reforms an effort "to convert Ecuador into a mining country at any cost" and that the idea of "'putting an end to the long neoliberal night,' appears to have meant being ever closer to the beginning of a new extractivist era, with a perhaps even longer and darker mining night."³¹⁸

On the Eve of the 'Long Mining Night'

To date, no large-scale mining project in the country has yet entered into commercial production.³¹⁹ However, the first contract has been signed for a large-scale open-pit copper mine in the southern Amazon, while other exploration projects have resumed activity around the country.

In August 2010, the Chinese consortium CRCC Tongguan acquired the Canadian exploration company Corriente Resources for \$679 million CAD,³²⁰ and became the first company to sign an exploitation contract with the Ecuadorian government in March 2012.³²¹ CRCC Tongguan has initiated construction at the Mirador mine in the province of Zamora Chinchipe in Ecuador's southern Amazon in which both campesino and Shuar Indigenous communities are seriously affected,³²² including by cases of criminalization, violence and state repression, lack of prior consultation and consent, forced displacement, the creation of social divisions, inadequate environmental studies, and labour disputes.³²³ The company currently estimates that the mine will reach the extraction phase in 2017.³²⁴

Additionally, there is now a more complex panorama of corporate interests as projects have changed hands and the new state mining company (ENAMI) has become involved. A contingent of Chinese firms have purchased projects or entered into joint venture agreements, the Southern Copper Corporation (owned by Grupo México) has acquired mining concessions, and ENAMI has struck a collaboration with Chile's state copper company CODELCO. Notoriously, ENAMI has prioritized work on Copper Mesa's former Junín copper-molybdenum project, renamed Llorimagua, in the Intag valley where campesino communities have been opposed to large scale mining for nearly two decades. To facilitate exploration activities in this area of historic resistance, the community president of Junín was jailed in April 2014 on charges of rebellion and sabotage and a *de facto* state of emergency was imposed through an overwhelming police presence in May 2014.³²⁵

³¹⁶ La Hora, "Reforma a la Ley Minera fue aprobada," June 13, 2013; http://www.lahora.com.ec/index.php/noticias/show/1101520981/1/Reforma_a_Ley_Minera_fue_aprobada.html#.VCS8Co6Js2A

³¹⁷ Xavier Ramos and Katherine Villavicencio, El Universo, June 9, 2013.

³¹⁸ Acción Ecológica, INREDH, CEDHU, Asamblea de los Pueblos del Sur et al, May 31, 2013.

³¹⁹ Mercedes Alvaro, The Wall Street Journal, "Ecuador's First Large-Scale Mine to Begin Production in 2017," June 2, 2014; <http://blogs.wsj.com/frontiers/2014/06/02/ecuadors-first-large-scale-mine-to-begin-production-in-2017/>

³²⁰ Bloomberg News, "Tongling, China Railway Plan to Invest \$3 Billion in Ecuador Copper Mine," August 13, 2010; <http://www.bloomberg.com/news/2010-08-13/tongling-china-railway-plan-to-invest-3-billion-in-ecuador-copper-mine.html>

³²¹ China Railway Construction Corporation Limited, "Announcement in Respect of the Mining Contract of Ecuador Mine Entered into Between Ecuacorriente S.A. and the Government of Ecuador," March 6, 2012; <http://english.crcc.cn/Portals/4/E-CRCC-A026-2220AP.pdf>

³²² See more at <http://protectecuador.org/>

³²³ International Federation for Human Rights, CEDHU and MiningWatch Canada on behalf of a group of Ecuadorian notifiers, "Request for review to Canada's National Contact Point under the OECD Guidelines for Multinational Enterprises," July 25, 2013; http://www.fidh.org/IMG/pdf/request_mirador_25july2013_distribution.pdf

³²⁴ Mercedes Alvaro, June 2, 2014.

³²⁵ INREDH, CEDHU, Acción Ecológica and the Ecuadorian Coordinating Committee for the Defence of Nature and the Environment (CEDENMA), "Human Rights Organizations Denounce De Facto State of Emergency in Intag, Ecuador," June 10, 2014; <http://www.miningwatch.ca/news/human-rights-and-environmental-organizations-denounce-de-facto-state-emergency-intag-ecuador>

With regard to Canadian companies, as of 2011, Natural Resources Canada reported that Canadian mining assets in Ecuador were about \$779 million CAD,³²⁶ a distant sixth in South America,³²⁷ and reflective of the ongoing delays that broad community resistance and the distaste of Canadian companies for Ecuador's policies have generated in any new mining projects getting underway. In particular, Kinross Gold was in contract negotiations for the large Fruta del Norte gold project in the southern Amazon around the same time as CRCC Tongguan. These broke down³²⁸ and later failed,³²⁹ based on the company's and its shareholders' dissatisfaction with the tax and royalty rates that the Ecuadorian government was pursuing. Since talks broke down in 2012, however, Kinross continued lobbying for further reforms and in June 2013, without any pretense of prior consultation of Indigenous or any other organizations in Ecuador, the National Assembly passed industry-friendly reforms to the mining law.³³⁰ Among other things, companies will not have to pay a 70% windfall tax on mineral sales over a base commodity price until their initial investment is recovered and royalty payments will be capped at 8% on mineral sales.³³¹ Kinross has since sold the Fruta del Norte project to Vancouver-based Lundin Gold,³³² which is quickly putting in place the team and studies necessary to advance the project toward extraction.³³³

Other Canadian companies, such as Salazar Resources, IAMGOLD (now working through INV Metals exploration company in which it is a majority shareholder)³³⁴ and Cornerstone Capital Resources have also resumed exploration activities on controversial projects.

In the final section, we review the stages of criminalization that have occurred over the last decade in connection with IAMGOLD's gold and silver project in the south-central highland province of Azuay.

Criminalization and Canadian Companies in Ecuador's Southern Highlands

For nearly a decade, in the south central highlands of Ecuador, just south of the country's third largest city of Cuenca, campesino and indigenous communities that depend on farming and dairy production have been fighting against the gold and silver projects of Canadian mining companies, such as IAMGOLD, given

³²⁶ Natural Resources Canada, "Canadian Mining Assets", January 7, 2013.

³²⁷ Chile, Argentina, Brazil, Peru and Colombia are the top countries with the most Canadian mining assets as defined by Natural Resources Canada in South America. Ecuador's investment is about 1.9% of all Canadian mining assets in South America.

³²⁸ Alexandra Valencia, Financial Post, "Kinross: Talks on Ecuador gold mine deal hit impasse," February 17, 2012; <http://business.financialpost.com/2012/02/17/kinross-ecuador-gold-mine-talks-hit-impasse/>

³²⁹ Kinross, Press Release, "Kinross announces it will cease development of Fruta del Norte," June 10, 2013; <http://www.kinross.com/news-articles/2013/061013-kinross-announces-it-will-cess-development-of-fruta-del-norte.aspx>

³³⁰ EFE, "Reforma a la Ley Minera fue aprobada," June 13, 2013; http://www.lahora.com.ec/index.php/noticias/show/1101520981/1/Reforma_a_Ley_Minera_fue_aprobada.html#.VCS8Co6Js2A

³³¹ Lundin Gold, Corporate Presentation, December 12, 2014; http://www.lundingold.com/i/pdf/presentation/2014-12_LUGCP.pdf

³³² Reuters, "Kinross Gold Corp to sell halted Ecuador gold project to Lundin company for \$240 million," October 22, 2014; <http://business.financialpost.com/2014/10/22/kinross-gold-corp-to-sell-halted-ecuador-gold-project-to-lundin-company-for-240-million/>

³³³ Lundin Gold, Press Release, "Engineering Studies Underway for the Development of the World Class Fruta del Norte Gold Project," February 4, 2015; <http://lundingold.mwnewsroom.com/press-releases/lundin-gold-engineering-studies-underway-for-the-development-of-the-world-class--tsx-lug-201502040990602001>

³³⁴ Kip Keen, MINEWEB, "IAMGOLD not 'bailing' on multimillion ounce Ecuador gold project," June 22, 2012; <http://www.mineweb.com/mineweb/view/mineweb/en/page66?oid=153775&sn=Detail&pid=102055>

concerns about the destructive impacts mining could have on their water supplies.^{335,336} Criminalization of local community members and leaders has occurred at each stage of their struggle.

First, throughout 2005, as their struggle began, local dairy farmers participated in a series of scientific studies, protests and meetings with state and company representatives out of concern that IAMGOLD's exploration activities were already contaminating their water supplies. When the process resulted in no greater assurances of protection for their water and when local community members found out that their rural parish president was participating in a company-sponsored study, they felt betrayed by their local government. When they shut down public operations of the parish government office, briefly holding the parish president captive, the rural parish president pressed charges against 18 community members for kidnapping.³³⁷ The office remained closed for three years until elections were held in 2009, during which time the rural parish president continued to meet in private with local parish council members and maintain links with the company.³³⁸ He was not reelected. During this time, IAMGOLD undertook a public relations campaign that found support from the Cuenca press that painted local farming operations as the principal source of water contamination³³⁹ and their demonstrations as violent.³⁴⁰

Second, in 2007, the Environmental Defence Committee from the rural parish of Victoria del Portete and members of the Union of Community Water Systems of Azuay (UNAGUA in Spanish initials), which includes participation from the neighbouring rural parish of Tarqui, joined the National Coordinating Committee in Defence of Life and Sovereignty in the fight against large-scale and open-pit mining nationwide. In June 2007, they participated in demonstrations, including marches and road blockades in order to have their demands heard. State mediation led some groups to temporarily stop protesting and to undertake a study to demonstrate that IAMGOLD's mining concessions had been granted illegally, without prior consultation or due process according to mining regulations. UNAGUA, in particular, was compelled by a personal promise from President Rafael Correa who told them that if he were given the legal arguments to do so in order to avoid IAMGOLD bringing a lawsuit against Ecuador, "[his] hand will not tremble to suspend IAMGOLD's mining concessions."³⁴¹ When a reduced group from the area went back to the streets in late June, police outnumbered protesters and used heavy tear gas. Dozens were reportedly wounded and over thirty-three were detained and charged.³⁴²

In March 2008, those facing legal processes, including all 18 against whom the rural parish president of Victoria del Portete had pressed charges, were granted amnesty by the National Constituent Assembly.³⁴³ It was not long, however, before stigmatization would begin anew and community leaders would face new charges.

After the Mining Mandate was decreed in April 2008 and while a new mining law was rushed through, communities in Azuay province, like others across the country opposed to large-scale mining, were subject

³³⁵ See, for example, Al Jazeera, People and Power, "Ecuador: Water or Gold," September 13, 2010; <http://www.aljazeera.com/programmes/peopleandpower/2010/08/201082585310769297.html>

³³⁶ Moore, J. and Velásquez, V., "Water for Gold: Confronting State and Corporate Mining Discourses in Azuay, Ecuador," In: *Subterranean Struggles: New Dynamics of Mining, Oil, and Gas in Latin America*, Ed. Anthony Bebbington and Jeffrey Bury (2013), University of Texas Press.

³³⁷ Acción Ecológica, INREDH and CEDHU, "Personas criminalizadas en el contexto de Actividades Extractivas y Megaproyectos," 2008.

³³⁸ Tereza Velásquez, "The science of corporate social responsibility (CSR): Contamination and conflict in a mining project in the southern Ecuadorian Andes," In: *Resources Policy*, 37, 2012, p233-240.

³³⁹ Ibid.

³⁴⁰ Moore, J. and Velásquez, V., 2013.

³⁴¹ Ibid.

³⁴² Ibid.

³⁴³ Asamblea Nacional Constituyente, Declaration, March 14, 2008.

to the President's frequent insults during his weekly national radio addresses that painted them as turncoats and traitors and were picked up in the press.³⁴⁴

From 2009 to 2010, as the mining law was rammed through and a new water law presented to the legislature, 24 indigenous and community leaders faced charges of sabotage and terrorism around the country for their alleged role in protests, events described in detail in a report from Amnesty International.³⁴⁵ The newly elected rural parish president of Victoria del Portete and the then president of UNAGUA were among them, both leaders in the struggle against IAMGOLD's gold project.³⁴⁶

Specifically, in May 2010, while the President accused the marches of being funded by foreign foundations, communities in Azuay turned out in large numbers to protest the government's proposed water law that failed to protect water supplies from large-scale mining or to ensure campesino and indigenous organizations a decisive role in water management. Three local community leaders were arrested from the area of Victoria del Portete and Tarqui, accused of sabotage and given a preventative prison sentence. They served three days in prison and the charges were later reduced to obstruction of a roadway, before they were declared innocent by a provincial level court in August 2010. The attorney general's office appealed the decision and in 2011, a judge declared the three guilty and sentenced them to a year in jail. Interestingly, despite the initial sentence, the judge ordered a lighter penalty, deciding they would only have to serve 8 days, given that "they are not a threat to society and that the motivation for their misconduct was altruistic in character, in favour of the communities of Tarqui and Victoria del Portete and in defence of water that they fear will be contaminated by mining activities."³⁴⁷ The final decision was appealed.³⁴⁸

As a result of the Mining Mandate, IAMGOLD's Quimsacocha project was suspended from April 2008 until late 2009, when it was allowed to resume operations.³⁴⁹ The Mining Mandate was not otherwise applied to revoke the company's concessions, even though they continue to overlap with important water supplies and protected forests, and were not previously consulted with local communities.³⁵⁰ The project has not advanced much, however, likely because the company was awaiting the outcomes of contract negotiations over the Fruta del Norte project with the Ecuadorian state and the favourable changes in the mining code in mid 2013. In an effort to offset its own risk, in June 2012, IAMGOLD sold the project to INV Metals,³⁵¹ in which it became a majority stakeholder, such that IAMGOLD retains an interest in the project, now called Loma Larga.³⁵² Since June 2013, INV Metals has been assessing how to advance the project under a new definition for "medium-scale" mining activities,³⁵³ even though local communities have been very clear that they are not interested in any mining of any scale in order to protect their water supplies. A new round of protest and criminalization can be anticipated.³⁵⁴

³⁴⁴ Moore, J. and Velásquez, V., 2013.

