



# THE TWO FACES OF CANADIAN DIPLOMACY

UNDERMINING HUMAN RIGHTS AND ENVIRONMENT  
DEFENDERS TO SUPPORT CANADIAN MINING



**Title:** The Two Faces of Canadian Diplomacy: Undermining Human Rights and Environment Defenders to Support Canadian Mining

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**Published by:** Justice and Corporate Accountability Project

**City:** Tkaronto (Toronto), Canada

**Date:** 10 December 2022

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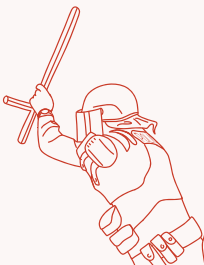
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**Illustrations, Design, and Copyedits:** Ellen Campbell, ellencampbell.myportfolio.com

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# TABLE OF CONTENTS



## FOREMATTER

EXECUTIVE SUMMARY.....	7
SUMMARY OF RECOMMENDATIONS.....	9
LIST OF ACRONYMS.....	14
ACKNOWLEDGEMENTS.....	15
ABOUT THE JUSTICE & CORPORATE ACCOUNTABILITY PROJECT.....	16

## INTRODUCTION..... 17

DEFENDERS & CANADIAN TRANSNATIONAL RESOURCE EXTRACTION.....	18
REPORT OBJECTIVES.....	21
REPORT ROADMAP.....	22
METHODS & DISCLAIMER.....	24

## 1. CANADA'S INTERNATIONAL OBLIGATIONS TO SUPPORT & PROTECT HRDs..... 25

INTRODUCTION.....	26
OVERVIEW OF NORMS.....	26
CONCLUSION.....	30



<b>2. HUSBAY MINERALS &amp; THE CONSTANCIA PROJECT IN PERU .....</b>	<b>31</b>
INTRODUCTION .....	32
A. HUSBAY MINERALS INC. ....	33
B. PROFILE OF THE CONSTANCIA MINE & AFFECTED COMMUNITIES .....	36
C. HUSBAY CONTRACTS WITH THE PERUVIAN NATIONAL POLICE (PNP)...	38
D. HUSBAY’S CONFLICTS WITH COMMUNITIES IN CUSCO, PERU .....	41
<b>3. THE CRIMINALIZATION OF JENNIFER MOORE .....</b>	<b>60</b>
<b>4. JUDICIAL FINDINGS THAT MOORE’S RIGHTS WERE VIOLATED .....</b>	<b>75</b>
INTRODUCTION .....	76
A. MOORE’S HABEAS CORPUS PETITION.....	78
B. THE COURTS FOUND MULTIPLE VIOLATIONS OF MOORE’S RIGHTS.....	79
C. REMEDIES & PROTECTIVE MEASURES .....	81
<b>5. CANADA’S FAILURES TO UPHOLD THE VOICES AT RISK GUIDELINES IN THE MOORE CASE .....</b>	<b>82</b>
A. CANADA FAILED TO ENGAGE LOCAL AUTHORITIES TO PROTECT A CANADIAN HRD UNDER THREAT.....	84
B. CANADA FAILED TO SUPPORT AND PROTECT A CANADIAN HRD CONCERNED WITH A CANADIAN COMPANY .....	86
C. CANADA FAILED TO INCREASE THE PROTECTION OF A CANADIAN HRD UNDER THREAT BY TAKING STEPS TO ENHANCE HER VISIBILITY .....	96
D. CANADA FAILED TO COOPERATE WITH INTERNATIONAL BODIES AND MADE STATEMENTS THAT WERE MISLEADING AND FALSE.....	102
E. CANADA FAILED TO PROPERLY TRACK THE CONSTITUTIONAL CASE OF A CANADIAN HRD OR TO ATTEND THE HEARINGS .....	109



<b>6. RECOMMENDATIONS .....</b>	<b>112</b>
INTRODUCTION .....	113
A. RECOMMENDATIONS DIRECTLY RELATED TO THE CRIMINALIZATION OF MOORE .....	115
B. RECOMMENDATION DIRECTLY RELATED TO CANADA’S INFLUENCE OVER HUDBAY’S CONSTANCIA PROJECT.....	116
C. REFORMS TO CANADA’S FRAMEWORK ON HRDs ABROAD.....	118
<b>7. CONCLUSION .....</b>	<b>120</b>
<b>8. BIBLIOGRAPHY .....</b>	<b>123</b>
<b>9. APPENDICES.....</b>	<b>140</b>
APPENDIX 1: ACCESS TO INFORMATION REQUESTS & DATES.....	141
APPENDIX 2: NAMES & POSITIONS OF OFFICIALS IN ACCESS TO INFORMATION RECORDS.....	144
APPENDIX 3: LIST OF GLOBAL AFFAIRS CANADA ACRONYMS .....	148
APPENDIX 4: ATIP RECORD - NOTE TO FILE.....	149
APPENDIX 5: ATIP RECORD - EMAIL FROM HUDBAY TO DUANE McMULLEN.....	152
APPENDIX 6: ATIP RECORD - GOVERNMENT OF CANADA RESPONSE TO OHCHR .....	155



# EXECUTIVE SUMMARY

Globalized industrial resource extraction is unsustainable from an environmental and social perspective, and Indigenous peoples are often on the front lines of alerting humanity to the resulting harms. Community members and their allies become environment and human rights defenders (HRDs) when they publicly allege harms on the part of state or company actors. As extraction intensifies around the world, so has the criminalization, threats, attacks, and even killings of HRDs. International bodies now regularly refer to this situation as a global crisis.

In 2017, while working as Latin America Program Coordinator for MiningWatch Canada, Canadian Jennifer Moore collaborated with local organizations to screen a documentary film among original Quechua communities affected by the Constancia Mine, located in southern Peru and owned by Canadian company Hudbay Minerals Inc. The documentary presented critical community and expert testimony about Hudbay's operations across the Americas. In the midst of the film screenings, Peruvian authorities detained Moore, banned her from re-entering the country, and labelled her a threat to national security. Moore was narrowly able to flee the country. In 2019, 2020, 2021, and 2022, the Peruvian courts found that Peru's actions violated Moore's human rights. The courts also made findings that Peruvian police were biased against Moore in part because of their services contract with Hudbay, and that the officers involved should be investigated.

Canada is a "home state" to many mining companies operating globally and has played a strategic role in facilitating the global dominance of Canadian companies in the extractive sector. For more than a decade, international bodies have articulated the obligations of home states to support HRDs abroad, especially when their work relates to an extractive project supported by that home state. In response to international pressure, in 2016, Canada announced *Voices at Risk: Canada's guidelines on supporting human rights defenders*, updated in 2019. This document specifies how Canadian embassies and other officials should support HRDs, including Canadian HRDs, and promote responsible conduct on the part of Canadian companies operating abroad. \ In spite of this, there is a lack of research on the critical question of whether or not the Guidelines have actually improved support for HRDs in practice. There is a lack of transparency about how Canadian officials implement the Guidelines, and there is no system of evaluation, monitoring, public reporting, or accountability. This report is a first attempt to respond to this significant knowledge gap. It documents and analyzes a case study of how Canadian officials responded to the criminalization of Canadian HRD Jennifer Moore.





## PROYECCIÓN DEL DOCUMENTAL: "FRAUDE DE FLIN FLON"



**Image used to promote the documentary "Flin Flon Flim Flam" in Cusco, April 2017**  
**Source: CooperAcción**

Citing hundreds of pages of government records, this report documents how Canadian officials utterly failed to comply with the Guidelines and take meaningful steps to support Moore. Beyond simple neglect, the records show that Canadian public servants held political bias against Moore; actively refused to recognize her as an HRD in spite of clear evidence and widespread expressions of civil society support for her work; and made statements to UN bodies that were false and misleading with respect to what they knew about Hudbay's potential involvement. The records reveal that these failures were systemic, persisted over time, and involved dozens of Canadian officials at all levels. In light of these serious and systemic failings, this report makes recommendations that pertain specifically to Moore's case, while underscoring the need for fundamental reforms to Canada's broader law and policy framework in this area.





# SUMMARY OF RECOMMENDATIONS

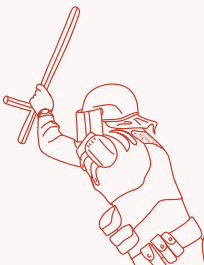
This report reveals that the Guidelines in their current form have not ensured that Canadian officials achieve the stated objective of effectively supporting HRDs. It also illustrates a number of basic rule of law issues with Canada's Guidelines, including the lack of reporting and transparency in their implementation; the lack of clarity regarding the nature of Canada's normative obligations described in the Guidelines; and the lack of independent oversight to ensure accountability for their implementation. In spite of this, we have specifically chosen not to include recommendations with respect to Canada's policy approach to economic diplomacy and HRDs abroad.

We believe that such recommendations should only be developed after a fulsome process of civil society engagement. This should include HRDs, Indigenous peoples, communities, and groups who are directly impacted by the impacts of industrial resource extraction abroad, which enjoys the support of the Canadian government and diplomatic missions. This follows the principle that policy reforms should be informed by empirical research like that undertaken in this report, as well as by the lived experience and perspectives of those who are directly impacted by the policies under discussion.



In addition to considering some of the narrow rule of law issues we outline above, such a dialogue should also involve more ambitious and visionary interrogations of the appropriate relationship between the Canadian state and the Canadian private sector in the overseas context. This includes the question of whether or not it is appropriate *at all* for Canada to provide diplomatic support to Canadian companies in sectors like resource extraction. This question arises due to the systematic way in which these activities violate rights, the enormous power disparities between companies and affected communities, and the ways in which domestic corporate law and international economic law currently constitute, enable, and protect transnational corporations from accountability. We firmly believe this is an important line of inquiry and we hope that this report will feed into its development.

In this report, we have focused our recommendations on the needs of defenders. We outline the need for specific actions and remedies to end the criminalization of Jennifer Moore, and to prevent similar situations from occurring to other defenders, including through the full implementation of the Guidelines on the part of Canadian officials. We also address specific actions that Canadian officials should take to discharge their responsibility to use Canada's power and influence to encourage Hudbay and Peruvian officials to respect the human and environmental rights of affected communities. The following recommendations are urgent and should be pursued as soon as possible by the Canadian officials referred to here.



# RECOMMENDATIONS DIRECTLY RELATED TO THE CRIMINALIZATION OF MOORE

## RECOMMENDATION 1

Canada's federal Parliamentary Subcommittee on International Human Rights should conduct a comprehensive review of the failures of Canadian officials to uphold the *Voices at Risk* Guidelines in the case of Jennifer Moore. This review should access all records, including those portions that are currently redacted. The terms of the review should be developed in consultation with Moore and the results should be published in a timely way. This case-specific review should be part of a larger evaluation of the efficacy of the Guidelines by the Sub-Committee, in consultation with groups who have direct experience supporting HRDs and the defenders with whom they partner.<sup>1</sup>

## RECOMMENDATION 2

Canada's Ambassador to Peru should take immediate steps to uphold the *Voices at Risk* Guidelines with respect to Moore's case. This includes publicly expressing support for Moore's work in Peru, and the work of all filmmakers, journalists, academics, and HRDs who support mine-affected communities, including those affected by Hudbay's Constanca Mine. This further includes calling on Peruvian authorities to abide by court orders, investigate the actions of the public officials involved in violations of Moore's constitutional rights, and remove the stigmatizing and defamatory statement about John Dougherty and Jennifer Moore from the Ministry of the Interior's website.

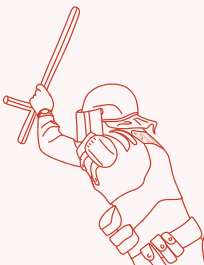
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<sup>1</sup> The federal Commissioner for the Environment and Sustainable Development may also have the jurisdiction to review Canada's performance pursuant to the *Voices at Risk* Guidelines.



# RECOMMENDATION DIRECTLY RELATED TO CANADA'S INFLUENCE OVER HUDBAY'S CONSTANCIA PROJECT

In the second section of this report, we detail serious ongoing concerns regarding Hudbay's exploitation and expansion as part of the Constancia project. This includes ongoing social, environmental, economic and health impacts. There is evidence that the company has failed to respect its agreements with affected groups, and that it has insisted on signing agreements with original Quechua communities that are grossly unfair and inequitable. Chronic social conflict has resulted, as well as frequent, legitimate protests for which community members have been subject to excessive police presence, violent repression and, at times, criminalization, including cases of prolonged legal persecution. There is also a court finding that Hudbay's security agreement with Peruvian police contributes to police bias in favour of the company's interests, and to the detriment of defenders and affected communities.



# RECOMMENDATION 3

We urge Canadian officials to

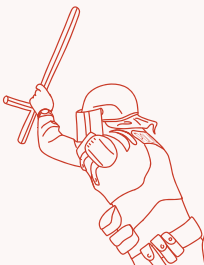
- Strictly adhere to applicable laws and international human rights treaties and policies to help address these issues within the scope of Canada's sphere of influence and regulatory power;
- Urge Hudbay and Peruvian officials to comply with the Constitutional Court's decision (Exp. No. 00009-2019-AI/TC) and with public international law standards regarding Hudbay's security arrangements with private and state security forces, including abstaining from using company-hired police to respond to protests;
- Fully respect the self-determination of affected communities and use all available channels to ensure that Hudbay's agreements with communities meet the criteria for rights-focused equitable agreements set out by former UN Special Rapporteur James Anaya in 2013;
- Use all available channels to pressure Hudbay to respect agreements signed with communities, and to ensure that these agreements do not constrain the collective rights of Indigenous communities; and
- Recognize the communities affected by Hudbay's Constanca mine as land and environment defenders, and urge all public and private actors involved to respect and protect the rights of these defenders to free expression, to social protest, and to live in a healthy environment, including to prohibit gag orders in signed agreements and to end the legal persecution and criminalization of community members who have participated in protests.

Conflicts such as those at Hudbay's Constanca mine occur, in part, because communities lack access to effective mechanisms to protect their rights and hold companies accountable. The Canadian government should ensure effective means in Canada for communities to seek meaningful accountability for the harms they have suffered due to the acts and omissions of companies domiciled or obtaining funding in Canada. In developing any interventions in support of local human rights defenders, Canadian officials should consult closely with affected communities and the social organizations that communities trust.



# LIST OF ACRONYMS

1. **ATIP** – Access to Information and Privacy
2. **CBC** – Canadian Broadcasting Corporation
3. **CESCR** – Committee on Economic, Social, and Cultural Rights
4. **CORE** – Canadian Ombudsperson for Responsible Enterprise
5. **CSR** – Corporate Social Responsibility
6. **DHSF** – Derechos Humanos Sin Fronteras
7. **ESIA** – Environmental and Social Impact Assessment
8. **FUDICH** – Chamaca Defence Front
9. **FUVID** – Velille Interests Defence Front
10. **GAC** – Global Affairs Canada
11. **HRD** – Human Rights and Environment Defender
12. **IACHR** – Inter-American Commission on Human Rights
13. **ILO** – International Labour Organization
14. **JCAP** – Justice & Corporate Accountability Project
15. **MWC** – MiningWatch Canada
16. **OHCHR** – Office of High Commissioner on Human Rights
17. **PNP** – Peruvian National Police
18. **PSIC** – Public Service Integrity Commissioner
19. **SER** – Servicios Educativos Rurales
20. **UN** – United Nations
21. **UNWG** – United Nations Working Group





# ACKNOWLEDGEMENTS

Numerous law students at universities across Canada contributed to the research that informed this report and made it possible. These students include Brandy Falkevitch, Judith Acevedo, Cameron Edward Mathee-Johnson, Jake Fenton, Jamie Moore, Jarret Mancell, Jasjit Parmar, and Danielle Blanchard, all at the Faculty of Law at Thompson Rivers University (TRU); Juan Pablo Mendez Campos at the Allard School of Law International Justice and Human Rights Clinic, University of British Columbia; Caroline Knutsson, McGill Faculty of Law; and Christine Mcleod, Marcela Ahumada, and Alexander DeParde, Osgoode Hall Law School, York University.

This student involvement was funded in part by the TRU Office of Research & Graduate Studies, the Jack and Mae Nathanson Centre on Transnational Human Rights, Crime and Security at York University, and the Penelope Tham Business Law & Policy Internship at Schulich School of Law, Dalhousie University. Ken Rubin must also be acknowledged for his strategic work to craft and submit requests for the government records that are analyzed in this report.

The authors are also grateful to Professor Shin Imai, Kirsten Francescone, Catherine Coumans, and Jamie Kneen at MiningWatch Canada, John Dougherty and Jennifer Moore for their review and comment on drafts of this report. This report would not have been possible without the commitment and courage of Jennifer Moore who meticulously documented the events she experienced. Stephanie Boyd also made important contributions to document these events and we are deeply grateful for the input of Human Rights Without Borders-Cusco (DHSF by its initials in Spanish) and their ongoing work to accompany communities and report on socio-environmental conflict over Hudbay's Constanca mine.



# ABOUT

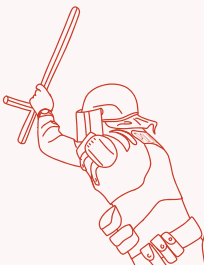
## THE JUSTICE & CORPORATE ACCOUNTABILITY PROJECT

This report is the work of Canadian students and law professors connected with the Justice & Corporate Accountability Project (JCAP). JCAP is a volunteer-driven transnational, collaborative, community-based legal clinic that assists in holding corporations and states to account by offering legal knowledge to communities that are negatively affected by natural resource extraction. JCAP has cultivated specific expertise in supporting Indigenous and Campesino communities in the Americas and has also supported communities in Africa.

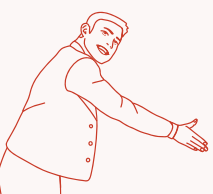
In addition to our work on Jennifer Moore’s case, JCAP has done a wide range of work dedicated to uncovering company and state complicity in the criminalization of HRDs. In 2016, JCAP published the *Canada Brand* report, documenting many instances of criminalization and violence associated with 28 Canadian mining operations in Latin America between 2000 and 2015. In 2017, we discussed our findings at hearings convened by the Inter-American Commission on Human Rights (IACHR) and the Canadian Parliamentary Committee on Canadian Mining & Human Rights in Latin America. We have also presented *amicus curiae* in cases related to Indigenous rights, as well as criminalisation and militarization of resource extraction in Peru.

JCAP has provided legal support to organizations concerned with the 2009 criminalization and murder of Mariano Abarca, a Mexican environment defender and critic of Canadian mining company Blackfire Resources. In 2018, JCAP represented Abarca’s family in a complaint to the Canadian Public Service Integrity Commissioner (PSIC) about the conduct of Canadian officials in that case. JCAP then supported the Abarca family in bringing the case to the Federal Court and the Federal Court of Appeal of Canada. In 2019, JCAP convened a team of civil society groups and pro bono lawyers to file a case in Federal Court to access government records that depict how Canadian officials undermined Guatemalan Indigenous communities’ efforts to seek justice and address the impacts of a Canadian mining operation in their territories. This case is the subject of the report: “The Two Faces of Canadian Diplomacy: Undermining International Institutions to Support Canadian Mining” published in January 2022.

JCAP’s work for state accountability and to support HRDs is only one of its important areas of research and advocacy. For more information, please visit: [justice-project.org](http://justice-project.org).



# INTRODUCTION



# DEFENDERS & CANADIAN TRANSNATIONAL RESOURCE EXTRACTION

Globalized systems of resource extraction and consumption are unsustainable from climate, environmental, and social perspectives.<sup>2</sup> Especially in the Global South, these large-scale operations often occur in remote areas, largely unnoticed by the majority of the population, and rural and Indigenous peoples are often on the front lines of alerting the broader community to the harms of industrial extraction.<sup>3</sup> When states and companies alike are unable or unwilling to respond constructively to these concerns, socio-environmental conflicts escalate.<sup>4</sup> Community members and their allies become environment and human rights defenders (HRDs) when they publicly allege harms on the part of state or company actors. In this context, HRDs may face defamation, harassment, criminalization and threats, and, in some cases, physical attacks.<sup>5</sup>

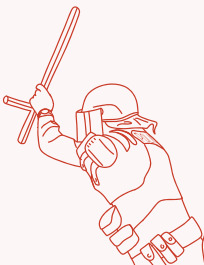
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2 See Kirsten Hund *et al*, “Minerals for Climate Action: The Mineral Intensity of the Clean Energy Transition” (2020), online (pdf): *The World Bank* <pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf> [perma.cc/2QYJ-M369]; Jeffrey D Sachs & Joseph E Stiglitz, *Escaping the Resource Curse* (New York: Columbia University Press, 2007); Yenny Vega Cárdenas & Patricia Urteaga-Crovetto, “The Concept of Global Justice and its Contribution toward Better Understanding and Resolving Natural Resources Conflicts” in Amissi M Manirabona & Yenny Vega Cárdenas, eds, *Extractive Industries and Human Rights in an Era of Global Justice: New Ways of Resolving and Preventing Conflicts* (LexisNexis, 2019).

3 See OAS, Inter-American Commission on Human Rights, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OR OEA/Ser.L/V/II. Doc. 47/15 (2015), online (pdf): <oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf> [perma.cc/6PE7-5LV] [IACHR, Indigenous Peoples].

4 See Anthony Bebbington *et al*, “Anatomies of Conflict: Social Mobilization and New Political Ecologies of the Andes” in Anthony Bebbington & Jeffrey Bury, eds, *Subterranean Struggles: New Dynamics of Mining, Oil and Gas in Latin America* (Austin: University of Texas Press, 2013).

5 See Global Witness, “Enemies of the State?: How governments and business silence land and environmental defenders” (July 2019), online (pdf): *Global Witness* <globalwitness.org/en/campaigns/environmental-activists/enemies-state/> [perma.cc/NYZ9-MURG]; OAS, Inter-American Commission on Human Rights, *Criminalization of the Work of Human Rights Defenders*, OR OEA/Ser.L/V/II. Doc. 49/15 (2015), online: <oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> [perma.cc/93UZ-3N4H]; Shin Imai, Leah Gardner, & Sarah Weinberger, “The ‘Canada Brand’: Violence and Canadian Mining Companies in Latin America” (2016), online (pdf): *Justice and Corporate Accountability Project* <justice-project.org/the-canada-brand-violence-and-canadian-mining-companies-in-latin-america/> [perma.cc/XL7X-F9K5].



Addressing these issues is particularly significant for Canada due to the dominant global presence of Canadian mining companies. For decades, Canada has been the home jurisdiction for between half and two-thirds of the world's publicly listed mining companies.<sup>6</sup> The Canadian government has played a strategic role in the global success of Canadian companies. One significant form of Canadian government support for extractive companies abroad is “economic diplomacy.” This term refers to political support, primarily through Global Affairs Canada (GAC)’s diplomatic missions and trade commissioners.<sup>7</sup>

In response to international and domestic pressure, Canada created the Extractive Sector Corporate Social Responsibility (CSR) Strategy in 2009, and, in 2014, it updated this policy. It stated that Canada expects companies to “respect human rights and all applicable laws, and to meet or exceed widely recognized international standards for responsible business conduct”.<sup>8</sup> This 2014 policy describes a ‘carrot-and-stick’ approach to economic diplomacy, offering “enhanced” diplomacy to CSR-abiding companies, while threatening companies that do not “embody CSR best practice” with the withdrawal of political support.<sup>9</sup> International bodies have noted that it is unclear how often this is done in practice or to what effect.<sup>10</sup>

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6 See Charis Kamphuis, “Canadian Mining Companies and Domestic Law Reform: A Critical Legal Account” (2012) 13:9 *German L J* 1456, online: <[papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2195978](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2195978)> [perma.cc/J88Q-4VKK]; Natural Resources Canada “Canadian Mining Assets”, Catalogue No M31-17E-PDF (Ottawa: Natural Resources Canada, 2019) online: *Government of Canada* <[nrcan.gc.ca/maps-tools-and-publications/publications/minerals-mining-publications/canadian-mining-assets/19323](http://nrcan.gc.ca/maps-tools-and-publications/publications/minerals-mining-publications/canadian-mining-assets/19323)> [perma.cc/735W-NWNR].

7 Global Affairs Canada, *Global Markets Action Plan: The Blueprint for Creating Jobs and Opportunities for Canadians Through Trade*, Catalogue No FR5-84/2013E-PDF (Ottawa: Global Affairs Canada, 2013) at 11; See also Government of Canada “Trade Commissioner Service - Eligibility and services” (last visited 12 October 2021), online: *Trade Commissioner Service* <[tradecommissioner.gc.ca/about-a\\_propos/services.aspx?lang=eng](http://tradecommissioner.gc.ca/about-a_propos/services.aspx?lang=eng)> [perma.cc/Y5W7-L4GX].

8 Global Affairs Canada, *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad*, Catalogue No FR5-164/2015E-PDF (Ottawa: Global Affairs Canada, 2015) at 3, online (pdf): <[international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced\\_CS\\_Strategy\\_ENG.pdf](http://international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced_CS_Strategy_ENG.pdf)> [perma.cc/A62H-B6PP] [GAC, *Business the Canadian Way*].

9 GAC, *Business the Canadian Way*, *supra* at 5, 12-13.

10 Working Group on Business and Human Rights, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada*, UNGAOR, 38th Sess, UN Doc A/HRC/38/48/Add.1 (2018) at para 34 [Working Group on Human Rights Report].



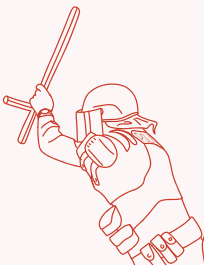
Civil society groups and international bodies have raised concerns about the tension between Canada's economic diplomacy policy objectives and its international human rights obligations.<sup>11</sup> In response to these concerns, Canada announced a new policy in late 2016: *Voices at Risk: Canada's guidelines on supporting human rights defenders* (the "Guidelines"), updated in 2019, with detailed annexes on Indigenous and environment HRDs. This document specifies how Canadian embassies should support HRDs, including Canadian HRDs, and promote responsible business conduct on the part of Canadian companies. Canadian officials have publicly referred to the Guidelines as an example of Canada's commitment to human rights.<sup>12</sup>

Despite these developments, there is a lack of transparency, and affected communities and their allies remain concerned that Canadian officials are doing very little to implement the Guidelines in practice. At present, the Guidelines do not include systems for evaluation, monitoring, or public reporting. As a result, information or research is lacking on the critical question of whether the Guidelines have actually influenced and improved Canadian officials' responses to HRDs and communities with concerns about Canadian companies.

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11 See Caren Weisbart, "Diplomacy at a Canadian Mine Site in Guatemala" (2018) 26 Crit Criminol 473; Jennifer Moore, "Unearthing Canadian Complicity: Excellon Resources, the Canadian Embassy, and the Violation of Land and Labour Rights in Durango, Mexico" (2015), online (pdf): *MiningWatch Canada* <miningwatch.ca/sites/default/files/excellon\_report\_2015-02-23.pdf> [perma.cc/GTMS-7NUF] [Moore, "Unearthing Canadian Complicity"]; Jennifer Moore & Gillian Colgrove, "Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy" (2013), online (pdf): *MiningWatch Canada* <miningwatch.ca/sites/default/files/blackfire\_embassy\_report-web.pdf> [perma.cc/2HKF-S6NQ]; Charlotte Connolly, Jennifer Moore & Caren Weisbart, "Qualifying as Canadian: Economic Diplomacy, Mining, and Racism at the Escobal Mine in Guatemala" in Veldon Coburn & David P Thomas, eds, *Capitalism & Dispossession: Corporate Canada at Home and Abroad* (Blackpoint, Nova Scotia: Fernwood Publishing, 2022); Charis Kamphuis, "Canadian Economic Diplomacy: Policy Gaps, Human Rights Impacts & Recommendations" (Submission on behalf of the Justice & Corporate Accountability Project delivered at the United Nations Working Group on Business & Human Rights) (February 2018).

12 See Global Affairs Canada, Statement, "Standing up for human rights and those who defend them" (10 December 2016), online: *Government of Canada* <canada.ca/en/global-affairs/news/2016/12/standing-up-human-rights-those-defend-them.html> [GAC, "Standing up for human rights"]; Global Affairs Canada, *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders*, Catalogue No FR5-110/2019E-PDF (Ottawa: Global Affairs Canada, 2019), online (pdf): *Government of Canada* <publications.gc.ca/collections/collection\_2020/amc-gac/FR5-110-2019-eng.pdf> [*Voices at Risk* 2019].





