



February 21, 2023

Canada-Ecuador Trade Consultations
Global Affairs Canada
Trade Policy and Negotiations Division (TCE)
John G. Diefenbaker Building
111 Sussex Drive
Ottawa, Ontario K1N 1J1

Via e-mail: TCE-Consultations@international.gc.ca

To whom it may concern,

re: Canada-Ecuador Free Trade Agreement

MiningWatch Canada is an Ottawa-based organization that works in solidarity with Indigenous peoples and non-Indigenous communities who are dealing with potential or operating industrial mining operations that affect their lives and territories, or with the legacy of closed mines, as well as with mineworkers and former workers seeking safe working conditions and fair treatment.

We write in response to the Government of Canada's invitation to consult with Canadian stakeholders regarding our views, reflections and priorities define Canada's "priorities in relation to potential future trade negotiations with Ecuador."¹

We welcome this opportunity to consult and Canada's commitment to openness and transparency. For this international cooperation to be inclusive, just and mutually beneficial to the peoples of both countries, it must hold human rights, Indigenous rights, labour rights, and environmental protection at its core.

For over two decades, MiningWatch Canada has worked in collaboration with Indigenous and rural communities affected and in resistance to Canadian mining in Ecuador, and with national allies.

We have communicated with our partners in Ecuador about a consultation by the Canadian government about a potential free trade agreement with Ecuador. We are concerned about the lack of transparency in this process as our partners told us that none of them were aware or informed of the consultation process by their respective government.

The following elements echo the concerns from our partners in Ecuador and are critical to ensuring the Canadian international trade and investment regime is as inclusive, just, and equitable as possible.

¹ Government of Canada, Join the discussion: consulting Canadians on possible free trade agreement negotiations with Ecuador, 6 January 2023: <https://www.international.gc.ca/trade-commerce/consultations/ecuador-equateur/fta-ale.aspx?lang=eng>

1. Concerns of affected Indigenous and campesino communities in Ecuador regarding a possible FTA with Canada

We are concerned that Canada's trade strategy is seeking “to advance commercial relations bilaterally”² especially and potentially in the mining sector in Ecuador given the conflictive nature of that sector and the often-violent imposition of mining development, underlined by the fact that the visible acts of resistance to mining in the country come from areas affected by decades of insistent Canadian mining investment. We echo our partners' concerns about how a potential FTA with Ecuador could exacerbate violence against Indigenous, environment and human rights leaders, further violate Indigenous collective rights to self-determination, and right to say No to extractive megaprojects in their territories, and contribute to the destruction of their territories and ecosystems.

MiningWatch Canada wishes to use this consultation space to urge the Government of Canada to consider the serious concerns outlined in the following public statement prepared by a collective of Ecuadorian Indigenous, campesino, and non-governmental organizations regarding a possible free trade agreement between Canada and Ecuador. We share it below given the lack of a consultation process for Ecuadorian communities and civil society organizations in their country to voice their views and concerns about this consultation process:

Ecuador-Canada Free Trade Agreement: A new attack on communities, Indigenous peoples, and the environment

February 21, 2023

In light of the start of negotiations for a Free Trade Agreement (FTA) with Canada, as announced by President Guillermo Lasso, as territorial social organizations, environmentalists, and research centres, we warn about the serious effects that this agreement would have on human and collective rights and the rights of nature, which are the pillars of the Ecuadorian Constitution.

We recognize FTAs as instruments of transnational corporate power, expressed through rules that grant excessive legal protections to investors while they deepen extractivism, deregulate labour and environmental protections, abandon measures to protect small-scale family agriculture, privatize basic services, among other things. These agreements are negotiated under conditions that are fundamentally unequal, starting from the premise of overturning norms that protect rights hard-won through social struggle, making them succumb to the calculations and profit-making strategies of big business.

This is why FTAs are negotiated behind closed doors, in order to limit public debate on the effects they will have. In Ecuador, for example, the information gathered during the negotiations of Trade Agreements negotiated by the State³ was classified RESTRICTED by the Ministry of Production, Foreign Trade, Investment and Fisheries, through the Ministerial Agreement MPCEIP-MPCEIP-2022-0001-A issued on 6 December 2022 (Official Register - Supplement No. 203).