³⁴⁵ Amnesty International, July 2012.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

³⁴⁹ El Comercio, "La Minería a gran escala avanza," January 25, 2010; http://ww1.elcomercio.com/noticiaEC.asp?id_noticia=330682&id_seccion=6

³⁵⁰ EDLC and MiningWatch Canada, February 5, 2014.

³⁵¹ Kip Keen, MINEWEB, June 22, 2012.

³⁵² Ibid.

³⁵³ INV Metals, "INV Metals provides Loma Larga Update," October 1, 2013; <http://www.juniorminingnetwork.com/junior-miner-news/news-releases/735-tsx/inv/18925-inv-metals-provides-loma-larga-update.html#.UkwFZo4sc2A>

³⁵⁴ MiningWatch Canada, "Ecuadorian Communities Welcome IAMGOLD's Retreat, Warn INV Metals There's No Social Licence for Quimsacocha," June 22, 2012; <http://www.miningwatch.ca/news/ecuadorian-communities-welcome-iamgold-s-retreat-warn-inv-metals-there-s-no-social-licence>

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Before he was murdered in Chicomuselo, Chiapas, Mariano Abarca was criminalized. Despite having heard the community complaints, there was no question about whose side the Canadian Embassy was on. The Embassy continued defending Blackfire Exploration even after his murder.; Photo: Jen Moore

Mexico is both the Canadian mining industry's country of choice for investment outside of Canada and one of the most dangerous places in the Americas to defend collective rights to land, water, food sovereignty and autonomy³⁵⁵ or to be a journalist reporting on human rights violations, corruption, organized crime and state collusion.³⁵⁶ Perpetrators of frequent murders are almost never held to account^{357,358} and militarization has increased along with growing territorial control of criminal groups, along with the frightening escalation of torture, of particular risk for anyone who is jailed.³⁵⁹ Official sources in Mexico report over 150,000 homicides³⁶⁰ and over 24,000 disappeared since the so-called 'war on drugs' was announced in 2006,³⁶¹ although actual numbers are bound to be much higher given that most violent crimes go unreported.

³⁵⁵ Peace Brigades International, Mexico Project, "A Panorama of the Defense of Human Rights in Mexico: Initiatives and Risks of Mexican Civil Society," April 2013; http://www.pbi-mexico.org/fileadmin/user_files/projects/mexico/files/PBI_Publications/A_Panorama_of_the_Defense_of_Human_Rights_in_Mexico_April_2013.pdf

³⁵⁶ Between 2000 and September 2014, Reporters Without Borders reported that 81 journalists were killed, making Mexico the most dangerous country to be a journalist followed by Colombia, Brazil and Honduras, especially when they report on issues such as human rights violations, organized crime, corruption and political meddling; Source: CNN México, "México, el país más mortífero para la prensa en Latinoamérica: RSF," September 30, 2014; <http://mexico.cnn.com/nacional/2014/09/30/mexico-el-pais-mas-mortifero-para-la-prensa-en-latinoamerica-rsf>

³⁵⁷ Amnesty International, "Human Rights Challenges Facing Mexico: Amnesty International memorandum to President Enrique Peña Nieto," February 2014; <http://www.amnesty.org/en/library/info/AMR41/004/2014/en>

³⁵⁸ National Network of Human Rights Organizations 'All Human Rights for All' (REDTDT), "The Right to Defend Human Rights in Mexico: Report on the Situation of Human Rights Defenders 2011-2013," May 2014.

³⁵⁹ Amnesty International, "Out of Control: Torture and Other Ill-Treatment in Mexico," September 2014; <http://www.amnesty.org/en/library/info/AMR41/020/2014/en>

³⁶⁰ This tally is based on the reports from the National Statistics and Geographic Institute (INEGI) and the National Public Security System (SNSP). INEGI reported 121,683 between 2007-2012 and another 22,732 in 2013. As of Jun 2014, according to SNSP, the numbers for 2014 were already 6,876 for a grand total of 151,291. See: Proceso, "Los Muertos Que Hablan," No. 1922, September 1, 2013; Proceso, "Mas de 121 mil muertos, el saldo de la narcoguerra de Calderón: INEGI," Jul 30, 2013; INEGI, "En 2013 se registraron 22 mil 732 homicidios" 23 julio 2014; and Proceso, "Se reportaron cuatro muertes por hora en enero a mayo: SNSP," Jun 26, 2014, <http://www.proceso.com.mx/?p=375776>.

³⁶¹ Francisco López Bárcenas, La Jornada, "México secuestrado," December 18, 2014; <http://www.jornada.unam.mx/2014/12/18/opinion/028a1pol>

Between 2011 and 2013, the Mexican network 'All Human Rights for All' (REDTDT by its initials in Spanish) documented 208 cases of diverse attacks against human rights defenders, including individuals and organizations in 24 states.³⁶² Based on the work of 74 organizations from around the country,³⁶³ REDTDT found that the top four states by frequency of aggressions were Oaxaca, Guerrero, Chihuahua and Chiapas, all states in which large-scale Canadian mining company projects have given rise to violence recently. REDTDT found the most common types of aggression against individual rights and land defenders include death threats, threats, arbitrary detention, physical aggression, intimidation, violent death and smear campaigns. 24 of 27 murders that the network documented in this period remain unsolved, with perpetrators tending to be unidentified persons or state public security agents at the municipal, state or federal level, including the army and navy marines. They note little or no interest within the state to investigate or sanction perpetrators, a result, in the network's view, of high levels of corruption, impunity and collusion of public authorities with organized crime, other criminal groups, and national and foreign corporations.

Specifically considering environmental defenders, Peace Brigades International reports that from 2006 to 2012, 12 environmental defenders were killed in Mexico for their work.³⁶⁴ This includes the lives of numerous prominent leaders from groups involved in the Mexican Network of Mining-Affected Communities (REMA), which was founded in 2008.³⁶⁵

The criminalization and murder of Mariano Abarca, father, restaurant owner, and community activist in Chicomuselo, Chiapas who was shot dead in broad daylight in front of his home near the centre of town on November 27, 2009 is one example that we examine in detail in the final section of this chapter.

Bety Cariño was part of REMA's National Coordinating Committee and Director of the Colectivo CACTUS (Centre for Community Support Working Together)³⁶⁶ when she was riddled with bullets on April 27, 2010 as she participated in a humanitarian support caravan to the autonomous Triqui Indigenous community of San Juan Copala that was under siege by paramilitary groups.³⁶⁷ Her murderer and that of Finnish activist Jyri Jaakkola remain in impunity, despite orders out for the arrest of numerous suspected perpetrators, including several public officials.³⁶⁸ One person has been detained so far in connection with Bety's murder, arrested in January 2015.³⁶⁹

Between January and June 2012, members of the Coordinating Committee of the United Villages of the Ocotlán Valley, which leads opposition to Vancouver-based Fortuna Silver's mine in San José del Progreso, Oaxaca, were shot or assaulted. Bernardo Vásquez and Bernardo Méndez were killed.³⁷⁰

³⁶² REDTDT, May 2014.

³⁶³ REDTDT, Website, "Nosotros," Accessed October 5, 2014; <http://redtdt.org.mx/nosotros/>

³⁶⁴ Peace Brigades International, Mexico Project, "A Panorama of the Defense of Human Rights in Mexico: Initiatives and Risks of Mexican Civil Society," April 2013; http://www.pbi-mexico.org/fileadmin/user_files/projects/mexico/files/PBI_Publications/A_Panorama_of_the_Defense_of_Human_Rights_in_Mexico_April_2013.pdf

³⁶⁵ REMA, "Quiénes Somos," Accessed October 5, 2014; <http://www.remamx.org/quienes-somos/>

³⁶⁶ REMA, "Asesinan a Coordinadora de REMA, Bety Cariño," April 28, 2010; <http://www.otrosmundoschiapas.org/index.php/temas-analisis/32-32-mineria/717-asesinan-a-coordinadora-de-rema-betty-carino>

³⁶⁷ Frontline Defenders, "Human rights defender Mr Omar Esparza Zárate on hunger strike over impunity for the assassination of human rights defender Ms Bety Cariño," May 7, 2014; <http://www.frontlinedefenders.org/node/25856>

³⁶⁸ Fernando Camachi Servín, La Jornada, "Exigen aclarar la muerte de Bety Cariño y Jyri Jaakkola," April 25, 2014; <http://www.jornada.unam.mx/2014/04/25/politica/010n1pol>

³⁶⁹ Pedro Matías, Proceso, "Triquis exigen justicia por el asesinato de uno de sus líderes," February 3, 2015; <http://www.proceso.com.mx/?p=394907>

³⁷⁰ National Assembly of People Affected by Environmental Conflicts, "New Aggression in San José del Progreso, Oaxaca" (June 16, 2012), online: <http://www.minesandcommunities.org/article.php?a=11773&l=1>

In October 2012, Ismael Solorio Urrutia and his wife Manuela Martha Solís Contreras, leaders in the rural organization El Barzón who opposed MAG Silver's mine project because of its potential impact on scarce local water supplies,³⁷¹ were murdered in Chihuahua.³⁷²

Less than five months before her own murder and mere days after Mariano was killed, Bety spoke at a protest that REMA had organized in front of the Canadian Embassy in Mexico City calling for justice for Mariano. Very powerfully, she articulated how attacks on environmental defenders can reinforce collective resolve:³⁷³

"From Chiapas, from Oaxaca, from San Luis Potosí, from Jalisco, from different states in which our Mother Earth is surrounded by these big companies. This sickness that is arriving in our communities where we are calmly working the earth, working in our communities, and are bit by bit being surrounded by these predatory companies that take away our water, that take away our natural resources. Brothers and sisters, we are here to say to these transnational companies, to these bad governments that are poorly representing their people, that we are not going to permit what is taking place. That we are not going to permit that the lives of our brothers and sisters be at risk [...] Mariano Abarca is now an example for our struggle, an example to follow, and if they think that we are going to be afraid, we want to tell them that we are strengthened and reinvigorated because in equal measure that they are betting on death, we are betting on life."³⁷⁴

While the threats, especially prolonged threats to individual human rights defenders in Mexico can too often turn deadly,³⁷⁵ REDTDT's report also analyzes threats against human rights organizations and finds that they tend to face smear campaigns, threats, raids, harassment, surveillance and death threats. From 2011 to 2013, 31 of 37 human rights organizations involved in indigenous rights struggles over land and territory, agrarian disputes, or protection of natural resources and the environment were targeted, especially when they tried to draw public attention to a case.³⁷⁶

One example of this occurred during the conflict between Toronto-based Excellon Resources with landowners in Durango over unfulfilled clauses in their land use contract and with workers over their right of association. In autumn 2012, a months-long protest faced intimidation and violence from state armed forces and company-supported groups, culminating in the burning of a protest camp maintained near the mine, but off company property.³⁷⁷ Since then, the Project for Economic Social and Cultural Rights (ProDESC) that accompanies the workers and landowners in Durango has faced a smear campaign led by the company.³⁷⁸

During 2014, Amnesty International observed that partiality in Mexico's justice system has not lessened, despite some recent constitutional and judicial system reforms.³⁷⁹ Amnesty adds that a new mechanism for the protection of journalists and human rights defenders has been poorly implemented and badly resourced. Threats against some human rights defenders have actually increased after they received protective measures from the state.³⁸⁰ Amnesty also produced a special report about an "out of control" escalation in the use of

³⁷¹ REDTDT, May 2014.

³⁷² Dawn Paley, "Punching Holes in the Desert". The Dominion (April 23, 2013): <http://dominion.mediacoop.ca/story/punching-holes-desert/16740>

³⁷³ Comité pour les droits humains en Amérique latine (CDHAL), "Discurso de Bety Cariño, Embajada de Canadá," December 3, 2009; <http://cdhal.org/es/videos/discurso-bety-carino-embajada-canada-3-diciembre-2009>

³⁷⁴ CDHAL, December 3, 2009

³⁷⁵ REDTDT, May 2014.

³⁷⁶ Ibid.

³⁷⁷ Project for Economic, Social and Cultural Rights, Mexico (PRODESC), "Fact Sheet: La Platosa Conflict in Durango, Mexico" (November 5, 2012) online: http://www.prodesc.org.mx/?wpfb_dl=10.

³⁷⁸ REDTDT, May 2014.

³⁷⁹ Amnesty International, February 2014.