# REPORT OBJECTIVES

This report is a first attempt to respond to this significant knowledge gap about Canada's implementation of the Guidelines in situations of risk and threat to specific HRDs. It documents and analyzes a case study of how Canadian officials failed to follow their own policies in response to the criminalization and detention of Canadian HRD Jennifer Moore. At that time, Moore had been working as the Latin America Program Coordinator for MiningWatch Canada for seven years. Her work in Canada and the region was very public and would have been relatively well known to Canadian authorities working on related issues. In 2017, Peruvian authorities banned Moore from re-entering the country and publicly labeled her a threat to public order. She was targeted due to her work to circulate a documentary film among communities affected by Hudbay Minerals Inc. ("Hudbay")'s Constancia Mine, located in the Cusco region of Peru. The film contained critical testimony about Hudbay's operations across the Americas, including interviews of numerous community members, scientists, politicians, and civil society.



# REPORT ROADMAP



## SECTION ONE

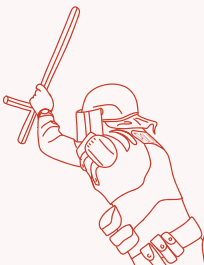
**Section 1** begins with statements from international human rights bodies about Canada's special obligations to support and protect human rights defenders who are affected by Canadian extractive industries' overseas operations. This section establishes that Canada has international obligations in this realm, and that these obligations are engaged in this case study. This compilation of statements serves as an important point of reference for this report's recommendations in Section 6.

## SECTION TWO

This international normative context is followed in **Section 2** by a description of the factual context with respect to the Canadian company involved: Hudbay. This section briefly reviews some of the controversies and allegations associated with Hudbay's operations across the Americas. It then describes the company's Constancia project, its relationship with the Peruvian police, and the concerns of affected Quechua communities. This includes concerns about the mine's environmental impacts, the company's approach to agreement-making with communities, and the resulting widespread protests that have plagued the project since 2014.

## SECTION THREE

Against this backdrop, **Section 3** describes the events surrounding the criminalization of Jennifer Moore in the Cusco region beginning in 2017, and the role of Peruvian police, state, and company authorities, as well as unidentified persons. This includes a range of acts of intimidation, defamation, criminalization, and surveillance leading up to her detention by police, and the decision of Peruvian authorities to ban her from re-entering the country.



## SECTION FOUR

**Section 4** summarizes Moore’s lawsuit in Peru to lift the ban. This section describes the courts’ findings, namely that Peruvian authorities violated her rights to due process and free expression, and that her classification as a threat to public order by the state was arbitrary and unfounded.

## SECTION FIVE

**Section 5** analyzes the response of Canadian officials at the Canadian Embassy to Peru (the “Embassy”) and at Global Affairs Canada (GAC) to the rights violations that Moore endured. The point of reference for this analysis is *Canada’s Voices at Risk* Guidelines. This section establishes the degree to which Canadian officials failed to abide by the 2016 and 2019 Guidelines in their response to the ongoing criminalization of Jennifer Moore by Peruvian authorities and company executives. This section identifies five major failures of Canadian officials to abide by the Guidelines, both with respect to their mandatory and recommended provisions. Beyond these failures, the available records of government communications also reveal deep political bias against Moore in her capacity as Latin America Program Coordinator at MiningWatch Canada and the lengths to which Canadian officials were willing to go to deny her any support at all, including by misleading international human rights bodies and failing to disclose what they knew about Hudbay’s agreement with the police and possible involvement in her criminalization.

## SECTION SIX

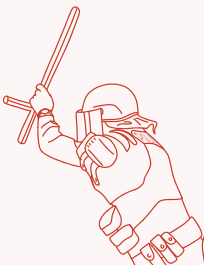
**Section 6** offers recommendations to Canadian government officials that pertain specifically to the Moore case. In this section, we also comment on the need for fundamental reforms to Canada’s policy and governance approach in this area.



# METHODS AND DISCLAIMER

In terms of its methods, this report assembles data from a wide range of sources. These sources included external government (Canada and Peru) documents and communications; Hudbay's publications and public statements; Moore's emails and notes recording relevant events; and other publicly available sources, including those produced by the media, civil society actors, and academics. At the core of this report is a narrative account based on a systematic review of hundreds of pages of internal Government of Canada records obtained from GAC pursuant to federal access to information and privacy (ATIP) legislation. These records were reviewed, organized, and summarized to create a detailed narrative of the actions and omissions of Canadian officials. The dates and scope of the ATIP disclosures cited throughout this report are reproduced in Appendices 4-6 of this report. While the information compiled from these records paints a disturbing picture of the actions and omissions of Canadian officials in this context, readers should know that the ATIP records reviewed contained many redactions. As a result, some of the facts about the actions and omissions of Canadian officials in this case remain hidden from public scrutiny.

While the information compiled from these records paints a disturbing picture of the actions and omissions of Canadian officials in this context, readers should know that the ATIP records reviewed contained many redactions. As a result, some of the facts about the actions and omissions of Canadian officials in this case remain hidden from public scrutiny. In spite of this, we have conscientiously set out the facts that we have been able to discern from the available record, and our analyses and findings are based on that record. If there are other facts that we are not aware of, or errors in the record, we are happy to correct them. We invite readers with any information of that nature to contact us and provide supporting documentation.



# 1. CANADA'S INTERNATIONAL OBLIGATIONS TO SUPPORT & PROTECT HRDs



# INTRODUCTION

This section summarizes Canada’s obligations to support and protect HRDs, with particular attention to HRDs who are impacted by the operations of Canadian companies abroad. It reviews the relevant norms originating from a range of United Nations (UN) and Organization of American States (OAS) instruments and bodies.

## OVERVIEW OF NORMS

The *United Nations Declaration on Human Rights Defenders* (1998) (“UN Declaration”), to which Canada is a signatory, is a foundational source of law in this area.<sup>13</sup> It describes the specific obligation of states to ensure the rights and protection of HRDs:

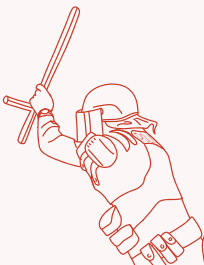
**12(2). The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.<sup>14</sup>**

In 2019, the UN Human Rights Committee outlined the specific requirements of states to take positive measures to protect the right to life of HRDs where they are the target of threats from third parties. These measures include a duty to require due diligence in relation to private entities; a duty to prevent reasonably foreseeable threats to life from private entities; and a duty to take special protective measures towards “specific threats or pre-existing patterns of violence relating to human rights defenders”.<sup>15</sup>

13 United Nations, “Human Rights Defenders Declaration Approved by Commission after 13 Years of Drafting” (8 April 1998) UN Doc HR/CN/846, online: *UN Meetings Coverage & Press Releases* <[un.org/press/en/1998/19980408.HRCN846.html](http://un.org/press/en/1998/19980408.HRCN846.html)> [perma.cc/UL6P-PZHN].

14 UNGA, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UNGAOR, 53rd Sess, UN Doc A/RES/53/144 (1999) art 12, online: <[documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement](http://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement)> [perma.cc/EZR4-PYM4] [UN Declaration of Human Rights].

15 UNHRC, *General Comment No. 36: Article 6, Right to Life*, 124th Session,





There is an emerging consensus among international treaty bodies that the duty to support and protect HRDs extends to home states who are directly involved in procuring investment in host states.<sup>16</sup> For instance, the UN Special Rapporteur on the Situation of Human Rights Defenders (“the UN Special Rapporteur on HRDs”) recommends that “where attacks have been carried out against defenders in host States, home States should use all avenues possible to advocate for an independent, impartial and transparent investigation and should provide financial and technical support to such an investigation”.<sup>17</sup> The UN Working Group on the Issue of Human Rights and Transnational Corporations (“the UN Working Group on Business & Human Rights”) echoes this recommendation in calling upon home states to enable effective adjudication to prevent, investigate, punish, and redress all forms of threats and attacks against HRDs.<sup>18</sup>

Canada bears certain extraterritorial responsibilities to ensure its extractive companies respect human rights abroad,<sup>19</sup> particularly in the context of projects that receive government services under the policy of economic diplomacy.<sup>20</sup> Guidance and

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UN Doc CCPR/C/GC/36 (2019) at paras 21-23, online: <undocs.org/CCPR/C/GC/36> [perma.cc/G937-EUUY] [UNHRC, General Comment No. 36].

16 Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders*, UNGAOR, 72nd Sess, UN Doc A/72/170 (2017) at para 3, online: <undocs.org/en/A/72/170> [perma.cc/9G72-X2LR]; Working Group on Business and Human Rights, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, UNGAOR, 38th Sess, UN Doc A/HRC/38/48 (2018) at para 22, online: <undocs.org/A/HRC/38/48> [perma.cc/V669-Z9DP] [Working Group Transnational Corporations Report].

17 Forst, *supra* at para 51. See also the *Report of the UN Special Rapporteur on the Rights of Indigenous Peoples* which calls on states to also provide effective redress and remedy: James Anaya, *Report of the Special Rapporteur on the rights of Indigenous peoples*, UNGAOR, 39th session, UN Doc A/HRC/39/17 (2018) at para 91, online: <ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.39.17.pdf> [perma.cc/97V5-YPFX] .

18 Working Group on the issue of human rights and transnational corporations and other business, *The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders*, UNGAOR, 47th Sess, UN Doc A/HRC/47/39/Add.2 (2021) at paras 41, 88, online: <documents-dds-ny.un.org/doc/UNDOC/GEN/G21/161/49/PDF/G2116149.pdf?OpenElement> [perma.cc/4HEZ-C3R5] [Guiding Principles on Business and Human Rights Report].

19 CESCR describes the extraterritorial obligations of states to prevent third parties from violating human rights in other countries, “if they are able to influence these third parties by legal or political means.” Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UNESCOR, 22nd Sess, UN Doc E/C.12/2000/4 (2000) at para 39, online (pdf): <refworld.org/pdfid/4538838d0.pdf> [perma.cc/ZF9D-54FB] [CESCR, General Comment No. 14].

20 *Canada’s Enhanced Corporate Social Responsibility Strategy to Strengthen Canada’s Extractives Sector Abroad* (2014) elaborates on the policy of economic diplomacy as a suite of services offered to Canadian businesses engaged in trade and export, including



jurisprudence from both the Inter-American Court for Human Rights and Inter-American Commission on Human Rights (IACHR) firmly establishes the obligations of states to support and protect human rights wherever they exercise jurisdiction or effective authority and control.<sup>21</sup> In 2017, the UN Committee on Economic, Social and Cultural Rights (CESCR) elaborated upon the extraterritorial obligations of states to ensure that corporations domiciled in their territory “act with due diligence to identify, prevent and address abuses to Covenant rights”.<sup>22</sup> The CESCR explained that a State party would be in breach of its obligations whenever there is a “failure by the State to take reasonable measures that could have prevented” corporate-caused harm, even when “other causes contributed to the occurrence of the violation.”<sup>23</sup> Both the UN Working Group on Business & Human Rights and the UN Special Rapporteur on the Rights of Indigenous Peoples have called upon states to take appropriate steps to ensure that all business enterprises domiciled in their territory and/or jurisdiction respect the rights of HRDs, including by enacting mandatory due diligence obligations for companies.<sup>24</sup>

In October 2013, the Working Group on Mining and Human Rights in Latin America submitted a report to the IACHR profiling 22 case studies of Canadian mining operations, many with strong support from the Canadian state, linked to 23 violent deaths and 25 cases of injury in ten of the projects examined.<sup>25</sup> In December 2015, the IACHR

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the “issuance of letters of support, advocacy efforts in foreign markets and participation in Government of Canada trade missions.” See: GAC, *Business the Canadian Way*, *supra* at 12.

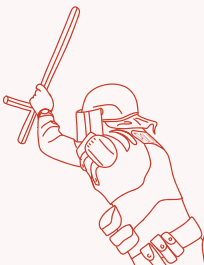
21 The Environment and Human Rights Advisory Opinion of Inter-American Court for Human Rights states, “in cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory.” *The Environment and Human Rights (Republic of Colombia)*, (2017) Advisory Opinion OC-23/17, Inter-Am Ct HR (Ser A) No 23 at para 102, online: <[refworld.org/cases,IACRTHR,5e67c7744.html](http://refworld.org/cases,IACRTHR,5e67c7744.html)> [perma.cc/AW4W-BN9U]; See also *Jose Isabel Salas Galindo and Others v United States* (2018), Inter-Am Comm HR, Case 10.573 No 121/18, OEA/Ser.L/V/II/doc.138, online: <[oas.org/en/iachr/decisions/2018/USPU10573-EN.pdf](http://oas.org/en/iachr/decisions/2018/USPU10573-EN.pdf)> [perma.cc/UZG9-S3RV].

22 Committee on Economic, Social and Cultural Rights, *General Comment No 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, UNESCOR, UN Doc E/C.12/GC/24 (2017) at 10 para 33, online: <[refworld.org/docid/5beaecba4.html](http://refworld.org/docid/5beaecba4.html)> [perma.cc/W2LK-Y4F8] [CESCR, General comment No 24].

23 *Ibid* at para 32.

24 Guiding Principles on Business and Human Rights Report, *supra* at paras 42-43; Anaya, *supra* at para 91(c).

25 Working Group on Mining and Human Rights in Latin America, “The Impact of Canadian Mining in Latin America and Canada’s Responsibility: Executive Summary of the Report Submitted to the Inter-American Commission on Human Rights” (October 2013) at 16, online (pdf): *Due Process of Law Foundation* <[dplf.org/sites/default/](http://dplf.org/sites/default/)



published a report where it expressed concern about the human rights impacts of economic diplomacy and called on states like Canada to make state support conditional on corporate respect for human rights and to refrain from influencing the adoption of norms or policies that solely favour its economic interests.<sup>26</sup>

In July 2017, the UN Special Rapporteur on HRDs reiterated this concern and remarked on the role of Canadian companies, along with Chinese and U.S. companies, in creating and contributing to violence against HRDs.<sup>27</sup> The Special Rapporteur concluded that these countries accounted for 25% of the 450 reported attacks against defenders globally in 2015 and 2016.<sup>28</sup> Shortly thereafter, the UN Working Group on Business & Human Rights published a report in October 2018 which directed the Canadian government to provide support to defenders to enable “more effective protection of the legitimate activities of defenders”.<sup>29</sup> It encouraged the Canadian government to “develop training for its public servants and trade officers, as well as guidance for companies that relates more directly to the role of the private sector in ensuring respect for the rights of human rights defenders in the extractive sector”.<sup>30</sup>

The Working Group has also noted that most home states, including Canada, are not doing enough to ensure the protection of HRDs through their own trade policies and economic diplomacy, and it has repeatedly recommended that states require agencies dealing with development aid, export credit, pensions, and sovereign investment funds to develop policies for the protection of HRDs; advocate for clauses in trade and investment agreements that include shared commitments to respect the rights of HRDs; raise the issue of risks to HRDs in the context of trade missions; maintain regular contact with HRDs, including by receiving them at embassies and visiting their places of work where it is safe to do so; and stand up for HRDs when they are threatened or attacked, including by formally raising concerns as part of diplomatic dialogues, generating public awareness of the work of HRDs, and observing and monitoring trials involving HRDs.<sup>31</sup>

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[files/report\\_canadian\\_mining\\_executive\\_summary.pdf](#)> [perma.cc/FEF4-J72N].

26 IACHR, Indigenous Peoples, *supra* at paras 13, 79-81; See also Working Group on Transnational Corporations Report, *supra* at para 35.

27 Forst, *supra* at paras 3-5.

28 *Ibid* at para 5.

29 Working Group on Human Rights Report, *supra* at 45.

30 *Ibid* at para 44.

31 Guiding Principles on Business and Human Rights Report, *supra* at paras 48-51; Anaya, *supra* at para 22.

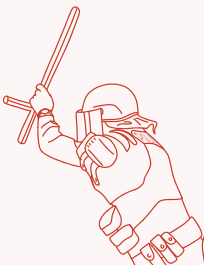


# CONCLUSION

The statements and recommendations from international bodies cited above clearly set out the obligations of home states, like Canada, to support HRDs abroad, and they have often named Canada specifically. This obligation is heightened where the risks of violence, threats, retaliation, and arbitrary actions against HRDs are connected to extractive projects that receive support from the Canadian state. In this context, Canada has a duty to exercise its influence and control to protect HRDs, and the legitimate exercise of their rights recognized in the UN Declaration and other international human rights instruments.<sup>32</sup> This duty is partly reflected in Canada's Voices at Risk Guidelines, which we analyze in Section 5 of this report. It also informs the recommendations we provide in the final section of this report.

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32 Such as the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Universal Declaration on Human Rights*. See *Voices at Risk* 2019, *supra* at 5-6.

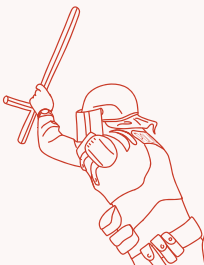


## 2. HUDBAY MINERALS & THE CONSTANCIA PROJECT IN PERU



# INTRODUCTION

This section provides general information about Hudbay, including a basic overview of its operations across the Americas. It begins by highlighting some of the environmental and human rights concerns raised by impacted communities across jurisdictions, followed by a brief description of the many conflicts between Hudbay and affected communities in Peru. This widespread pattern of violence and alleged rights violations connected to Hudbay is critical to properly assessing the main subject matter of this report, namely the deficient response of the Canadian government to the criminalization of Jennifer Moore in 2017 in connection with Hudbay's Constancia project in Peru.



# A. HUDBAY MINERALS INC.

Hudbay primarily mines copper concentrate and zinc metal. Directly and through subsidiaries, Hudbay owns several polymetallic mines, four ore concentrators, and one zinc production facility. The company is publicly-traded on the Toronto Stock Exchange, the New York Stock Exchange, and the Bolsa de Valores de Lima.<sup>33</sup> In addition to its open-pit copper mine in Peru, Hudbay has operations in Manitoba and Saskatchewan (Canada), and has interests in two open-pit copper mines in the United States, one of which is awaiting regulatory approvals in Arizona.<sup>34</sup> Hudbay also operated the Fenix nickel project in Guatemala from 2008 to 2011.<sup>35</sup> The company states that its mission is “to create sustainable value through the acquisition, development and operation of high-quality and long-life deposits with exploration potential in jurisdictions that support responsible mining”, and its vision is “to be a responsible, top-tier operator of long-life, low-cost mines in the Americas”.<sup>36</sup>

Against the backdrop of Hudbay’s apparent economic success, communities directly affected by the company’s operations in each of these jurisdictions have organized to denounce the environmental and social impact of the company’s operations. In 2011, Guatemalan plaintiffs brought three legal actions in Canada against Hudbay with respect to alleged harms that occurred at the Fenix Nickel mine while it was owned and operated by the company’s predecessor, Skye Resources, as well as after Hudbay took over the project.<sup>37</sup> The plaintiffs in these lawsuits sought damages for serious bodily

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33 Hudbay Minerals Inc., “Hudbay Announces Election of Directors” (17 May 2021), online: *Press Release* <[hudbayminerals.com/investors/press-releases/press-release-details/2021/Hudbay-Announces-Election-of-Directors/default.aspx](http://hudbayminerals.com/investors/press-releases/press-release-details/2021/Hudbay-Announces-Election-of-Directors/default.aspx)> [perma.cc/8CNL-FAQ3].

34 David Abbott, “Rosemont Mine project faces pushback over water storage”, (18 February 2022), online: *Tucson Sentinel* <[tucsonsentinel.com/local/report/021822\\_rosemont\\_water\\_shortage/rosemont-mine-project-faces-pushback-over-water-storage/](http://tucsonsentinel.com/local/report/021822_rosemont_water_shortage/rosemont-mine-project-faces-pushback-over-water-storage/)> [perma.cc/RWM8-7X6F].

35 Hudbay Minerals Inc., “The Facts: CGN and Hudbay in Guatemala”, online (pdf): <[s23.q4cdn.com/405985100/files/doc\\_downloads/guatemala/CGN-and-Hudbay-in-Guatemala.pdf](https://s23.q4cdn.com/405985100/files/doc_downloads/guatemala/CGN-and-Hudbay-in-Guatemala.pdf)> [perma.cc/J33X-GPZL].

36 Hudbay Minerals Inc., “About Us”, online: <[hudbayminerals.com/about-us/default.aspx#values](http://hudbayminerals.com/about-us/default.aspx#values)> [perma.cc/GN3B-CLX3].

37 Gabriel Friedman, “‘They burned everything’: Guatemalan women press Hudbay on human rights claims in closely watched case”, (17 September 2019), online: *Financial Post* <[financialpost.com/commodities/indigenous-guatemalan-women-travel-to-toronto-to-press-hudbay-on-human-rights-claims](http://financialpost.com/commodities/indigenous-guatemalan-women-travel-to-toronto-to-press-hudbay-on-human-rights-claims)> [perma.cc/9DWK-599R]; *Choc v Hudbay Minerals Inc.*, 2011 ONSC 1414, [2011] OJ No 3417 (QL) (Ont SCJ); Klippensteins, Barristers & Solicitors, “The Lawsuits”, online: <[chocversushudbay.com/about/](http://chocversushudbay.com/about/)> [perma.cc/PA4R-UXAH].





harm, sexual assault, rape, and death, all which allegedly occurred at the hands of the company's security forces.<sup>38</sup>

In Manitoba, Hudbay announced in June 2022 that its mine in Flin Flon, “the 777”, had ceased mining activities.<sup>39</sup> The project has received mixed support from the community, and scientists and community leaders have expressed grave concern over its cumulative environmental and social impacts, especially given that the company's operations in the area began in the 1930s.<sup>40</sup> In 2010, Hudbay resumed construction of a mine at its Lalor project in Snow Lake and achieved production by 2012.<sup>41</sup> The Snow Lake project has also faced community opposition, and, in 2013, the Mathias Colomb Cree Nation protested and blockaded the mine's access road, while issuing the company an eviction order.<sup>42</sup>

Community opposition to Hudbay has a transnational character. In 2015, representatives from Indigenous communities affected by the company's projects across the Americas (Guatemala, Canada, the United States, and Peru) came together to protest outside its Toronto headquarters.<sup>43</sup> Community organizers and elected officials opposed to Hudbay's

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38 Mining.com, “Lawsuit could be precedent-setting for Canadian mining companies operating abroad”, (26 November 2017), online: <mining.com/lawsuit-precedent-setting-canadian-mining-companies-operating-abroad/> [perma.cc/7B4C-6C3J]; Mark Gelowitz *et al*, “Ontario Court Gives Green Light to International Human Rights Tort Claims in Choc v Hudbay Minerals Inc.” (26 July 2013), online: *Osler* <osler.com/en/resources/cross-border/2013/ontario-court-gives-green-light-to-international-h> [perma.cc/8YNL-LGA5]. Solway Group, a Swiss company, purchased the Fenix mine in 2011; James A Rodriguez, “Mynor Padilla: Killer of anti-mining activist pleads guilty” (7 January 2021), online: *BBC News* <bbc.com/news/world-latin-america-55573682> [perma.cc/7AEN-4SGU].

39 HudBay, “Hudbay announces completion of mining activities at 777 after 18 years of steady production”, (22 June 2022), online: <hudbayminerals.com/investors/press-releases/press-release-details/2022/Hudbay-Announces-Completion-of-Mining-Activities-at-777-after-18-years-of-Steady-Production/default.aspx> [perma.cc/N7NH-2G3N]

40 John Dougherty, “Flin Flon Flim Flam (Hudbay's Hoax)” (31 December 2015), online (video): *YouTube* <youtube.com/watch?v=j7aacPtEl8s> [perma.cc/UWA3-Q53A].

41 Hudbay began exploring mining opportunities in northern Manitoba located at Snow Lake in the 1950s, but only limited mining occurred in the 1980s and 1990s: Town of Snow Lake, “Mining History”, online: *Our Community* <ww.snowlake.com/p/mining-history> [perma.cc/NCE6-8T9L].

42 Ian Graham, “Northern Manitoba First Nation members protest at Hudbay AGM in Toronto”, *Thompson Citizen* (17 May 2013), online: <thompsoncitizen.net/news/nickel-belt/northern-manitoba-first-nation-members-protest-at-hudbay-agm-in-toronto-1.1364283> [perma.cc/ZX9U-QYDS].

43 Mining Justice, “UPDATE: United Against Hudbay: a protest at Hudbay's shareholder meeting” (22 May 2015), online: *Mining Injustice Solidarity Network* <mininginjustice.org/united-against-hudbay-a-protest-at-hudbays-shareholder-meeting/> [perma.cc/X2Z5-BC7V].



operations have also had some recent success in the courts.<sup>44</sup> In 2019, an Arizona court halted Hudbay’s Rosemont project, which faces opposition from environmental groups, the Tohono O’odham Nation, Pascua Yaqui and Hopi tribes, Pima County authorities, and congressional representatives<sup>45</sup> on the basis that the company had failed to meet applicable environmental regulations.<sup>46</sup> The decision was upheld in May 2022, and, as a result, the company is seeking to begin work on a nearby property instead, posing further risks to local water supplies.<sup>47</sup>

In this context of growing resistance and opposition, the Constancia mine and its proposed expansion in Peru has become increasingly important for Hudbay and its goal to position itself as a global leader in mining.<sup>48</sup> Even before Hudbay initiated operations at Constancia in 2015, the project’s construction and scale had profound social and environmental impacts for communities of the region.<sup>49</sup> The remainder of this section will describe the publicly reported human rights and environmental concerns associated with the Constancia project.

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44 Abbott, *supra*.

45 Zayna Syed, “Why critics fear a copper mining company is skirting key water rules in Arizona” (17 May 2022), online: <[azcentral.com/story/news/local/arizona-environment/2022/05/17/after-legal-setbacks-rosemont-mine-copper-company-starts-work/9797624002/](https://www.azcentral.com/story/news/local/arizona-environment/2022/05/17/after-legal-setbacks-rosemont-mine-copper-company-starts-work/9797624002/)> [perma.cc/T5C4-DN96]; Dougherty, *supra*.

46 Separately, Hudbay is moving forward with the Mason project in Nevada, which it acquired in 2018. The Mason project is in the exploration stage but is projected to be similar in scale to Constancia in Peru. See Dougherty, *supra*; Hudbay Minerals Inc., “Hudbay Advances Appeal of Unprecedented Rosemont Court Decision” (22 June 2020), online: *Press Release* <[hudbayminerals.com/investors/press-releases/press-release-details/2020/Hudbay-Advances-Appeal-of-Unprecedented-Rosemont-Court-Decision/default.aspx?gclid=CjwKCAjwo4mlBhBsEiwAKgzXOBT6Ysgz24mvvHzcqwpdd6KPVcM5IDaHHjXNel81eoA3cRleyDa4jRoC5RIQAvD\\_BwE](https://www.hudbayminerals.com/investors/press-releases/press-release-details/2020/Hudbay-Advances-Appeal-of-Unprecedented-Rosemont-Court-Decision/default.aspx?gclid=CjwKCAjwo4mlBhBsEiwAKgzXOBT6Ysgz24mvvHzcqwpdd6KPVcM5IDaHHjXNel81eoA3cRleyDa4jRoC5RIQAvD_BwE)> [perma.cc/97D8-JVVF]; Nicola Saminather, “Hudbay shares slump 18% after court bars construction at Arizona project” (1 August 2019), online: *Reuters* <[reuters.com/article/us-hudbay-minerals-rosemont-court-idUSKCN1UR4WK](https://www.reuters.com/article/us-hudbay-minerals-rosemont-court-idUSKCN1UR4WK)> [perma.cc/8PRZ-JF57].