² Government of Canada, Join the discussion: consulting Canadians on possible free trade agreement negotiations with Ecuador, 6 January 2023: <https://www.international.gc.ca/trade-commerce/consultations/ecuador-equateur/fta-ale.aspx?lang=eng>

³ President Lasso has stated his intention to “sign FTAs with 10 countries” before the end of his term in 2025

In addition to the lack of transparency, we are also concerned that an FTA with Canada will guarantee greater impunity for Canadian investments in the extractive sector, mainly mining, in Indigenous and peasant territories, water recharge areas, and forests, where mining projects are being opposed due to evidence of water contamination. We are concerned that an FTA will lead to deforestation, the destruction of the páramos, forced displacement, a rupture of the social fabric, as well as violence, criminalization, and prosecution of those who defend human rights and the environment.

Ecuador's four main exports to Canada in the last 12 years have been mining, agricultural, food and fish products. Among agricultural products, cacao (49%) and cultivated flowers (41%) accounted for nearly 90% of the value of exports. The case of cacao reveals the primary pattern: just over USD 39 millions of unprocessed cacao was exported in 2022, while very little processed cacao was exported. In terms of agricultural imports from Canada, wheat accounted for 91% of imports in 2021, followed by lentils and oats; in the case of frozen potatoes, which currently account for a low percentage of imports, this will likely increase with an FTA, which will threaten the production of potatoes from small-scale family farms, who will not be able to compete with products coming out of highly-subsidized systems like in Canada.

Canadian investment in Ecuador

According to information from the Chamber of Mining of Ecuador, at least eleven companies backed by Canadian capital are operating in nine provinces of Ecuador with extremely high levels of socio-environmental conflicts caused by violations of the law and the constitution, often with the complicity of regulatory authorities. The territories are treated as sacrificial – a mentality which will be even more difficult to reverse if an FTA further cements legal protections for these investments.

Here are a few examples of what is happening on the lands of Indigenous and peasant communities, in the páramos and forests where Canadian mining companies are operating:

The **Loma Larga mega-mining project** (Azuay, Cuenca, Victoria del Portete), located on 7,960 hectares of the Kimsacocha páramo, is owned by **Dundee Precious Metals Inc.** as of 2021. Previously, it was owned by the Canadian companies Iamgold Corporation and INV Metals Inc., during a period in which the State Comptroller General's Office identified several administrative and legal irregularities (Report DR2-DPA-0064-2018 of 10/12/2018).

The headwaters for key rivers are found in the Kimsacocha páramos, including the Irquis, Tarqui, and Yanuncay rivers that flow through the Santiago River basin into the Amazon basin. Kimsacocha also feeds the community water systems and water table, as well as the municipal water catchment that supplies water to more than 600,000 residents of the city of Cuenca.

Public pressure has led to two binding referendums related to this project: the first, in Girón in 2019, where 86% of participants voted to prohibit mining in the Kimsacocha páramos; the second, in Cuenca in 2021, where 80% of participants voted to prohibit mining in water recharge areas (the projects affects the Yanuncay and Tarqui water recharge areas). However, the government and the company insist on advancing the project, in violation of the rights to political participation.

The right to free, prior, and informed consent (FPIC) and the right of Indigenous communities to self-determination, as well as the rights of environmental consultation for other populations, have been violated. For this reason, the project is currently suspended (although Dundee plans to start exploitation in 2023). Furthermore, the company's refusal to hand over documentation such as the Environmental Impact Study – arguing that it will only provide the study to *certain sectors of direct influence at the appropriate time* – violates the right to access information.

The **Fruta del Norte project** (Zamora Chinchipe, Yantzaza canton, Los Encuentros parish), owned by **Lundin Gold**, has been operating since 2019. Previously, the Canadian junior Aurelian Resources was conducting exploration activities between 2003 and 2005. During this period, the company used perks and parties to entice community members, while effectively carrying out the proletarianization of people who, until then, had enjoyed economic and food sovereignty. This boom was reduced with the arrival of Kinross, the Toronto-based major, which bought Aurelian in 2008. During this period, the State's Comptroller General identified multiple and important irregularities and lack of environmental licences for its operation.