³⁸⁰ REDTDT, May 2014.

torture and other forms of ill-treatment by police and armed forces.³⁸¹ Between 2003 to 2013, they reported a 600% increase in the incidence of torture, an increase which is generally tolerated by authorities and therefore occurs in an almost 100% state of impunity.³⁸² Amnesty attributes this to increased deployment of the army and navy marines as part of the government's 'war on drugs' and rising military involvement in policing, including detentions, investigations and interrogations.³⁸³ Given that people are at particular risk of torture if they end up in jail for any reason, Amnesty reiterates the need to abolish the concept of "arraigo" in Mexico, which is prolonged detention of suspects that "encourages abuses and undermines judicial supervision."³⁸⁴ They and others have made this recommendation since 2008, but it has been continually ignored.³⁸⁵

In this increasingly risky and brutal context for defenders of land and the environment, large scale mining investment activities have expanded and intensified to unprecedented levels.

Canadian Economic Interests and the Mining Model in Mexico

Foreign investment in Mexico was facilitated by legal and constitutional reforms that largely took place under the government of President Carlos Salinas de Gortari (1988-1994), and included the 1994 adoption of the North American Free Trade Agreement with Canada and the US (NAFTA). Reforms to the mining law opened up areas that were previously limited to national capital and eliminated the requirement that foreign capital must associate up to 49% ownership with national capital.³⁸⁶ The introduction of NAFTA removed requirements to purchase national inputs or transfer technology, and introduced powerful provisions that allow foreign corporations in Mexico to sue or threaten to sue the state when government decisions run counter to their interests.³⁸⁷ Further reforms enabled collectively held lands to be rented.³⁸⁸ This latter reform was of particular interest to mining companies, given that over 50% of Mexican territory is collectively held by agricultural associations called Ejidots and by Indigenous communities.³⁸⁹ Furthermore, until 2013,³⁹⁰ mining companies did not have to pay any royalties for mineral extraction.³⁹¹

Notably, at the time that the Mexican mining sector opened its doors wide to foreign investment, Mexican mining barons of tremendous economic and political clout were already well-positioned in mineral rich parts of the country.³⁹² Today, the three principal Mexican mining companies, Frisco, Grupo México and Industrias Peñoles, are in the hands of three of the country's — and the world's — richest men: Carlos Slim, Germán Larrea Mota-Velasco and Alberto Bailleres.³⁹³ But the opening to foreign investment and the rise in precious metals prices since 2000 attracted a myriad of Canadian mining firms, big and small. From 2001 to 2012,

³⁸¹ Amnesty International, September 2014.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Amnesty International, February 2014.

³⁸⁵ Ibid.

³⁸⁶ Adriana Estrada with Helena Hofbauer, FUNDAR, "Impactos de la inversión minera canadiense en México: Una primera aproximación," September 2001.

³⁸⁷ Ibid.

³⁸⁸ Francisco López Bárcenas and Mayra Monserrat Eslava Galicia, "El Mineral o La Vida: La Legislación Minera en México," April 2011.

³⁸⁹ Bárcenas and Galicia, April 2011.

³⁹⁰ Laura Dawson, Canadian Council of Chief Executives, "Canada's trade with Mexico: Where we've been, where we're going and why it matters," February 2014.

³⁹¹ Mónica Cruz, Emeequis, "Canada Se Lleva el Oro de México," June 13, 2011.

³⁹² La Jornada, "Suplemento Especial: 500 Años de Saqueo," November 14, 2011.

³⁹³ La Jornada, November 14, 2011.

the number of foreign mining companies in Mexico rose by over 700%.³⁹⁴ As of 2014, 184 of 268 of foreign mining companies in Mexico have offices in Canada, about 70%.³⁹⁵ Canada is the largest foreign investor in Mexico's mining sector³⁹⁶ and Canada has greater mining assets in Mexico than in any other country in the Americas, outside of Canada.³⁹⁷

Along with the influx of foreign capital, by 2010, over 25,000 mining concessions were granted across nearly 30% of Mexican territory.³⁹⁸ In terms of the number of mining projects, as of 2014, foreign companies hold some 102 in operation and another 786 in exploration.³⁹⁹ Mexico has become the top destination globally for investment in mining exploration outside of Canada, the US and Australia, over half of which is dedicated to the search for silver and gold.⁴⁰⁰ The Mexican newspaper *La Jornada* describes the rapaciousness of the modern mining industry in Mexico this way: private mining companies have exploited twice the gold and half the silver in 10 years that was exploited over 300 years during the colonial period.⁴⁰¹ Another Mexican magazine attributes 70% of the gold exploitation in Mexico to just six Canadian mining companies, with Vancouver-based Goldcorp by far in the lead.⁴⁰²

According to Mexican investigator Claudio Garibay, Goldcorp's operations exemplify a predatory mining model characterized by 'negative reciprocity': "the intent to obtain something with impunity and without giving anything in return." Garibay illustrates this through detailed examination of the company's Los Filos operation in Guerrero, where the company rents land from three Ejidos whose land will be irreparably damaged from the open pit and underground operation, and which Goldcorp intends to exploit in some fifteen years.⁴⁰³ Garibay observes that the company presents itself as a benevolent philanthropist contributing to community programs, rather than as party to a negotiated agreement with local landowners. But merely in economic terms the asymmetry is staggering, without considering social and environmental impacts related to the territorial control that it exerts. According to 2009 figures, for every \$992.85 USD that Goldcorp projects in net profits, it pays \$7.15 in rent to local communities. Goldcorp's Mexican operations represent 40% of its proven and probable reserves of gold across the Americas,⁴⁰⁴ and as such are a crucial part of the company's rapid growth plan, as much as they are emblematic of the model of mining being expressed in Mexico today.

The myth that Canadian mining companies contribute to people's betterment is further unmasked by their reaction to the Mexican legislature's approval of a 7.5% royalty on profits from mining production in October 2013.⁴⁰⁵ Mexico has notoriously low tax rates as a proportion of its Gross Domestic Product when compared with countries in the Organization for Cooperation and Economic Development,⁴⁰⁶ and federal revenues are

³⁹⁴ Secretaría de Economía, "Anuario Estadístico de Minería Mexicana 2012," 2013.

³⁹⁵ Dirección General de Desarrollo Minero, Secretaría de Economía, "Diagnóstico de Empresas Mineras Mexicanas con Capital Extranjero en la Industria Minero Metalúrgica del país," First quarter of 2014.

³⁹⁶ Laura Dawson, February 2014.

³⁹⁷ Natural Resources Canada, "Canadian Mining Assets", January 7, 2013.

³⁹⁸ Bárcenas and Galicia, April 2011.

³⁹⁹ Dirección General de Desarrollo Minero, First quarter of 2014.

⁴⁰⁰ Coordinación General de Minería, Secretaría de Economía, "Su mejor oportunidad es una industria comprometida con las comunidades y el medio ambiente," 2013.

⁴⁰¹ *La Jornada*, November 14, 2011.

⁴⁰² Mónica Cruz, June 13, 2011.

⁴⁰³ Goldcorp, "Los Filos – Overview & Operating Highlights," Accessed September 30, 2014;

<http://www.goldcorp.com/English/Unrivaled-Assets/Mines-and-Projects/Mexico/Operations/Los-Filos/Overview-and-Operating-Highlights/default.aspx> and Goldcorp, "Peñasquito - Overview & Operating Highlights," Accessed September 30, 2014; <http://www.goldcorp.com/English/Unrivaled-Assets/Mines-and-Projects/Mexico/Operations/Penasquito/Overview-and-Operating-Highlights/default.aspx>

⁴⁰⁴ Goldcorp, "Goldcorp Mineable Reserves," December 31, 2010; http://www.goldcorp.com/files/2010_reserves.pdf

⁴⁰⁵ Fasken Martineau, Mining Bulletin, "New Mexican Tax Provisions; How Do They Affect Your Mining Company," February 3, 2014

⁴⁰⁶ Ralph Cuervo-Lorens, Northern Miner, February 24, 2014.

about to plummet further with forthcoming privatization of the energy sector. Nonetheless, even though an estimated 60% of this fee will be deductible from already low corporate taxes,⁴⁰⁷ Canadian companies and the Mining Commission of the Canadian Chamber of Commerce repeatedly declared in the press that they would stop investing in Mexico if the measure was implemented.⁴⁰⁸ Shortly after it went into effect on January 1, 2014, *El Universal* reported that a number of companies filed constitutional injunctions against the measure, including Goldcorp.⁴⁰⁹

Of additional importance, as part of the mining model in Mexico and elsewhere, Canadian mining companies – large or small – can corral significant backing from the Canadian Embassy to stand up for them in situations of conflict, or even when they encounter obstacles in getting permits for their projects.

During the period from mid to late 2009, the Canadian Embassy came to the defence of Blackfire Exploration in connection with opposition and concerns over the environmental and social impacts of its small barite mine in Chiapas. At the same time, the Embassy was also troubleshooting for several other firms. Based on documentation obtained from the Canadian Department of Foreign Affairs under an Access to Information request, within a period of just two weeks in early October 2009, as described in an email from the Embassy's Trade Commissioner titled "Troubleshooting for Canadian Mining Companies," the Embassy "intervened at senior levels for four Canadian mining investments in Mexico."⁴¹⁰ These included backing company interests in connection with: a year-long strike against the La Guitarra mine in the state of Mexico⁴¹¹ then owned by Genco Resources;⁴¹² lack of prior community consultation at Fortuna Silver's San José mine in Oaxaca; and an unresolved land titling dispute at Oromex Silver's Tejamen project in Durango.⁴¹³ A more recent example took place in early 2013, when Canadian Ambassador Sara Hradecky publicly intervened on behalf of Esperanza Resources whose open-pit gold project is hotly contested in the state of Morelos, where environmental groups, state and federal environmental authorities, and the state Governor oppose the project given potential environmental impacts and its location only a kilometre from the popular archaeological site called Xochicalco.⁴¹⁴

When the Canadian Embassy provides such unconditional support for Canadian mining companies despite legitimate labour, land and community disputes — contrary to their own assertions that they promote corporate responsibility and abidance by local laws — it is fostering self-entitled and aggressive behaviour leading to serious collective and individual rights violations. The following section examines the Embassy's response in the context of the criminalization and assassination of Mariano Abarca on November 26, 2009 in Chicomuselo, Chiapas.

⁴⁰⁷ Ralph Cuervo-Lorens, Northern Miner, "Commentary: A better response to Mexico's new mining taxes," February 24, 2014; <http://www.northernminer.com/news/commentary-a-better-response-to-mexicos-new-mining-taxes/1002929894/?ref=rss&ctid=1002929894>

⁴⁰⁸ For example: La Jornada, "Mineras canadienses amenazan con irse, se niegan a pagar impuestos," October 2, 2013; <http://www.vanguardia.com.mx/minerascanadiensesamenazanconirseesenieganapagarimpuestos-1844304.html>

⁴⁰⁹ Ivette Saldañal, El Universo, "Empresas extranjeras aplazan proyectos sobre minería," February 26, 2014; <http://www.eluniversal.com.mx/finanzas-cartera/2014/impreso/empresas-extranjeras-aplazan-104-proyectos-sobre-mineria-108360.html>

⁴¹⁰ Access to information request A-2010-00758/RF1, page 000213 – 000214 and 000216.

⁴¹¹ First Majestic Silver Corp., "Overview: La Guitarra Silver Mine," Accessed October 5, 2014; <http://www.firstmajestic.com/s/LaGuitarra.asp>

⁴¹² In September 2010, Silvermex Resources Ltd. and Genco Resources agreed to combine their companies, the result of which was called Silvermex Resources Inc. In July 2012, First Majestic Silver purchased Silvermex and the La Guitarra mine along with it. See: Marketwired, "Silvermex Resources Ltd. and Genco Resources Ltd. Enter into Business Combination Agreement," September 20, 2010; <http://www.marketwired.com/press-release/silvermex-resources-ltd-genco-resources-ltd-enter-into-business-combination-agreement-tsx-venture-smr-1321754.htm> and First Majestic Silver, Press Release, "First Majestic Completes Acquisition of Silvermex Resources," July 2, 2012; <http://www.firstmajestic.com/s/NewsReleases.asp?ReportID=535220>

⁴¹³ Ibid.

⁴¹⁴ MiningWatch Canada, "Backgrounder: A Dozen Examples of Canadian Mining Diplomacy," October 8, 2013; <http://www.miningwatch.ca/article/backgrounder-dozen-examples-canadian-mining-diplomacy>

Criminalization and Blackfire Exploration in Chicomuselo, Chiapas

The criminalization and murder of Mariano Abarca in November 2009 in connection with Blackfire Exploration's Payback mine in the municipality of Chicomuselo, Chiapas, illustrates how criminalization can be a precursor to targeted violence. Not only did Blackfire play a direct role in the criminalization of Abarca, but the response of Canadian authorities reveals how the acts and omissions of the Canadian state can contribute to - or fail to address - repression and violence, as well as the ensuing pursuit of justice.

Calgary-based Blackfire Exploration operated a barite mine in the municipality of Chicomuselo, Chiapas from late 2007 until late 2009 when the mine was shut down for environmental reasons mere days after the shooting murder of Mariano Abarca on November 26, 2009. Evidence that the company had been making direct payments into the personal bank account of the local mayor also surfaced in Canadian national media at this time, leading to an ongoing investigation by the Royal Canadian Mounted Police.