47 Rosemont Mine Truth, “Copper World’s high production of sulfuric acid poses serious pollution and water depletion threat to Santa Cruz River Valley” (23 June 2022), online: <[rosemontminetruth.com/copper-worlds-high-production-of-sulfuric-acid-poses-serious-pollution-and-water-depletion-threat-to-santa-cruz-river-valley/#more-6061](https://www.rosemontminetruth.com/copper-worlds-high-production-of-sulfuric-acid-poses-serious-pollution-and-water-depletion-threat-to-santa-cruz-river-valley/#more-6061)> [perma.cc/HNV9-7N4Y]

48 See Dougherty, *supra*.

49 Derechos Humanos Sin Fronteras, “Impactos Mineros Invisibilizados: Una Mirada Desde los Actores Sobre el Proyecto Constancia de Hudbay” (September 2019), online (pdf): *MiningWatch Canada* <[miningwatch.ca/sites/default/files/cleanestudioimpactosminerosinvisibilizadoshudbay-cuscodhsf.pdf](https://www.miningwatch.ca/sites/default/files/cleanestudioimpactosminerosinvisibilizadoshudbay-cuscodhsf.pdf)> [perma.cc/C6CM-TT4G] [“Impactos Mineros”].



## B. PROFILE OF THE CONSTANCIA MINE & AFFECTED COMMUNITIES

The Constanca mining project is in the Andes of southern Peru in the province of Chumbivilcas, in the department of Cusco, approximately 600 km southeast of Lima. Hudbay acquired Constanca in 2011 and invested \$1.5 billion USD in the project.<sup>50</sup> Commercial production at Constanca began in 2015 and is estimated to continue until 2037.<sup>51</sup> Constanca is an open-pit mine that spans an estimated 35 kilometers squared and produces about 86,000 tons of (primarily) copper ore daily.<sup>52</sup> In 2018, Hudbay also acquired a series of properties in the surrounding region to create a large, contiguous block of exploration prospects a short distance from Constanca for the mine's continued expansion.<sup>53</sup> The province of Chumbivilcas is one of the poorest regions in Peru and is home to 66,000 inhabitants. Approximately 88% are Quechua speaking and over 92% identified as Quechua in the 2017 Census.<sup>54</sup> The province is also home to approximately 77 Campesino Communities, many of whom are Quechua.<sup>55</sup> The districts most affected by Constanca's operations are Chamaca, Livitaca, and Velille.<sup>56</sup> These three districts are

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50 Republica del Perú, "Proyecto Minero Constanca", online: *Perú, Ministerio de Energía y Minas* <minem.gob.pe/minem/archivos/file/Ficha%20Constanca%20Julio%202018.pdf> [perma.cc/A4MA-WA5R].

51 Hudbay Minerals Inc. "Peru", online: <hudbayminerals.com/peru/default.aspx> [perma.cc/6KRF-YLL2] [Hudbay, "Peru"].

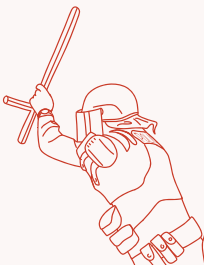
52 *Ibid.*

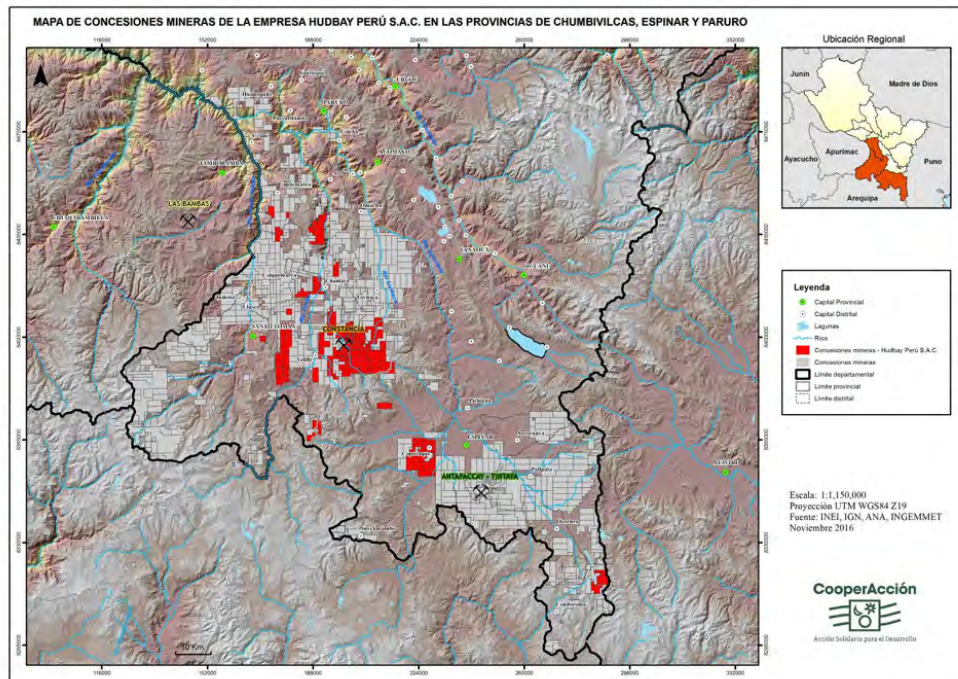
53 *Ibid.*

54 "Impactos Mineros", *supra* at 37-38, 40; Republica del Perú, "Cusco Resultados Definitivos" (October 2018) at 24-25, 38, online (pdf): *Instituto Nacional de Estadística e Informática* <inei.gob.pe/media/MenuRecursivo/publicaciones\_digitales/Est/Lib1559/08TOMO\_01.pdf> [perma.cc/Z6BJ-KZ9Q].

55 Republica del Perú, "Buscador de localidades de pueblos indígenas", online: *Base de Datos de Pueblos Indígenas u Originarios, Ministerio de Cultura* <bdpi.cultura.gob.pe/buscador-de-localidades-de-pueblos-indigenas> [perma.cc/2 VTX-TAT5] [Republica del Perú, "Localidades Indígenas"]; Republica del Perú, "Directorio de Comunidades Nativas y Campesinas, Censos Nacionales 2017" (December 2018), online (pdf): *Instituto Nacional de Estadística e Informática* <inei.gob.pe/media/MenuRecursivo/publicaciones\_digitales/Est/Lib1597/TOMO\_02.pdf> [perma.cc/5XGG-2QVU].

56 Notably, the Peruvian government has granted mining concessions for more than half of the territory in each district. Hudbay owns a 100% indirect interest in the Constanca property, which consists of 36 concessions: "Impactos Mineros", *supra*; Olivier Tavchandjian, "NI 43-101 Technical Report Constanca Mine, Cuzco, Peru" (29 March 2021), online (pdf): <s23.q4cdn.com/405985100/files/doc\_downloads/tech\_reports/peru/Constanca-NI-43-101-Technical-Report-March-29-2021\_FINAL.pdf> [perma.cc/D3YA-4F52].





**A map of mining concessions (red blocks) titled to Hudbay Peru S.A.C. in the provinces of Chumbivilcas, Espinar and Paruro as of 2017**

**Source: CooperAcción**

home to 30 Campesino Communities of Quechua descent.<sup>57</sup> A large proportion of the population in all three districts relies on agriculture and livestock for subsistence and as a source of income.<sup>58</sup>

The International Labour Organisation (ILO) Committee has recognized Campesino Communities in Peru as Indigenous peoples under the *ILO 1989 Convention No. 169*, which became part of Peruvian law in 1995.<sup>59</sup> There are several laws in place in Peru that recognize and protect the social, cultural, economic, and political rights of Campesino Communities, including special constitutional protections.

57 República del Perú, “Localidades Indígenas”, *supra*.

58 “Impactos Mineros”, *supra* at 14.

59 República del Perú, Legislative Resolution No 26253, *For the approval of “Convention 169 of the ILO on Indigenous and Tribal Peoples in Independent Countries”* (1993); *Convention concerning Indigenous and Tribal Peoples in Independent Countries*, International Labour Organization, Convention No. 169, (1989) [*Convention No 169*]; Charis Kamphuis, “Derecho y la Convergencia del Poder Público y el Poder Empresarial: La Desposesión Campesina y La Coerción Privatizada en el Perú” (2012) 15 *Revista Latinoamericana de Derecho Social*, online: <papers.ssrn.com/sol3/papers.cfm?abstract\_id=1879947v> [perma.cc/VA78-T962]; OAS, *American Convention on Human Rights*, art 21, Nov. 22, 1969, OEA/No. 36, 1144 U.N.T.S. 123.





# C. HUSBAY CONTRACTS WITH THE PERUVIAN NATIONAL POLICE (PNP)

In 2017, Hudbay confirmed that it maintains a contract for security services with the Peruvian National Police (PNP) with respect to the Constancia Mine.<sup>60</sup> Unfortunately, the current version of this agreement is not publicly available. However, we were able to access and review a copy dated March 17, 2013, which includes provisions for annual renewal.<sup>61</sup> Based on our research, these agreements tend to be renewed with identical or substantially similar terms, and routinely remain in place for decades over the lifetime of a project.<sup>62</sup>

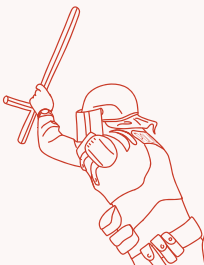
According to the 2013 Hudbay-PNP agreement, the PNP has agreed to provide Hudbay with services complementary to ordinary police services. This includes ongoing protection, surveillance, and security services at the Constancia installations and in the project's "area of influence".<sup>63</sup> It further includes the "prevention of crimes, acts of

60 Business & Human Rights Resource Centre, "Response by Hudbay Minerals" (8 May 2017), online: *Latest News* <[business-humanrights.org/en/peru-hudbay-minerals-responds-on-arrest-of-two-north-american-activists-allegedly-over-their-involvement-in-a-documentary-on-impacts-by-its-operations#c156997](http://business-humanrights.org/en/peru-hudbay-minerals-responds-on-arrest-of-two-north-american-activists-allegedly-over-their-involvement-in-a-documentary-on-impacts-by-its-operations#c156997)> [perma.cc/LLQ3-DQG8].

61 Convenio Interinstitucional que Celebran Hudbay Perú SAC – "Proyecto Constancia" y la Policía Nacional de Perú (Región Policial Sur Oriente) (17 March 2013) at 2, online (pdf): <[ia803200.us.archive.org/34/items/ConvenioHudbayPeru/Convenio%20Hudbay%20Per%C3%BA.pdf](http://ia803200.us.archive.org/34/items/ConvenioHudbayPeru/Convenio%20Hudbay%20Per%C3%BA.pdf)> [Hudbay, PNP Contract].

62 *Ibid*; Charis Kamphuis, "Foreign Investment and the Privatization of Coercion: A Case Study of the Forza Security Company in Peru" (2011-2012) 38 *Brook J Intl L* 529, online: <[papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1879911](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1879911)> [perma.cc/DA97-XUJ4] [Kamphuis, "Foreign Investment"]; Charis Kamphuis, "La Extracción Extranjera de Recursos Mineros y la Privatización del Poder Coercivo: Un Estudio de Caso Sobre la Empresa de Seguridad Forza" (2011) 38:68 *Apuntes: Centro de Investigación de la Universidad del Pacífico* 63, online: <[papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1879915](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1879915)> [perma.cc/5P6R-JGLS]; Charis Kamphuis & Shin Imai, *Amicus Curiae Brief, Mollohuanca Cruz & Association of Livestock Producers of Huinipampa-Espinar v Ministry of the Interior of Peru et al* (submitted to the Constitutional Court of Peru in November 2018), online: <[ssrn.com/abstract=3329499](http://ssrn.com/abstract=3329499)> [perma.cc/S8F6-JDRA] [Kamphuis & Imai, *Amicus*]. See also EarthRights International, Instituto de Defensa Legal & Coordinadora Nacional de Derechos Humanos, "Informe: Convenios entre la Policía Nacional y las Empresas Extractivas en el Perú. Análisis de las relaciones que permitan la violación de los derechos humanos y quiebran los principios del Estado Democrático de Derecho" (February 2019), online (pdf): *EarthRights International* <[earthrights.org/wp-content/uploads/Informe-Convenios-entre-PNP-y-empresas-extractivas.pdf](http://earthrights.org/wp-content/uploads/Informe-Convenios-entre-PNP-y-empresas-extractivas.pdf)> [perma.cc/V85Z-KFVW] [Earthrights, "Informe"].

63 Hudbay, PNP Contract, *supra* clause 3.



vandalism, sabotage, terrorism and or attacks that could befall the project”,<sup>64</sup> as well as the “detection of unknown persons in the area of the project”.<sup>65</sup> The agreement requires the PNP to provide these services by coordinating with Hudbay’s representatives and with due regard for the company’s internal norms.<sup>66</sup> In exchange for services, Hudbay agrees to provide benefits and monetary compensation to PNP officers, as well as monetary contributions to the PNP as an institution.<sup>67</sup>

Contracts for services between the PNP and mining companies like Hudbay are formed in a context of social conflict between local communities and extractive industries in Peru. As armed PNP officers in uniform provide security services to Hudbay amidst ongoing human rights concerns, conflicts often escalate into the violent repression of social protests, leading to injuries, deaths, and the prolonged criminalization of local community members. This has been the case over the years, including in 2014, 2016, and 2021, as described further below.

As a result, Peru has some of the highest incidences of killings of HRDs in the world. The 2021 Global Witness annual report on the murder of human rights defenders listed Peru among the top ten countries for the highest number of registered attacks.<sup>68</sup> Similarly, a 2015 study reported that, of twelve HRDs killed in Peru that year alone, eleven occurred in conflicts with mining and extractive industry projects.<sup>69</sup> These reports do not capture the broader patterns of threats, attacks, criminalization, and other forms of harassment and intimidation faced by communities and organizations who organize to defend their rights. According to the UN Working Group on Business & Human Rights, an average of 200 social conflicts per year were recorded in Peru between 2014–2017, 45% of which were related to the mining sector. These social conflicts resulted in 49 deaths (43 civilians and 6 members of security forces) and 1,410 injuries (775 civilians and 635 members of security forces).<sup>70</sup>

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64 *Ibid* clause 4.1.

65 *Ibid* clause 5.1.18.

66 *Ibid*.

67 *Ibid* clauses 4.3, 7.2.

68 Global Witness, “Last Line of Defence” (September 2021) at 11, online: *Global Witness* <[globalwitness.org/en/campaigns/environmental-activists/last-line-defence/](https://globalwitness.org/en/campaigns/environmental-activists/last-line-defence/)> [perma.cc/CX8A-77FQ]

69 Global Witness, “On Dangerous Ground” (June 2016) at 12, 16, online: *Global Witness* <[globalwitness.org/en/reports/dangerous-ground/](https://globalwitness.org/en/reports/dangerous-ground/)> [perma.cc/8ZST-BKVS].

70 Working Group Transnational Corporations Report, *supra* at para 22.







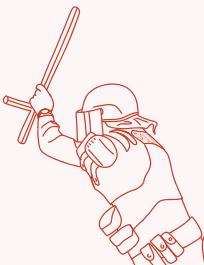
## Constancia open pit overlooking the community of Chilloroya, 2015

Source: Jen Moore

Many civil society organizations and international human rights bodies have expressed rule of law and human rights concerns regarding PNP services contracts with foreign mining companies.<sup>71</sup> In 2020 and 2021, Peru's Constitutional Tribunal articulated a series of significant conditions and constraints on the use of these contracts under domestic legislation.<sup>72</sup> However, there is evidence that state officials are neglecting to enforce the specified requirements.

71 See: Working Group Transnational Corporations Report, *supra*; Earthrights "Informe", *supra*; Frontline Defenders, "Environmental Rights Defenders at Risk in Peru" (June 2014), online: *Frontline Defenders* <[frontlinedefenders.org/en/statement-report/environmental-rights-defenders-risk-peru](https://frontlinedefenders.org/en/statement-report/environmental-rights-defenders-risk-peru)> [perma.cc/37HR-2UZF]; El Observatorio para la Protección de los Defensores de Derechos Humanos, "Socavando Derechos: La defensa de los derechos humanos obstaculizada por los intereses económicos" (2021), online (pdf): <[fidh.org/IMG/pdf/obs-peru-socavandoderechos-esp-250221-vf.pdf](https://fidh.org/IMG/pdf/obs-peru-socavandoderechos-esp-250221-vf.pdf)>.

72 Constitutional Court of Peru, *Colegio de Abogados de San Martín c Poder Ejecutivo*, STC No 00009-2019-PI/TC (23 June 2020), online (pdf): <[tc.gob.pe/jurisprudencia/2020/00009-2019-AI.pdf](https://tc.gob.pe/jurisprudencia/2020/00009-2019-AI.pdf)>; Constitutional Court of Peru, *Colegio de Abogados de San Martín c Poder Ejecutivo*, Razón de Relatoría (8 June 2021), online (pdf): <[tc.gob.pe/jurisprudencia/2021/00009-2019-AI%20CTRResolucion2.pdf](https://tc.gob.pe/jurisprudencia/2021/00009-2019-AI%20CTRResolucion2.pdf)>; Constitutional Court of Peru, *Colegio de Abogados de San Martín c Poder Ejecutivo*, STC No 04289-2016-PA/TC (6 November 2021). For an English language analysis of the 2020 decision, see Charis Kamphuis, "Can Resource Companies Hire the Police?:"





## D. HUDBAY'S CONFLICTS WITH COMMUNITIES IN CUSCO, PERU

In 2010, Norsemont Mining Inc., the previous owner of the Constanca mine, completed an Environmental and Social Impact Assessment (ESIA) of the project.<sup>73</sup> The ESIA projected that the mine would cause significant adverse impacts on water quality, air quality, noise pollution, flora and fauna, and soil.<sup>74</sup> The study concluded that the daily lives of the surrounding communities would be severely disrupted, causing families to relocate, abandon agricultural jobs, and become unable to maintain livestock.<sup>75</sup> The ESIA included a Community Relations Plan encompassing several initiatives, including land acquisition programs, community relations training, communication and consultation with affected communities, environmental impact monitoring, dispute resolution, job creation outside of the mining sector, and more.<sup>76</sup> The ESIA also identified communities within the area of direct influence and indirect influence.<sup>77</sup>

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Case Comment on *San Martin Law Society v Peru*” (December 21, 2020), online (pdf): *Business & Human Rights Resource Centre* <[business-humanrights.org/es/%C3%BAltimas-noticias/commentary-peru-constitucional-tribunal-sets-strict-criteria-for-private-security-contracts-between-resource-companies-national-police/](https://business-humanrights.org/es/%C3%BAltimas-noticias/commentary-peru-constitucional-tribunal-sets-strict-criteria-for-private-security-contracts-between-resource-companies-national-police/)> [perma.cc/6WRN-ZJEK]. For a Spanish language analysis of both the 2020 and 2021 decisions, see: Charis Kamphuis & Juan Carlos Ruiz Molleda, “¿Pueden las Empresas de Extracción de Recursos Contratar los Servicios de la Policía Nacional? Comentarios a la Sentencia del Tribunal Constitucional del Perú” (2021) 13 *Revista de la Facultad de Derecho y Ciencias Políticas* 269, online: <[revistas.unsaac.edu.pe/index.php/RFDCP/article/view/966](https://revistas.unsaac.edu.pe/index.php/RFDCP/article/view/966)>.

73 Knight Piésold Consultores SA, *Proyecto Constanca: Estudio de Impacto Social y Ambiental* (Lima, 2010), online: [perma.cc/VS2V-UNRK] [Knight Piésold].

74 *Ibid* at 38-39.

75 *Ibid* at 43-45.

76 *Ibid* at 65-91.

77 *Ibid* at 20, 23.



After Hudbay purchased Constancia in 2011, it began to negotiate land use agreements with communities. In 2012, it published an amended version of the 2010 ESIA and reported progress in its Community Relations Plan.<sup>78</sup> By 2014, however, Hudbay disclosed that there were 74 community complaints registered against the company.<sup>79</sup>

The next section will summarize three different but interrelated dimensions of the conflicts between Hudbay and the communities affected by Constancia: the first part summarizes known reports of the environmental concerns and impacts of the project; the second part presents reported complaints about the company's alleged failures to fulfill its agreements with affected communities; and the third summarizes reports of community protests and repressive state and company responses.<sup>80</sup> As stated above, this context is critical for properly assessing the criminalization of Jennifer Moore and Canada's response.

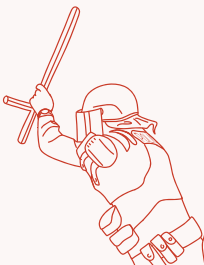
This section draws on a wide range of sources, including Hudbay's publications and press releases, Peruvian government documents, local news sources, and reports by NGOs who work with affected communities. While the section summarizes all relevant information available online, given how remote and isolated the affected communities are, it is very likely that not all conflicts and concerns have been publicly reported.

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78 César Flores Unzaga, Marco Zeisser, & Vanessa Schaeffer, "Conviviendo con la Minera en el Sur Andino" (June 2016), online (pdf): *CooperAcción* <cooperacion.org.pe/wp-content/uploads/2016/09/Conviviendo-con-la-mineria.pdf> [perma.cc/YVK5-VU9N].

79 Hudbay Minerals Inc., "The Nature of Mining: Hudbay 2016 Annual and CSR Report" (2016), online (pdf): *AnnualReports.com* <annualreports.com/HostedData/AnnualReportArchive/H/TSX\_HBM\_2016.pdf> [perma.cc/Z94Q-D3ZD] [Hudbay CSR Report].

80 Friends of MiningWatch, "Peruvian Community Denounces HudBay Minerals for Human Rights Violations over Constancia Project" (11 November 2014), online: *MiningWatch Canada* <miningwatch.ca/news/2014/11/11/peruvian-community-denounces-hudbay-minerals-human-rights-violations-over-constancia> [perma.cc/UJ3K-GCDR] [Peruvian Community]; Peruvian Observatory of Mining Conflicts and Human Rights Without Borders – Cusco, "Communities from the District of Chamaca Strike at HudBay Minerals' Constancia Mine in Cusco, Peru" (10 November 2016), online (blog): *MiningWatch Canada* <miningwatch.ca/blog/2016/11/10/communities-district-chamaca-strike-hudbay-minerals-constancia-mine-cusco-peru> [perma.cc/7NZM-HTWD] ["Communities from Chamaca"].



## I. ENVIRONMENTAL IMPACTS

As noted, Constanca is an industrial-scale mining project surrounded by rural and original Quechua communities that predominately rely on land and water for subsistence livelihoods.<sup>81</sup> Communities report that the mine’s operations are highly disruptive to daily life.<sup>82</sup> Hudbay has approximately 150 fleet vehicles that use local roads to transport heavy loads from the mine site to a seaport 470 kilometers away.<sup>83</sup> **The intensity of Hudbay’s truck traffic, and that of other mining companies (such as Las Bambas, owned by Chinese firm MMG that also operates in the copper mining corridor of southern Peru), also affect communities in surrounding provinces, including the nearby province of Espinar.** The daily and intensive use of local roads has led to complaints about severe dust pollution, as well as dangerous conditions for livestock and people who use and cross the roads and adjacent land.<sup>84</sup>

Constancia is also within 10 kilometers of water sources that many communities in Chumbivilcas depend on, and many believe that the mine poses a grave danger to water in the region.<sup>85</sup> A local NGO Derechos Humanos Sin Fronteras (DHSF) interviewed community members who reported that the Macaray River has suffered contamination due to the release of mining waste discharge and industrial chemicals, leading to diminished biodiversity, as well as skin conditions among children and illness in animals who drink the water.<sup>86</sup>

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81 “Impactos Mineros”, *supra* at 28.

82 *Ibid* at 58.

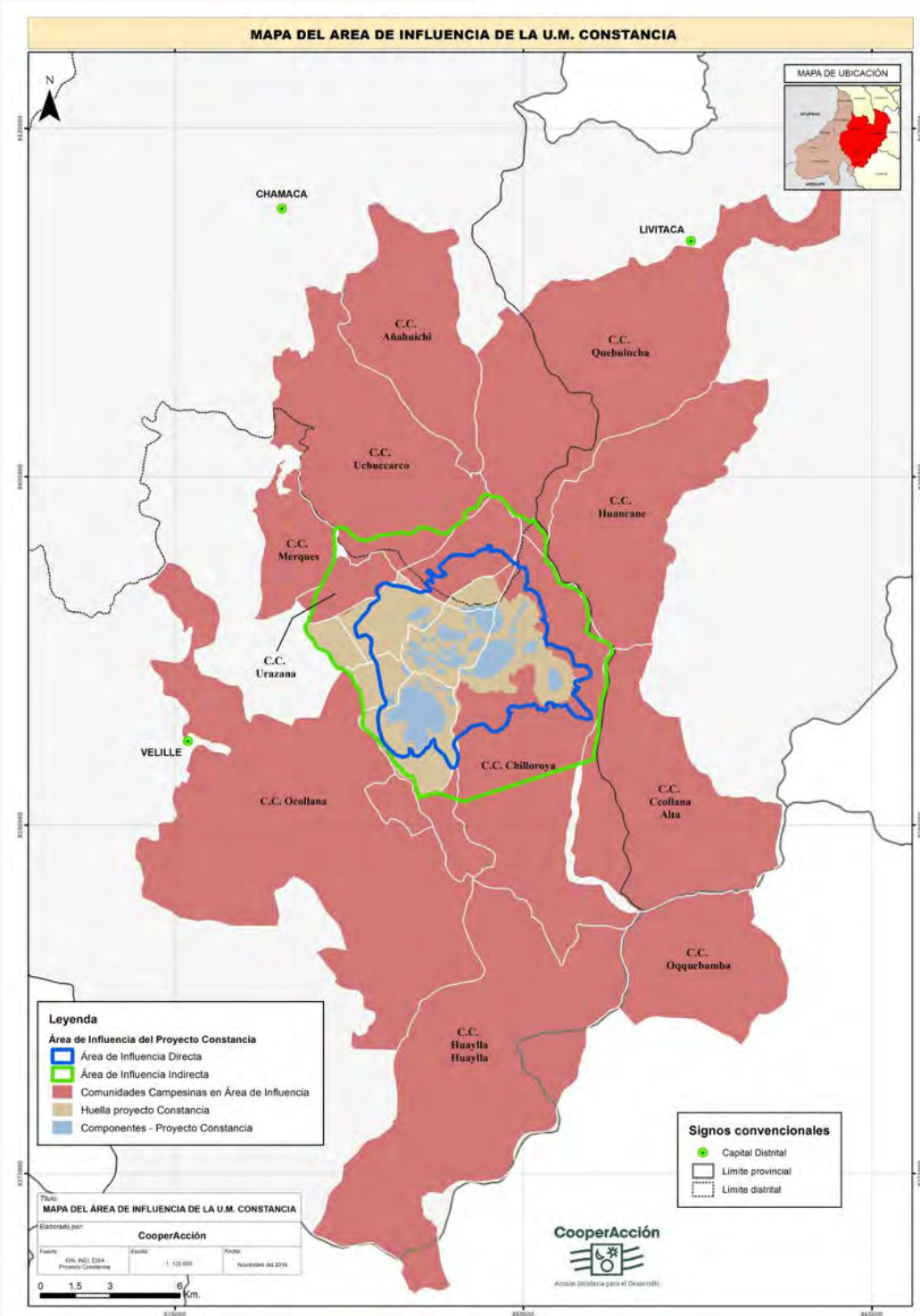
83 *Ibid* at 27.

84 *Ibid*.

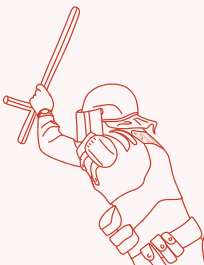
85 *Ibid*.

86 *Ibid* at 67-68, 72.