Lundin Gold has failed to comply with its own promises to benefit local populations. The company relies on temporary/occasional labour contracts; in 2017, the only bridge connecting dozens of communities with the centre of the parish Los Encuentros collapsed as a result of Lundin Gold's constant heavy truck traffic; there are additional impacts on water systems and housing⁴. In addition, processes of subtle dispossession or induced migration (due to development-induced displacement) are gaining momentum with the closure of more community schools. In 2015, schools were closed in the communities of Santa Lucía, La Libertad and Jardín de Cóndor. To date, two communities have disappeared — the community of San Antonio in 2012 and El Playón in 2015.⁵

The **Fierro Urco mining project** (Loja and El Oro) involves, among others, the Canadian companies **Cornerstone** and **Adventus**. According to a report by the Universidad Técnica Particular de Loja and other organizations, the project covers 72,676 hectares in a fragile páramo ecosystem that is the source of 50% of the water consumed by the 225,000 residents of Loja and Saraguro and the 50,000 residents of El Oro.

Primarily the women of the Kichwa Saraguro people are leading the resistance to mining in this area, defending their territory, water, and agricultural production which provides jobs and sustains the food sovereignty of the communities and the region. Through their struggle, they have successfully prevented the companies from carrying out advanced exploration activities. Some of the companies, such as Newcrest, have abandoned their support for Cornerstone in its advanced exploration efforts. These achievements, however, have also meant the prosecution of those who defend human, collective, and environmental rights, although these processes were suspended by the Amnesty declared by the National Assembly.

⁴ María Fernanda Solíz Torres, Milena Alía Yépez Fuentes, William Sacher Freslon, "The Significance of Memory and Monitoring: Resistances from the Valle de las Luciernagas", Universidad Andina Simon Bolivar: 2019, January 17: <https://miningwatch.ca/blog/2019/1/17/investigators-study-canadianswedish-mining-project-ecuador-yields-disturbing-results>

⁵ *ibid*

After the June 2022 national strike, the so-called peace agreements included modifications to the national government's mining action plan to guarantee non-intervention in Indigenous territories, water sources, archaeological areas and protected areas. In this context of social movement organizing, the issue of mining has become prominent in national debate.

The **Fortuna project** (Azuay, Morona Santiago and Zamora Chinchipe) is concessioned to the company **Lucky Minerals** (and its Ecuadorian subsidiary Goldminindex S.A.) with twelve concession blocks that affect seventeen communities in four parishes in the canton of Nabón, Oña and Sigsig, in Azuay; four communities in two parishes in the canton of Gualaquiza, in Morona Santiago; and five communities in the canton of Yacuambi, in Zamora Chinchipe.

On 12 August 2022, *el Colectivo de Lucha y Defensa del Agua y la Vida del Cerro El Mozo (Nabón)* sent a letter to President Lasso in which they "directly and clearly stated that in the territories of the canton of Nabón, we will not allow the development of metallic mining, especially when it seeks to operate within our water sources, which originate in the high altitude páramos in the territories of Morona Santiago and Zamora Chinchipe, which not only feed our canton but the entire region." They also say that the great biodiversity of their territories is their motivation for opposing mining, based on the constitutional rights to resistance and social protest, the rights of nature, free and informed prior consent and the precautionary principle.

This decision to "prioritize water, ecosystems, and life over the promises of development made by mining companies" led to the prosecution of eight community leaders following complaints filed by Lucky Minerals' manager for Ecuador and the former president of the Chamber of Mines of Ecuador.

The *"Technical report on field inspection and location of water concession points requested by the mining company Goldminindex S.A., which is located within the Yacuambi Municipal Ecological Conservation Area,"* published in October 2022 concludes that: 1) the concession is located within the territory that makes up the Yacuambi Municipal Ecological Conservation Area, the "Podocarpus el Cóndor" Biosphere Reserve and the Podocarpus-Sangay Connectivity Corridor; 2) concessioning this water resource for mining purposes puts fragile ecosystems at risk, such as the high Andean páramo and water recharge areas; 3) large-scale mining would leave no water recharge in the area; 4) the requested water capture points are located within the ecosystem known as páramo grassland, which is characteristic of water recharge zones and which would affect the Zabala, Yacuambi, and Zamora-Santiago river basins; 5) in the case of water use for large-scale mining operations, contamination puts at risk large areas of life, human settlements, and agricultural areas that form the basis of the economy and are a source of food for families in the area.