Mariano Abarca, a father of four and a restaurant owner in the town of Chicomuselo, was an important community leader in the opposition to Blackfire's Payback mine. In July 2009, he participated in a delegation that traveled from Chicomuselo to Mexico City to protest in front of the Canadian Embassy. There he was videotaped speaking to an Embassy representative when he stated that the company had broken its promises to provide work to everyone in the Ejido Grecia; that infrastructure in Chicomuselo had been damaged by the company's trucks; and that the community was highly concerned about environmental contamination given the importance of the rivers that flow from the Sierra Madre highlands of Chiapas.⁴¹⁵

On film, Abarca further alleged that Blackfire was using some of its approximately 40 workers as 'shock troops' against protesters. He concluded by stressing that community members who spoke out about problems were at personal risk: "Some of us in the movement have received threats and we don't think it's fair that foreigners come in creating conflict, while taking the wealth back to their country."⁴¹⁶

Three weeks later, undercover police detained Abarca in response to a complaint filed by Blackfire's Public Relations Officer, Luis Antonio Flores Villatoro. The complaint alleged that Abarca was responsible for crimes of "illicit association, organized crime, attacks on communication routes, damages against the company and disturbing the peace, and threats against bodily integrity, as well as collective integrity and the integrity of state heritage."⁴¹⁷ After being held for eight days, Abarca was released without charge for lack of evidence.⁴¹⁸ In a videotaped interview recorded at that time, Mariano said that if any harm should befall him, his family, or other activists, the community would blame Blackfire.⁴¹⁹

On November 27, 2009, about four months after protesting in front of the Canadian Embassy, a male assailant shot Mariano Abarca in the back at close range in front of his house. The three individuals detained

⁴¹⁵ "Mariano Abarca Frente a la Embajada Canadiense" YouTube (July 22, 2009) online: <http://www.youtube.com/watch?v=zwGavLzTob8>.

⁴¹⁶ Ibid.

⁴¹⁷ Public Attorney's Initial Assessment of Blackfire complaint against Mariano Abarca: Procuraduría General de Justicia del Estado, Fiscalía de Distrito Fronterizo Sierra, Fiscalía del Ministerio Público de Chicomuselo, Chiapas, Averiguación Previa Número 00033/FS10/2009.

⁴¹⁸ United Steelworkers, Common Frontiers, and MiningWatch Canada, Report from the March 20-27, 2010 fact-finding delegation to Chiapas, Mexico to investigate the assassination of Mariano Abarca Roblero and the activities of Blackfire Exploration Ltd., April 21, 2010 at p.11.

⁴¹⁹ Otros Mundos Chiapas, *México a Cielo Abierto* (2010) online: http://archive.org/details/MexicoACieloAbierto_124.

immediately following the murder all had connections with the company, although none of those named by the Abarca family and activists closely following the conflict were ever investigated,⁴²⁰ except for one who was jailed in what is widely believed to be a case of political persecution.⁴²¹

Based on documents obtained from the Canadian Department of Foreign Affairs, it is clear that the Canadian Embassy was aware of the tensions around Blackfire's mine.⁴²² Even before the mine went into operation, the Embassy knew the company had difficulties reaching agreements with local communities and exerted diplomatic pressure on Chiapas state officials to enable the mine to get up and running. Once in operation and up until roughly mid-2009, the Embassy monitored media reports about thousands-strong protests in Chiapas, received documents expressing opposition to the mine, made reports of months-long blockades, heard the testimony of Mariano Abarca in July 2009 about armed workers being used to intimidate peaceful protesters, and received some 1,400 letters after Abarca's 2009 detention that expressed dire worry about his wellbeing. These many pieces of verifiable information should have represented red flags for the Embassy regarding Blackfire's operation. Instead, an Embassy staff member dismissed them as nothing but tactics to 'shake down' the company for more money.⁴²³

After Abarca's detention in August 2009, the Embassy undertook to gather information and facilitate communication between parties. Its approach, however, was oriented to dispel doubts over the legitimacy of Blackfire's operation and promote the company's characterization of the protests. Although we do not have a full record of the Embassy's meetings with state officials, in communications around Embassy officials' fact-finding mission to Chiapas in October 2009, there is no evidence that they tried to speak with affected community groups and activists directly involved in the conflict; instead they raised concerns with the state government about possible increases in royalty payments levied on Blackfire.⁴²⁴

The Embassy and officials back in Canada, who would have received updates and communiqués, should have been alarmed at complaints about armed workers, threats, and intimidation, and questioned the company's attempt to criminalize Mariano Abarca's involvement in peaceful protests against the mine project. This is especially true given that the mine officials had him detained on what were ultimately found to be baseless and trumped-up accusations.

Moreover, given Blackfire's economically motivated interests in the area and the Embassy's awareness of opposition to the mine, Canadian officials should have questioned the allegations made against Abarca. Nonetheless, despite receiving 1,400 individual communications expressing fear for the life of Abarca, the Embassy advanced the company's characterization of Abarca and other protestors as a grave threat in its correspondence with Mexican government officials.

The outcome might have been different for Abarca, his family, and his community had the Canadian Embassy taken the evidence of growing opposition and tensions more seriously.

When presented with this analysis in 2013, Embassy representatives did not offer any defense for what had taken place. In August 2013, Mariano's brother, Uriel Abarca, and son, José Luis Abarca, met with representatives from the Canadian Embassy in Mexico City to present them with the report "*Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy.*"

⁴²⁰ United Steelworkers, Common Frontiers & MiningWatch Canada, "Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy," May 2013.

⁴²¹ Represión al estilo Sabines," Proceso (November 25, 2012) 48-51, archived online: <http://democratanortedemexico.blogspot.ca/2012/11/represion-al-estilo-sabines.html>.

⁴²² United Steelworkers, Common Frontiers & MiningWatch Canada, May 2013.

⁴²³ Ibid.

⁴²⁴ Ibid.

The Canadian representatives simply repeated the empty and all-too-familiar Canadian government line: "We encourage Canadian mining companies to respect local laws and human rights and to implement Corporate Social Responsibility programs."⁴²⁵

At this meeting, Uriel and José Luis asked that, at a minimum, the Canadian Embassy speak with Mexican authorities in order to ensure protection for the lives of Mexican activists that are threatened or criminalized for speaking out against the operations and abuses of Canadian mining companies. Embassy representatives responded that this would be tantamount to interfering in Mexican sovereignty. Canadian officials did not, however, seem to see the behaviour of then Canadian Ambassador Guillermo Rychinski as interfering in Mexican sovereignty when he, on behalf of Blackfire Exploration, pressured the state governor of Chiapas to support the company's operations. Evidence of this was found in the documents from the Department of Foreign Affairs, in which an email to the Canadian Embassy from a Blackfire employee stated: "All of us at Blackfire really appreciate all that the Embassy has done to help pressure the state government to get things going for us. We could not do it without your help."⁴²⁶

⁴²⁵ Jennifer Moore, Americas Program, "Canadian Embassy Snubs Family of Slain Mexican Activist," September 4, 2013; <http://www.cipamericas.org/archives/10557>

⁴²⁶ Jennifer Moore, September 4, 2013.

CANADA

by Roch Tassé

During the debate around the adoption of Canada's *Anti-Terrorism Act (ATA)* in December 2001, civil liberties organizations, human rights groups, unions, jurists and academics expressed concerns about the definition of terrorism contained in the bill. They claimed the legislation provided a vague, imprecise and overly expansive definition of "terrorism" and "terrorist activity" that could be interpreted arbitrarily to encompass forms of dissent and/or violent behavior that have little to do with terrorism, thus threatening civil liberties and the right to legitimate political dissent. At the time, the government and other advocates of the bill disregarded these concerns and reassured opponents that the ATA was not design to be used against legitimate dissent in Canada since the intent of the legislation was to deal with terrorism as commonly understood following the attacks in the US on September 11, 2001.



Bill C-51, the *Anti-Terrorism Act, 2015*, expands the definition of what is considered a threat to national security in Canada to include interference with Canada's economic or financial stability, and interference with critical infrastructure. It empowers 17 government departments to exchange and collate information on individuals involved in such activities, and expands CSIS' mandate to include powers of disruption, including covert actions and tactics that violate the Canadian Charter of Rights and Freedoms. Despite the protests of hundreds of thousands of Canadians, the bill received royal assent on June 18, 2015. Image: whoacanada.wordpress. com

First Nations

First Nations activists were the first known targets of Canada's *Anti-Terrorism Act*. On September 21, 2002, members of the British Columbia Integrated National Security Enforcement Team (INSET) --- an integrated multi-agency anti-terrorist unit created under the *ATA* --- raided the home of two members of the British Columbia West Coast Warrior Society, on the outskirts of Port Alberni. The operation, led by the RCMP, was a weapons search. The warrant obtained to carry out the raid was based on a request by the RCMP who invoked the *ATA* with support from the Canadian Security Intelligence Service (CSIS).

No unauthorized weapons were found and no charges were laid as a result of the police action. Spokespersons for the Warrior Society were told that the information used to obtain the search warrant was sealed. The two individuals concerned had been involved in indigenous rights issues for a number of years through organizations including the Union of BC Indian Chiefs, United Native Nations, Native Youth Movement, Indigenous Sovereignty Network and the West Coast Warrior Society.

Following the raid, local political commentator Tommy Deer expressed his concerns about the use of the *Anti-Terrorism Act* against the West Coast Warrior Society: "There really needs to be a clear definition of terrorism. There is a marked difference between terrorism as opposed to legitimate resistance movements. In this case, the government of Canada is trying to manipulate the tragedy of 9/11 to immorally serve their colonial agenda and justify the suppression of legitimate Indigenous resistance in Canada and I predict we will see more cases of this kind of 'imperialistic terror' being turned against Native people."

Almost a decade later, in its January-May 2011 edition, the *First Nations Strategic Bulletin* revealed that shortly after forming government in January 2006, Prime Minister Stephen Harper ordered the federal government to tighten up on gathering and sharing intelligence on First Nations in order to anticipate and manage potential unrest across Canada. The *Bulletin* is published by the First Nations Strategic Policy Counsel, a network of concerned individuals who are practitioners in either First Nations policy or law.

Shortly after the order was issued, the Department of Indian and Northern Affairs (INAC) was given the lead role to spy on First Nations in order to identify leaders, participants and outside supporters of First Nation occupations and protests. INAC also established a "hot spot" weekly reporting system to highlight communities across the country that engage in direct action to protect their land and communities, and information was shared with the RCMP, CSIS and other government departments and agencies as early as 2006. According to the *Bulletin's* editor Russell Diablo "Aboriginal people who are defending their lands by disrupting transportation routes, private development, resource extraction projects, and other crucial economic activities are now treated on a spectrum from criminals to terrorists."

In its October 12, 2011 edition, the *Globe and Mail* reported that the Canadian military was keeping a watch on aboriginal groups through an intelligence unit meant to protect the Forces and the Department of National Defence from espionage, terrorists and saboteurs. According to records released under access to information law, the Canadian Forces' National Counter-Intelligence Unit, created in the 1990s, put together at least eight reports on the activities of aboriginal organizations between January, 2010 and July, 2011. A significant amount of the reports' content is dedicated to upcoming protests and lobbying activities on Parliament Hill by native groups, including the activities of the Assembly of First Nations, the Algonquin Anishinabeg Nation Tribal Council and Red Power United.

Commenting on the news, NDP defence critic Jack Harris said it would be legitimate for the Forces to monitor protest activity near a military base. However, he noted that most of the unit's counter-intelligence reports

that focused on aboriginal organizations were not focused on activity near Forces personnel or property and called for independent oversight over the Canadian Forces' intelligence activities.

Case of Kitchenuhmaykoosib Inninuwug (KI) and Ardoch First Nations

Platinex Inc., a junior exploration company, acquired mineral claims within the traditional territory and unsettled land claim area of KI First Nation in 1999. KI is a fly-in community in the remote northwest part of the province of Ontario, some 600 km north of Thunder Bay. For a time Platinex was in discussion with KI about its plans, but the company proceeded with its activities before reaching an agreement. In 2001 KI issued a moratorium on further activity until a satisfactory agreement was reached. In 2006 the conflict escalated, with members of KI actively protesting and blocking Platinex from their territory. More conflict and court proceedings ensued. In October 2007, frustrated by the costs and time being taken up in court, KI withdrew its participation in legal proceedings, while the court issued an injunction prohibiting KI from interfering in Platinex's activities. Firm in their resolve, KI issued a statement saying that they would not allow Platinex back on their land, which led to contempt charges and eventual jail time for Chief Donny Morris and five councilors, who came to be known as the KI6.

As events were unfolding in the far north, at the other end of the province, in an area of cottages, woodlots, and farms just 90 km north of Kingston, Frontenac Ventures Inc. began staking crown and private land with the hopes of finding and claiming uranium deposits. Over the winter of 2006 and 2007 a coalition of First Nations and local settlers formed, to educate themselves about how the Mining Act works and about the risks they were facing from exploration and exploitation of uranium. In the summer of 2007 a number of demonstrations against the staking and proposed exploration were held, including occupation of Frontenac's base of operations at Robertsville. Legal challenges followed, including a \$77-million lawsuit against the Ardoch Algonquin and Shabot Obadjiwan First Nations. An injunction to not interfere with Frontenac's operations was granted by the courts, and was then broken by First Nation and settler activists. For peacefully breaking the injunction, Bob Lovelace, former Chief of the Ardoch was sentenced to 6 months in jail and a \$25,000 fine, Co-chief Paula Sherman was given a \$15,000 fine and the Ardoch were collectively given another \$10,000 fine.