**A map of the area of influence of the Constanza mine, 2017**  
**Source: CooperAcción**





A photo taken from the road of Coporaque, Espinar in 2015. Residents of Coporaque protested Hudbay in 2017 particularly over dust pollution from the constant mine traffic

Source: Jen Moore



## II. UNFULFILLED AND INADEQUATE AGREEMENTS

Hudbay has stated that it has 90 different agreements with communities surrounding Constanca.<sup>87</sup> In our research, we found reference to twelve reported agreements. In many of these cases, communities with agreements in place have continued to protest against the company.<sup>88</sup> We present our findings in the tables below. It is important to note that the local human rights organization, DHSF, does not attribute the agreements to the good will of the company, but rather views them as an outcome of the social conflicts that the Constanca mine has generated and as a way in which the company has sought to gain greater economic and political control over the local population.<sup>89</sup>

The persistence of social conflicts in the face of such agreements is due, in part, to the power imbalance between a large multinational corporation, on the one hand, and rural and Indigenous communities on the other, who are experiencing serious divisions over rising inequality as a result of who does and does not benefit from the mine and from an increased cost of living created by the mine's presence.<sup>90</sup> Communities generally lack resources or capacity to negotiate fair and equitable multi-year land use (license) agreements.<sup>91</sup> DHSF reports that communities are frustrated with Hudbay's specific approach to agreements and agreement-making.<sup>92</sup> Further, they report that communities have had to resort to protests as the only tool at their disposal to compel Hudbay to negotiate or re-negotiate an unfair agreement, or to draw Hudbay's attention to failures to fulfill the terms of existing agreements.<sup>93</sup>

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87 Hudbay, "Peru", *supra*.

88 In addition to agreements with communities, the three districts of Chumbivilcas (Chamaca, Velille, and Livitaca) have also negotiated agreements with Hudbay.

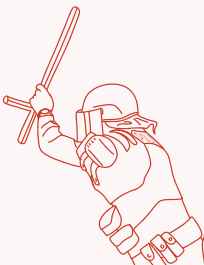
89 "Impactos Mineros", *supra* at 60-61, 34-35.

90 *Ibid* at 39-63, 81-84.

91 Charis Kamphuis & Carlos Quispe Dávila, "Cuestionando el consentimiento en las cortes: una crítica socio-legal a los acuerdos indígenas-industria (Challenging Consent in Court: A Socio-Legal Critique of Indigenous-Industry Agreements)" (2021) 6 Latin American L Rev, online: <papers.ssrn.com/sol3/papers.cfm?abstract\_id=3708425> [perma.cc/S29J-UVQD]; Charis Kamphuis, "Contesting Indigenous-Industry Agreement in Latin America" in Ibrónke Odumosu-Ayanu & Dwight Newman, eds, *Indigenous Industry Agreement, Natural Resources, and the Law* (Abingdon: Routledge, 2020), online: <papers.ssrn.com/sol3/papers.cfm?abstract\_id=3215369> [perma.cc/KLT9-KP9X].

92 "Impactos Mineros", *supra* at 60-63.

93 "Impactos Mineros", *supra* at 60-63.





We have reviewed several such agreements, including one example of Hudbay's proposed 2022 agreement with a Quechua speaking Campesino Community, which, in our view, contains grossly unjust provisions.<sup>94</sup> This draft agreement contemplates the execution of projects to benefit the community up to a maximum cost of approximately US \$50,000 (s 6.1). All such projects must be approved by Hudbay and are constructed by the company at its discretion and by the means that it considers most favorable (s 6.3). At the same time, the agreement purports to absolve Hudbay of any responsibility for the results or any aspect whatsoever of the projects that it constructs (s 7.1). Finally, the agreement would require the community not to participate in, or support any act with the purpose, direct or indirect, of hindering or harming the means of operations of Hudbay in any way (s 10.2). Any violation of this provision would null the agreement and give Hudbay the right to demand the return, within 72 hours, of all property and amounts transferred to the community under the agreement. In sum, this agreement would require the community in question to give up their right to freely criticize Hudbay, as well as their right to protest, in exchange for an extremely modest amount of project funding that is totally controlled by Hudbay, but for which it takes no responsibility. The constraint on the community's rights appears to exist into perpetuity, or as long as Hudbay's Peruvian subsidiary exists.

Furthermore, there is evidence that Hudbay's approach to agreement making, which favours certain communities and districts over others, is causing increased social and political division in the area. For example, since the company's arrival, some communities are seeking to separate from existing districts to create their own district. Hudbay has become involved by advocating for the creation of smaller districts, with which they can presumably negotiate and manage more easily.<sup>95</sup> Another consequence of Hudbay's presence is fractured relationships among and within communities, as well as within and between districts, as a minority that receive most of the economic benefits from Constancia are often pitted against those that do not, and yet who nonetheless experience harm to their ways of life as a result of the mine.<sup>96</sup>

Finally, we have not found evidence that Hudbay has recognized or respected the Indigenous rights of affected Quechua Campesino Communities under the Peruvian constitution and in international human rights law. These include rights to self-determination, including the right to free, prior, and informed consent, and rights to equitably benefit from the mining activities taking place on Indigenous territories, among others. International bodies have called on resource companies to approach

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94 Framework Cooperation Agreement (2022) [unsigned template on file with the authors].

95 *Ibid* at 85-86.

96 *Ibid* at 81.





agreement-making with Indigenous peoples with due respect for applicable rights frameworks.<sup>97</sup>

Table 1 lists some of the Campesino Communities affected by the Constancia mine and, in some cases, have negotiated an agreement with Hudbay Minerals. Others, such as the community of Añahuichi in the district of Chamaca have so far resisted Hudbay's efforts to initiate dialogue over areas in which the company seeks to undertake mining exploration.<sup>98</sup>

**TABLE 1: CAMPESINO COMMUNITIES WITH REPORTED AGREEMENTS WITH HUBBAY**

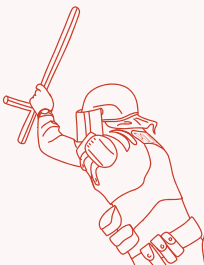
COMMUNITY	LOCATION (DISTRICT)	DATE OF FIRST AGREEMENT
Uchuccarco <sup>99</sup>	Chamaca	Signed July 2012
Chilloroya <sup>100</sup>	Livitaca	Signed April 2012
Ccollana Alta	Velille	Signed Sept/Oct 2012
Casa Blanca	Velille	Signed May 2013
Merques	Velille	Signed Sept/Oct 2012
Urazana	Velille	Signed June 2016
Huaylla Huaylla	Livitaca	Signed July 2013
Qquehuincha	Livitaca	Signed Sept 2018
District of Chamaca	Chamaca	Signed 2013
District of Velille	Velille	Signed 2016
District of Livitaca	Livitaca	Signed 2016
Province of Chumbivilcas	N/A	Signed 2021

97 Anaya, *supra*; IACHR, Indigenous Peoples, *supra*.

98 Mauro Timoteo Castañeda Asesencio, "Contexto de Chumbivilcas" (July 2022). [Document on file with the author]

99 *\*Identified as Area of Direct Influence*

100 *\*Identified as Area of Direct Influence*



### III. PROTESTS, CRIMINALIZATION & VIOLENCE

Soon after Constancia’s operations began, community members began to organize numerous protests, large and small. For example, as depicted in the documentary *Flin Flon Flim Flam*, residents of the community of Uchuccarco took over the Constancia mine site after Hudbay refused to negotiate over land rights, broken promises of jobs, and money owed in back wages to workers in November 2014.<sup>101</sup> Police dispersed them with tear gas and reportedly beat and kicked community members, including pregnant women, women with children and elderly women who participated.<sup>102</sup> Later, in 2016, thousands of residents from eleven different communities joined together to protest Hudbay. On other occasions, community members have blocked the roadways that Hudbay relies on, or occupied portions of the mine site. In our research, we have found reports of at least a dozen major protests between 2014 and 2021, ranging in size from a few hundred to several thousand.

It is important to recognize what is at stake for mine-affected community members when they make the difficult choice to protest in these contexts. As mentioned above, Hudbay has a contract with the PNP and police officers have reportedly responded to Hudbay-related protests with repression and violence, resulting in injuries and death.<sup>103</sup> Unfortunately, this kind of repression and violence on the part of PNP and private security officers is common for mining conflicts in Peru.<sup>104</sup>

101 Dougherty, *supra*.

102 *Ibid.*

103 “Impactos Mineros”, *supra* at 98.

104 Kamphuis, “Foreign Investment”, *supra*; Kamphuis & Imai, Amicus, *supra*; “Mapping Community Resistance to the Impacts and Discourses of Mining for the Energy Transition in the Americas” (4 March 2022) at 40, online: *MiningWatch Canada* <miningwatch.ca/sites/default/files/2022-03-04\_report\_in\_english\_ejatlaz-mwc.pdf> [perma.cc/G95E-B6YS]; Rael Mora, “Foreign Mining Companies Hire Peru’s Police as Private Security”, (7 May 2015), online: *teleSUR* <telesurenglish.net/news/Perus-Police-Criticized-for-Private-Financing-from-Business-20150507-0028.html> [perma.cc/9XCF-SKU8]; Coordinadora Nacional de Derechos Humanos, Press Release, “Policía Nacional si presta servicios a empresas mineras, brindándoles protección y seguridad” (3 November 2016), online: *Latest News* <derechoshumanos.pe/2016/11/policia-nacional-si-presta-servicios-a-empresas-mineras-brindandoles-proteccion-y-seguridad/> [perma.cc/T3K4-WB7A]; Business & Human Rights Resource Centre “Kukama Indigenous People” (9 August 2020), online: *Latest News* <business-humanrights.org/en/latest-news/kukama-indigenous-people/> [perma.cc/3FEA-6MZB]; Global Witness, “Last Line of Defence: The



# TIMELINE: PROTESTS AGAINST HUBBAY'S CONSTANCIA MINE



The timeline below summarizes known conflicts between communities and Hudbay. It presents data compiled primarily from local news sources and NGOs conducting interviews in the region. However, due to limited access to communities affected by Constancia, it is very likely that some protests and concerns have not been documented or publicly reported. It is important to note that the 2017 criminalization of Jennifer Moore has further hampered civil society access to the region by contributing to a climate of fear for HRDs.

## OCTOBER 2014

Uchucarco Campesino Community threatened to strike against Hudbay, claiming it failed to fulfill commitments in the 2012 ESIA Community Relations Plan because it did not pay workers and implement environmental plans.<sup>105</sup>

## NOVEMBER 2014

Uchucarco Campesino Community members protested against Hudbay for land use and back wages, as well as deficiencies in promised jobs. This is the first publicly reported protest against the company. According to reports and video footage, the protestors seized the open pit and the police responded with violence and tear gas.<sup>106</sup> The film “Flin Flon Flim Flam” depicts the protest.

## AUGUST 2016

Chilloroya Campesino Community members blockaded a road to prevent vehicles from entering Hudbay facilities. They aimed to force the company to negotiate with them and claimed the company had breached agreements with the communities. The protestors demanded that a Canadian Hudbay executive meet with them, as trust in Peruvian Hudbay leadership had diminished.<sup>107</sup>

## JANUARY 2016

The Velille Interests Defence Front (FUVID)<sup>108</sup> organized a 72-hour district-wide strike to pressure Hudbay to comply with its commitments to mitigate risks to the community and complete community investment projects.<sup>109</sup> Approximately 6,000 people participated in a demonstration in Velille. Hudbay agreed to negotiate with FUVID and representatives from eight communities.<sup>110</sup>

industries causing the climate crisis and attacks against land and environmental defenders” (September 2021), online: *Global Witness* <[globalwitness.org/en/campaigns/environmental-activists/last-line-defence/](https://globalwitness.org/en/campaigns/environmental-activists/last-line-defence/)> [perma.cc/SLK2-39EP].

105 See Peruvian Community, *supra*; Unzaga Zeisser & Schaeffer, *supra*.

106 “CUSCO: Comuneros de Uchucarco sostienen 15 días de paralización contra minera Hud Bay” (27 November 2014), online (blog): *Derechos Humanos Sin Fronteras* <[dhsf-cusco.blogspot.com/2014/11/cusco-comuneros-de-uchucarco-sostienen.html](https://dhsf-cusco.blogspot.com/2014/11/cusco-comuneros-de-uchucarco-sostienen.html)> [perma.cc/U3R2-BYTC]; “Chumbivilcas: Pobladores de Velille inician paro y se movilizan cerca al campamento proyecto minero Constancia – Hudbay” (25 January 2016), online (blog): *Derechos Humanos Sin Fronteras* <[dhsf-cusco.blogspot.com/2016/01/chumbivilcas-pobladores-de-velille\\_25.html](https://dhsf-cusco.blogspot.com/2016/01/chumbivilcas-pobladores-de-velille_25.html)> [perma.cc/N52R-D99C] [“Chumbivilcas”].

107 “Comunidad de Chilloroya restringe tránsito de vehículos de Hudbay” (12 August 2016), online: CooperAcción <[cooperaccion.org.pe/comunidad-de-chilloroya-restringe-transito-de-vehiculos-de-hudbay/](https://cooperaccion.org.pe/comunidad-de-chilloroya-restringe-transito-de-vehiculos-de-hudbay/)> [perma.cc/CP6Z-GYSY].

108 The Spanish acronym, FUVID, stands for Frente Unico de Defensa de los Intereses de Velille.

109 Jennifer Moore, “Thousands Protest HudBay Minerals’ Constancia Mine in Peru, Force Company to the Table” (28 January 2016), online (blog): *Mining Watch Canada* <[miningwatch.ca/blog/2016/1/28/thousands-protest-hudbay-minerals-constancia-mine-peru-force-company-table](https://miningwatch.ca/blog/2016/1/28/thousands-protest-hudbay-minerals-constancia-mine-peru-force-company-table)>.

110 “Chumbivilcas”, *supra*.





Strike organized by the Velille Defense Front in January 26 over economic, social and environmental demands regarding the Constanca mine

Source: Human Rights Without Borders – Cusco



### NOVEMBER 2016

Approximately 1,000 Chamaca district Campesino Community members occupied the Constancia mine in protest due to the company's lack of respect for the signed agreement with the community, lack of information about the environmental impact assessment and other environmental concerns.<sup>111</sup> The action grew when the Uchucarco Campesino Community joined the protest. All 11 districts of the Chumbivilcas province participated as part of the Chamaca Defense Front (FUDICH),<sup>112</sup> forcing Hudbay to temporarily suspend operations at Constancia.<sup>113</sup> The protest faced police repression and six men and one woman faced criminal charges, which had yet to be resolved as of 2021.<sup>114</sup>

### DECEMBER 2016

Hundreds of residents in Chumbivilcas blocked several roads in the mining corridor and coordinated protests through the streets of Chamaca, Velille, and Livitaca districts against Hudbay and other local mining companies. In response, Hudbay temporarily suspended transportation activities and locked its trucks in the mining camp. The PNP dispatched a large number of troops to protect the companies and maintain order. The protesters demanded the review, evaluation, and modification of environmental impact studies and the permanent asphalted of the connecting highway, among other concerns.<sup>115</sup>

### FEBRUARY 2017

Residents of Coporaque district (located in the neighboring province of Espinar) held a 72-hour strike against Hudbay, demanding that the road linking Espinar with Chumbivilcas (where the mine is located) be asphalted.<sup>116</sup> Their main complaint is that the road is the predominant route of mining transport trucks, generating severe dust pollution. The protest occurred at multiple sites to prevent the transit of vehicles from Constancia. Hudbay responded by voluntarily signing an agreement with the National Ministry of Transport and Communications for the maintenance of sections of the highway.<sup>117</sup>

### APRIL 2019

About 40 residents in Coporaque district set up a road blockade, halting 60 Hudbay trucks. The protestors claimed that the company was not authorized to use this route.<sup>118</sup>

111 "Explotación minera de Hudbay", *supra*.

112 The Spanish acronym, FUDICH, stands for Frente Unico de Defensa de los Intereses de Chamaca.

113 "Communities from Chamaca", *supra*; Hudbay Minerals Inc., "Hudbay Announces Temporary Suspension of Operations at Constancia" (8 November 2016), online: Press Release, <hudbayminerals.com/investors/press-releases/press-release-details/2016/Hudbay-Announces-Temporary-Suspension-of-Operations-at-Constancia/default.aspx> [perma.cc/LE2M-PVG4]; "Se instala mesa de diálogo que pone fin a conflicto minero en Chumbivilcas" (10 November 2016), online: *La Republica* <larepublica.pe/politica/820396-se-instala-mesa-de-dialogo-que-pone-fin-conflicto-minero-en-chumbivilcas/> [perma.cc/A2LZ-QP2K]; "Hudbay suspende operación en mina Constancia tras protesta", *El Comercio* (11 November 2016), online: <elcomercio.pe/economia/peru/hudbay-suspende-operacion-mina-constancia-protesta-228364> [perma.cc/E7XZ-993A].

114 "Explotación minera de Hudbay", *supra*.

115 Hudbay's 2016 annual report mentions that Constancia was protested by local community members through a march, roadblock and brief occupation. Hudbay stated that the occupiers were from communities that had signed co-operation/development agreements with Hudbay and the Peruvian government, and were "dissatisfied with the scope of the agreements and the pace of their implementation": Hudbay CSR Report, *supra* at 3.

116 Miguel Neyra, "Cusco: inician paro minero en la provincia de Espinar" (21 February 2017), online: *El Comercio* <elcomercio.pe/peru/cusco/cusco-inician-paro-minero-provincia-espinar-405052> [perma.cc/27DT-BNZ9]

117 Neyra, *supra*.

118 Sofia Velasquez, "Cusco: Bloquean vía que usa la minera Hudbay en Espinar" (14 April 2019), online: *La Republica* <larepublica.pe/sociedad/1449292-bloquean-via-minera-hudbay-espinar/> [perma.cc/J26D-9FJB].





Communities from the district of Chamaca stop the Constanca mine over Hudbay's broken promises, November 2016

Source: Human Rights Without Borders – Cusco



### OCTOBER 2019

Residents across several provinces joined forces to set up a blockade along a Chumbivilcas road to protest Hudbay and other mining companies. They denounced the heavy use of roads by trucks transporting tons of minerals through their communities. Dozens of communities (estimated to be about 40) protested the resulting poor air quality and cracks in their adobe homes.<sup>119</sup>

### FEBRUARY 2021

Community members from the district of Livitaca protested the Hudbay mine in an effort to force the company to negotiate a province-wide agreement with Chumbivilcas. The protestors took this action after attempts over four years to secure an agreement with the company.<sup>120</sup> Reportedly, the peaceful protest became violent when police intervened, leaving at least seventeen community members injured and a number of local community leaders facing legal complaints. This instilled fear in the local population that they would face repercussions should they continue to protest.<sup>121</sup> The company and province of Chumbivilcas ultimately signed an agreement in late February.<sup>122</sup>

### MAY 2021

Members of the Hatun Ccollana Campesino Community blockaded Hudbay's facilities to pressure the company to negotiate with them. The protestors sought to enforce their agreement with the company, which they claim it had breached. Community leaders faced legal persecution as a result.

### OCTOBER 2021

Led by the Livitaca Defense Front (FUDIL), the region's Campesino Communities began a protest and blockade after negotiations with Hudbay stalled. In light of Hudbay's expansion of operations in the Pampacancha area, the Livitaca Communities considered their 2016 agreement with the company to be unfair. The 15 Campesino Communities of Livitaca district wanted Hudbay to provide the funding necessary to meet their health, sanitation, and educational needs. The blockade was set up to block the road that Hudbay's fleet relies on for transport. After the negotiations stalled, the protest and blockade continued for several days, in an effort to pressure Hudbay to return to the negotiation table. The protestors also demanded better environmental auditing by the state-run Organization for Environmental Assessment and Auditing (OEFA). In November, negotiations between the communities and the company resumed.

The above timeline demonstrates that, for many years, communities affected by the Constancia mine have frequently protested the social, environmental, and economic impacts of the project on their lives and livelihoods. Protests have been almost continuous, often numbering in the thousands, and, at times, coordinated across communities, districts, and even provinces. Protestors have often faced police repression and legal persecution as a result. Adding to this environment of criminalization of communities, in 2022, documents were leaked that reveal that the Peruvian military has been monitoring DHSF, a human rights collective of lawyers based in Cusco that provide research and legal support to Hudbay-affected communities.<sup>123</sup>

This is the context within which Jennifer Moore, acting as Latin America Program Coordinator for MiningWatch Canada, endeavored to provide communities with information about the company and their rights. The next section of this report details how the PNP and other Peruvian and Hudbay officials criminalized Jennifer Moore and John Dougherty when they travelled to communities affected by Constancia to show a documentary film depicting a wide range of environmental and human rights concerns with Hudbay's operations across the Americas.

119 José Víctor Salcedo, "Casi 40 comunidades soportan paso de camiones mineros" (13 October 2019), online: *La Republica* <larepublica.pe/politica/2019/10/13/mineria-casi-40-comunidades-soportan-paso-de-camiones-mineros-las-bambas/1/> [perma.cc/Q94W-AMEA].

120 José Víctor Salcedo, "Cusco: Explota conflicto por fallida negociación entre Hudbay y Chumbivilcas", *La Republica* (20 January 2021), online: <larepublica.pe/sociedad/2021/01/20/cusco-explota-conflicto-por-fallida-negociacion-entre-hudbay-y-chumbivilcas-lrsd/?ref=lre> [perma.cc/63SG-VY32].

121 "Cusco: Comuneros de Chumbivilcas intentan tomar campamento de Hudbay" (27 February 2021), online: *La Republica* <larepublica.pe/sociedad/2021/02/28/cusco-comuneros-de-chumbivilcas-intentan-tomar-campamento-de-hudbay-lrsd/?ref=lre> [perma.cc/X7FX-GRWW]; "Reporte N° 01-2021-DHSF", *supra*.

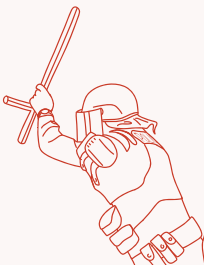
122 José Víctor Salcedo, "Cusco: Gobierno desactiva un conflicto, pero se activa otro en el Corredor Minero", *La Republica* (10 March 2021), online: <larepublica.pe/sociedad/2021/03/10/cusco-gobierno-desactiva-un-conflicto-pero-se-activa-otro-en-el-corredor-minero-lrsd/> [perma.cc/6BHS-WCGG].

123 The extent of the military surveillance of DHSF is not known at the time of writing. See: Peru Support Group, "Civil Society Groups Protest at Military Monitoring" (October 15, 2022), online: <perusupportgroup.org.uk/2022/10/civil-society-groups-protest-at-military-monitoring/>; Infobae, "Guacamaya Leaks: ¿Qué hay en los correos filtrados que exponen al Ejército del Perú y Comando Conjunto?" (October 21, 2022) online: <infobae.com/america/peru/2022/10/07/guacamaya-leaks-peru-se-filtran-283-mil-correos-entre-ejercito-peruano-comando-conjunto/> [perma.cc/WWZ5-ERY6].





# 3. THE CRIMINALIZATION OF JENNIFER MOORE



In 2015, the American journalist John Dougherty released the documentary film “Flin Flon Flim Flam” with InvestigativeMEDIA.<sup>124</sup> The film details Hudbay’s alleged involvement in human rights abuses and environmental contamination in its past and present projects across the Americas. As already mentioned, some of the issues and protests described in the previous section are covered in the film. In 2017, Dougherty made plans to screen the film in Peru with support from MiningWatch Canada Latin America Program Coordinator Jennifer Moore. At the time, Moore had worked in that role for seven years and she had a decade of experience supporting mine-affected communities to defend their rights, and she had an ongoing relationship with communities and civil society groups in Peru. Her work is likely to have been known to Canadian government officials given that an important objective of MiningWatch Canada’s work is to advocate with Canadian authorities for corporate accountability in solidarity with affected communities. By the Spring of 2017, Moore had appeared at parliamentary committee meetings, meetings with federal authorities, and a session at the Inter-American Commission on Human Rights together with Canadian government representatives.

In March 2017, approximately one month prior to the trip, Moore sent letters on MiningWatch letterhead to the leaders of several districts in Chumbivilcas province proposing a screening of Dougherty’s documentary in the region.<sup>125</sup> These letters were endorsed by local NGOs CooperAcción<sup>126</sup> and DHSF,<sup>127</sup> and they mentioned that Moore and Dougherty would be present at the screenings, that Moore would share the results of ongoing research on Hudbay, and that the costs of the screenings would be covered.<sup>128</sup> The mayor of Chamaca, Walter Choquehuanca, later invited the presidents of several Quechua Campesino Communities, as well as civil society organizations to a scheduled screening. The invitation included details about the event, including Moore and Dougherty’s planned attendance.<sup>129</sup>

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124 The film is freely available on YouTube. See Dougherty, *supra*.

125 Jennifer Moore, “Chronology” (4 May 2017) (unpublished) at 1 [Moore, “Chronology”].

126 CooperAcción promotes the knowledge and exercise of social, environmental, political, cultural, and economic rights, as well as the sustainable management of the territory with gender and intercultural approaches in order to build development alternatives to extractivism: See “CooperAcción”, online: *CooperAcción* <cooperaccion.org.pe/>.

127 Derechos Humanos Sin Fronteras Cusco are an organization of human rights defenders who, inspired by Liberation Theology, promote and defend the right to life, freedom of expression, the environment, and cultural diversity. See “Derechos Humanos Sin Fronteras”, online: *Derechos Humanos Sin Fronteras* <derechosinfronteras.pe/>.

128 Moore, “Chronology”, *supra* at 1.

129 *Ibid.*



Deception, Violence and Greed...



# LIN FLON FLIM FLA

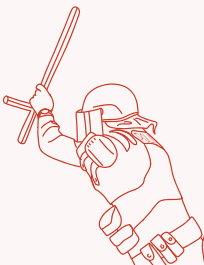


InvestigativeMEDIA's documentary on the worldwide operations of Hudbay Minerals and the company's plans to construct the Rosemont open-pit copper mine in the Santa Rita Mountains on the Coronado National Forest southeast of Tucson, Arizona.

Written and Directed by John Dougherty

**Investigative**MEDIA

**Promotional graphic for the documentary Flin Flon Flim Flam**  
Source: Investigative Media



In early April 2017, *El Montonero* (a far-right media platform in Peru) published an online column referring to the so-called “radical anti-mining activities” of certain NGOs, followed by a column titled “Ambush Against Hudbay Constancia in the Works”.<sup>130</sup> The article named Dougherty and Moore and accused them of “spreading propaganda and false narratives against Hudbay globally” and “preparing a new ambush against [...] the Constancia project.”<sup>131</sup>

Days after the *El Montonero* articles were posted online, Moore and Dougherty arrived in Peru on tourist visas.<sup>132</sup> Moore emailed the Canadian Embassy in Lima<sup>133</sup> and copied the address [sos@international.gc.ca](mailto:sos@international.gc.ca) to convey her safety concerns due to the negative press about her.<sup>134</sup> In response, a Consular Official told Moore that if she was concerned, she “should contact a private security firm and local authorities or cancel [her] travel plans altogether.”<sup>135</sup>

Over the course of subsequent screenings of the film between April 18 to 21 in the Cusco region, Moore, Dougherty, and staff members of DHSF and CooperAcción reported being filmed by unknown individuals and tracked by police.<sup>136</sup> During this time, community leaders<sup>137</sup> also reported being questioned by police and Hudbay representatives about the screenings.<sup>138</sup> Moore and Dougherty learned that police

130 “Preparan emboscada contra Hudbay Constancia”, *El Montonero* (10 April 2017), online: [elmontonero.pe/politica/preparan-emboscada-contra-hudbay-constancia](http://elmontonero.pe/politica/preparan-emboscada-contra-hudbay-constancia) [perma.cc/F2UW-UNYA].

131 Moore, “Chronology” at 1. Details also in Moore’s email sent 20 June 2017, and again on 11 September 2017 to Ambassador Kutz, which is included in Government of Canada, Department of Foreign Affairs, Trade and Development, *Access to Information Request A201702278*, at 000004-000006 online: [dropbox.com/s/f0nkvoxnrx3p4i6/ATIP%20Request%20-%20A201702278.pdf?dl=0](https://dropbox.com/s/f0nkvoxnrx3p4i6/ATIP%20Request%20-%20A201702278.pdf?dl=0) [perma.cc/Z3JD-U63V] [ATIP Request A201702278].

132 Moore, “Chronology”, *supra* at 1.

133 Jennifer Moore, “Emergency Notification to Embassy 1” (17 April 2017) (unpublished) at 2 [Moore, “Emergency Notification 1”].

134 Jennifer Moore, “Emergency Notification to Embassy 2” (17 April 2017) (unpublished) at 2 [Moore, “Emergency Notification 2”].