The **Warintza project** (Morona Santiago, Cordillera del Condor in the southern Amazon), of Lowell Minerals Exploration (a subsidiary of Canada's **Solaris Resources Inc**), is located within conservation areas and on the ancestral territory of the Warints, Maikiuants, and other communities of the Shuar Arutam People (PSHA). Leaders of the Shuar have denounced the contamination of the Warints, Congo, and Santiago rivers – a river corridor for the communities – as well as deforestation and dumping of chemicals used for underground drilling, drone surveillance between 2019 and 2020, and helicopter fly-overs in the Warints community that intimidate families, especially children.

Lowell is operating in violation of the right to consultation, given the State did not carry out a free, prior, and informed consultation as established in Article 57.7 of the Constitution, nor does the company have the consent of the Warints or the PSHA government. In a response to these claims, a high-ranking representative of the company issued an unprecedented threat to slit the throats of the leaders, especially that of Josefina Tunki, president of the PSHA. Complaints filed with the Canadian embassy and national authorities about these events have gone unaddressed.

All of these are instances of worsening the ecological debt the extractivist model and its corporate actors have with the peoples and communities of Ecuador, who will be further harmed by the signing of an FTA with Canada. Mining projects are located in fragile páramo ecosystems, which are water recharge areas; in areas of great biodiversity and forests; in water sources that supply communities, towns and cities. The construction of mining infrastructure involves deforestation, a loss of biodiversity, and the disruption of ecosystem connectivity. Explosives are used to extract the material, harming the soil, sources of water, and causing air pollution. In terms of the raw material extracted, up to 98% is left as toxic waste to be disposed of in tailings dams that threaten the entire environment: from groundwater contamination to collapse in the event of an earthquake.

Arbitration claims against Ecuador in international tribunals

Article 422 of the Ecuadorian Constitution states: *No international treaties or instruments may be signed in which the Ecuadorian state cedes sovereign jurisdiction to international arbitration in contractual or commercial disputes between the state and private natural or legal persons.* However, the signing of Free Trade Agreements and Bilateral Investment Treaties (BITs) contravenes this constitutional prohibition because these instruments contain clauses related to the Investor-State Dispute Settlement Mechanism (ISDS), which gives companies the possibility of filing multi-million-dollar arbitration claims against the Ecuadorian State in international tribunals such as ICSID (part of the World Bank), UNCITRAL, PCA, LCIA – tribunals which typically find in favour of the companies.

Ecuador is one of the countries in the region most affected by this issue, according to the Transnational Institute's 2020 report. Nevertheless, President Lasso insists on continuing down the same path that has permitted the raiding of public funds and expanding the frontiers of devastation in the name of granting investment opportunities. On 16 July 2021, with Decree 122, Lasso re-ratified the ICSID and is determined to sign new BITs – after the 16 in force at the time were denounced in 2017.

This ability to sue the state is used by companies to ensure, through blackmail, the protection of their interests over human rights and the environment, and to obtain sometimes considerably more than what they have invested.

Canadian companies have resorted to this strategy. The case of the **Llurimagua** project (province of Imbabura) is emblematic for the 25-years-plus of resistance by communities of Intag to stop the advancement of mining that would destroy their water resources and biodiversity. In 2011, this opposition led to an arbitration claim filed before the Permanent Court of Arbitration (PCA) by **Copper Mesa Mining Corporation** against the Ecuadorian state for 70 million dollars.

The ruling found that the company had *engaged in reckless escalation of violence (...) in particular the use of organized armed men in uniform who used tear gas and fired on villagers and local officials*. But it blamed these actions on the company's local representatives and ruled that management in Canada was only negligent, for which the court reduced the compensation award by 30%. It also claimed that the *Government of Ecuador did not do enough to help the company deal with the protesters* and that the state *treated the investor unfairly and inequitably*.

Another claim came from the Canadian oil company **Encana** in 2003. Encana filed an arbitration claim at the London Court of International Arbitration (LCIA), alleging that the changes in tax regulations affected Encana's subsidiaries. Yet it continued to operate and export oil - at a price that increased during the period under consideration. The ruling found in favour of the Ecuadorian state, but it still had to assume legal costs of USD 711,065.21 (of which USD 330,267.44 had to be reimbursed to Encana).