An appeal of the sentences in both the KI and Ardoch legal cases was heard in May 2007; all seven of those in jail were released, and the fines against the Ardoch were revoked. The appeal decision cited problems with the *Mining Act* and the weak role of the province in structuring constructive consultation as root causes of the conflict.

The mining company, Frontenac Ventures Corporation, applied to the Supreme Court of Canada for leave to appeal, arguing that the Court of Appeal's decision amounts to a "license to blockade". Frontenac argued that the Canadian mining industry could collapse if the Supreme Court did not overturn the Ontario Court of Appeal's "lenient" approach to Aboriginal blockades and injunctions. The Supreme Court eventually dismissed Frontenac's appeal, with costs.

Case of Lac Babine Nation

First Nations' right to freedom of expression and the public's right to information have also been the subject of criminalization. Advocates have been criminalized for publically communicating their opposition to extractive projects.

In 2009 Pacific Booker Minerals Inc. sued the Lake Babine Nation and Chief Betty Patrick for defamation because the Nation had published a news release on Oct. 14, 2008, announcing its withdrawal from discussions with Pacific Booker over its Morrison copper-gold project in British Columbia. According to the suit, which the company filed in the Supreme Court of British Columbia on Dec. 30, 2008, issuing such a news release implied the company conducted itself dishonestly or in bad faith. The case was eventually thrown out of court, but at a cost of \$90,000 to Chief Betty Patrick and the Lake Babine Nation.

Tar sand activists threatened by Anti-Terrorism Act in Alberta

In the fall of 2009, Greenpeace activists staged three protests inside tar sands mines in Alberta, temporarily shutting down parts of the world's largest energy project.

The campaign began on Sep. 15, when 25 activists entered Shell's Albion mine in northern Alberta, chaining themselves to a three-story high dump truck and hanging huge banners to coincide with meetings between Canadian Prime Minister Stephen Harper and U.S. President Barack Obama in Washington. Shell officials temporarily shut down the site. On Sep. 30, activists canoed down the Athabasca River into a tar sands facility operated by Suncor. They blocked a conveyor belt that moves heavy oil, causing a temporary shutdown of Canada's second largest oil sands mine. Shell was targeted again in early October when activists blocked construction of an upgrader needed to refine heavy tar sands oil in Ft. Saskatchewan, Alberta.

These protests led to the arrest of 37 individuals and prompted the Alberta government to threaten to unleash its 'counterterrorism plan' if activists continued using civil disobedience to protest the tar sands. Solicitor General Fred Lindsay even suggested that he would look at whether or not the anti-terrorism legislation would apply. The 37 individuals were eventually charged for "mischief" under the criminal code and charges against two of them were later dropped. The others pleaded guilty and were sentenced to heavy fines.

"I think there is an agenda in linking Greenpeace to concerns about terrorism," said Bruce Cox, the executive director of Greenpeace Canada, following the arrests.

Shifting gears... shifting the discourse

Over the last decade, CSIS and RCMP security reports, along with other government policy documents, have equated "economic interests" with Canada's "national interests" and portrayed any group opposed to these interests as a threat to Canada's national security.

As early as 2002, in its first annual report tabled after the adoption of the ATA, CSIS warned that "...Canada is confronted by domestic terrorism issues related to aboriginal rights, white supremacists, sovereignty, animal-rights and anti-globalization issues." Since then, CSIS and RCMP security reports have consistently

continued to identify animal rights activists, First Nation activists, environmentalists and anti-globalization activists as a domestic threat to Canada, but without identifying any specific organization until recently.

In January 2012, eight months after its majority election, the Harper government launched a series of discursive attacks against specific environmental groups and foundations opposed to various resource development projects. Verbal attacks were supported by a new “anti-terrorism” policy statement, the release of security and intelligence reports, parliamentary committee hearings and other measures. These measures, considered as a whole, gave the impression of a concerted and systematic campaign aimed at discrediting, intimidating and delegitimizing opponents of the Northern Gateway pipeline project by labeling them a “national security” risk, portraying them as enemies of Canada’s “national interests” and associating them vaguely with “terrorism.” Never before had the link between corporate interest and “national interest” been expressed so clearly in the government’s discourse.

Significantly, this campaign against environmental groups started after the Northern Gateway pipeline’s public hearings were delayed as a result of the number of people and groups wanting to participate in the Environmental Assessment process.

Attacks against foreign funding and political activities of Canadian charities

It began in early January 2012 when Prime Minister Harper expressed his concern about “foreign money” influencing Canadian energy policy, referring to US charitable foundations supporting Canadian environmental groups’ efforts to protect globally significant ecosystems.

Three days later, on January 9, in an open letter addressed to Canadians, Natural Resources Minister Joe Oliver lashed out at environmental groups with the following accusations: “These groups threaten to hijack our regulatory system to achieve their radical ideological agenda. They seek to exploit any loophole they can find, stacking public hearings with bodies to ensure that delays kill good projects. They use funding from foreign special interest groups to undermine Canada’s national economic interest.” As a response, Minister Oliver promised to reform and streamline the environmental assessment process for major resource development projects.

These accusations were made as the Conservative-dominated Commons Finance Committee was set to begin a review of the charitable sector, which critics feared would lead to undue examination of the sector’s transparency, political activities, its advocacy role and the flow of funds received from outside the country. On February 9, the Conservative MP for the Alberta riding of Fort McMurray-Athabasca in the heart of the oilsands, Brian Jean, announced he was preparing a private member’s bill to prevent foreign trusts from providing financial support to the Canadian environmental movement. “I would like to look at legislation to stop these people from bringing in the money, doing so either through disclosure or otherwise stopping them from interfering in Canadian interests” he said at the time. However, Mr. Jean retired from politics in January 2014 before he could table his private member’s bill.

Similar comments were made on March 13 during a Senate inquiry into the foreign funding of Canadian charities. Conservative Senator Don Plett asked where environmentalists would draw the line and whether they would take money from Al Qaeda, Hamas or the Taliban. He told the upper chamber that Canada is a sovereign nation and “foreign entities should simply not be allowed to meddle in the Canadian regulatory process under the guise of charities.” Another Harper-appointee, Percy Mockler, told the Senate it had to

stop the interference of foreign foundations who were "muddling" in the business of our country. Not all foundations were "evil" said Mockler, but he labeled others as "bad, not to mention ugly, foundations". He then proceeded to list the David Suzuki Foundation, the Packard Foundation, the Greenpeace International Foundation, the Sierra Club Foundation, the Hewlett Foundation, the Ecojustice Canada Bullitt Foundation, the Gordon and Betty Moore Foundation, Tides Canada and even the MADD foundation. "They are all anti-Canadian," echoed Senator Mike Duffy, a former television personality and another Harper-appointed Tory. A few months later, Senator Duffy became a central figure in a political drama involving allegations of financial fraud and the subject of an RCMP investigation into what has come to be known as "the Senatagate". His trial is still underway at the time of writing this paper.

Conservative members continued to make unsubstantiated allegations of money laundering and foreign interference in Canadian policy-making throughout the parliamentary reviews. However, more informed and knowledge-based public debate and media coverage revealed the political activities of charities to be a bogus issue and a diversion. According to Imagine Canada, an umbrella group representing charities, there are very few organizations among the 85,000 Canadian charities that actually carry out any political activity and, of those that do, very few even come close to allocating the admissible 10 per cent of their resources toward it. As well, a closer look at sources of foreign funding showed that the targeted environmental charities had received substantially less foreign funding from abroad than several charities, foundations and lobby groups favorable to the Harper government's agenda. For its part the Canadian Press reported that only one environmental charity was among the top 10 recipients of foreign money. That charity, Ducks Unlimited, was recently appointed to the Harper government's new hunting and fishing advisory panel. The others were mainly development and humanitarian NGOs including World Vision and Care Canada.

Nevertheless, in April, the government introduced new measures in its *Budget 2012 Implementation Bill* that tightened the rules and reporting obligations regarding charities' political activities. Bill C-38 stated that "concerns have been raised that some charities may be exceeding these limitations and that there is currently no requirement for a charity to disclose the extent to which it receives funding from foreign sources for political activities." In response Budget 2012 imposed new reporting requirements on charities regarding their political activities and the extent to which they may be funded by foreign sources. It provided the Canadian Revenue Agency (CRA) with the authority to suspend for one year the tax-receipting privileges of charities that exceed the 10% permissible amount, who inaccurately report their political activities or fail to disclose gifts from foreign donors. The bill also granted CRA additional funding and resources to carry out more in-depth audits of charities.

Faithful to Natural Resources Minister Joe Oliver's comments in January, Bill C-38 also introduced amendments to the *Canadian Environmental Assessment Act* that weaken the environmental assessment process for resource-based projects. The new regime is based on a list of types of projects eligible for assessment, rather than any project requiring federal authorization, and features restricted timeframes, limited scope of investigation, limited public participation, and extensive (but poorly defined) discretionary decision-making by federal authorities, including delegation to provincial processes. The result has been characterized as nothing more than a regulatory information gathering process — an environmental assessment process in name only. Another piece of legislation, Bill C-45 (*Jobs and Growth Act 2012*), also modified Canada's *Indian Act* with a view to opening up Indigenous territory for resource development projects.

The attacks continued on August 8 when Ethical Oil Institute, a pro-tar sands industry lobby group with links to the Harper government, filed a legal brief with CRA in which it accused Tides Canada of "laundering" money from donors to organizations engaged in "non-charitable" political activities. Ethical Oil asked CRA to consider whether Tides Canada, a Vancouver-based environmental and social justice organization, had

violated Canada's charity law and to withdraw Tides' charitable status. Ethical Oil had in the past accused environmental organizations of using foreign funds to improperly influence Canadian political debates.

The Ethical Oil brief accused Tides Canada of engaging in "impermissible political activities" and referred to many activities carried out by Tides and the groups it funds in opposition to the Conservative government's environmental policies, especially with regards to the development of the Alberta tar sands.

Ethical Oil is a Toronto-based lobby group that aggressively promotes and defends Canada's tar sands industry. Its website says the organization was founded "to promote the ideas in Ezra Levant's bestselling book, *Ethical Oil: The Case for Canada's Oil Sands*. One of its founders, Alykhan Velshi, had worked for Immigration Minister Jason Kenney before launching the initiative. He has now returned to Ottawa politics as a senior official in the Prime Minister's Office and the group is now run by Jamie Ellerton, another ex-Kenney staffer.

Public Safety anti-terrorism strategy document highlights "domestic threat"

On February 9, a month after the controversy surrounding the declarations by Prime Minister Harper and Natural Resources Minister Joe Oliver over the political activities and foreign funding of charities, the minister of Public Safety, Vic Toews, released the government's revised policy statement on counter-terrorism. The document, titled *Building Resilience Against Terrorism*, is the second such post-9/11 policy statement that sets out how the multifaceted activities of government departments and agencies are involved in counter-terrorism and contribute to Canada's anti-terrorism strategy. The aim of the strategy is: "To counter domestic and international terrorism in order to protect Canada, Canadians and Canadian interests."

Under a section titled "The Terrorist Threat", the document affirms that "The threat to Canada from terrorism has three main components: violent Sunni Islamist extremism — both at home and abroad, other terrorist groups, and domestic issue-based extremism." In another chapter titled "Domestic Issue-based Extremism" the document goes on to say: "Although not of the same scope and scale faced by other countries, low-level violence by domestic issue-based groups remains a reality in Canada. Such extremism tends to be based on grievances — real or perceived — revolving around the promotion of various causes such as animal rights, white supremacy, environmentalism and anti-capitalism." It also says that a small number of groups in Canada "have moved beyond lawful protest to encourage, threaten and support acts of violence" and warns that these groups "could choose to adopt a more violent, terrorist strategy to achieve their desired results." The executive summary expresses it this way: "At home, issue-based domestic extremists may move beyond lawful protest to threaten acts of terrorism."

The wording of the policy statement muddles the distinction between civil disobedience, which might very well imply low-level violence, and terrorism. It characterizes groups who may choose civil disobedience as "issue-based extremists" and appears to move the discourse forward in associating civil disobedience and low-level violence with "terrorism."

Greenpeace targeted in threat assessment report

At the end of July, the Canadian Press obtained a heavily censored copy of a September 2011 threat assessment of marine-related issues under the *Access to Information Act*. The report was compiled by the RCMP with input from the Canada Border Services Agency, Canadian Security Intelligence Service, Defence Department, Fisheries and Oceans and Transport Canada.

The report states that "The Canadian law enforcement and security intelligence community have noted a growing radicalized environmentalist faction within Canadian society that is opposed to Canada's energy sector policies." It singles out Greenpeace, saying "Greenpeace is opposed to the development of Canada's Arctic region, as well as Canada's offshore petroleum industry. Criminal activity by Greenpeace activists typically consists of trespassing, mischief, and vandalism, and often requires a law enforcement response."

"Tactics employed by activist groups are intended to intimidate and have the potential to escalate to violence" adds the report before concluding that there is a need for strategies "to detect and disrupt threats" before they occur.

Ottawa establishes Alberta counterterrorism unit

After labeling certain environmental and first nations groups as extremists and radicals, on June 6 the federal government announced the creation of a counterterrorism unit in Alberta in order to protect the province's natural resources and infrastructure. The new counterterrorism unit, with offices in Edmonton and Calgary, is Canada's fifth Integrated National Security Enforcement Team (INSET) set up in major Canadian cities since the September 2001 terrorist attacks in the United States. The INSETs are responsible for criminal investigations involving terrorist activities.