135 Moore, “Emergency Notification 1”, *supra* at 1.

136 See Moore’s email sent 20 June 2017 and again on 11 September 2017 to Ambassador Kutz, included in ATIP Request A201702278, *supra* at 7. See also *Molleda et al v Peru*, Superior Court of Justice of Reos Libres, Case No. 03172-2017, (8 August 2019) [unofficial English translation] [*Molleda*] at para 5.

137 Leaders questioned include Juan Valencia in Velille and another unnamed leader of the Velille Defence Front. See Moore, “Chronology”, *supra* at 5.

138 See Moore’s email sent 20 June 2017, and again on 11 September 2017 to Ambassador Kutz, included in ATIP Request A201702278, *supra* at 7.







### Screening in the district of Chamaca, Chumbivilcas province, April 18, 2017

Source: Jen Moore

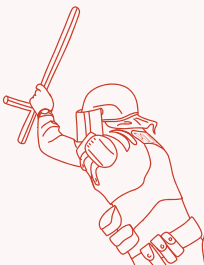
officers went to their hotel to request personal information from hotel staff.<sup>139</sup> On another occasion, two Hubday employees reportedly approached and questioned a community leader.<sup>140</sup> The employees sought information about the film screenings, claimed to have “high-level orders from Lima”, and said that they needed to know “if there was any agreement or act arising from the event”.<sup>141</sup> According to a subsequent PNP report,<sup>142</sup> the allegations against Moore in the *El Montonero* article had led police to

139 *Ibid.*

140 The Hubday employee involved was allegedly Nilton Diaz, Head of Government Relations: Constanca Mining Unit and Clodomiro Monge Palomino, Supervisor of Institutional Relations. See Moore, “Chronology”, *supra* at 6.

141 Moore, “Chronology”, *supra* at 5–6.

142 Informe N° 13-2017-VII-MACRO-REGPOL-CUSC-APU/RP-CUSCO-DEPSEEST/SECC.



“begin inquiring into Moore’s presence in Peru” and to begin “surveil[ing] her activities in the country”.<sup>143</sup>

The Friday evening of April 21, Moore and Dougherty screened the documentary in the regional capital city of Cusco. During the event, police officers were observed entering and leaving on multiple occasions. When Dougherty and Moore exited the venue around 8:19 PM, 15 to 20 police officers, mostly in civilian clothes, and immigration officers surrounded and detained them.<sup>144</sup> The officers requested Moore’s passport and said they could detain her for up to four hours to verify her migration status.<sup>145</sup>

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EXTR (22 April 2017) National Peruvian Police, Cusco Region Police, Immigration Matters-Cusco, Chief, Jorge W. Venero Flores and Edgar E. Abarca Lezama at 4 [PNP Report].

143 *Ibid* at 4 [unofficial English translation].

144 Details included in a letter sent from the United Nations Office of the High Commissioner to the Canadian Embassy in Lima. See ATIP Request A201702278, *supra* at 28.

145 Moore, “Chronology”, *supra* at 7.

**John Dougherty answering questions following the screening of Flin Flon Film Flam on April 21, 2017 in the city of Cusco the same night that he and Jen Moore were detained**  
**Source: Jen Moore**







Jennifer Moore, left, being detained by immigration officers and police officers, mostly in civilian clothes a short distance from the central plaza of the city of Cusco

Source: CooperAcción (also see [ocma1.org/yo-mando-en-este-territorio-acerca-de-las-detenciones-en-cusco-de-jen-moore-y-john-dougherty/](http://ocma1.org/yo-mando-en-este-territorio-acerca-de-las-detenciones-en-cusco-de-jen-moore-y-john-dougherty/))







### **Peru National Police officer Edgar Abarca Lezama holds documents during detention proceedings in Cusco, Peru against John Dougherty and Jen Moore**

**Source: John Dougherty**

Moore stated she would only travel with police if she had legal representation. After a lawyer with DHSF, Clotilde Flórez Vásquez, arrived at scene, Moore cooperated with the police and entered their vehicle.<sup>146</sup> During the early stages of Moore’s detention, Vásquez and two of Moore’s colleagues<sup>147</sup> contacted the Canadian Embassy, alerting them to the detention. At around 8:40 PM, Marie-Eve Pomerleau from GAC called Moore, explaining that Peruvian authorities “have the right to verify migration status” and that she should “cooperate with this”.<sup>148</sup> Pomerleau offered a lawyer, but Moore declined, as she already had one.<sup>149</sup>

After officers took Moore to her hotel to retrieve her passport, even accompanying her to her room, they brought her to the police station at around 9:41 PM. At 9:59 PM, she overheard a phone call between the head officer Superior Edgar Abarca and a Canadian Embassy representative.<sup>150</sup> About 20 minutes later, the Embassy official called

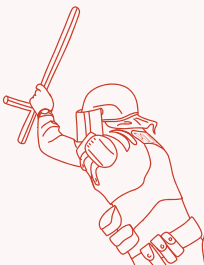
146 *Ibid.*

147 Journalist Stephanie Boyd contacted Kristel Veliz, an Embassy public relations employee, and Jamie Kneen contacted the Emergency Response Watch Centre.

148 Moore, “Chronology”, *supra* at 7.

149 *Ibid.*

150 *Ibid* at 9.



Moore and said that she would be released immediately after giving a statement to police.<sup>151</sup> This conflicted with the legal advice from Moore’s lawyer, who advised her to reserve the right not to give a statement.<sup>152</sup> It also contradicted the conclusion drawn by Moore’s lawyer, who advised that the detention appeared to be part of a planned action undertaken to surveil her and Dougherty, rather than a simple process to verify her migration status.<sup>153</sup>

At around 10:43 PM, police informed Moore and Dougherty that they would be brought before a migration judge at 9 AM on Monday in Cusco to decide on the nature of the infraction and the sanction.<sup>154</sup> An hour later, Moore and Dougherty noticed several unidentified men filming them in the police station and Dougherty responded by taking photos of the men.<sup>155</sup> Moore and Dougherty were ultimately released at 12:29 AM.<sup>156</sup> Peruvian courts later found that Moore was detained “under the pretense that immigration officers needed to verify her immigration status”.<sup>157</sup>

An hour after her release, Moore called the Embassy to inform them that she had been released.<sup>158</sup> She expressed fear for her safety and stated that she was being persecuted for telling the truth about Hudbay’s contract for services with the police.<sup>159</sup> That same night, Canadian embassy staff were contacted directly by several prominent Peruvian human rights leaders expressing concern that Moore’s rights had been violated, and Canadian officials observed social media posts by other prominent leaders expressing the same concern.<sup>160</sup> Government records reveal that, at that point in time, six Canadian

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151 *Ibid.*

152 *Ibid.*

153 *Ibid.*

154 *Ibid.*

155 *Ibid.*

156 *Ibid* at 10.

157 *Molleda* 2019, *supra* at para 4 [unofficial English translation].

158 Government of Canada, Department of Foreign Affairs, Trade and Development, *Access to Information Request* P201901716 at 12, online: <[dropbox.com/s/cdosl94h12sd22x/ATIP%20Request%20-%20P201901716.pdf?dl=0](https://dropbox.com/s/cdosl94h12sd22x/ATIP%20Request%20-%20P201901716.pdf?dl=0)> [perma.cc/6TAJ-ST9V] [ATIP Request P201901716].

159 *Ibid* at 12.

160 Those Canadian officials made aware of these concerns at that time were: Luke Sookocheff, Deputy Director, GAC; Brooke Ritchie, Lima Consular; Dale Smyl (LIMA – AG); Mazen Mahfouz (LIMA – TD), Mathew Pearson (LIMA – GR): Government of Canada, Department of Foreign Affairs, Trade and Development, *Access to Information Request* P201901718, online: <[dropbox.com/s/ik36fbbi8zzvftb/ATIP%20Request%20-%20P201901718.pdf?dl=0](https://dropbox.com/s/ik36fbbi8zzvftb/ATIP%20Request%20-%20P201901718.pdf?dl=0)> [perma.cc/27B2-ZSUD] [ATIP Request P201901718].



embassy officials were aware of Moore's detention. Five were aware that it was linked to the film screening and that Peruvian civil society leaders believed the situation was a human rights issue. These communications are described and analyzed in greater detail in Part 6(b) of this report.

The morning after Moore's release, on Saturday April 22, the PNP issued a report concluding that Moore's activities in facilitating and supporting the documentary screenings, including speaking at the screenings, violated Peruvian law.<sup>161</sup> On this basis, the Manager of Migratory Services issued a Resolution with the decision to issue a migratory alert prohibiting Moore's return to Peru for an indefinite period of time.<sup>162</sup> Later that morning, the Peruvian Ministry of the Interior published a statement online asserting that, by publicly disseminating the documentary, Moore was inciting local inhabitants and Campesino Communities to oppose Canadian mining activity in a region where previous protest had been violent and dangerous. As a result, the Minister concluded that Moore's work involved "activities that threaten public order, internal order or national security".<sup>163</sup> According to the criminalizing statement, Moore had violated the terms of her tourist visa when she supported and facilitated the documentary screenings.

That same day, Moore wrote to Brooke Ritchie of GAC and requested embassy accompaniment to the airport.<sup>164</sup> Ritchie responded that this was not possible because Canada does "not have a consulate in Cusco."<sup>165</sup> Ritchie noted that they could, however, "maintain contact with authorities to encourage fair treatment and help facilitate a resolution", but that they could not "interfere with their legal processes" or provide legal advice.<sup>166</sup>

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161 PNP Report, *supra* at 4.

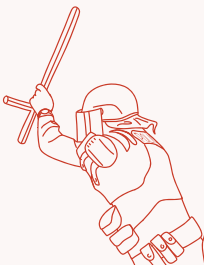
162 Resolución de Gerencia, N° 755-2017- MIGRACIONES-SM, [23 April 2017] Servicios Migratorios, Henry Paricahua Carcausto at 1, 3, 4 [Resolución].

163 "Sobre la situación migratoria irregular de una ciudadana canadiense y un norteamericano", COMUNICADO MININTER N° 008 – 2017, (22 April 2017) Minister of the Interior [unofficial English translation] ["Sobre ciudadana canadiense"].

164 ATIP Request P201901716, *supra* at 16.

165 *Ibid* at 22.

166 *Ibid*. This refusal to give Moore advice appears to contradict the earlier interventions of another Canadian official, who advised Moore to give a statement to police. As noted above, this earlier advice contradicted the legal advice that Moore received from a Peruvian human rights lawyer to the effect that she was not required to give a statement and that it would not be in her interest to do so.



Moore and Dougherty then consulted with DHSF lawyers and decided to leave the country as they were worried about their safety. The DHSF lawyers advised they could continue the legal process from afar.<sup>167</sup> Government documents record the fact that Moore called the Canadian Embassy a second time to ask for accompaniment to the airport but was again refused and informed that they only provide consular services and visits if detained.<sup>168</sup> She explained the reasons for her fears and expressed that her and Dougherty were “being stigmatized for sharing information and it was important for the Embassy officials to be at the airport or support as this is a political issue”.<sup>169</sup> In spite of this, the Embassy refused to provide accompaniment or any other form of support.

Moore and Dougherty left Peru without issue the following day (April 23, 2017).<sup>170</sup> Shortly before their flight, another MiningWatch Canada partner, the Mexican Network of Mining Affected People emailed the Canadian Embassy in Lima and Ambassador Kutz to express concern over Moore and Dougherty’s criminalization and mistreatment by Peruvian authorities and Hubday.<sup>171</sup>

That same day, a Sunday, Peru’s Director of Immigration rendered a decision at an Immigration hearing that prohibited Moore’s return to Peru indefinitely.<sup>172</sup> This was based on the allegation that Moore had committed acts against public order and that she had violated immigration law by engaging in activity beyond what is permitted by her tourist visa.<sup>173</sup> There never was a hearing and Moore was not formally notified of this decision.

On April 24, 2017, GAC’s Director General of Trade Commissioner Service Operations and Trade Strategy, Duane McMullen, wrote an internal email to Georgina Galloway, Deputy Director of Responsible Business Practices, GAC, and Francine Nofle, Director of Business and Trade, GAC, about Moore’s detention. Galloway expressed confusion about the reason for the detention and Nofle indicated that she had heard about it through a CBC news report.<sup>174</sup>

167 Moore, “Chronology”, *supra* at 11.

168 *Ibid.* See also ATIP P201901716, *supra* at 25-26.

169 ATIP Request P201901716, *supra* at 25.

170 *Ibid* at 29.

171 *Ibid* at 32.

172 *Molleda* 2019, *supra* at paras 3, 9.

173 *Ibid* at para 5.

174 ATIP Request A201702278, *supra* at 15.



Apparently in response to further media inquiries, a Hudbay employee, whose name was redacted, emailed McMullen and expressed support for Peru’s criminalization of Moore. The employee stated that Hudbay was “sympathetic” to the concerns of the Peruvian government that led to Moore’s arrest,<sup>175</sup> because “this type of activism” by “ideological opponents of mining” and “foreign activists” does not benefit the communities and could “set the stage for violent confrontations between community members and police with tragic results.”<sup>176</sup> The Hudbay employee also denied any involvement on the part of the company.<sup>177</sup> There is no record that McMullen responded to the company’s position as expressed, or asked any further questions. According to the available record, however, he forwarded Hudbay’s email to five other GAC officials without adding any further comment.<sup>178</sup>

Government records document that at this point in time, less than five days after Moore’s detention, at least 23 Canadian Embassy and GAC officials were aware that Moore had been detained because of her role in screening a film about Hudbay. Of these, at least 19 officials were also aware that Peruvian authorities had criminalized her by prohibiting her re-entry and by publishing a statement calling her a threat to public order. Moreover, at least six Canadian officials were aware that Hudbay agreed with the Peruvian government’s rationale for criminalizing Moore. On May 5, 2017, GAC updated its Travel Advice and Advisories for Peru without mention of Moore’s issues in the country and the potential implications for other HRDs like Moore or Dougherty, such as journalists, filmmakers, researchers, students, or human rights workers.<sup>179</sup> Later in May, a group of Peruvian human rights advocates<sup>180</sup> initiated a *habeas corpus* on

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175 The Hudbay employee erroneously used the term “arrest(ed)” and not “detention” or “detained”.

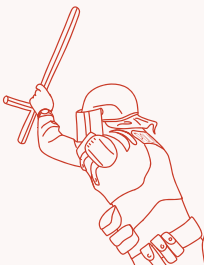
176 ATIP Request A201702278, *supra* at 76.

177 *Ibid* at 75.

178 Email forwarded to Georgina Galloway – BTA; Francine Noftle – BTA; Mazen Mahfouz – LIMA – TD; Sylvia Cesaratto – NLA; Claudio Ramirez – NLA.

179 Global Affairs Canada, “Travel Advice and Advisories for Peru” (25 March 2017), online: *Government of Canada* <[travel.gc.ca/destinations/peru](http://travel.gc.ca/destinations/peru)>, archived at “Wayback Machine”, online: <[web.archive.org/web/20170505010722/https://travel.gc.ca/destinations/peru](http://web.archive.org/web/20170505010722/https://travel.gc.ca/destinations/peru)> [perma.cc/E3QM-BG4P] [GAC “Travel Advice”].

180 The petitioners were Juan Carlos Ruis Molleda, Luis Alvaro Masquez Salvador, Jose Ramiro Llantas Perez, Clotilde Florez Vasques, and Paul Jose Casafranca Boub: “Peruvian Court to Hear MiningWatch Canada’s Legal Action Against Arbitrary Detention in Connection with Hudbay Minerals’ Operations” (20 November 2017), online: *MiningWatch Canada* <[miningwatch.ca/news/2017/11/20/peruvian-court-hear-miningwatch-canadas-legal-action-against-arbitrary-detention](http://miningwatch.ca/news/2017/11/20/peruvian-court-hear-miningwatch-canadas-legal-action-against-arbitrary-detention)> [perma.cc/WQ4F-5A5D] [MiningWatch, “Peru Arbitrary Detention”].





Moore's behalf in a Peruvian court. Government records indicate that Canadian officials were aware of the legal proceedings from the outset.

In June 2017, Moore, Dougherty, and MiningWatch emailed the Canadian Embassy in Lima, detailing the harassment and detention of Moore and Dougherty, and requesting that Ambassador Kutz provide assistance and "support in appealing to Peruvian authorities".<sup>181</sup> Moore re-sent the email in September 2017.<sup>182</sup> Canadian officials never replied to these repeated requests for support, despite having a draft in process that was never sent.

In July 2017, MiningWatch, Moore, Dougherty, and a number of other organizations sent an urgent action appeal to seven UN and IACHR Commissioners and Rapporteurs, requesting that they formally communicate to the Government of Peru and express the view that Peruvian authorities had violated the rights of two HRDs, in contravention of Peru's obligations under the *International Covenant on Civil and Political Rights*.<sup>183</sup>

In response, the Special Procedures Branch of the Office of High Commissioner on Human Rights (OHCHR) sent a joint communication regarding Moore's detention and charges to the Government of Canada.<sup>184</sup> The communication, dated September 19, 2017, "expressed 'serious concerns' about the allegations of Hudbay's interference and role in the detention and charges against [Moore] and [Dougherty], who spoke critically of the company's activities".<sup>185</sup> The letter also asked follow-up questions about Canada's knowledge of events and the steps taken to address the allegations against Hudbay.

On October 27, 2017, Canada's Minister of International Trade, Francois-Philippe Champagne, granted Hudbay representatives an in-person meeting. Duane McMullen, Director General of the Trade Commissioner Service was also in attendance. The meeting was at the request of Hudbay and the Minister's briefing notes in preparation for the meeting are highly redacted. The unredacted portions focus on the litigation against Hudbay for alleged human rights violations in Guatemala. Although they mention a 2016 protest at Hudbay's Constancia mine in Peru, the unredacted notes make no

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181 ATIP Request A201702278, *supra* at 6.

182 *Ibid* at 4.

183 Letter from Jennifer Moore et al to David Kaye et al (3 July 2017), "Urgent Action Appeal".

184 ATIP Request A201702278, *supra* at 27.

185 *Ibid* at 29.



mention of the UN joint communication about the criminalization of Jennifer Moore, sent just one month prior.<sup>186</sup>

Canada responded to the OHCHR three months later, stating that it expects companies “to meet or exceed” international standards, in accordance with its policy in place at the time (see Part 6(b) for further details on this policy). Canada’s reply provided little detail in response to the specific concerns raised by the OHCHR and stated that officials were “not aware of any evidence that Hudbay Minerals was involved in the actions of the Peruvian authorities in detaining and questioning Ms. Moore”.<sup>187</sup>

In November 2017, 90 prominent and grassroots civil society organizations sent a letter to Peruvian officials and Canadian Ambassador Kutz.<sup>188</sup> The letter urged the recipients to stop the criminalization of Moore and Dougherty, cancel the migratory alert, and remove the criminalizing statements from the Ministry of Interior website.<sup>189</sup> There is no evidence in the available records that Ambassador Kutz ever responded or even contemplated responding.

On December 14, 2017, Moore sent a letter signed by 22 civil society organizations to the attention of then Member of Parliament and Honorable Minister of Foreign Affairs Chrystia Freeland, outlining concerns over the criminalization of freedom of expression in Peru and providing a summary of the surveillance, detention, and prohibition on re-entry that Moore faced. The letter specifically invoked the *Voices at Risk* Guidelines published by Freeland’s Ministry with her personal endorsement.<sup>190</sup> No GAC officials, nor the Minister, ever replied. Section five of this report provides further details and analysis of these events.

In contrast to Canada’s silence, civil society groups did not abandon Moore and the unlawful prohibition on her re-entry to Peru. In the next section, we describe the legal proceedings that the Peruvian civil society group initiated to challenge the actions and decisions of the Peruvian police and government officials.

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186 Government of Canada, Department of Foreign Affairs, Trade and Development, *Access to Information Request* A-2019-01759 at A0027387\_4-000004.

187 *Ibid* at 23.

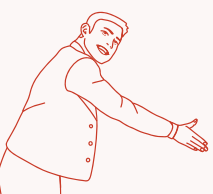
188 Letter from MiningWatch Canada *et al* to Peruvian Ministers *et al* (17 November 2017), “RE: Criminalization of freedom of expression and international solidarity in Peru” [MiningWatch, “Letter to Peruvian Ministers”].

189 *Ibid*.

190 Letter from Jennifer Moore *et al* to Honourable Chrystia Freeland *et al* (14 December 2017) [Letter to Freeland]; GAC, “Standing up for human rights”, *supra*.



# 4. JUDICIAL FINDINGS THAT MOORE'S RIGHTS WERE VIOLATED



# INTRODUCTION

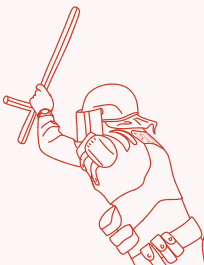
On May 16, 2017, shortly after Jennifer Moore’s departure from Peru, several petitioners filed a *habeas corpus* application on her behalf.<sup>191</sup> To date, the Peruvian courts have issued four decisions in the case. In the 2019 first instance decision, the Superior Court of Justice of Reos Libres accepted the innovative *habeas corpus* claim, finding that Peruvian authorities had violated Moore’s rights.<sup>192</sup> At the appellate level, in 2020, the Lima Superior Court of Justice remanded the case, ordering the lower court to specify a remedy to address the violations, as well as to determine the outstanding issue of whether Moore had been arbitrarily detained.<sup>193</sup> In its 2021 decision on the remanded case, the court issued remedies and measures to protect Moore’s rights in light of the *habeas corpus* violations.

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191 Application for preventative and innovative *habeas corpus*, Juan Carlos Ruiz Molleda et al (May 16, 2017). In October 2022, journalists reported that the Peruvian military has monitored three of the civil society organizations that were among the most prominent supporters of Moore and her legal case: the Institute for Legal Defense (IDL), Cooperacion and Human Rights without Borders (DHSF-Cusco). Documents depicting this monitoring came to light due to the hacking of military messaging in several Latin American countries. The extent of the military surveillance of these human rights groups is not known at the time of writing. See Peru Support Group, “Civil Society Groups Protest at Military Monitoring” (October 15, 2022), online: <[perusupportgroup.org.uk/2022/10/civil-society-groups-protest-at-military-monitoring/](https://perusupportgroup.org.uk/2022/10/civil-society-groups-protest-at-military-monitoring/)>; Infobae, “Guacamaya Leaks: ¿Qué hay en los correos filtrados que exponen al Ejército del Perú y Comando Conjunto?” (October 21, 2022) online: <[infobae.com/america/peru/2022/10/07/guacamaya-leaks-peru-se-filtran-283-mil-correos-entre-ejercito-peruano-comando-conjunto/](https://infobae.com/america/peru/2022/10/07/guacamaya-leaks-peru-se-filtran-283-mil-correos-entre-ejercito-peruano-comando-conjunto/)> [perma.cc/WWZ5-ERY6].

192 *Molleda et al v Peru*, Superior Court of Justice of Reos Libres, Case No 03172-2017, (8 August 2019) [unofficial English translation] [*Molleda* 2019].

193 *Peru v Molleda et al* (appeal) Superior Court of Justice of Lima, Case No. 03172-2017, (13 February 2020) [unofficial English translation] [*Molleda* 2020].



The court also found that Moore’s four-hour detention was within the scope of ordinary police powers.<sup>194</sup> The parties appealed and in January 2022 an appellate court upheld the findings of the lower court, including the removal of the migratory alert, but revoked the other remedies that the lower court had ordered.<sup>195</sup> Moore appealed to Peru’s Constitutional Court seeking a declaration that the 4-hour detention was illegal and arbitrary, and seeking an order that the Ministry of the Interior must remove the defamatory statement from its website and refrain from any further persecution of Moore or any other environment defender.<sup>196</sup>

This section will summarize the relevant aspects of these legal proceedings in three parts. The first part outlines Moore’s constitutional claim, the second part summarizes the courts’ legal and factual findings, and the third part sets out the remedies ordered by the courts to date.

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194 *Molleda et al v Peru* (remanded), Superior Court of Justice of Reos Libres, Case No. 03172-2017, (30 April 2021) [unofficial English translation] [*Molleda* 2021].

195 *Molleda et al v Peru* (second appeal), Corte Superior de Justicia de Lima – Novena Sala Penal Liquidadora, Case No. 03172-2017, Resolution No. 593, (12 January 2022) [unofficial English translation] [*Molleda* 2022].

196 Institute of Legal Defense, Factum presented to the Novena Sala Penal Liquidadora de la Corte Superior de Justicia de Lima, Case No. 03172-2017-0-1801-JR-PE-01, (5 January 2022).





## A. MOORE'S *HABEAS CORPUS* PETITION

At first instance, the Superior Court of Justice of Reos Libres in Cusco heard the petition filed on behalf of Jennifer Moore<sup>197</sup> against the Ministry of the Interior, the Peruvian National Police, the Cusco State Security Department of the National Police, and the Cusco Regional Migration Superintendence Headquarters.<sup>198</sup> The petitioners alleged two types of *habeas corpus* violations, a preventative *habeas corpus*<sup>199</sup> related to the detention of Moore, and an innovative *habeas corpus* based on the violation of Moore's constitutional rights.<sup>200</sup>

The petitioners asked the Court to order the respondents to abstain from detaining, persecuting, harassing, criminalizing, or pursuing any other act that would affect Moore's rights and freedoms, to allow her to return to Peru, and to cease all threats of expulsion and remove any obstacles to her entry to the country.<sup>201</sup> The petitioners also submitted that these violations of Moore's rights were a form of retaliation against her for questioning Hudbay, which has a services contract with the police.<sup>202</sup>

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197 The petitioners were a group of prominent human rights lawyers: Juan Carlos Ruis Molleda, Luis Alvaro Masquez Salvador, Jose Ramiro Llantas Perez, Clotilde Florez Vasques, and Paul Jose Casafranca Boub.

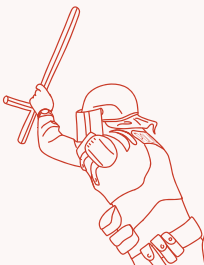
198 *Molleda* 2019, *supra*.

199 A preventative *habeas corpus* is used in cases where a deprivation of a liberty has not yet occurred, but where there is certain and imminent threat that it will: *Molleda* 2019, *supra* at para 16.

200 An innovative *habeas corpus* will apply where a violation of a personal liberty has ceased to occur, and the affected party requests the court to exercise its power to prevent the repetition of the violation: *Molleda* 2019, *supra*.

201 *Ibid*.

202 *Ibid* at para 3.



## B. THE COURTS FOUND MULTIPLE VIOLATIONS OF MOORE'S RIGHTS

As stated above, in a decision issued on August 8, 2019, the first instance Court accepted Moore's innovative *habeas corpus* claim and found that Peruvian authorities had perpetrated multiple violations of her rights. These findings were re-affirmed in April 2021 by the same presiding judge (Justice Castillo Soltero) in a second decision after receiving the remanded case from the appellate Court.<sup>203</sup> This section will refer to both decisions when summarizing the relevant findings, which fall into two main categories: (1) procedural fairness and due process violations, and (2) human rights violations.

First, the Court found multiple violations of Moore's procedural rights. In 2019, and again in 2021, the Court found that the decision to bar Moore's re-entry to Peru was arbitrary and illegal because it lacked factual basis and authority. The Court concluded that the police officers in question were not authorized to surveil Moore and they drew conclusions about her that were not based on facts.<sup>204</sup> Critically, in 2019, the Judge concluded that there was no link between Moore and any violent protests.<sup>205</sup> In 2021, the Court once again found no evidence that Moore had attacked or risked public order, or that she was working in a way prohibited by her visa. As a result, the Court re-affirmed that Moore had not caused violent protests or acts of any kind, but had merely attended events in favour of social and environmental protection, exercising her rights to free expression and movement.

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203 *Molleda* 2021, *supra*.

204 *Molleda* 2019, *supra* at para 4; *Ibid* at para 24.

205 *Molleda* 2019, *supra* at para 29; *Molleda* 2021, *supra* at para 26.



Moreover, in 2019, Justice Castillo Soltero noted that the police report contained unnecessary wording that favoured Hudbay, and that the services agreement between Hudbay and the Peruvian National Police influenced their behaviour. In this context, the Judge concluded that given the existence of the agreement and the biased wording of the report, the police report lacked impartiality.<sup>206</sup> In our reading of the decision, the Judge's reasoning is consistent with, and supports the conclusion that, the police were biased against Moore, in part due to their contractual relationship with Hudbay.