The conclusion is obvious. A Free Trade Agreement between Ecuador and Canada is not in the interests of Indigenous peoples, territories or the environment. The FTA will only be another instrument of corporate power, wielded by the national elites to deepen the rationale for devastation, which is the invisible face behind the narratives of corporate success. This brief account shows the illegitimacy of mining projects – a central pillar to the FTA that is being imposed – which are just as illegitimate as the government promoting it.

Signed by:

1. *Yasunidos Guapondelig (Guapondelig Yasunidos)*
2. *Cabildo por el Agua de Cuenca (Watershed Water Council)*
3. *Collective for the Struggle and Defence of Water and Life of Cerro El Mozo, Nabón (Colectivo de Lucha y Defensa del Agua y la Vida del Cerro El Mozo, Nabón)*
4. *Unión de Comunidades Indígenas del Azuay, UCIA*
5. *Defensa y Conservación Ecológica de Intag (DECOIN, or Defence and Ecological Conservation of Intag)*
6. *Shuar Arutam People*
7. *Área de Salud Colectiva UASB (Collective health area -UASB)*
8. *Instituto de Estudios Ecuatorianos/OCARU (Institute of Ecuadorian Studies/OCARU)*
9. *Frente de Defensa de Fierro Urco (Defence Front of Fierro Urco)*
10. *Acción Ecológica*
11. *Red Ecuador Decide Mejor sin TLC (Ecuador without FTA's coalition)*

2. Concerns about the right to say NO, the right to free, prior, and informed consent (FPIC) and the right of Indigenous communities to self-determination is not being respected by Canadian mining companies and Canadian embassy officials

Despite a large social movement against opening the door to further mining investment in Ecuador and citizen-led initiatives/referendums to vote in favour of water and against mining in their territories. Canadian mining companies and embassy officials continue to be actively involved in promoting the expansion of Canadian mining projects in Ecuador.⁶

⁶ Canada in Ecuador. [@CanadaEcuador]. 2021, June 21. Very productive meeting with Min. @JuanCar_Bermeo! is top mining investor in #Ecuador and 2nd overall investor. Discussed how to collaborate to investment and how to

To cite a few recent examples, in southern Ecuador, in a citizen-led initiative in 2021, 80% of residents of Cuenca voted overwhelmingly in a referendum in favour of water and against industrial mining⁷ in the watersheds of the area's five rivers in the Páramo de Kimsakocha, a fragile ecosystem that supplies water for domestic use and irrigation to numerous Indigenous communities and residents in the city of Cuenca, which has been threatened by Canadian mining interests for over 20 years. Despite the overwhelming result, the owner of the project, Toronto-based Dundee Precious Metals, maintains it will continue to pursue the project.

In the Amazon, in 2019, the Indigenous Shuar Arutam People declared their territory free of mining, demanding the exit of Solaris Resources, a Canadian mining company, and that their right to say NO to mining projects be respected. Nevertheless, Vancouver-based Solaris Resources Inc, continues to promote the "Warintza Model" to sell shareholders on the idea that the Shuar peoples are in favour of mining. PSHA have contested the company's claims about Indigenous consent. According to them, the company "did not do a prior consultation process in accordance with the Constitution. There was no free, prior and informed consultation. They only did an information sharing process with two of the 46 Shuar communities."⁸

Canadian mining interests have been promoted by Canadian officials despite overwhelming opposition in the country. For example, last June, while thousands of people, led by Indigenous peoples, marched throughout Ecuador as part of a historic national strike⁹ to demand a moratorium on mining and to nullify Executive Decree 151,¹⁰ which will allow mining in fragile ecosystems such as the Amazon and the páramos, Canadian Ambassador to Ecuador Sylvie Bédard was promoting the expansion of mining in the country presenting at the Prospectors and Developers Association of Canada's annual mining conference in Toronto given her role spearheading the Mining Consultative Public-Private Council set up to troubleshoot solutions for the mining industry in the South American country.¹¹

We are concerned that a potential free trade agreement with Ecuador could exacerbate diplomatic efforts to push for even greater Canadian mining into territories which already said no to mining and into new territories.