The creation of the a new Alberta counterterrorism unit was "prompted by factors such as a growing population, a strong economy supported by the province's natural resources and the need to protect critical infrastructure," said the RCMP in a statement in support of the government's announcement. The statement goes on to say that while there is "no indication that the threat level is higher" in Alberta, "... the establishment of an INSET in Alberta ensures that we have the capacity to address these threats if they arise."

The new INSET is composed of specially trained members of the RCMP, Edmonton Police Services, Calgary Police Services, Canada Border Services Agency and CSIS.

In reaction to the creation of the Alberta INSET, Greenpeace director Bruce Cox said "The tight circle of corporations, government and security forces is remarkable. Private companies get a private security and intelligence gathering force paid by tax payers."

Intelligence-sharing with the corporate sector

An article published in *The Dominion* on October 10, 2012 revealed that the Canadian government had been organizing briefings that provide energy companies with classified intelligence from the Canadian Security Intelligence Service, the RCMP and other agencies, including Communications Security Establishment Canada (CSEC), raising concerns that federal officials are spying on environmentalists and First Nations in order to provide information to the businesses they criticize. According to documents obtained under the *Access to*

Information Act, the secret-level briefings have taken place twice a year since 2005. The draft agenda for one of the briefings, acquired by *The Dominion*, shows that the RCMP and CSIS assisted the department of Natural Resources in organizing a daylong event on November 25, 2010, at CSIS headquarters in Ottawa, and a networking reception the previous night at the Chateau Laurier. Speakers at the event included presenters from the RCMP and CSIS, as well as the Department of National Defence and Public Safety Canada. The article also says that participants were given the option to review selected classified reports, but that note-taking at the event was prohibited.

Just over a year later, following the Snowden leaks and the NSA/CSEC revelations, The Guardian confirmed that CSEC, which allegedly hacked into the Brazilian mining and energy ministry, had participated in those secret briefings with Canadian energy corporations. According to The Guardian, meetings were officially billed to discuss "threats" to energy infrastructure but also covered "challenges to energy projects from environmental groups", "cyber security initiatives" and "economic and corporate espionage". The documents obtained do not indicate that any international espionage was shared by CSEC officials, but the meetings were an opportunity for government agencies and companies to develop "ongoing trusting relations" that would help them exchange information "off the record", wrote an official from the Natural Resources ministry in 2010.

Groups opposed to energy projects such as the tar sands expressed misgiving about such meetings. Keith Stuart, a climate change campaigner with Greenpeace Canada, told *The Dominion* "I see a worrying trend of blurring the lines between government security apparatus and the private sector. What we are seeing is government working at the behest of these big multinational corporations, rather than seeing themselves as a regulator of those companies in the public interest."

"They have created this security culture where there is no separation between the federal government, and the fossil fuel sector," commented Clayton Thomas-Muller, an organizer with the Indigenous Environmental Network, a group fighting for the rights of Indigenous people around the world and a vocal opponent of tar sands projects.

Both Thomas-Muller and Stewart told *The Dominion* that they are concerned that groups opposing energy projects may be spied upon by intelligence agencies that report on their activities to energy companies.

Expanded state surveillance

On June 6, 2014, the Ottawa Citizen reported that the federal government was expanding its surveillance of public activities to include all known demonstrations across the country.

The request sent out by the Government Operations Centre in Ottawa to all federal departments read: "The Government Operations Centre is seeking your assistance in compiling a comprehensive listing of all known demonstrations which will occur either in your geographical area or that may touch on your mandate."

The Government Operations Centre or GOC is supposed to provide strategic-level coordination on behalf of the federal government "in response to an emerging or occurring event affecting the national interest." But according to the Ottawa Citizen, the GOC has also been involved, as an intelligence clearing house, in compiling information on Aboriginal protesters. The latest request, however, significantly expanded its surveillance activities to include all demonstrations by any person or group.

Wesley Wark, an intelligence specialist at the University of Ottawa, told the Citizen such an order is illegal. “The very nature of the blanket request and its unlimited scope I think puts it way over the line in terms of lawful activity,” said Wark. “I think it’s a clear breach of our Charter rights.”

A successful campaign?

By mid-2012, a score of civil society organizations critical of government policies had been either de-funded, demonized or simply shut down. The list included organizations such as KAIROS, the Canadian Council for International Cooperation, Alternatives, Rights and Democracy and many others. (For an exhaustive list, visit the Voices-Voix website at voices-voix.ca).

In February 2014 CBC News reported that CRA was conducting extensive audits on some of Canada's most prominent environmental groups to determine if they complied with guidelines that restrict political advocacy. According to the CBC, the list of groups reads like a who's who in the environmental charity world. They include: The David Suzuki Foundation, Tides Canada, West Coast Environmental Law, The Pembina Foundation, Environmental Defence, Equiterre and Ecology Action Centre.

“We’re concerned about what appears to be an increase in audits around political activity and in particular around environmental organizations,” said Marcel Lauzière, president of Imagine Canada, an umbrella organization for charities. “There’s a big chill out there with what charities can and cannot do.” John Bennet, Executive Director of Sierra Club Canada, expressed it this way: “This is a war against the sector”.

Three years following the launch of the campaign by the Harper government, the attacks against groups and charities opposed to the government’s policies continued. By January 2015, 53 charities had been subjected to these audits. While the first 10 audits targeted environment charities, most of whom oppose the government’s promotion of energy pipelines and the tar sands, later audits expanded to include anti-poverty, human-rights and international cooperation groups also critical of the Harper Government’s policies.

New Anti-Terror Bill

Finally, in the spring of 2015, the government tabled new anti-terrorism legislation that codified into law many elements of its discourse as well as questionable practices of police and intelligence agencies described throughout this chapter. Bill C-51, the *Anti-Terrorism Act, 2015*, expands the definition of what is considered a threat to the national security of Canada to include interference with the economic or financial stability of Canada, and interference with critical infrastructure. It empowers 17 government departments to exchange and collate information on individuals involved in such activities, and expands CSIS’ mandate to include powers of disruption, including covert actions and tactics that violate the Canadian Charter of Rights and Freedoms. The bill also lowers the threshold for making preventative arrests and obtaining a peace bond and extends the period of time that recognizance conditions can apply; it expands criteria to prevent an individual from boarding a plane without the need for a judicial warrant; and includes provisions that will criminalize “advocating” or “promoting” terrorism, in general. All of this raises further worries about how it could be used in particular against Aboriginal peoples and organizations that contest the extractivist agenda in this country.

Discussion and Conclusions

By looking at the nature of criminalization in five case studies in the Americas in connection with Canadian extractive industries and in the context of the extractivist model today, we observe several patterns and draw a few conclusions. First, we see a trend of intensified criminalization of dissent of land and environment defenders in the Americas. Second, we see a reinforced role of the state to enact discipline and punishment through stigmatization, biased application of the law and/or legal reforms that toughen measures for social control and security in favour of the extractive industry. Third, we find that the Canadian government has consistently promoted the interests of Canadian mining companies to influence decisions over extractive projects and related policies through its diplomatic services, aid money, and foreign policy. Fourth, we see a parallel trend within Canada of repression and deregulation to favour neocolonial extractivism that is consistent with the model that Canada promotes beyond its borders.

With regard to the first trend, we see how individuals and groups are targeted for their resistance to extractivism and its negative impacts through a range of repressive acts, including stigmatization, spurious legal processes, as well as targeted violence and militarization. We see this repression intensifying over time. Furthermore, while criminalization takes a toll on the work of land and environment defenders, corporations continue committing abuses that remain in impunity with their economic interests intact.

The intensification of criminalization is particularly pronounced in the case of Guatemala.

In Guatemala, Goldcorp was the first company to get a large-scale mine underway since the end of the armed conflict in 1996. In connection with Goldcorp's Marlin mine in the northwestern highlands, we observe a strategy combining legal, political and psycho-social elements that the company employs to undermine local consultation processes and criminalize local opponents, who are made to suffer prolonged legal persecution and several instances of physical violence. Further, the company has consistently enjoyed privileged backing from armed forces and state agencies — including from the Canadian state — to assert its interests. In contrast, despite repeat community complaints that precipitate strong recommendations from regional and international human rights bodies to suspend the mine and respect their collective rights, the communities lack effective and binding mechanisms to hold the company to account.

Tahoe Resources — a spin-off firm from Goldcorp — was the second company to get a large-scale mine into operation during the post-war period and seems to have learned all the worst lessons from Goldcorp's Marlin mine. Similar to Goldcorp, Tahoe Resources employed a strategy with state support at its Escobal project in southeastern Guatemala that has included legal challenges against community consultation processes, the criminalization of visible community leaders promoting consultation processes, and criminalization of vulnerable community members involved in protests. From 2011 to 2013, company representatives, individuals believed to have company backing, and state agents brought nearly 90 legal cases against peaceful protesters and community leaders, all but one of which have been fully absolved. Under the current administration of President Otto Pérez Molina, a former military general, the state has participated in stigmatizing and criminalizing mining-affected communities, also giving rise to more violence and militarization. Between 2013 and 2015, there have been multiple acts of violence in connection with the Escobal mine, which implicate private security guards and other actors that have not been fully investigated. In 2013, a military state of siege was temporarily ordered. Since then, military presence has continued and a permanent office led by the National Security Commission has been established in the local area with the help of the company that frames local opponents as a threat to national security. The company considers it a tool to address community and security matters, while local activists consider it to be a counterinsurgency and military intelligence operation.

Second, we see a reinforced role of the state to enact discipline and punishment on people and organizations that challenge the extractivist model or its negative impacts. Toward this end, laws and justice are applied (or not) and may be reformed (or not) in a biased fashion to favour the interests of extractivist projects, further stacking the justice system and the legal framework against peoples struggling to defend land, healthy communities, a safe living environment and sustainable livelihoods.

In Peru, two decades of reforms to institutionalize discrimination against campesino and Indigenous communities affected by extractive projects have meant harsh punishment for people organizing to defend their lands and their water supplies. Those who speak out or protest face heightened penalties and are frequently stigmatized as terrorists or as having been manipulated by terrorists. In the context of the highland Andean communities, they are denied respect as Indigenous peoples, so as to avoid application of a prior consultation law (passed in 2011) much less respect for their free, prior and informed consent over whether or not mining can take place in their territories in accord with UN Declaration of the Rights of Indigenous Peoples and international jurisprudence. Meanwhile, transnational mining companies can employ police and army on contract, being guaranteed that state armed forces will respond to dispell protests and defend their project sites. If police or soldiers wound or kill people in the process — something that has been happening with disturbing frequency in Peru as social-environmental conflicts over extractive projects have multiplied in tandem with exponential increases in foreign investment — they are guaranteed immunity from criminal liability. When Peru's armed forces show up using company vehicles or dressed in clothing bearing company logos, the message about who's security is ensured and who's peace is protected is made clear to communities facing the barrel of their guns.

In Ecuador, despite a new 2008 political constitution that declares the country to be a plurinational state that promotes food sovereignty, recognizes the human right to water and the right to resist acts that could violate one's rights, human rights, environmental and Indigenous organizations have been sounding the alarm about a new wave of criminalization against social protest and dissent. Notoriously, since 2008, Canadian authorities and companies played a key role in containing efforts to strengthen mining regulations and tax measures governing Ecuador's nascent mining sector in which no large-scale mining project is as yet underway. The Canadian Embassy successfully lobbied against application of a constitutionally ranked decree that should have annulled the mining concessions of most Canadian-owned projects for lack of prior consultation with communities, as well as for overlap with water supplies and protected natural areas. The Embassy also ensured that Canadian companies had a privileged seat at the dialogue table over a new mining law that passed in 2009 without adequate prior consultation with Indigenous organizations and affected communities who have been arguing that Ecuador should not develop a large-scale mining sector. The mining law failed even to incorporate the tenets of the above-mentioned decree. This law provides corporations with recourse to seek an Administrative Injunction that obliges the state to come to their defence if their activities could be impeded in anyway. In the last couple of years, Canadian companies have also successfully pressured for retrogressive reforms in the new mining law to make mine permitting easier and to weaken tax measures. Concurrently, while having increased national participation in the mining sector and promising greater local benefits from mining, the current president has regularly issued public threats against anyone who questions the national economic agenda and its continued reliance on extractive industry. Indigenous and campesino community leaders have been criminalized on charges of terrorism, with greater use of arbitrary detention and preventative prison sentences. While individuals and their families take a toll in terms of stress and resources needed to fight spurious charges and endure lengthy legal processes, efforts to protect water supplies and livelihoods, to defend local autonomy and Indigenous self-determination, and for respect for local decision-making and an economic model based on good living and solidarity have been set back in mining-affected areas and at the national level.

Third, we observe how Canadian companies benefit from this increasingly repressive and violent context, consistently working with Canadian authorities to compell and perpetuate these trends. In each Latin American case study, we have identified how Canadian Embassies, overseas development aid or trade pacts have been used to justify Canadian mining projects, to lobby in favour of their interests and to gain favour over the wellbeing of mining-affected communities.