In the 2019 and 2021 decisions, the presiding Judge found that the Immigration Department's decision to deny Moore re-entry to Peru was based on the flawed police report, and that the Department failed to act reasonably by balancing the available measures and the public purpose that it purported to protect. The Court found that it was unreasonable in the circumstances for the Department to choose the most severe sanction possible (deportation and prohibiting re-entry).<sup>207</sup> Moreover, the Department violated Moore's constitutional right to due process because it made its decision without giving Moore the opportunity to defend herself.<sup>208</sup>

Second, in both the 2019 and 2021 decisions, the Court found violations of Moore's human rights and freedoms. The courts recognized that, while in Peru, Moore's rights to free movement and freedom of expression, including the right to express her thoughts to others and to seek, receive, and disseminate information and views, were protected by the Constitution<sup>209</sup> and the *American Convention on Human Rights*. The Court found that Peruvian authorities had imposed illegitimate restrictions on these rights, given the lack of evidence in the flawed police report.<sup>210</sup> In 2022, an appellate judge upheld these first instance findings with respect to the violations of Moore's rights.<sup>211</sup>

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206 *Molleda* 2019, *supra* at para 29.

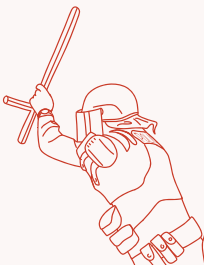
207 *Ibid* at para 4; *Molleda* 2021, *supra* at para 28.

208 *Molleda* 2019, *supra* at para 13; *Molleda* 2021, *supra* at para 23.

209 *Molleda* 2019, *supra* at para 28; *Molleda* 2021, *supra* at paras 28-29.

210 *Molleda* 2019, *supra* at paras 29-30; *Molleda* 2021, *supra* at para 28-29.

211 *Molleda* 2022, *supra* at paras 10-17.



## C. REMEDIES & PROTECTIVE MEASURES

In 2019, the Court of first instance granted Moore's innovative *habeas corpus* application and voided the administrative procedure against Moore that had resulted in the migratory alert. In February 2020, the appellate Court suspended the effect of this decision, and remanded the case to the lower Court to determine appropriate remedies and protective measures. In 2021, a new decision was issued with the detailed measures, as required.

In the 2021 remanded decision, the Court once again voided the migratory alert against Moore. The Judge ordered the National Police and the Superintendence of Immigration to abstain from any actions that would infringe Moore's rights and freedom. She also ordered the Ministry of the Interior to cease its threats of expulsion or any impediment that may prevent Moore from re-entering the country. Finally, the Judge ordered that the proceedings be referred to the Attorney General for an investigation of the acts that had transpired against Moore.<sup>212</sup>

In 2022, an appellant judge affirmed the 2021 remanded decision and revoked the migratory alert against Moore. However, the appellate judge also revoked all three remedies that the lower Court had granted in favour of Moore.<sup>213</sup> At the time of publication of this report, the parties have appealed the appellate decision to Peru's Constitutional Court.

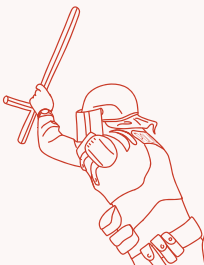
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212 *Molleda* 2021, *supra* at para 2.

213 *Molleda* 2022, *supra* at paras 20, 23, 24.3, 24.4.



# 5. CANADA'S FAILURES TO UPHOLD THE *VOICES AT RISK* GUIDELINES IN THE MOORE CASE





# INTRODUCTION

The *Voices at Risk* Guidelines were first announced in December 2016, and were updated on June 17, 2019.<sup>214</sup> However, many of the 2016 Guidelines remained identical or very similar after the policy was updated. The 2016 Guidelines were in place in April 2017 when Peruvian authorities first took actions to criminalize Moore, when she repeatedly appealed to Canadian authorities for help, and when she filed a constitutional *habeas corpus* claim.<sup>215</sup> The 2019 Guidelines cover the period while Moore’s case was before the courts and when they issued findings in her favour.

This section of the report summarizes only the most significant failures of Canadian officials to follow the Guidelines in response to the criminalization of Jennifer Moore. Some of these failures were ongoing and occurred both before and after the policy update in 2019. In detailing five major breaches, we refer to both versions of the Guidelines. The analysis in this section refers to the facts presented in Section 3 of this report with respect to the criminalization of Moore, and in Section 4 with respect to the findings of the Peruvian courts. Where relevant to a particular Guideline, we present additional facts about Canada’s response or lack of response, drawing from the available government records.

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214 *Voices at Risk* 2016, *supra*; *Voices at Risk* 2019, *supra*.

215 MiningWatch, “Peru Arbitrary Detention”, *supra*.



# A. CANADA FAILED TO ENGAGE LOCAL AUTHORITIES TO PROTECT A CANADIAN HRD UNDER THREAT

Guideline 3.5 (2016) and Guideline 3.7 (2019) both state that Canada “*should build and maintain relationships with local authorities with influence or those with the authority to make decisions affecting human rights*”.<sup>216</sup> According to the Guidelines, Canadian missions *should* also “*discuss human rights issues with authorities on an ongoing basis*” through “*formal and informal channels*” in an attempt to “*facilitate the resolution of difficult issues*”.<sup>217</sup> The Guidelines also advise that, where a human rights defender (HRD) is “*at acute risk*”, it is often fruitful to “*engage local authorities discreetly*” as this can “*help to resolve emerging crises in their early stages*”.<sup>218</sup>

Moore immediately alerted Embassy officials about her legitimate concerns for her safety after seeing the *El Montonero* article. The Embassy should have, as the Guidelines directed, discussed her concerns with local authorities at the earliest possible opportunity and preferably in advance of Moore’s trip. Instead, a Canadian official declined to offer her any support and simply told Moore to either contract private security and notify local authorities, or to not travel at all (in other words, not to do the human rights work that she had planned). Canadian authorities should have been alive to the fact that the *El Montonero* article put Moore at risk, and should have engaged Peruvian authorities at an early stage in an attempt to prevent the predictable crisis that unfolded. Instead, there is no evidence that Canadian officials made any attempt to speak to Peruvian authorities at this early stage, leaving Moore without any Embassy support or a plan for her safety. In the end, the escalation that Moore feared materialized.

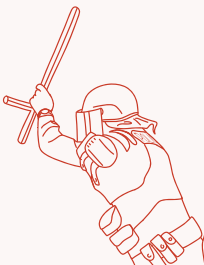
Upon learning of Moore’s detention, an Embassy official made a few phone calls to Peruvian authorities in order to get an understanding of the issue. However, there is no record that Canadian officials ever followed up with Peruvian authorities. When Peruvian authorities surveilled and publicly criminalized Moore shortly thereafter, issuing a migratory alert, banning her from the country, and putting her at acute risk again,

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216 *Voices at Risk* 2016, *supra* at 7. See also *Voices at Risk* 2019, *supra* at 16 [emphasis added].

217 *Ibid* [emphasis added].

218 *Ibid* [emphasis added].



the evidence indicates that Canadian authorities resisted numerous and high profile calls for assistance, and refused her request for accompaniment to the airport.

Despite repeated calls for action from dozens of organizations over the months that followed, there is no record of any attempt whatsoever on the part of Canadian officials to discuss these matters on an ongoing basis through any diplomatic channels, formally or informally. Moreover, internal communications indicate that Canadian officials were at best confused about Peru's criminalization of Moore. However, at times, they appeared committed to deny that the criminalization was happening at all, in spite of unquestionably clear contemporaneous statements from numerous civil society actors, Moore herself, and even from the very Peruvian officials who were openly criminalizing Moore. Moreover, as described above, many Canadian officials had prior knowledge of Moore's work for MiningWatch Canada in solidarity with affected people in Latin American and in favour of greater corporate and state corporate accountability. Even if their confusion was in good faith, Canadian officials made no attempt to seek clarity from Peruvian officials. This inaction in the full context of the events that took place, and in light of the specific actions and statements of Canadian officials, suggests that some Canadian officials were committed to an approach of willful blindness with respect to the unfolding violations of Moore's rights that many groups were publicly denouncing.

In the weeks, months and years that followed, this stance of willful blindness appears to have continued. Although Canadian officials internally circulated a press release about Moore's *habeas corpus* action in Peruvian courts, they made no attempt to engage with Peruvian authorities about the matter.<sup>219</sup> In fact, it appears that they did not even turn their minds to it or discuss it. When, with the support of prominent civil society organizations, Moore appealed directly to then Minister Freeland for support and specifically invoked the *Voices at Risk* Guidelines, the Minister remained silent.

Although Moore's ongoing *habeas corpus* claim ultimately prospered with favourable decisions in the Peruvian courts, to date there is no record of Canadian officials advocating for Peruvian authorities to rescind the migratory alert, remove statements criminalizing Moore and Dougherty from government websites (described in Section Three), or investigate the police officers who surveilled and detained the two of them. While Peruvian courts have recognized that these actions violated Moore's constitutional rights, the Canadian government has failed to respond at all.

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219 ATIP Request A201702278, *supra* at 10.



## B. CANADA FAILED TO SUPPORT AND PROTECT A CANADIAN HRD CONCERNED WITH A CANADIAN COMPANY

Guideline 4.2 (2016) states that Canadian embassies *should* support HRDs whose work focuses “on the activities of multinational corporations [and] subsidiary companies [...] *regardless of the nationality of the company in question*”.<sup>220</sup> Guideline 4.2 (2019) is very similar. It states, “missions are *expected to provide support to HRDs* even when they allege or appear to have suffered human rights abuses by a Canadian company”.<sup>221</sup> In these circumstances, the 2019 Guideline adds that, the embassy *must* also *provide protection to the HRDs in question* “as appropriate”.<sup>222</sup>

The 2016 and 2019 Guidelines both affirm, with slightly different language, that “Canadian companies working internationally are *expected and encouraged to operate lawfully, transparently* and in consultation with host governments and local communities, and to *conduct their activities in a socially and environmentally responsible manner*”.<sup>223</sup>

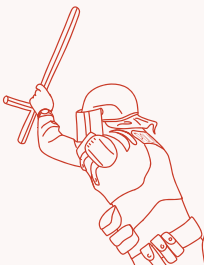
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220 *Voices at Risk* 2016, *supra* at 10 [emphasis added].

221 *Voices at Risk* 2019, *supra* at 21 [emphasis added].

222 *Ibid* [emphasis added].

223 *Ibid* [emphasis added].



A Canadian official reiterated this policy when referring specifically to contracts between the Peruvian police and Canadian mining companies at a public roundtable discussion in Ottawa in March 2017, just one month before the events that Moore faced in Peru.<sup>224</sup> At that forum, the official expressed specific knowledge of contracts between Peruvian police and Canadian mining companies, and stated that “of course [they] require that Canadian companies operating overseas operate with due respect of the rule of law, and actually we go beyond that, we expect them to uphold values and ethics that are Canadian/international standards that go many times beyond what is required in the local operating environment”.<sup>225</sup>

When a Canadian company is alleged or appears to be involved in a case of human rights abuse against HRDs, both the 2016 and 2019 Guidelines state that missions *must* refer to Canada’s Enhanced Corporate Social Responsibility Strategy to Strengthen Canada’s Extractive Sector Abroad (CSR Strategy).<sup>226</sup> The 2019 Guideline adds that the embassy “*should* also seek direction from the Responsible Business Practices Unit at Headquarters”, and “*must ensure close collaboration* between the sections of the mission responsible for international business development and bilateral diplomatic relations”.<sup>227</sup>

Finally, the 2016 and 2019 Guidelines both state that “*depending on the facts of a case, there may be an impact on the support that the mission offers to the Canadian company in question, including denying or withdrawing trade advocacy support*”.<sup>228</sup>

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224 Jennifer Moore, “Roundtable with Government, Carleton U” transcript (March 2017), [Moore, “Roundtable transcripts”].

225 *Ibid.*

226 *Voices at Risk* 2016, *supra* at 10. See also *Voices at Risk* 2019, *supra* at 21.

227 *Voices at Risk* 2016, *supra* at 11. See also *Voices at Risk* 2019, *supra* at 21 [emphasis added].

228 *Ibid* [emphasis added].





# I. SUMMARY OF RELEVANT EVENTS

Canadian officials were well aware of the many potential connections between Hudbay, the PNP and the criminalization of Jennifer Moore. Section two of this report described how, at the time of the events in question, Hudbay had a contract with the PNP to provide services such as protection, surveillance, and security at their Constancia Mine installations and “in the area of influence of the project”.<sup>229</sup> Hudbay also had a highly publicized history of alleged human rights violations and court proceedings against it in Canada.<sup>230</sup> The “Flin Flon Flim Flam” documentary film, which is easily accessible online, included footage of all of these issues, and depicted violence by Hudbay contracted PNP officers against affected communities.

Canadian officials were also made aware of reports that Hudbay had a role in the criminalization of Moore while she traveled with Dougherty to screen his film. For example, Canadian officials were aware that between April 18 and 20, the pair alleged that they were “filmed by unknown individuals (suspected to be Hudbay employees) and tracked by police”.<sup>231</sup> Embassy officials were also told that community leaders reported being “questioned by police and company (Hudbay) representatives about the film screening”.<sup>232</sup> See Section 3 above for a more detailed description of these events.

Canadian officials also had early notice that the criminalization of Moore was potentially a human rights issue. While Moore was still detained by police on the night of April 21, Embassy officials discussed a Facebook post about her detention by CooperAcción, a reputable Peruvian human rights organization, and noted that it described “the situation in highly negative terms (free speech repression)”.<sup>233</sup> Brooke Ritchie (First Secretary

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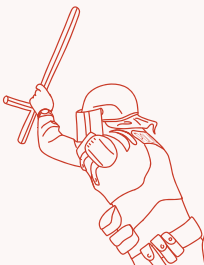
229 Hudbay, PNP Contract, *supra* at 3 (clause 3); Charis Kamphuis & Brandy Falkevitch, Amicus Curiae Brief, *Jennifer Moore v Minister of the Interior of Peru et al* (submitted to the Primer Juzgado Penal con Reos Libres in April 2018), online: <[ssrn.com/abstract=3329458](https://ssrn.com/abstract=3329458)> at para 20.

230 “HudBay Operations in Peru and Guatemala: Violence and Repression Found to Result from Mining Company Contracts with State Security Forces” (28 November 2019), online: *MiningWatch Canada* <[miningwatch.ca/news/2019/11/28/hudbay-operations-peru-and-guatemala-violence-and-repression-found-result-mining](https://miningwatch.ca/news/2019/11/28/hudbay-operations-peru-and-guatemala-violence-and-repression-found-result-mining)> [perma.cc/4AWU-S8NF].

231 ATIP Request A201702278, *supra* at 7.

232 *Ibid.* See also Moore, “Chronology”, *supra* at 5.

233 ATIP Request P201901718, *supra* at 2.



Consular) noted that the Facebook post appealed for urgent attention to the situation due to “censorship of film denouncing conflicts of mining company Hudbay”.<sup>234</sup>

The morning after Moore’s release, on April 22, Canadian officials circulated another Facebook post sent by the Executive Director of Servicios Educativos Rurales (SER) a reputable national organization, which denounced the censorship of the film and police harassment at locations where the film was shown.<sup>235</sup> That same morning, in an email discussion First Secretary Political & Economic Affairs Luke Sookocheff wrote that the detention “might be visa related (she’s only on a tourist visa). That on its own does not sound like something you arrest people for.”<sup>236</sup> Also that morning, a network of HRDs from Mexico<sup>237</sup> emailed the Canadian Embassy to express their concern over the situation and Hudbay’s possible connection to it.<sup>238</sup>

Then, at around 11:30 AM, the Peruvian Interior Ministry published a communication online that alleged that, by screening the film, Moore sought to “incite residents [...] against Canadian mining activities in Peru. In particular, against Hudbay’s Constancia mine” and that her actions threatened “public order, internal order or national security”.<sup>239</sup>

Later that day, Canadian officials wrote in internal emails that Moore’s detention “seems to be related to the screening of a documentary related to Hudbay”<sup>240</sup> and embassy officials noted a telephone conversation in which Moore told the Embassy that she was “being persecuted for speaking out and telling the truth and that the company (Hudbay) pays the police”.<sup>241</sup>

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234 CooperAcción Facebook post in ATIP Request P201901716, *supra* at 8. In the embassy case note, the Facebook post is included in both Spanish (the language it was published in) and English. It is unclear who translated the post to English.

235 The Facebook post can be found at CooperAcción, “#URGENTE Represión y censura por película que denuncia conflictos mineros de empresa #Hudbay. El documentalista norteamericano John Dougherty y la ciudadana canadiense Jennifer Moore acaban de ser detenidos...” (21 April 2017) posted on CooperAcción, online: Facebook <[facebook.com/cooperaccionperu/photos/a.295534950536147.66375.235551359867840/1401954779894153/?type=3&theater](https://www.facebook.com/cooperaccionperu/photos/a.295534950536147.66375.235551359867840/1401954779894153/?type=3&theater)> [perma.cc/Z4BX-9FLS] [CooperAcción Facebook post].

236 ATIP Request A201702278, *supra* at 79.

237 The Mexican Network of Mining Affected People (Red Mexicana de Afectadas/os por la Minería).

238 ATIP Request P201901716, *supra* at 32.

239 “Sobre ciudadana canadiense”, *supra*.

240 ATIP Request A201702278, *supra* at 79.

241 ATIP Request P201901716, *supra* at 12.



Over the next couple of days, the situation was discussed in several emails between Canadian officials.<sup>242</sup> One exchange is particularly important. On April 24, Duane McMullen, GAC Director General of Trade Commissioner Service Operations and Trade Strategy, and Francine Nofle, GAC Director of Business and Trade, informed Georgina Galloway, Deputy Director of Responsible Business Practices, about the detention. The email thread revealed that these three Canadian officials appeared confused about what had occurred.<sup>243</sup> For example, Nofle suggested that her information came from a CBC report and Galloway mentioned that she “missed the CBC report” and “any additional info [they] might have would be great as per [her] voicemail”.<sup>244</sup>

Later that day, a Hudbay employee emailed McMullen, stating that Hudbay had no connection to Moore’s detention. However, the employee’s response closely echoed the earlier public statement from Peru’s Ministry of the Interior. The email stated that the company was

*sympathetic to the concerns of the Peruvian government with the social unrest that is getting stirred-up by a combination of political opponents of the current government, ideological opponents of mining, and the role that foreign activists may be playing [...] Such activities are not helpful to improving the lives of those in the remote regions of Peru, and in some cases have set the stage for violent confrontations between community members and police with tragic results.*<sup>245</sup>

This email was forwarded by McMullen to six other Canadian officials and one of those recipients, Claudio Ramirez, forwarded it on to two others.<sup>246</sup>

On April 27, Luke Sookocheff echoed Hudbay’s position when he distributed a Note to File<sup>247</sup> to eighteen recipients (including Galloway and the Canadian Ambassador in Peru, Gwyneth Kutz) that referred to Moore as belonging to “an anti-mining NGO”. Referring to public statements that Moore had made, “to the effect that the Embassy was aware of her activities”, Sookocheff wrote that “it is unfortunate that the impression left by

242 See for example, ATIP Request A201702278, *supra* at 79; ATIP Request P201901718, *supra* at 4; Moore, “Chronology”, *supra* at 11.

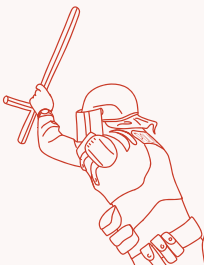
243 ATIP Request A201702278, *supra* at 15.

244 *Ibid.*

245 *Ibid* at 76 [emphasis added].

246 See Appendix 5, *infra*.

247 See Appendix 4, *infra*.



Ms. Moore’s statement is that the Canadian embassy as a whole was aware of her activities and/or supportive of them”.<sup>248</sup>

The Note to File<sup>249</sup> also referred to the Facebook post made by the NGO CooperAcción “criticiz[ing] the detention as an abuse of freedom of speech”<sup>250</sup> and it mentioned that Moore may face arrest if she returns to Peru,<sup>251</sup> but it did not acknowledge any of the messages that embassy staff had received directly from Moore, as well as numerous civil society organizations in Peru, Canada and Mexico expressing human rights and security concerns about the situation. Sookocheff’s Note did not recognize Moore as an HRD, nor did he recommend any action to support her.

In the months that followed, Canadian officials continued to receive ample notice of Moore’s status as an HRD and the connection between her criminalization and Hudbay’s operations. For example, in May 2017, human rights organizations initiated a claim on Moore’s behalf in Peruvian court, which referred to “the contract between Hudbay’s Peruvian subsidiary and the National Police” and “alleged that Moore’s [...] arbitrary detention was a result of this privatization of police services”.<sup>252</sup> Canadian officials had early notice of this legal action.<sup>253</sup>

As mentioned in Section 3, in June 2017 and again in September 2017, Moore wrote to the Canadian embassy in Lima, asking for “support in appealing to Peruvian authorities” and asserting that her “stigmatization in the press and by a public authority, along with police harassment, illegal and arbitrary detention, and [her] prohibition from re-entry to the country” was a direct result of her activism in Peru critical of Hudbay’s activities.<sup>254</sup> Officials worked on a draft response from September 11 until October 2,<sup>255</sup> but never sent a response to Moore.

Section 3 also referred to the September 2017 joint communication from the OHCHR to the Government of Canada in response to Moore’s detention and the prohibition on her re-entry to Peru, asking for comment on allegations about Hudbay’s involvement and

248 ATIP Request A201702278, *supra* at 73.

249 Appendix 4, *infra*.

250 ATIP Request A201702278, *supra* at 73.

251 *Ibid.*

252 MiningWatch, “Peru Arbitrary Detention”, *supra*.

253 ATIP Request A201702278, *supra* at 10.

254 *Ibid* at 5-6.

255 *Ibid* at 4, 46.



requesting information about what measures Canada was taking to “ensure Hudbay follows its international human rights law responsibilities”.<sup>256</sup>

Hudbay responded to the OHCHR communication in November, denying involvement in the detention.<sup>257</sup> Canada requested a thirty-day extension to the sixty days already provided before responding in December, stating that it expects Canadian companies operating abroad to follow its CSR Strategy and to “meet or exceed” international standards. The letter also stated that officials were “not aware of any evidence against Hudbay in Moore’s detention”.<sup>258</sup> Canada’s response did not outline a single action taken in support of Moore or to investigate Hudbay’s potential involvement.

Section 3 also described how, in November 2017, a group of 90 civil society organizations, including many Canadian and international groups, sent a letter to prominent Peruvian Authorities with copies to Canadian officials, including Ambassador Kutz of the Canadian Embassy in Lima. The letter urged recipients to stop the criminalization of Moore and Dougherty and to “lift the migratory alert that impedes their re-entry to Peru”<sup>259</sup> including publishing a rectification on the Ministry of Interior’s website<sup>260</sup> and “prevent such a situation from occurring again against them or others”.<sup>261</sup> The letter expressed that the undersigned organizations believed that “the stigmatization in the press and by a public authority, police harassment, illegal and arbitrary detention, and prohibition from entry to Peru” was the result of “the privatization of the public security apparatus in Peru” and “Hudbay Minerals’ apparent attempt to exert control over what information communities living around its Constancia mine have access to”.<sup>262</sup>

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256 *Ibid* at 29.

257 *Ibid* at 33.

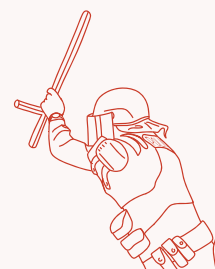
258 *Ibid* at 22-23.

259 MiningWatch, “Letter to Peruvian Ministers”, *supra* at 1.

260 *Ibid* at 3

261 *Ibid* at 1.

262 *Ibid* at 2.





In December 2017, Moore sent a letter to the attention of Minister Freeland, signed by 22 civil society organizations, outlining similar concerns.<sup>263</sup> The letter asked Freeland for her “support in urging Peruvian authorities to take all measures necessary to stop this process of criminalization”.<sup>264</sup> No response from Ambassador Kutz, Minister Freeland, or any other Canadian official was ever received, and the letters were not disclosed in any of the access to information documents requested and released.

In December 2019, a Peruvian Court of first instance issued a decision finding that the actions of Peruvian authorities had violated Moore’s due process rights and her human rights. The court also found that the PNP had exhibited bias in its treatment of Moore because the police report on Moore contained “wording that favoured Hudbay” and because the PNP had a contract with Hudbay.<sup>265</sup> As discussed in Section four, the decision was upheld in subsequent proceedings in 2020, 2021, and, again, in 2022.

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263 Moore, “Letter to Freeland”, *supra*.

264 *Ibid* at 2.

265 *Molleda* 2019, *supra* at para 23.



## II. ANALYSIS

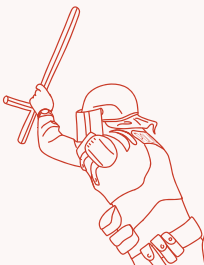
The summary above indicates that, in advance of the events in question, Canadian officials knew or should have known that Hudbay had a history of alleged human rights violations in Peru and also in Guatemala, including ongoing civil lawsuits against the company in Canada, and an ongoing services contract in place with the Peruvian police. It is also likely that at least some of the Canadian officials engaged in this case had prior knowledge of Moore’s work, and that of MiningWatch Canada, in support of mining-affected communities in Latin America and around the world in favour of greater corporate and state accountability for harms occurring.

In the weeks after Moore’s criminalization in April 2017, at least 23 Canadian officials became aware that Moore, a Canadian HRD who was critical of Hudbay, had been criminalized by Peruvian police and other authorities while exercising her right to free expression. They knew that Moore believed that Hudbay was involved. At least six officials, including Duane McMullen, Director General of Trade Services, also knew that Hudbay was “sympathetic” with the rationale for Peru’s criminalization of Moore, and that it had made further statements to the effect that the activities of foreign activists may help set the stage for violence. By September 2017, Canadian officials knew that there was broad concern about Moore’s situation among human rights organizations and international bodies. Finally, by December 2019, Canadian officials knew or should have known that a Peruvian court had found that Peruvian authorities had violated Moore’s rights and that police officers had exhibited bias against her in part because of the contractual relationship between the police and Hudbay.

There could have been no reasonable doubt among Canadian officials that the *Voices at Risk* Guidelines, applicable to Canadian companies and Canadian HRDs, were engaged. In these circumstances, the guidelines *required* Canadian officials to refer to Canada’s CSR strategy. There is no evidence that this occurred. Embassy officials should have further sought direction from the Responsible Business Practices Unit, but they did not. Documents show that the Deputy Director of Responsible Business Practices, Georgina Galloway, was not informed and learned about events from the Canadian press. Two days after Moore was released from detention, Galloway informed Duane McMullen, Director General, Trade Operations in GAC, that she had heard about the detention through a CBC news report.<sup>266</sup> Even so, once Deputy Director Galloway received this information, there is no evidence that she took any action.

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266 ATIP Request A201702278, *supra* at 15.



In this context, the guidelines also *required* Canadian officials to take steps to investigate the allegations against Hudbay in order to ascertain “*the facts* of a given case” and determine if there should be “an impact on the support that the mission offers to the Canadian company in question”. There is no evidence that those responsible took any steps at all to investigate, rather they simply ‘took Hudbay’s word for it’ in an email from a Hudbay employee that denied involvement and effectively expressed support for Moore’s criminalization.

Moreover, in the midst of these events, and only one month after the UN communication to Canada about the criminalization of Moore in connection with Hudbay’s Peruvian mine, the Canadian Minister of International Trade granted Hudbay’s representatives an in-person meeting on October 27, 2017. There is no evidence from the unredacted portions of the documents outlining the Minister’s meeting objectives, context, concerns, and talking points, that the Minister or Duane McMullen, who was in attendance, took the opportunity to raise concerns about Moore’s treatment with Hudbay or to explore opportunities to uphold the Guidelines in her case.