3. Concerns about increased violence against human rights and Indigenous and environment defenders

make responsible mining benefit all Ecuadorians including local & indigenous communities. @RecNaturalesEC 2/2 . [Tweet]. <https://twitter.com/CanadaEcuador/status/1405601781351071745?s=20&t=OISfBM1TVSykFhhe57ReSQ>

⁷ MiningWatch Canada, "Overwhelming Vote in Southern Ecuador Sends Strong Message to Mining Companies", 2021, February 11: <https://miningwatch.ca/blog/2021/2/11/overwhelming-vote-southern-ecuador-sends-strong-message-mining-companies>

⁸ Ana Cristina Alvarado, "A Canadian mining company's destructive PR push in Ecuador's Amazon is modelled on so-called reconciliation at home", The Breach, 2022, June 23: <https://breachmedia.ca/exporting-reconciliation/>

⁹ Andrea Sempértegui, "Ecuador's Historic Strike ", 2022, October 5: <https://www.nybooks.com/online/2022/10/05/ecuador-historic-strike/>

¹⁰ Abogados, "Executive Decree establishes the Action Plan for the Mining Sector", 10 August 2021, <https://www.avl.com.ec/en/executive-decree-establishes-the-action-plan-for-the-mining-sector/>

¹¹ Ministerio de Minas y Energía Ecuador [@RecNaturalesEC]. (2021, May 21). En la cita, se eligió a la Embajadora de Canadá en Ecuador, @Sylvie_Bedard, como representante de los cuerpos consulares que tienen inversiones mineras en Ecuador, quien formará parte del directorio del Consejo Consultivo Minero Público-Privado. [Tweet]. <https://twitter.com/RecNaturalesEC/status/1531740303606136833>

MiningWatch Canada shares concerns identified by territorial social organizations, environmentalists, and research centres as shared in the statement about how “an FTA will lead to deforestation, the destruction of the páramos, forced displacement, a rupture of the social fabric, as well as violence, criminalization, and prosecution of those who defend human rights and the environment.”

In 2019, Josefina Tunki, president of the Shuar Arutam People (PSHA), went public about a death threat she says she received by phone from the vice-president of operations of Solaris in order to dissuade her from organizing against the company. In an attempt to call the attention of the Canadian embassy in Ecuador and request support for Tunki under Canada’s policy guidelines for human rights defenders at risk, Tunki and PSHA sent a letter to the embassy signed by more than 136 national and international organizations.¹²

Canada’s *Voices at Risk* Guidelines on supporting threatened human rights defenders (VaR) recognize: “the key role played by human rights defenders in protecting and promoting human rights and strengthening the rule of law, often at great risk to themselves, their families and communities, and to the organizations and movements they often represent. Canada has a strong tradition of supporting these brave people in communities worldwide as they hold governments and companies to account for and keep respect for human rights alive. These are individuals who stand up for others who face discrimination — often at their peril.”¹³ Specifically, VaR notes that Canadian missions can provide support by "Identifying the specific needs of women HRDs and responsive actions, for example, protection measures, relocation plans, psychosocial support, childcare or other support services and resources; Working at local, national and regional levels to coordinate efforts and response mechanisms to ensure the protection and safety of women HRDs, leveraging women's rights organizations networks."

The Canadian embassy didn’t implement *Voices at Risk*, nor did it answer PSHA’s demands. Instead, it advised PSHA to file a complaint before the Canadian Ombudsperson for Responsible Enterprise (CORE). Because of their concerns about CORE, and its lack of powers to investigate, PSHA decided not to file such a complaint.

4. Concerns about lack of due diligence before trade and investment agreements

MiningWatch Canada shares territorial social organizations, environmentalists, and research centres from Ecuador concerns “that an FTA will lead to deforestation, the destruction of the páramos, forced displacement, a rupture of the social fabric, as well as violence, criminalization, and prosecution of those who defend human rights and the environment.”

Ten years after the unanimous endorsement of the United Nations Guiding Principles on Business and Human Rights (UNGPs), there continue to be widespread reports of serious human rights abuses and environmental damage linked to the overseas activities of Canadian companies and supply chains. Communities and workers who suffer harm are often unable to access justice and remedy. Human rights and environmental defenders who stand up to powerful corporations frequently face violence,

¹² MiningWatch Canada, “International Organizations Join Shuar Arutam People to Press Canadian Embassy in Ecuador to Condemn Canadian Company’s Threats and Abuses”, 2021, August 31: <https://miningwatch.ca/blog/2021/8/31/international-organizations-join-shuar-arutam-people-press-canadian-embassy-ecuador>