In Mexico, this was blatantly demonstrated through the way that the Canadian Embassy held Blackfire Exploration's hand from 2007 to 2010 to enable the company to get its barite mine up and running, to troubleshoot for the company when community opposition and complaints over environmental and social impacts arose, to ignore threats to the lives of local community leaders such as Mariano Abarca, and to continue defending the company's interests even after Abarca was murdered, evidence of corruption had come to light, and the mine was shut down on environmental grounds. This and other examples demonstrate how this is not just a problem with corporate behaviour, but also with the disparaging and neocolonial attitude of Canadian authorities toward these communities and the Canadian state's efforts over the last couple of decades to reinforce and entrench extractivism — especially favouring neoliberal extractivism — in the region.

Fourth, by looking at the trends of stigmatization and criminalization against communities and organizations who are resisting and challenging this same economic development model within Canada's borders, we illustrate the congruency between the extractivism that Canadian authorities are promoting and protecting in neocolonial fashion abroad with their efforts to foster its expansion at home.

In Canada, the Canadian Security Intelligence Service (CSIS) and Royal Canadian Mounted Police (RCMP) security reports, along with government policy documents — notably on Canada's anti-terrorism strategies — have started to equate "economic interests" with Canada's "national interests" and portrayed any group opposed to these interests as a threat to Canada's national security. Groups opposed to government policy, particularly surrounding the development of the energy and extractive sectors, have been infiltrated and the object of surveillance by both CSIS and the RCMP. This includes people and community groups participating in the public Environmental Assessment process of the Northern Gateway pipeline project. First Nations activists have been targeted and been the object of special spy operations carried out by the Canadian military. Intelligence gathered was shared with energy companies during private briefings by security agencies, including CSIS. These actions have been supported by what appears to be a concerted campaign, by Conservative ministers, members of Parliament and senators, to demonize and delegitimize civil society organizations opposed to government policies — especially, but not uniquely in the environmental sector —, as well as by a tightening of rules and regulations governing the political and international fundraising activities of charities and their reporting obligations. Now, the proposed Anti-Terrorism Act, Bill C-51, which aims to give enhanced powers to Canadian intelligence agencies, redefines security to include preventing interference with the economic or financial stability of Canada. This bill also lowers the threshold for making preventative arrests and obtaining a peace bond and extends the period of time that recognizance conditions can apply; it expands criteria to prevent an individual from boarding a plane without the need for a judicial warrant; and includes provisions that will criminalize "advocating" or "promoting" the commission of terrorism offenses. All of this raises further worries about how it could be used in particular against Aboriginal peoples and organizations that contest the extractivist agenda in this country.

Where do we go next?

For every instance of criminalization profiled in our full discussion paper, there are many other examples about the ways in which Indigenous and Afro-Descendant peoples, farmers, environmentalists, journalists, and concerned citizens are being methodically targeted and criminalized for speaking out against extractivism. Equally, there are examples in which Canadian state authorities and companies have been complicit in the entrenchment of the extractivist model and have tried to repress reforms that social movements and governments have sought to make. Our goal with this discussion paper is not to do an exhaustive survey of cases of criminalization and Canada's role in extractivism in the hemisphere. Our intent is to provide a framework wherein we could provide examples of the criminalization of land and environment defenders with connections to Canadian interests, while including details about the kinds of resistance being undertaken to defend land and life; to urge respect for community self-determination, autonomy and other visions of development; and to hold up the dominant political and economic development model to greater scrutiny given its destructive implications for affected communities and the commons, and the important role that the Canadian state has assumed in order to promote its expansion at home and around the world.

In the context of the criminalization of dissent of land and environment defenders in the Americas, our process of reflection leads us to conclude that we urgently need to determine how to better coordinate as individuals, organizations and networks in Canada in solidarity with those being harmed by the rapacious interests of extractivism in Canada and Canadian extractive interests in the hemisphere. Given the nature of the processes of criminalization taking place in Canada, especially pressures on organizations that receive public funding and the chilling effect that this is having, we must be creative and look for opportunities to build new alliances across issues, including with those who are already working on civil liberties and criminalization in other sectors, and with those who are seeing and experiencing the impacts of extractivism in sectors such as agrobusiness and energy.

It is vital that we recognize that by and large the same extractivist model that is being imposed at home is the same as that which Canada is promoting abroad. We must see ourselves as actors in this struggle, not just allies or solidarity activists. It is paramount that we make the connections and join movements against this unjust political and economic development model, on the basis of respect for the autonomy and self-determination of affected communities, the protection of water, biological and cultural diversity and sustainable livelihoods. Central to this should be preventing harms before they happen and strengthening collective demands for state and corporate accountability for the abuses of communities, workers and the environment. Furthermore, we need to seek ways to address the financial and material dependency that we have come to have on such destructive and profit-hungry mineral extraction.

It is necessary that we cultivate spaces independent of state and industry funding for critical research and action within and among civil society organizations, academics and grassroots groups. It is important to make creative and collective use of our still considerable resources to resist deepened dependence on natural resource extraction when we urgently need to move in the opposite direction.

The full report concludes with a short list of recommendations culled from a survey of existing reports about criminalization from various social movements and human rights organizations and with a full review of international instruments in order to consider the range of areas for further research and action that we can collectively cultivate. Generally, the recommendations provide political, structural and policy considerations that we, in our movements, can use as points of departure to build greater solidarity with affected communities. The recommendations could become organising themes in our groups, organizations and as a movement to build greater coherence and coordination to defend dissent, the wellbeing of communities, and to acknowledge the importance of these struggles to processes of decolonization and to the integrity

of the commons whether that be the water we share, the air we breathe, the relationship between mineral extraction and climate change, or the depletion of mineral resources.

The recommendations are categorized, first, according to whom they are directed: a) Civil Society, Media and Researchers; b) Host States, meaning the country in which a company is operating; c) Home States, meaning the country of origin of a company; and d) Companies. They are also categorized by areas for action: a) Respect for dissent and the right to protest in defence of land and the environment; b) Protection of land and environment defenders; c) Surveillance and access to information; d) Fight against impunity; e) Preventative measures to address the root causes of the criminalization of land and environment defenders; f) How and what laws are written and applied; and g) Policing of demonstrations and other forms of protest to ensure protection of land and environment defenders. The list is not exhaustive, but we hope at a minimum that it will serve as a useful contribution to developing a common platform for action.

Overall, we are moved by a sense of urgency to raise the level of this discussion given how governments — including the Canadian government — are using any means available to protect extractive interests by seeking to criminalize anyone who questions their activities, their impacts, or the underlying model for economic growth. The general goal of criminalization is to cultivate fear and self-censorship on the individual and collective level, while debilitating social movements, swaying public opinion against anyone who dares to disagree, and, in the worst case, making any action contrary to extractivist activities and related policies illegal and a target for state violence. The process of criminalization itself can lead to serious threats, violence, heightened policing and surveillance, and militarization. In this increasingly difficult context, and while recognizing that each individual struggle has its particularities, we believe that it is important to recognize the extent of the threat to lands, territories, watersheds, sacred spaces, farms and diverse peoples across the hemisphere. We need to see that we are struggling up against an economic and political model being imposed on affected Indigenous and non-Indigenous communities from north to south who are forced to bear the brunt of the social, environmental and economic impacts from industrial primary resource extraction that is fuelled by an unhealthy and unsustainable material and financial dependency jeopardizing the natural commons on which we all rely. At the same time that we need to strengthen our responsiveness to individual conflicts and cases of criminalization, it is urgent to make more connections between them and see them as part of a common problem deserving a more concerted response.

Finally, we hope that this discussion paper will contribute to fostering further research, organizing, and action in response to the restriction of political space and repression that is taking place in the name of “security” and the so-called national interest in order to further extractivism in the hemisphere. We hope that it will motivate more efforts to draw attention to the voices and issues being silenced, as well as to shed light on how the governments and corporations involved are complicit in the stigmatization, threats, exhausting and costly legal processes, repression, violence, injuries and murders that are taking place in order to shamelessly shore up their interests. We also hope that it will compell greater attention to how stigmatization and criminalization in the Canadian context is oriented to try to repress debate and encourage self-censorship around root issues related to extractivism, such that we name the problem and pursue creative strategies to resist this tendency and build a stronger movement.

We look forward to your comments, reflections, input and conclusions on these same themes and proposals with the hope that we will be able to strengthen our coordination, research and actions together.

Recommendations

To Civil Society, Media and Researchers

Respect for dissent and the right to protest in defense of land and the environment

1. Undertake education and dissemination of information directed toward all State agents, the general public and the press to raise awareness about the importance and validity of the work of land and environment defenders and the criminalization of dissent and social protest, including by challenging the extractivist development model and denouncing related injustices, taking the lead from affected communities.^J
2. Publicly recognize that the exercise of the protection and promotion of individual and collective Indigenous and human rights are legitimate actions and that, by exercising these rights, land and environment defenders are helping to strengthen the rule of law and to expand the rights and guarantees of all persons;
 - a) Public opinion makers must refrain from making statements that stigmatize land and environment defenders or that suggest that organizations working on land and environmental issues act improperly or illegally, merely because they promote and defend Indigenous and human rights, the land and the environment;
 - b) Editorial boards and the governing boards of civil society organizations should give full recognition to the important work carried out by land and environment defenders;
 - c) Media outlets and civil society organizations should not tolerate the stigmatization of the work of these defenders by public officials or the media, particularly in context of social polarization, as this can foster a climate of intimidation and harassment which might encourage rejection and even violence against defenders.^C
3. Strengthen independent and public media to monitor and report on the work and struggles of land and environment defenders and the criminalization of dissent and social protest, to ensure fair and factual coverage.^B
4. Build knowledge about criminalization of dissent and social protest in defence of land and the environment. Increase collaborative efforts of Canadian scholars and activists aimed at furthering the understanding of the processes underlying criminalization of dissent and social protest by land and environment defenders in order to have greater impact in countering this trend.
5. Civil society organizations should provide independent support and expertise to mining-affected communities, and refrain from participating in partnerships with industry, whether or not they are government-sponsored, in order to not reinforce asymmetrical relationships, to strengthen communities and their organizations, and to ensure that their own organizations have the liberty to speak out when there are abuses in connection with a given extractive project and/or policy.
6. Civil society organizations, researchers and academics should nurture networks and coalitions that can research, act and speak clearly in solidarity with land and environment defenders who struggle to protect their individual and collective Indigenous and human rights.
7. In the context of government attacks on social movements, which include efforts to stigmatize, cut public funding and undertake forensic audits of not-for-profit organizations that the government deems to be critical of the extractivist agenda, it is vital that movements establish and nurture organizing spaces, such as coalitions or networks that can assert clear positions and that are not dependent on government funding.

Protection of land and environment defenders

8. Establish links with relevant international mechanisms, such as special rapporteurs and rights monitoring groups.^G
9. Create and/or strengthen support networks among land and environment defenders and watchdog relevant public and private sector actors. Define a strategy and procedures for the urgent protection of land and environment defenders facing threats. A strategy should include criteria for deciding whether the situation of risk justifies communicating information to the regional and international protection networks, in which case great care must be taken to present accurate and complete information.^B
10. Systematically monitor legal proceedings against land and environment defenders (including through trial observation), visit land and environment defenders in custody and express public support for defenders and their families.^F
11. Pressure state authorities in the Americas, including Canada, to fulfil their obligations to protect land and environment defenders through tangible measures and to monitor the implementation of such measures. These measures could include visiting defenders facing threats and legal processes, demanding that states guarantee full, impartial and immediate investigations of threats and violence, and ensuring relocation in extreme cases of threat. Identify, support, and urge governments to implement existing recommendations related to the criminalization of land and environment defenders, such as those issued by the Inter-American Human Rights System, Special Mechanisms of the United Nations (Committees and Rapporteurs) and the United Nations Human Rights Council under the Universal Periodic Review.^E

Surveillance and Access to Information

12. Strengthen networks and groups that monitor the grounds and procedures governing intelligence-gathering activities targeting land and environment defenders and their organizations to ensure due protection of individual and collective Indigenous and human rights.^J
13. Utilize access-to-information laws to obtain information held by the state about civil society organizations and land and environment defenders. Urge the state to establish, and where it is established, to ensure an expedited, independent, and effective mechanism for this purpose. This must include independent, civilian oversight of the government's and/or the security intelligence agencies' decisions to deny access to information.^J

Fight Against Impunity

14. Demand that the government of Canada amend existing civil, criminal and administrative laws and introduce new judicial and non-judicial mechanisms at home to hold companies based or registered in Canada to account for individual and collective Indigenous and human rights violations committed in another country.
15. Demand that the government of Canada hold public officials to account where their acts or omissions in dealing with individual and collective Indigenous and human rights violations connected with Canadian-registered mining corporations operating internationally demonstrate negligence or another type of co-responsibility for the harms caused.

Preventive Measures to Address the Root Causes of Criminalization of Land and Environment Defenders

16. Demand that the government of Canada stop promoting, supporting through political and economic means, and protecting extractivist expansion, given systemic violations of individual and collective rights of mining-affected communities, impacts on water supplies and ecologically and culturally important areas.^I
17. Identify and promote options that will reduce dependency on the extractivist development model, taking the lead from affected communities.