Most importantly, the Guidelines *required* Canadian officials to offer Moore support, regardless of the nationality of the company involved. As the evidence and analysis presented throughout this report reveals, not only did Canadian officials *fail* to provide Moore with any meaningful support, they also *actively refused* to provide the requested support, even after multiple (unanswered) communications from Moore, a letter from 90 civil society groups, and a joint letter from UN bodies. Contrary to the requirements of the Guidelines, the documents reveal that Canadian officials demonstrated bias against Moore, referring to her in derogatory terms as “anti-mining” and admitting that they sought to avoid any public association with her. There is no record that a single Canadian official questioned these omissions, attitudes, or the chosen course of inaction.



## C. CANADA FAILED TO INCREASE THE PROTECTION OF A CANADIAN HRD UNDER THREAT BY TAKING STEPS TO ENHANCE HER VISIBILITY

Guideline 3.7 (2016) and Guideline 3.3 (2019) both recognize that *giving greater visibility to HRDs contributes to their safety and effectiveness* by demonstrating that *‘the world is watching’*.<sup>267</sup> This visibility can *dissuade authorities from taking actions against HRDs*.<sup>268</sup> Both Guidelines also recognize that one way Canadian missions can demonstrate the importance of the work of HRDs is through field visits *“often within sight of local authorities and security forces”*.<sup>269</sup> The 2019 Guideline recommends such visits and suggest that Embassies can also enhance visibility *“through public communication and social media”*.<sup>270</sup> It states that public recognition lends credibility to HRDs and to their work, which is particularly important for those who are the target of campaigns to discredit them”.<sup>271</sup>

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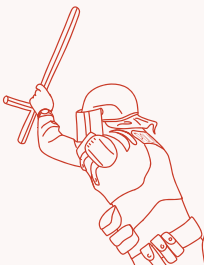
267 *Voices at Risk* 2016, *supra* at 8. See also *Voices at Risk* 2019, *supra* at 15.

268 *Ibid.*

269 *Ibid.*

270 *Ibid.*

271 *Voices at Risk* 2019, *supra* at 15.



# I. SUMMARY OF RELEVANT EVENTS

Contrary to the Guidelines cited above, Canadian officials failed to take any actions at all that would have given Moore and her work in Peru greater visibility. This section highlights the events that provided direct opportunities to do so.

When *El Montonero* published its first article about Moore, accusing her of “anti-mining radicalism”,<sup>272</sup> and the article was reprinted in *Diario del Cusco*,<sup>273</sup> Moore informed Canadian officials of it and of her resulting fears for her safety.<sup>274</sup>

During Moore’s detention, Peruvian and Canadian human rights leaders contacted Canadian officials several times to make them aware of the concern that Moore had been targeted because of her human rights work.<sup>275</sup> During and shortly after Moore’s detention, officials engaged in cursory internal discussions of the situation.<sup>276</sup> Among other information, officials shared a link to a Facebook post created by the reputable Peruvian human rights NGO CooperAcción, which denounced the censorship of the film about Hudbay, as well as the detention of Moore.<sup>277</sup> Embassy officials could have amplified these social media posts, but they did not.

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272 Moore, “Chronology”, *supra* at 1.

273 *Ibid* at 2.

274 Moore, “Emergency Notification 1”, *supra*. See also Moore, “Emergency Notification 2”, *supra*; ATIP Request P201901716, *supra* at 3.

275 See ATIP Request P201901716, *supra* at 4. See also ATIP Request P201901718, *supra* at 2.

276 See ATIP Request P201901718, *supra* at 2. See also ATIP Request A201702278, *supra* at 15, 79.

277 CooperAcción Facebook post in ATIP Request P201901716, *supra* at 8.





Following Moore's release, on April 24, 2017, *El Montonero* published a second article asserting that Moore "did not follow the law" while promoting the "anti-mining movement".<sup>278</sup> This reflected the statement that the Minister of the Interior had posted online two days prior, accusing Moore of inciting violence and threatening public order solely because of her work to disseminate the documentary. Shortly afterward, when GAC updated its Travel Advice and Advisories for Peru, the changes did not reflect the obvious risk that these events presented to any Canadian HRD, journalist, or scholar expressing critical views about mining in Peru.<sup>279</sup>

On May 9, 2017, a journalist from the *Vancouver Observer* contacted GAC to obtain their "official position on [Moore's] detention" and her "allegation that it was a result of human rights activism".<sup>280</sup> GAC could have affirmed Moore's rights as an HRD, but instead officials declined to comment.<sup>281</sup>

On May 15, 2017, MiningWatch Canada published a press release about the *habeas corpus* lawsuit filed in Peru on Moore's behalf.<sup>282</sup> A Canadian official forwarded a link to the release to other officials, but officials failed to even comment on the release, and they took no further action.<sup>283</sup> In November of that year, Canadian officials circulated a news article about the upcoming Peruvian court hearing.<sup>284</sup> Once again, officials failed to make any further comment or take any action to amplify online news about Moore's human rights case.

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278 Moore, "Chronology", *supra* at 11.

279 GAC "Travel Advice", *supra*.

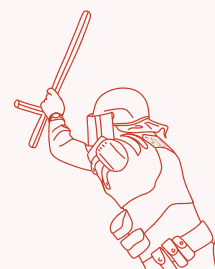
280 ATIP Request A201702278, *supra* at 53.

281 *Ibid.*

282 MiningWatch, "Peru Arbitrary Detention", *supra*.

283 ATIP Request A201702278, *supra* at 10.

284 See MiningWatch, "Peru Arbitrary Detention", *supra*. Evidence of officials circulating the article can be found in ATIP Request P201901716, *supra* at 64.



In October 2019, a Peruvian court issued a decision in Moore’s favour, finding that the decision of the Ministry of the Interior to bar Moore entry to Peru lacked factual basis and authority;<sup>285</sup> that Peru’s Immigration Department had failed to follow due process in dealing with Moore’s case;<sup>286</sup> that the treatment of Moore was unreasonable and had violated her rights;<sup>287</sup> and that the police involved lacked impartiality, in part because of the contract in place between the police force and Hudbay.<sup>288</sup> The Peruvian government appealed and in February 2020, the Peruvian appellate court issued a decision in Moore’s favour.<sup>289</sup> While news of these decisions was shared widely by civil society groups on social media, there is no record of any public statement on the part of Canadian officials recognizing or endorsing these ground-breaking legal decisions that upheld the rights of a Canadian HRD.

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285 *Molleda* 2019, *supra* at para 24.

286 *Ibid* at para 22.

287 *Ibid* at para 28.

288 *Ibid* at para 23.

289 *Molleda* 2020, *supra*.



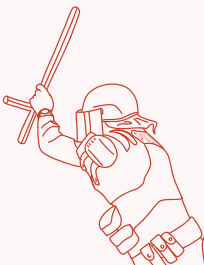
## II. ANALYSIS

The above summary highlights the fact that Canadian officials had numerous clear and direct opportunities to take relatively simple actions to show their support and help increase the visibility of Moore’s case. In spite of this, not a single official showed any interest in taking steps to support Moore in this way and fulfill the applicable recommendations of the *Voices at Risk* Guidelines.

Rather, some Canadian officials appeared to refuse to even recognize that Moore was, and is, an HRD, instead calling her an “anti-mining activist”. As described above in Subsection 5(b) above, in a Note to File authored by Luke Sookocheff, First Secretary (Political & Economic Advisor) at GAC, and sent to eighteen other Canadian officials, he referred to Moore as being part of an “anti-mining NGO”. Mr. Sookocheff also noted that Moore had “made a public statement to the effect that the Embassy was aware of her activities” and that “it is unfortunate that the impression left by Ms. Moore’s statement is that the Canadian embassy as a whole was aware of her activities and/or supportive of them”.<sup>290</sup> Thus, instead of taking steps to increase Moore’s visibility, Mr. Sookocheff’s statement suggests that at least some officials were explicitly committed to distancing themselves from Moore.

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290 ATIP Request A201702278, *supra* at 73.



For a period of weeks, months, and years, Moore’s status as an HRD, whose rights had been violated by the actions of the Peruvian government due to her criticism of Canadian mining company Hudbay, was reiterated publicly numerous times by reputable organizations and individuals, and even by the Peruvian courts.<sup>291</sup> There was clearly a “campaign to discredit” Moore. Yet, Canadian officials did and said nothing publicly. They did not use “public communication and social media”; they did not “show that the world is watching”; they did not show support “within sight of local authorities and security forces”; and they did not try to “dissuade” authorities from their continued action against Moore.

While the Guidelines encouraged Canadian officials to do all of these things and more, they appeared totally unconcerned with taking any action at all to improve her safety and contribute to the effectiveness of her work and that of other similarly situated HRDs. Alongside Mr. Sookocheff’s negative statements about Moore, this record of gross inaction and complete disregard for the Guidelines on the part of so many Canadian officials can only be explained as the result of an ideological bias within Global Affairs Canada in favour of mining corporations and against human rights work in solidarity with mining affected communities, such as the work that Moore undertakes. This issue will be discussed in greater detail in this report’s recommendations.

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291 See, for example, *Molleda 2019, supra*. See also CooperAcción Facebook post. See also MiningWatch, “Peru Arbitrary Detention”, *supra*. See also MiningWatch “Letter to Peruvian Ministers”, *supra*. See also Moore, “Letter to Freeland”, *supra*.



## D. CANADA FAILED TO COOPERATE WITH INTERNATIONAL BODIES AND MADE STATEMENTS THAT WERE MISLEADING AND FALSE

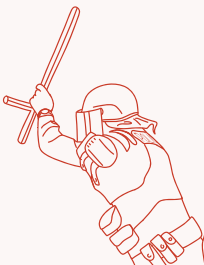
Guideline 3.6 recognizes that Canadian embassy “*cooperation with and support for regional and international bodies*” is a “recognized avenue for supporting and enabling strong institutions to promote and protect human rights”.<sup>292</sup> The Guideline recognizes that “the Special Rapporteur on the situation of human rights defenders is mandated to [...] gather information on the situation of human rights defenders”.<sup>293</sup> Finally, the Guideline states, “beyond the *close cooperation* between missions in a region on cross-cutting themes and issues, Canadian missions *should continue to work within regional institutions to promote and protect human rights and to support human rights defenders*”.<sup>294</sup>

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292 *Voices at Risk* 2016, *supra* at 8 [emphasis added].

293 *Ibid.*

294 *Ibid* [emphasis added].



# I. SUMMARY OF RELEVANT EVENTS

As described in Sections 3 and 5(b) above, on April 24, 2017, two days after Moore’s release from detention, a Hudbay employee contacted Director General Duane McMullen stating that they expected McMullen was “aware of the news reports of two foreign nationals [...] arrested in Peru” and that accusations that the “arrests” were attributable to Hudbay were not true.<sup>295</sup> The employee said that Hudbay “in no way tried to block access to the film,” but that the company was aware of Moore’s activities prior to her detention.<sup>296</sup> As noted previously, the Hudbay representative said they were

*sympathetic to the concerns of the Peruvian government with the social unrest that is getting stirred-up by a combination of political opponents of the current government, ideological opponents of mining, and the role that foreign activists may be playing. These efforts are often based on mischaracterization, if not plain untruths, of local mining activities. Such activities are not helpful to improving the lives of those in the remote regions of Peru, and in some cases have set the stage for violent confrontations between community members and police with tragic results.*<sup>297</sup>

As referenced previously, on September 19, 2017, the Special Procedures Branch of the Office of the High Commissioner on Human Rights (OHCHR) sent a joint communication, signed by four United Nations bodies,<sup>298</sup> as well as three bodies of the Inter-American

295 ATIP Request A201702278, *supra* at 75.

296 *Ibid.*

297 *Ibid* at 76 [emphasis added].

298 The bodies that signed were the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the UN Special Rapporteur on the Situation of Human Rights Defenders, the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, the UN Working





Commission on Human Rights (IACHR), to the Government of Canada expressing concern about Moore’s treatment by Peruvian authorities. The communication highlighted details of the events surrounding Moore’s detention, and asked Canada to comment on the

**alleged interference of [...] Hudbay Minerals into the criminal charges and arbitrary detention against Ms. Moore and Mr. Dougherty, due to their work as human rights defenders, speaking out about the impact of the company activities.<sup>299</sup>**

The letter also requested Canada to specify what measures it had taken “to ensure Hudbay [...] implements its responsibilities under international human rights laws” and to “provide information on the measures taken by [the Government] to address allegations in this case within the framework of Canada’s [CSR] Policy as well as [...] the] ‘Voices at Risk’ [Guidelines].”<sup>300</sup> The communication “express[ed] serious concerns” over the allegations of Hudbay’s involvement in Moore and Dougherty’s detention.<sup>301</sup>

For its part, Hudbay responded to the OHCHR’s communication, strongly denying involvement in Moore’s detention.<sup>302</sup> The Canadian government’s response stated that, although Canada expects companies “to meet or exceed international standards for responsible business conduct,” since the events took place within Peru, “Canadian laws do not apply”.<sup>303</sup> Also, the response attested that Canadian officials were “not aware of any evidence that Hudbay Minerals was involved in the actions of Peruvian authorities in detaining and questioning Ms. Moore”.<sup>304</sup>

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Group on Arbitrary Detention, the IACHR Special Rapporteur for Freedom of Expression, the IACHR Rapporteur on Human Rights Defenders and the IACHR Rapporteur for Peru.

299 ATIP Request A201702278, *supra* at 29.

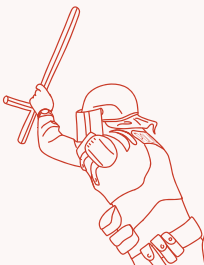
300 *Ibid.*

301 *Ibid.*

302 *Ibid* at 33.

303 *Ibid* at 22-23.

304 *Ibid* at 23.



## II. ANALYSIS

International human rights bodies jointly contacted Canadian authorities to express concern for Moore’s safety and to request information about Hudbay’s potential involvement in her surveillance and detention. However, Canadian authorities failed to comply with Guideline 3.6 and cooperate with and support these bodies in their quest to determine the nature of Hudbay’s involvement in the situation, and to promote and protect the human rights of Moore and other HRDs who may encounter similar forms of criminalization.

Canadian officials took three months to respond to the OHCHR’s communication.<sup>305</sup> When they did respond, the response was vague, defensive, and lacked any commitments or information that would have been of assistance (see full response in Appendix 6). It failed to provide meaningful answers to the questions asked. For example, in response to a request for further information or comments about the allegations against Hudbay, Canada referred generally to its expectations of companies under the CSR Strategy, without outlining any specific steps taken towards Hudbay.<sup>306</sup> Similarly, Canada avoided the question of how it had implemented the *Voices at Risk* policy to support Moore and only said “the Embassy of Canada is actively engaged in public advocacy and programming to promote human rights and gender equality in Peru. The Embassy is in regular contact with human rights organizations in Peru, and is open to receiving any information from organizations or individuals regarding any aspect of the human rights situation in that country”.<sup>307</sup>

Moreover, one particular statement in Canada’s response to the OHCHR appears to be misleading and false. In one of the only portions of the response that offered specifics, Canada stated that it was “not aware of any evidence that Hudbay Minerals was involved in the actions of Peruvian authorities in detaining and questioning Ms. Moore”.<sup>308</sup> This statement is misleading and indeed false for two reasons.

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305 The delay was likely due in part to GAC’s failure to properly document, understand, and analyze the case internally. See, for example, Luke Sookocheff’s Note to File documented in *ibid* at 73. See also emails between Canadian government officials included in ATIP Request A201702278, *supra* at 2-4, 6, 15. See examples of emails between Canadian government officials included in ATIP Request P201901716, *supra* at 57, 102-104.

306 Government of Canada, Department of Foreign Affairs, Trade and Development, *Access to Information Request A20180882* at 16, online: <[dropbox.com/s/l1ag2y1u6a2d2wi/ATIP%20Request%20-%20A20180882.pdf?dl=0](https://dropbox.com/s/l1ag2y1u6a2d2wi/ATIP%20Request%20-%20A20180882.pdf?dl=0)> [perma.cc/NW8Q-FT49] [ATIP Request A20180882].

307 *Ibid* at 16.

308 ATIP Request A201702278, *supra* at 23.



First, Canadian officials had failed to undertake any of the due diligence required by Canada's own policies before issuing this statement effectively vouching for Hudbay. For example, Canada's CSR Strategy states that companies "must operate responsibly in a conscious and consistent way to mitigate [...] social risks, including those related to human rights" and that companies are "to respect human rights and all applicable laws, and to meet or exceed widely-recognized international standards for responsible business conduct".<sup>309</sup> The 2016 and 2019 *Voices at Risk* Guidelines both state that "depending on the facts of a case, there may be an impact on the support that the mission offers to the Canadian company in question, including denying or withdrawing trade advocacy support".<sup>310</sup> Although Canada promotes these policies, in our review of all available government communications at the time, there was no investigation whatsoever into whether Hudbay acted in accordance with these expectations and standards in relation to Jennifer Moore. In fact, Hudbay initiated a meeting between the Canadian Minister of International Trade that incidentally took place just over a month before Canada sent its response to the UN. There is no indication in the unredacted portions of the Minister's briefing notes that the criminalization of Moore was even part of the meeting agenda. In other words, there is no evidence that Canadian officials had done any due diligence on the basis of which they could responsibly convey to the OHCHR that they were "not aware of any evidence that Hudbay Minerals was involved in the actions of the Peruvian authorities in detaining and questioning Ms. Moore."<sup>311</sup>

Second, Canada's statement to this group of international bodies was also false because, contrary to the statement made, the records reveal that Canadian officials did *in fact* have information that should have raised concerns about Hudbay's potential involvement in Moore's criminalization:

- **The day after Moore's detention, Canadian government officials became aware of allegations that the police were harassing attendees and organizers of the film screenings, that there was a connection between the harassment and Hudbay,<sup>312</sup> and that Moore believed that she was being persecuted because of Hudbay's contract with the police.<sup>313</sup> They became aware of this information through a phone conversation between Moore and an Embassy official on April**

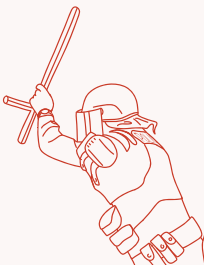
309 GAC, *Business the Canadian Way*, *supra* at 3.

310 *Voices at Risk* 2016, *supra* at 21. See also *Voices at Risk* 2019, *supra* at 11 [emphasis added].

311 *Ibid* at 23.

312 ATIP Request P201901716, *supra* at 8.

313 *Ibid* at 12.



22, 2017 in which she “expressed fear for her safety [and] felt she was being persecuted for speaking out and telling the truth and that the company (Hudbay) pays the police”.<sup>314</sup> In addition, officials were aware of a Facebook post published by CooperAcción, which discussed the arrests and harassment in connection with the film about Hudbay, stating that Dougherty and Moore had “just been arrested by security of the state at the end of film-Forum” and that, after the event, “outside the premises were two vehicles-one officer and one non-Official with about 15 police surrounding the panelists of cinema-Forum”.<sup>315</sup>

- Moore’s letter to government officials, including Canadian Ambassador Kutz, sent in June 2017 and again in September 2017, alerted Canadian officials that “community leaders [...] reported being questioned by police and company representatives about the film screenings”.<sup>316</sup> The letter also alerted them that “on April 20, police [...] went to the place where [Moore was] staying to request [her] personal information from hotel staff”.<sup>317</sup>
- The letter sent by Moore and signed by 22 civil society organizations to Minister Freeland on December 14, 2017 outlined concern over the criminalization of Moore’s freedom of expression and provided information on Hudbay’s potential involvement. This information included the fact that “Hudbay personnel were reported to have questioned local community leaders about the film screenings during the days before the detention”.<sup>318</sup>
- The communications cited above repeatedly informed Canadian officials of the contract in place between Hudbay and the PNP, which should have raised reasonable questions and concerns about whether

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314 *Ibid.*

315 ATIP Request P201901716, *supra* at 8.

316 ATIP Request A201702278, *supra* at 7.

317 *Ibid.*

318 Moore, “Letter to Freeland”, *supra* at 3.



or not the PNP officers involved in Moore’s detention were operating pursuant to said contract. Indeed, a Peruvian court later found that the officers involved exhibited bias against Moore due in part to the contract.

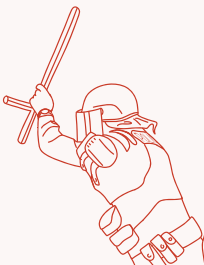
- A Hudbay representative had sent an email to Duane McMullen, Director General of Trade Operations and Trade Strategy in GAC, that expressed agreement with the Peruvian government’s rationale for criminalizing Moore.<sup>319</sup> Hudbay told McMullen that the company was “sympathetic” to the concerns of the Peruvian government that led to Moore’s detention, namely that “ideological opponents of mining” and “foreign activists” often spread “mischaracterizations”, “untruths”, and are “not helpful” and sometimes stir up “social unrest” and “set the stage for violent confrontations”.<sup>320</sup>

The records show that Canadian officials withheld the information listed above from the OHCHR, effectively protecting the company. As such, Canada’s statement to the OHCHR that it was “not aware of any evidence that Hudbay” was involved in Moore’s detention and questioning was both misleading and false. Canada had failed to do its due diligence to investigate the matter, and it withheld the information it did have. The *Voices at Risk* Guidelines state that the Canadian embassy *should* cooperate with and support international bodies and recognizes that “the Special Rapporteur on the situation of human rights defenders is mandated to [...] gather information on the situation of human rights defenders”. By protecting Hudbay and withholding the information referred to here, Canada not only failed to cooperate with the Special Rapporteur, it also undermined the Rapporteur’s ability to fulfill its mandate and take steps to protect a Canadian HRD.

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319 ATIP Request A201702278, *supra* at 76.

320 *Ibid.*



## **E. CANADA FAILED TO PROPERLY TRACK THE CONSTITUTIONAL CASE OF A CANADIAN HRD OR TO ATTEND THE HEARINGS**

Both the 2016 and 2019 versions of these Guidelines state that “attendance by Canadian officials at trials or hearings involving human rights defenders—a clear and visible expression of Canada’s concern—can be helpful by allowing for detailed tracking of legal proceedings [...] ensuring up-to-date information on cases of particular interest”.<sup>321</sup> The Guidelines also indicate that Canada’s presence at proceedings “often presents networking opportunities with human rights organizations, other diplomats, and local authorities”<sup>322</sup> and that visiting detained HRDs can “be a helpful means of showing support”.<sup>323</sup>

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321 *Voices at Risk* 2016, *supra* at 8. See also *Voices at Risk* 2019, *supra* at 16.

322 *Ibid.*

323 *Voices at Risk* 2016, *supra* at 10. See also *Voices at Risk* 2019, *supra* at 17.





# I. SUMMARY OF RELEVANT EVENTS

As previously mentioned in Part 6(b), in May 2017 MiningWatch published a press release advising of Moore’s *habeas corpus* lawsuit in Peru to challenge the constitutionality of her treatment,<sup>324</sup> and GAC officials shared this information internally.<sup>325</sup> Then, in November 2017, Moore’s case was heard by a Peruvian Court of first instance<sup>326</sup> and Canadian officials once again circulated the notice of the hearing internally.<sup>327</sup>

As described in Section 5 of this report, in August 2019 the court found multiple violations of Moore’s constitutional and procedural rights and in February 2020, a court of appeal issued a second decision in Moore’s favour. The final set of relevant government records reviewed by the authors were received in November 2020 (see Appendix 1). In the documents reviewed, Canadian officials did not internally track or comment on these proceedings in any way and they made no public comment.

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324 MiningWatch, “Peru Arbitrary Detention”, *supra*.

325 ATIP Request A201702278, *supra* at 10.

326 *Molleda* 2019, *supra*. See also Juan Carlos Ruiz, Martiza Quispe & Álvaro Másquez, “A propósito del caso Moore: en Perú continúa la criminalización de defensores de derechos humanos” (24 November 2017), online: *La Mula* <juancruizm.lamula.pe/2017/11/24/a-proposito-del-caso-moore-en-peru-continua-la-criminalizacion-de-defensores-de-derechos-humanos/juancruizm/> [perma.cc/AX9R-35Z6].

327 Evidence of officials circulating the article can be found in ATIP Request P201901716, *supra* at 64.

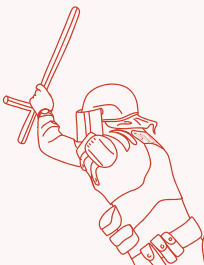


## II. ANALYSIS

Canadian officials had early and repeated notice that Moore had filed a human rights claim in Peruvian court. However, they showed no interest in taking any action at all. They did not even consider: tracking the proceedings; attending the hearings; showing “a clear and visible expression of Canada’s concern” for the outcome of the case; or networking with supportive human rights organizations, as recommended by Canada’s own Guidelines.



# 6. RECOMMENDATIONS



# INTRODUCTION

This report has documented major failures on the part of Canadian officials to comply with the letter and spirit of Canada's HRD Guidelines and take meaningful steps to support Jennifer Moore when she endured criminalization and human rights violations at the hands of Peruvian authorities as a direct result of her work in support of Quechua Campesino Communities impacted by Hudbay's Constancia Mine in Peru. Beyond simple neglect, the records show that Canadian public servants held political bias against Moore; actively refused to recognize her as an HRD facing persecution, in spite of clear evidence and widespread expressions of support for her work; and made statements to UN bodies that were misleading and false with respect to what they knew about Hudbay's potential involvement and complicity.



In light of these findings, and bearing in mind Canada's obligations in international law (see Section 1), it is clear that fundamental reforms are required to Canada's policy approach to HRDs abroad. In theory, the Canadian Ombudsperson for Responsible Enterprise (CORE) *could* play a role in supporting practical, as well as more fundamental, reforms. It has a mandate to provide advice to Ministers and may make recommendations for Ministerial review of responsible business conduct and due diligence policies. This includes policies related to funding and services provided to Canadian companies by the Government of Canada.<sup>328</sup> However, for years, civil society, experts, members of parliament, and international human rights bodies have expressed concerns about CORE's lack of independence from Global Affairs Canada, among other serious problems.<sup>329</sup>

This is because CORE is a public servant and her employment security is at the discretion of the Minister of International Trade, whose very policies she might review.<sup>330</sup> As such, there are legitimate doubts about the institutional capacity of CORE to rigorously and transparently evaluate the conduct of public officials, and the efficacy of policies, within Global Affairs.

Added to this, civil society groups more recently pointed to specific actions that, in their view, call into question CORE's commitment to transparency and meaningful engagement with civil society.<sup>331</sup> As a result, many groups have decided to withdraw from any further engagement with CORE. This breakdown in CORE's relationship with a significant number of civil society groups, in combination with a lack of independence and other significant limitations, suggest that CORE's capacity to effectively pursue policy changes may be seriously hampered in practice. As a result, we have chosen not to include CORE in our recommendations at this time.

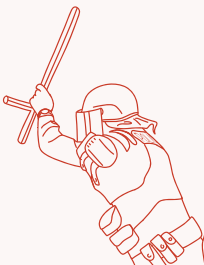
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328 See articles 4(f) and 12 of the *Order in Council* establishing the powers of the CORE: Government of Canada, Canadian Ombudsperson for Responsible Enterprise, PC 2019-1323, September 6, 2019, online: Government of Canada <orders-in-council.canada.ca/attachment.php?attach=38652&lang=en> [perma.cc/3ABA-VMTR].

329 See, for example, House of Commons, *Mandate of the Canadian Ombudsperson for Responsible Enterprise: Report of the Standing Committee on Foreign Affairs and International Development and Subcommittee on International Human Rights* (June 2021) (Committee Chair, Sven Spengemann) (Subcommittee Chair, Peter Fonseca), online: <ourcommons.ca/DocumentViewer/en/43-2/FAAE/report-8>; Mike Blanchfield "UN official criticizes Canadian delays setting up corporate ethics watchdog", *CBC News* (April 20, 2019), online: <cbc.ca/news/politics/un-watchdog-carr-corporate-ethics-1.5116399. Some other serious limitations with the CORE's current mandate in the context of investigations are: its lack of power to compel the disclosure of evidence, its lack of power to make binding recommendations, and its lack of power to enforce remedies for victims.

330 *Ibid* at 2.