¹³ Government of Canada, “Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders”, https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng#a3

intimidation or criminalization as in the case of the president of PSHA, Josefina Tunki. The risks and vulnerabilities they face have worsened with the global COVID-19 health crisis.¹⁴

While Canadian companies have a responsibility to respect human rights, they can often avoid fulfilling that responsibility because binding rules do not exist, are not enforced, or because companies structure their global operations to avoid liability

5. Concerns about the use of investor-state dispute settlement as a way to undermine human rights, including Indigenous rights, and the rights of communities to protect their territories and water

As MiningWatch Canada we are deeply concerned that a potential Canadian free trade agreement with Ecuador will include a controversial investment chapter and investor-state dispute settlement (ISDS) process. ISDS mechanism could undermine communities affected and in resistance to Canadian mining as foreign Investor protection agreements often preclude governments from introducing more robust environmental or human rights standards that communities have demanded for national states to take measures to protect their territories and water. In this sense, ISDS is a system that threatens the right to self-determination of affected people and leads to greater impunity of Canadian mining companies.

We share Ecuadorian mining affected communities and allied organizations' statements about FTAs. They say in their public statement that “FTAs [act] as instruments of transnational corporate power, expressed through rules that grant excessive legal protections to investors while they deepen extractivism, deregulate labour and environmental protections.”

Recommendations

1) Ensure Right of Meaningful Participation and Consultation with Ecuadorian Affected Communities and Civil Society Organizations

Drawing on Canada’s own obligations to international human rights standards, including the UN Declaration on the Rights of Indigenous Peoples and the UN Guiding Principles on Business and Human Rights, we urge Canada to guarantee that broad and transparent meaningful consultation with all affected Indigenous peoples and rural communities in Ecuador and civil society organizations in the consultation process about a potential FTA with Ecuador.

MiningWatch Canada shares the calls of territorial social organizations, environmentalists, and research centres from Ecuador that “A Free Trade Agreement between Ecuador and Canada is not in the interests of Indigenous peoples, territories or the environment.” No agreement must advance without their free, prior and informed consent.

¹⁴ Coalition against the mining pandemic, “*No Reprieve: For life and territory - COVID-19 and resistance to the mining pandemic*”, 2022, May 24: <https://miningwatch.ca/publications/2022/5/24/no-reprieve-life-and-territory-covid-19-and-resistance-mining-pandemic>

2) Respect the Right To Say No To Mining Projects and Indigenous right the right to free, prior, and informed consent (FPIC)

We urge Canadian officials to halt any diplomatic support for Canadian mining investment in territories which already said no to mining and into new territories. Citizen-led initiatives and referendums have been clear in their message and must be respected: protection of water and live over mining in their territories and watersheds.

3) Do not advance any new trade and investment agreement without an empowered independent ombudsperson and without human rights due diligence legislation (mHRDD)

We anticipate that an FTA with Ecuador will increase mining investment in the country, and exacerbate environmental conflicts. We are also concerned that a potential free trade agreement between Ecuador and Canada will exacerbate threats and intimidation against environment, human rights, and Indigenous leaders who speak out against Canadian mining, as there are no mechanisms with a real and strong mandate to protect them.

As such, we urge Canada to not advance any new trade and investment agreement with Ecuador until CORE is independent; have the powers needed to independently investigate complaints thoroughly, including the power to compel documents and testimony from Canadians and Canadian companies; have an adequate budget; and have a mandate to report publicly.

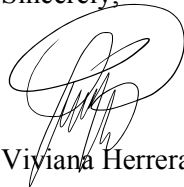
We also urge Canada to enact legislation and policy reform to require companies to respect human rights, and effective mechanisms to help people access remedy. Mandatory human rights and environmental due diligence (mHRDD) legislation would change that.

4) Reject any agreement that includes ISDS

Canada's current free trade agreements (FTAs) and investment treaties provide strong rights and privileges to private commercial interests, but contain much weaker safeguards for workers, Indigenous Peoples, and the natural world. A standard FTA with Ecuador—where most Canadian interest and investment is in mining and extractives—would be particularly harmful to Indigenous and other rural communities, especially if it includes an investor-state dispute settlement process. Thus, Canada must reject any agreement that includes ISDS.

We would be happy to meet to discuss our concerns and recommendations further, and to respond to any questions you might have.

Sincerely,



Viviana Herrera

Latin American Program Coordinator