To Home States or the State of Origin of a Company – Canada

How and What Laws are Written/Applied

1. Annul, repeal or amend legislation which permits the criminalization of land and environment defenders and which, when applied, contravenes international and regional obligations of States.^E
2. Adopt Canada-wide anti-SLAPP legislation ('Strategic lawsuits against public participation' or SLAPP suits are brought with the intention of intimidating and silencing critics through expensive and exhausting legal processes). This is central to respecting and recognizing the rights to freedom of expression, democratic participation of individuals and groups in public debates, equality before the courts and academic freedom. Anti-SLAPP legislation will protect affected communities, concerned individuals, civil society organizations and academics from suits by resource-extraction companies. SLAPP suits transform the engagement of individuals and groups in public debates around the defense of environmental, cultural or economic rights into a private dispute between these individuals and organizations, while large economic interests and powers with disproportionate financial capacities try to intimidate, financially exhaust and reduce those individuals and organizations to silence.

Respect for dissent and the right to protest in defense of land and the environment

3. Publicly recognize that the protection and promotion of individual and collective Indigenous and human rights are legitimate actions and that, by exercising these rights, land and environment defenders are helping to strengthen the rule of law and to expand the rights and guarantees of all persons. Also,
 - a) Public officials must refrain from making statements that stigmatize land and environment defenders or that suggest that Indigenous and/or human rights organizations act improperly or illegally because they promote and defend Indigenous and human rights, and/or land and environmental defence. In this respect, governments should give precise instructions to their officials and should impose disciplinary sanctions on those who do not comply with such instructions;
 - b) States should give full recognition to the important work carried out by land and environment defenders;
 - c) States should not tolerate the stigmatization of the work of these defenders by public officials, particularly in a context of social polarization, as this can foster a climate of intimidation and harassment that might encourage rejection and even violence against defenders.^B
4. The government of Canada should repeal its "economic diplomacy" policy for overseas missions (as described in the November 2013 'Global Markets Action Plan') according to which "all diplomatic assets of the Government of Canada will be marshalled on behalf of the private sector in order to achieve the stated objectives within key foreign markets." In its place, the Canadian government should adopt official policies to guide the behaviour of Canada's missions abroad in accord with the international human rights instruments to which Canada is a signatory and ones that it has endorsed, including the UN Declaration on the Rights of Indigenous Peoples. Such policies could take direction from instruments such as the EU Guidelines for Human Rights Defenders.
5. Foreign missions should appoint specific liaison officers that
 - (a) Where they are invited to engage with communities, would gather detailed and impartial information about the Indigenous and human rights impact of business through dialogue with land and environment defenders and mining-affected communities. This information must not be shared with other for-profit or not-for-profit actors without the express consent of the defenders and/or communities;

- (b) Make themselves available to receive land and environment defenders in missions and, when invited, visit their communities and areas of work;^d
- (c) Systematically monitor legal proceedings against land and environment defenders (including through trial observation where appropriate), visit defenders in custody and express public support for defenders and their families;^e
- (d) Provide, as and where appropriate, visible recognition to land and environment defenders, through the use of appropriate publicity, visits or invitations.^j

Protection of Land and Environment Defenders

6. Trade missions should raise human rights concerns with host countries where the individual and/or collective Indigenous and/or human rights of affected communities and workers are at risk or are being violated in connection with the investment activities of Canadian companies.^f
7. Canada should urge authorities in the Americas, such as national prosecutors and human rights commissioners, to fulfil their obligations to protect land and environment defenders and mining-affected communities through measures, including, among others, to guarantee full and impartial investigation into threats and violence and to hold all of those responsible to account, and to monitor the implementation of such measures.^e
8. Canada should contribute resources through its cooperation programs for national human rights institutions and institutes for legal defence.^e
9. The Department of Foreign Affairs, Trade and Development should provide support to defenders fleeing persecution due to their activities of dissent in other countries by facilitating their entry into Canada and temporary residence, as per the 1951 Refugee Convention to which Canada is a signatory.

Fight Against Impunity

10. In keeping with the Maastricht Principles on the Extraterritorial Obligations in the area of Economic, Social and Cultural Rights, Canada should amend existing civil, criminal and administrative laws and introduce new judicial and non-judicial mechanisms at home to hold companies based or registered in Canada to account for individual and collective Indigenous and human rights violations committed in another country, or clarify existing regulatory frameworks that govern how to sanction domiciled businesses and their employees for involvement in abuses abroad to include such mechanisms.^f
11. Canada should hold public officials to account where their acts or omissions in dealing with individual and/or collective Indigenous and human rights violations in connection with Canadian-registered mining corporations operating overseas demonstrate negligence or another type of co-responsibility for the harms caused.
12. Foreign missions should monitor the activities of Canadian-domiciled or financed companies operating abroad and report on any individual and/or collective Indigenous and human rights violations that they observe to the appropriate local, national and international authorities and to make a public annual report about such violations.

Preventive Measures to Address the Root Causes of Criminalisation of Land and Environment Defenders

13. Stop promoting, supporting through political and economic means, and protecting extractivist expansion, given systemic violations of individual and collective rights of mining-affected communities, impacts on water supplies and ecologically and culturally important areas
14. Identify and promote options that will reduce dependency on extractivist expansion at home and around the world.^l

To Host States or States in which a Company is Operating – Canada and others

How and What Laws are Written/Applied

1. Use precise and unambiguous language that narrowly defines punishable offenses, thus giving full meaning to the principle of legality in criminal law.
2. Ensure that crimes invoked to arrest land and environment defenders are formulated in accordance with the principle of legality; ensure that authorities presiding over cases issue their decisions within a reasonable period of time; ensure that authorities and third parties do not violate the principle of presumption of innocence by making statements that stigmatize land and environment defenders who are being criminally prosecuted.^A
3. Ensure that authorities or third parties do not use the policy-making and punitive power of the State and its organs of justice to harass or persecute land and environment defenders who are engaged in legitimate and lawful activities.^A
4. Annul, repeal or amend legislation which permits the criminalization of land and environment defenders and which, when applied, contravenes international and regional obligations of States.^E
5. Ensure law enforcement budgets are not contingent on economic incentives. For example, law enforcement should not be directly funded - in any way - by contracts, rents or royalties from the extractive industry.
6. Respect workers' rights, including to join or form a union of their own choosing, without fear of any repercussions or persecution.^E
7. Respect the rights of mining-affected communities, including binding prior consultation and their rejection of unwanted projects; and respect indigenous rights to self-determination and free, prior and informed consent before any mining activities are initiated on their lands, in accordance with ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and international jurisprudence.^E
8. States should instruct their authorities to ensure that, from the highest levels, forums are created for open dialogue with mining-affected communities both Indigenous and non-Indigenous, as well as Indigenous and human rights organizations regarding the development of public policies that affect them. Indigenous peoples should be consulted on such public policy decisions in accord with ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and international jurisprudence.^A

Respect for dissent and the right to protest in defense of land and the environment

9. States should
 - (a) Publicly recognize that the exercise of the protection and promotion of individual and collective Indigenous and human rights are legitimate actions and that, by exercising these rights, land and environment defenders are helping to strengthen the rule of law and to expand the rights and guarantees of all persons;
 - (b) Public officials must refrain from making statements that stigmatize land and environment defenders or that suggest that Indigenous and/or human rights organizations act improperly or illegally, merely because they promote and protect Indigenous and human rights, and/or land and environmental defence. In this respect, governments should give precise instructions to their officials and should impose disciplinary sanctions on those who do not comply with such instructions;
 - (c) States should give full recognition to the important work carried out by land and environment defenders;

- (d) States should not tolerate the stigmatization of the work of these defenders by public officials, particularly in a context of social polarization, as this can foster a climate of intimidation and harassment that might encourage rejection and even violence against defenders.^B
10. States should appoint specific liaison officials who are independent of government to
- (e) Gather detailed and impartial information about the Indigenous and human rights impact of business through regular dialogue with land and environment defenders and mining-affected communities where they have an invitation to engage. This information must not be shared with other for-profit or not-for-profit actors without the express consent of the defenders and/or communities;
 - (f) Make themselves available to land and environment defenders and mining-affected communities, including receiving them in their offices and visiting their communities and areas of work;^J
 - (g) Systematically monitor legal proceedings against land and environment defenders (including through trial observation where appropriate);
 - (h) Visit defenders in custody and express public support for defenders and their families^E;
 - (i) Provide, as and where appropriate, visible recognition to land and environment defenders, through the use of appropriate publicity, visits or invitations.^J

Policing of demonstrations and other forms of protest to ensure protection of land and environment defenders

11. Adopt mechanisms to prevent the use of force during public demonstrations, through planning, prevention, and investigation measures.^A
12. Ensure that law enforcement officials are trained in international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other relevant treaties, declarations and guidelines.^B
13. Enforce a code of conduct for law enforcement officials, particularly with regard to crowd control and the use of force, and ensure that the legal framework contains effective provisions for civilian and independent oversight and accountability of officials, especially with regard to their responses to public protest actions.^B
14. Hold law enforcement officials to account under civil justice systems, and do not give civil or criminal immunity to law enforcement officials for abusive actions.^B
15. Stop the processes of the militarization of policing and repeal measures already in place. The military should not be involved or put in charge of law enforcement activities at any time. Law enforcement officials should not be trained in nor use military tactics and equipment. Law enforcement officials should not be deployed with soldiers.^B
16. Stop the processes of privatization of the armed forces and repeal measures already in place that allow police and other state armed forces to establish private contracts with corporations, which confuses their mandate to protect the peace for a country's population with protecting the private interests of a corporation.
17. In the context of the arrest and detention of a person, land and environment defenders should, at a minimum, have regular access to the detainee and basic information on the substance of the charges on which the detainee is held.^B

Surveillance and Access to Information

18. Revise the grounds and procedures governing intelligence-gathering activities targeting land and environment defenders and their organizations to ensure due protection of their individual and collective Indigenous and human rights. To this end, implement a mechanism for periodic, independent review of their records.^A

19. Ensure land and environment defenders and the general public have ready access to public information held by the State, as well as private information about them. Establish, maintain and adequately resource an expedited, independent, and effective mechanism for this purpose, which includes a review by civilian authorities of decisions to deny access to information, whether by state or state security authorities.^A
20. Allow land and environment defenders to perform their monitoring role and grant domestic and foreign media access to assemblies to facilitate independent coverage.^B
21. Ensure that the procedure for registering and the regulatory frameworks for organizations involved in Indigenous and human rights, land and environmental justice work do not become an impediment to their activities, and that registration is for declarative purposes, not to authorize, legalize or undermine their existence.^A
22. Do not restrict, prohibit or stigmatize access to funds, including from foreign sources, for the purpose of defending individual and collective Indigenous and human rights, land and the environment.^B

Fight Against Impunity

23. Combat impunity for attacks against land and environment defenders and individual and collective Indigenous and human rights violations by State and non-State actors, as well as those acting in collusion with them, by guaranteeing full, prompt and impartial investigations into allegations and appropriate and adequate redress and reparation to victims.^C
24. Allocate the resources and training required to build the capacity of prosecutors who are willing to pursue cases against those responsible for abuses against land and environment defenders.^F
25. Welcome and facilitate country visits from Special Rapporteurs of regional and international human rights organizations.^I

Preventive measures to deal with root causes of criminalisation of land and environment defenders

26. In Canada, stop promoting, supporting through political and economic means, and protecting extractivist expansion, given systemic violations of individual and collective rights of mining-affected communities, impacts on water supplies and ecologically and culturally important areas; identify and promote options that will reduce dependency on its expansion.^I
27. Encourage states outside of Canada when they make efforts to stop promoting, supporting through political and economic means, and protecting extractivist expansion, systemic violations of individual and collective rights of mining-affected communities, impacts on water supplies and ecologically and culturally important areas; and to identify and promote options that will reduce dependency on its expansion.^I

To Companies:

1. Companies should not support and ensure that they are not benefiting from, or remaining silent in response to the criminalization of dissent and social protest of land and environment defenders in relation to their operations or related activities.^K
2. Companies should ensure that they do not benefit from individual and collective human rights violations, such as threats, violence, murder, land theft, and destruction of water supplies and protected areas, and that their operations do not benefit illegal armed actors; that they do not enter into contract with state armed actors; and that they do not hire armed actors with a history of human rights abuses.^E
3. Companies should respect the rights of mining-affected communities, including binding prior consultation and their rejection of unwanted projects; and respect indigenous rights to self-determination and free, prior and informed consent before any mining activities are initiated on their lands, in accordance with ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and international jurisprudence.^E
4. Companies should respect workers's rights to freely join or form a union of their own choosing without fear of any repercussions or persecution.^K
5. Companies should not use their influence with law-makers, diplomats and politicians in ways which could, advertently or inadvertently, infringe the rights of local communities and lead to human rights abuses.^K
6. Companies should not launch SLAPP suits against community members, citizens, civil society organizations and academics in violation of their rights to freedom of expression, democratic participation in public debates, equality before the courts and academic freedom.

References for Recommendations

Please note: Recommendations above may be verbatim or modified from the relevant documented referenced below.

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- I. Observatorio de Conflictos Mineros de América Latina /Observatory of Mining Conflicts in Latin America (OCMAL), Cuando tiemblan los derechos Extractivismo y Criminalización en America Latina, 2011. <http://www.conflictosmineros.net/biblioteca/publicaciones/publicaciones-ocmal/cuando-tiemblan-los-derechos-extractivismo-y-criminalizacion-en-america-latina/download>
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- K. CIDSE, Criminalisation of Social Protest related to Extractive Industries in Latin America, Analysis and Recommendations, June 2011.
- L. CIDSE, The criminalization of human rights defenders in Latin America – An assessment from international organisations and European networks, June 2012.