331 Canadian Network on Corporate Accountability, "CNCA's response to the CORE's request for quarterly meetings" (February 2021), online: CNCA <cncaccrce.ca/2022/02/10/cncas-response-to-the-cores-request-for-quarterly-meetings/>.



# RECOMMENDATIONS

## DIRECTLY RELATED TO THE CRIMINALIZATION OF MOORE

These recommendations align with statements of the UN Special Rapporteur on Human Rights Defenders in 2017 that strongly encourage Canada to use all avenues possible to advocate for independent, impartial, and transparent investigations where attacks against HRDs occur, and provide financial and technical support to such an investigation.<sup>332</sup>

### RECOMMENDATION 1

Canada's federal Parliamentary Subcommittee on International Human Rights should conduct a comprehensive review of the failures of Canadian officials to uphold the *Voices at Risk* Guidelines in the case of Jennifer Moore. This review should access all records, including those portions that are currently redacted. The terms of the review should be developed in consultation with Moore and the results should be published in a timely way. This case-specific review should be part of a larger evaluation of the efficacy of the Guidelines by the Sub-Committee, in consultation with groups who have direct experience supporting HRDs and the defenders with whom they partner.<sup>333</sup>

### RECOMMENDATION 2

Canada's Ambassador to Peru should take immediate steps to uphold the *Voices at Risk* Guidelines with respect to Moore's case. This includes publicly expressing support for Moore's work in Peru, and the work of all filmmakers, journalists, academics and HRDs who support mine-affected communities, including those affected by Hudbay's Constanca Mine. This further includes calling on Peruvian authorities to abide by court orders, investigate the actions of the public officials involved in violations of Moore's constitutional rights, and remove the stigmatizing and defamatory statement about John Dougherty and Jennifer Moore from the Ministry of the Interior's website.

332 Forst, *supra* at para 51.

333 The federal Commissioner for the Environment and Sustainable Development may also have the jurisdiction to review Canada's performance pursuant to the *Voices at Risk* Guidelines.

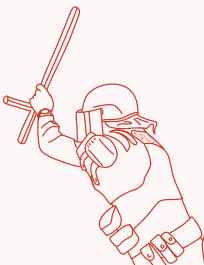




# RECOMMENDATION

## DIRECTLY RELATED TO CANADA'S INFLUENCE OVER HUDBAY'S CONSTANCIA PROJECT

In the second section of this report, we detail serious ongoing concerns regarding Hubday's exploitation and expansion as part of the Constanca project. This includes ongoing social, environmental, economic, and health impacts. There is evidence that the company has failed to respect its agreements with affected groups, and that it has insisted on signing agreements with original Quechua communities that are grossly unfair and inequitable. Chronic social conflict has resulted, as well as frequent, legitimate protests for which community members have been subject to excessive police presence, violent repression, and, at times, criminalization, including cases of prolonged legal persecution. There is also a court finding that Hubday's security agreement with Peruvian police contributes to police bias in favour of the company's interests, and to the detriment of defenders and affected communities.



# RECOMMENDATION 3

We urge Canadian officials to

- **Strictly adhere to applicable laws and international human rights treaties and policies to help address these issues within the scope of Canada’s sphere of influence and regulatory power;**
- **Urge Hudbay and Peruvian officials to comply with the Constitutional Court’s decision (Exp. No. 00009-2019-AI/TC) and with public international law standards regarding Hudbay’s security arrangements with private and state security forces, including abstaining from using company-hired police to respond to protests;**
- **Fully respect the self-determination of affected communities and use all available channels to ensure that Hudbay’s agreements with communities meet the criteria for rights-focused equitable agreements set out by former UN Special Rapporteur James Anaya in 2013;**
- **Use all available channels to pressure Hudbay to respect agreements signed with communities, and to ensure that these agreements do not constrain the collective rights of Indigenous communities; and**
- **Recognize the communities affected by Hudbay’s Constancia mine as land and environment defenders, and urge all public and private actors involved to respect and protect the rights of these defenders to free expression, to social protest and to live in a healthy environment, including to prohibit gag orders in signed agreements and to end the legal persecution and criminalization of community members who have participated in protests.**

Conflicts such as those occurring at Hudbay’s Constancia mine occur, in part, because communities lack access to effective mechanisms to protect their rights and hold companies accountable. The Canadian government should ensure effective means in Canada for communities to seek meaningful accountability for the harms they have suffered due to the acts and omissions of companies domiciled or obtaining funding in Canada. In developing any interventions in support of local human rights defenders, Canadian officials should consult closely with affected communities and the social organizations that communities trust.

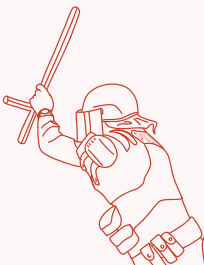


# REFORMS TO CANADA'S FRAMEWORK ON HRDs ABROAD

The Guidelines are a step in the journey toward full recognition and implementation of Canada's duty in international law to respect and protect human rights and HRDs, wherever it has jurisdiction and influence. However, this report has revealed that the Guidelines in their current form have not ensured that Canadian officials achieve the stated objective of effectively supporting HRDs. Global Affairs Canada should identify and implement reforms to Canada's framework on HRDs informed by the weaknesses and deficiencies revealed in this report and related research. In particular, case studies based on the records obtained through access to information requests should be given significant weight, as they provide a more fulsome account of the actions, omission, and attitudes of Canadian officials in these contexts.

This case study has illustrated a number of basic rule of law issues with Canada's Guidelines, including the lack of reporting and transparency in their implementation, the lack of clarity regarding the nature of Canada's normative obligations described in the Guidelines, and the lack of independent oversight to ensure accountability for their implementation. Despite this, we have specifically chosen not to include recommendations with respect to Canada's policy approach to economic diplomacy and HRDs abroad.

We believe that such recommendations must only be developed after a fulsome process of civil society engagement. This should include HRDs, Indigenous peoples, communities, and groups who are directly impacted by the impacts of industrial resource extraction abroad, which enjoys the support of the Canadian government and diplomatic missions. This follows the principle that policy reforms should be informed by empirical research like that undertaken in this report, as well as by the lived experience and perspectives of those who are directly impacted by the policies under discussion.



In addition to considering some of the narrow rule of law issues we outline above, such a dialogue should also involve more ambitious and visionary interrogations of the appropriate relationship between the Canadian state and the Canadian private sector in the overseas context. This includes the question of whether or not it is appropriate *at all* for Canada to provide diplomatic support to Canadian companies in sectors like resource extraction. This question arises due to the systematic way in which these activities violate rights, the enormous power disparities between companies and affected communities, and the ways in which domestic corporate law and international economic law currently constitute, enable, and protect the transnational corporation from accountability. We firmly believe this is an important line of inquiry and we hope that this report will feed into its development.

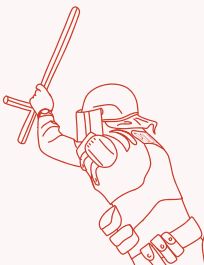
Policy reforms to Canada's approach to economic diplomacy and HRDs should be undertaken with careful attention to the importance of institutional culture. The findings in the present report are consistent with observations made in a number of similar case studies that suggest that there is a culture of bias at Global Affairs Canada against HRDs who are critical of Canadian extractive companies.<sup>334</sup> In Section 5 of this report, we found that, taken as a whole, the acts and omissions of Canadian officials reflected political bias against Moore due to her criticism, as MiningWatch Latin America Program Coordinator, of Hudbay and her work more generally in support of mine-affected communities in Latin America. Thus, while we strongly believe that policy and governance reforms are necessary to ensure Canada's adherence to its international obligations, we are also certain that broader cultural changes within Global Affairs are essential prerequisites to the success of any new policy approach adopted in the area of business and human rights. In our view, policy and governance changes should be pursued in combination with a fulsome strategy of human rights informed cultural change at GAC.

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334 MiningWatch, News Release, "Canadian Ambassador Sued for Defaming Documentary Film Maker Steven Schnoor" (29 April 2010), online: *MiningWatch Canada* <miningwatch.ca/news/2010/4/29/canadian-ambassador-sued-defaming-documentary-film-maker-steven-schnoor> [perma.cc/2KN6-CP93]; Moore & Colgrove, *supra*; Moore, "Unearthing Canadian Complicity", *supra*; Connolly, Moore, & Weisbart, *supra*. See also "Backgrounder: A Dozen Examples of Canadian Mining Diplomacy" (8 October 2013), online (blog): *MiningWatch Canada* <miningwatch.ca/blog/2013/10/8/backgrounder-dozen-examples-canadian-mining-diplomacy> [perma.cc/K7LA-5T8B]; Charlotte Connolly & Charis Kamphuis, "Two Faces of Canadian Diplomacy: Undermining International Institutions to Support Canadian Mining" (January 2022), online (pdf): *Justice and Corporate Accountability Project* <papers.ssrn.com/sol3/papers.cfm?abstract\_id=4025474>.



# 7. CONCLUSION



This report's findings and recommendations will be of practical value to HRDs, civil society organizations, public servants, and law and policy makers in Canada and to international bodies. It is the first of its kind, in that it is rooted in an empirical study of the responses of Canadian officials in a situation of crisis for a Canadian HRD after the *Voices at Risk* Guidelines were put into place.<sup>335</sup> It is also the first study to undertake a rigorous fact-based normative analysis of how Canada failed to comply with the Guidelines in a specific context. It is for this reason that the findings and recommendations provided here are invaluable and should inform ongoing discussions of law and policy reforms with respect to Canada's approach to corporate responsibility, economic diplomacy, and human rights.

International bodies and civil society organizations universally and routinely recognize that HRDs are critical actors in the struggle to build more sustainable and just societies globally. It is for this reason that the UN Special Rapporteur on HRDs has recognized that the protection of HRDs contributes to the global protection of the environment and sustainable development.<sup>336</sup> The UN Working Group on Business and Human Rights has also echoed the widespread observation that HRDs are often at the greatest risk in the context of transnational corporate resource extraction projects.<sup>337</sup>

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335 Previous studies in this area have analyzed events that pre-date Canada's *Voices at Risk* Guidelines: Moore, "Unearthing Canadian Complicity", *supra*; Moore & Colgrove, *supra*; Connelly *et al*, *supra*; Weisbart, *supra*.

336 Forst, *supra* at paras 2, 4.

337 *Guiding Principles on Business and Human Rights Report*, *supra* at paras 22-24.





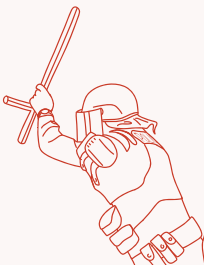
While this report delves into a local human and environmental rights issue, this case study of Hudbay’s Constancia Mine and the criminalization of HRDs is but one example of many. Thus, it provides a window into a truly global issue. The effects of innumerable industrial-scale extractive projects accumulate over time to generate serious global impacts.<sup>338</sup> Parallel to this, recent studies by UN Special Rapporteurs have raised alerts over “a global crisis” of attacks against environmental and human rights defenders, highlighting that many of these defenders are members of Indigenous communities.<sup>339</sup> This report connects these issues back to Canada in light of its significant economic and political support for Canadian extractive industries operating abroad. Where a Canadian company is operating abroad, Canada’s international responsibilities are engaged and, at a minimum, Canadian officials must abide by their international obligations and follow their own human rights policies when HRDs come under threat due to their criticism of these operations.

Section 2 of this report makes it clear that since its inception, Hudbay’s Constancia mine was a site of alleged harm, upheaval, and conflict for local original Quechua communities. When Peru decided to scapegoat Moore in 2017 and blame “foreign activists” for the conflicts, Hudbay told Canada that it agreed, and local leaders alleged that the company was involved. In spite of this, and in the face of sustained international pressure, Canadian officials stood by, did nothing, and protected the company. International bodies, civil society organizations and the Canadian public must demand that Canada does better. We hope this report contributes to these calls for better Canadian laws, policies, and practices in the area of business and human rights, and for progressive developments in the law of extra-territorial responsibility and HRDs.

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338 Hund et al, *supra*.

339 Anaya, *supra* at para 40.



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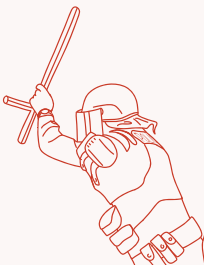
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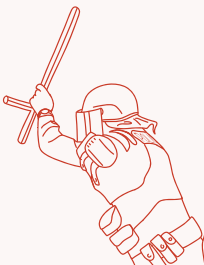
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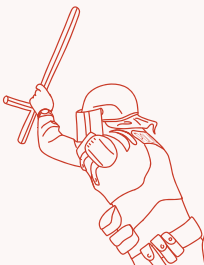
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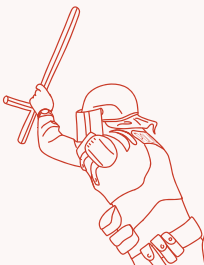
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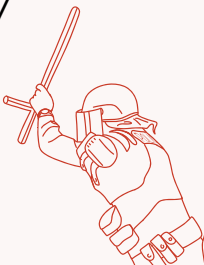


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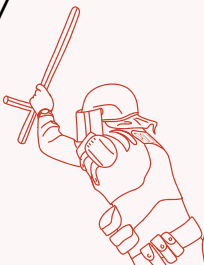
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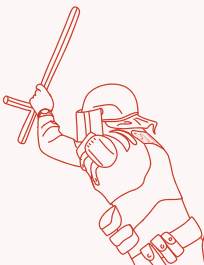
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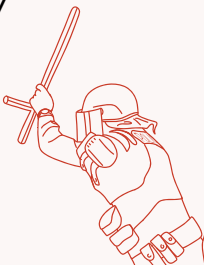
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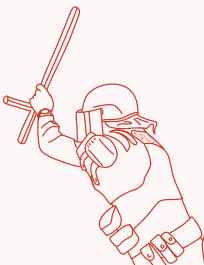
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# 9. APPENDICES



# APPENDIX 1:

## ACCESS TO INFORMATION REQUESTS & DATES

This Appendix reproduces requests made by Ken Rubin to Global Affairs Canada between 2017 and 2020 for records that are cited in this report.

### 1. The first request, made on December 18, 2107, asked for

Briefing notes, reports, memos, notes of meetings, media lines concerning problems at, concerns with, and support for Hudbay Minerals' Constancia project in Chumbivilcas, Cusco, Peru; including Lima, Peru embassy and Ottawa headquarter records; and including concerns about the Peruvian national police security contracts with Hudbay's Peruvian subsidiary, and Peruvian authorities monitoring of civil society groups activities connected to Hudbay.<sup>340</sup>

Also requested were records of “the Lima, Peru embassy and Ottawa headquarter” from April 17, 2017 to April 25, 2017, concerning the following:

- Briefing notes, reports, memos, notes of meetings, media lines and concerns with the screening Dougherty's documentary film 'Flin Flon Flim Flam' (in Quechua and Spanish) in Peru in April, 2017;
- The police surveillance of Dougherty, Moore and others with critical observations about Hudbay and Hudbay Minerals' Constancia project in Chumbivilcas, Cusco, Peru between April 14-22, 2017;
- The public incrimination of Dougherty and Moore on the Peruvian Ministry of Interior website on April 22, 2017;
- Moore and Dougherty's subsequent departure from Peru on April 23, 2017;
- Moore and Dougherty's subsequent prohibition from entry to Peru for an indefinite period under a migratory alert issues on April 23, 2017.
- Include representations made and exchanges with Hudbay Minerals and Peruvian authorities on these matters from March 2017 and until the date of the December 18, 2017 request.<sup>341</sup>

The response release of records was sent in two parts nearly one year later, on November 28, 2018<sup>342</sup> and nearly two years later, on November 27, 2019.<sup>343</sup>

340 Ken Rubin, “ATIP request to Picard (2017 12 18)” (jpg) [Rubin, “ATIP request 2018”].

341 Rubin, “ATIP request 2018”.

342 ATIP Request A201702278.

343 ATIP Request P201901718.



## 2. The second ATIP request asked for

Global Affairs 2017, 2018 (up to June 3, 2018) records, including data bases maintained on attacks, violations and abuses human rights defenders abroad have experiences. Provide 2017, 2018 headquarters reports/memos drafted or produced of missions, specific support efforts for human rights defenders in the countries they operate in. Provide 2017, 2018 headquarters reports/memos drafted or produced of missions specific problems with Canadian corporations in the countries they operate that contribute to attacks, violations and abuses civil society and human rights defenders experience. Include branches dealing with human rights, business corporate responsibilities and directives that missions must abide by UN and Canadian guidelines supporting human rights defenders.<sup>344</sup>

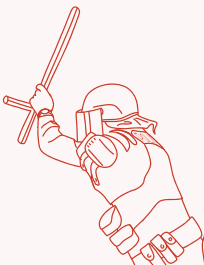
The responsive release<sup>345</sup> was received on October 29, 2019.<sup>346</sup>

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344 “ATIP request emails (2019 11 08 – 2020 01 08)” at 5 (pdf).

345 ATIP Request A20180882.

346 ATIP Request A20180882.



### 3. The third request, filed on November 5, 2019, asked for

From April 2017 to present, records of the Canadian embassy in Lima, Peru including Ambassador Gwyneth Kutz, regarding the police surveillance and detention of {John Dougherty and Jennifer Moore}, then Latin America Program Coordinator for MiningWatch Canada and other between April 14-22, 2017. Please provide from December 1, 2017 to present, records of the Canadian embassy in Lima, Peru and Ottawa headquarters, including reports, briefing notes, meeting notes and communication (e-mail messages and other correspondence) concerning the April, 2017 screening of a documentary film 'Flin Flon Flim Flam' in Peru; the police surveillance and detention of {John Dougherty and Jennifer Moore}, then Latin America Program Coordinator for MiningWatch Canada and others between April 14-22, 2017; and their subsequent prohibition from entry to Peru for an indefinite period under a migratory alert issued on April 23, 2017.

Please include any representations made and exchanges with Hudbay Minerals and Peruvian authorities, such as the Minister of Interior and the Superintendent of Immigration, in this regard. Please provide from April 2017 to present, records of the Canadian embassy in Lima, Peru and Ottawa headquarters concerning communications with Amnesty international regarding the police surveillance and detention of {John Dougherty and Jennifer Moore}, then Latin America Program Coordinator for MiningWatch Canada and others between April 14-22, 2017.<sup>347</sup>

The release of documents in response was received over a year later, on November 10, 2020.<sup>348</sup>

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347 "Moore ATIP request – response letter (2020 11 10)" (pdf).

348 ATIP Request P201901716.



# APPENDIX 2:

## NAMES & POSITIONS OF OFFICIALS IN ACCESS TO INFORMATION RECORDS<sup>349</sup>

### 1. GOVERNMENT OF CANADA

#### a. Peru – Embassy

Abeo, Charo.	LIMA, Consular Officer
Berhusen, Paula.	LIMA-GR, Undetermined
Chirica, Valentin.	LIMA-IM, Counsellor
Des Marais, Anik.	Development Section, Deputy Director
Finall, Sarah.	LIMA-IM, Analyst
Kutz, Gwyneth.	HOM, Ambassador
Mahfouz, Mazen.	Commercial Section, Senior Trade Commissioner
Pypops, Nicolas.	LIMA-SP, Deputy Director
Ritchie, Brooke.	Consular Section, Second Secretary Consular
Smyl, Dale.	Consular Section, First Secretary Consular
Sookocheff, Luke.	Political Section, First Secretary (Political & Economic Affairs)
Vanderloo, Caroline.	LIMA-TD, Trade Commissioner
Veliz, Kristel.	Public Relations, Political and Public Relations Officer
Verano, Rosario.	LIMA-AG, Undetermined

<sup>349</sup> Note that each officials' position is listed according to their status at the time they appear in the records.



## **b. Global Affairs – South America Office**

Azarian, Christin.	South America Relations (NLA), Senior Desk Officer Peru (Political and Trade Relations)
Guay, Karolina.	South America Relations (NLA), Political Counselor – Guatemala
Ramirez, Claudio.	South America Relations (NLA), Counselor (Commercial) and Senior Trade Commissioner
Sunderland, Sean.	South America Relations (NLA), Senior Policy Analyst

## **c. Global Affairs – Business and Trade**

Babcoc, John.	Foreign Affairs and International Trade Canada, Spokesperson
Caveda, Felix.	Trade Commissioner Service Operations and Trade Strategy (BTA), Trade Commissioner
Diehl, Tracy.	Responsible Business Practices (BTA, Trade Commissioner
Galloway, Georgina.	Responsible Business Practices (BTA), Deputy Director
McMullen, Duane.	Trade Commissioner Service Operations and Trade Strategy (BTA), Director General
Nguyen, Minh Tien.	Responsible Business Practices (BTA), Trade Commissioner
Noftle, Francine.	Director of Business and Trade
Regimbald, Emilie.	Responsible Business Practices (BTA), Policy Advisor

## **d. Global Affairs – Human Rights and Indigenous Policy**

Gouvea, Andriana.	Human Rights and Indigenous Policy (IOR), Senior Policy Analyst
Tinkler, Shawn.	Human Rights and Indigenous Policy (IOR), Senior Policy Analyst



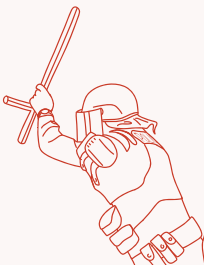


**e. Geneva – Permanent Mission to UN and WTO**

Anderson, Lorraine. Legal Affairs, First Secretary  
Joltopuf, Iolanda. Human Rights Section, Program Assistant  
McCarney, Rosemary. HOM, Ambassador and Permanent Representative

**f. Ottawa Global Affairs – Other**

Cesaratto, Sylvia. South America Bilateral Relations, Director  
Cornelissen, Sean. Corporate Social Responsibility, Extractive Sector (VCSR),  
Policy Analyst/Senior Policy Analyst  
Dumont, Jacinthe. Strategic Consular Case Support (JNOS), Senior Correspondence  
and Briefing Officer  
Fetz, Thomas. United Nations, Human Rights and International Law (JLH),  
Deputy Director  
Freeland, Chrystia. Honorable Minister of Foreign Affairs  
Frenette, Andre. South America and Inter-American Affairs, Director General  
Ivkoff, Catherine. United Nations, Human Rights and International Law (JLH),  
Deputy Director  
Jean, Austin. Media Monitoring (LCBE), Deputy Director  
Kagner, Kirill. Strategic Consular Case Support (JNOS), Deputy Director  
McKeen, Jennifer. United Nations, Human Rights and International Law (JLH),  
Legal Officer  
O'Neill, Patrick. United Nations, Human Rights and International Law (JLH),  
Foreign Service Officer  
Revil, Emilie. Natural Resources and Governance (MES), Deputy Director



## 2. HUSBAY MINERALS INC.

Clarry, David. Vice President, Corporate Social Responsibility  
Hair, Alan. President and Chief Executive Officer

## 3. UNITED NATIONS

Balbin, Beatriz. Special Procedures, OHCHR, Chief Special Procedures Branch  
Deva, Surya. OHCHR, Chair Rapporteur of Working Group on the issue of human rights and transnational corporations and other business enterprises  
Kaye, David. OHCHR, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

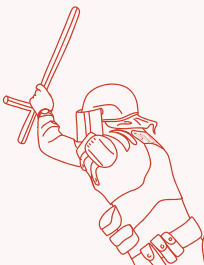
## 4. UNITED STATES OF AMERICA OFFICIALS

Bosshardt, Marcia. U.S. Department of State, Foreign Service Officer, Diplomat  
Cullinane, Mark. U.S. Department of State, Deputy Chief of Mission  
Petroni, Lawrence. U.S. Embassy in Chile, Deputy Chief of Mission



# APPENDIX 3: LIST OF GLOBAL AFFAIRS CANADA ACRONYMS

1. **HOM** – Ambassador (Head of Mission)
2. **VCSR** – Corporate Social Responsibility, Extractive Sector unit
3. **FPDS** – Foreign Policy and Diplomacy Service
4. **GENEV-HR** – Geneva, Human Rights Section
5. **GAC** – Global Affairs Canada
6. **IOR** – Human Rights and Indigenous Policy Unit
7. **LIMA-TD** – Lima, Trade and Commercial Section
8. **LIMA-CS** – Lima, Consular Section
9. **LIMA-DA** – Lima, Development Section
10. **LCBE** – Media Monitoring Desk
11. **MES** – Natural Resources and Governance
12. **BTA** – Responsible Business Practices Unit
13. **JNOS** – Strategic Consular Case Support
14. **NLA** – South America Relations Desk
15. **BTS** – Trade Commissioner Service Support
16. **BTA** – Trade Commissioner Service Operations and Trade Strategy
17. **JLH** – United Nations, Human Rights and International Law



# APPENDIX 4: ATIP RECORD - NOTE TO FILE



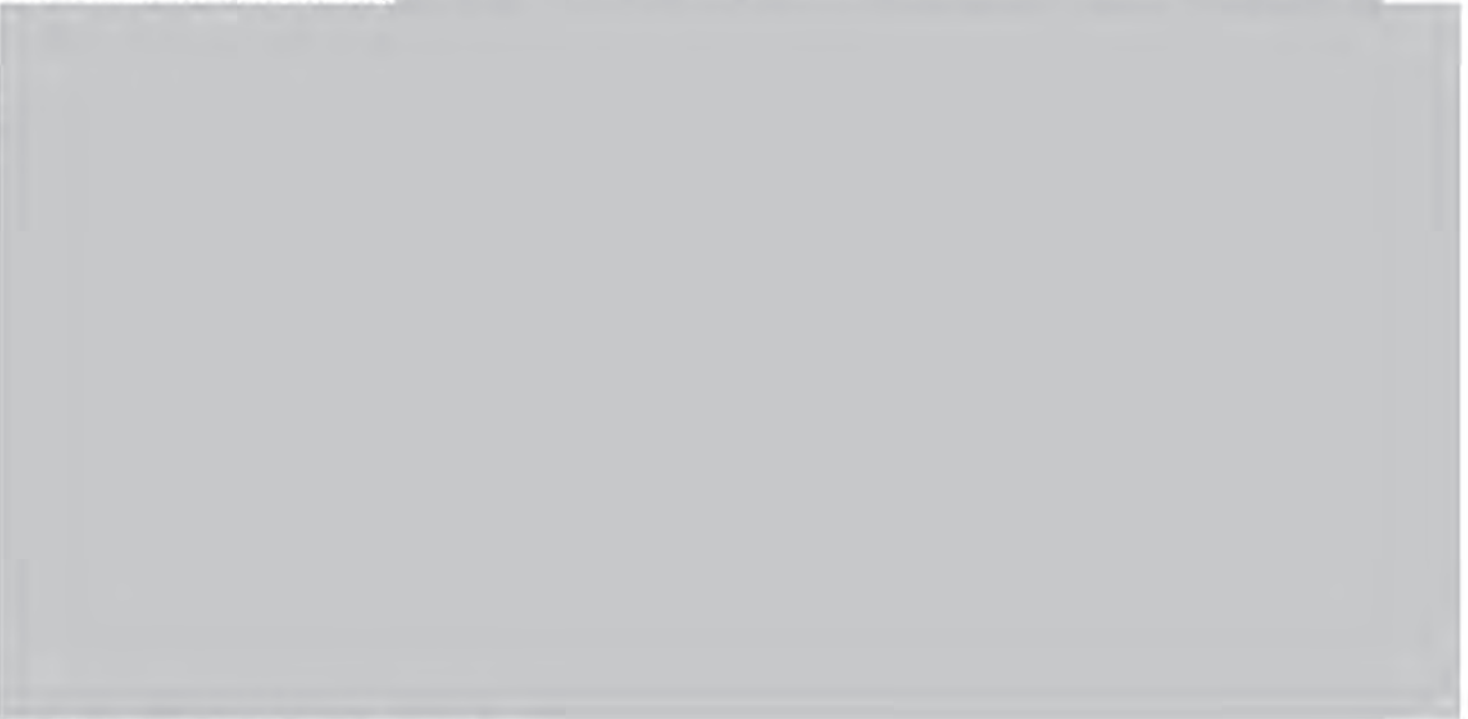
**Azarian, Christin -NLA -C5**

**From:** Sookocheff, Luke -LIMA -GR -C5  
**Sent:** April 27, 2017 2:59 PM  
**To:** Sookocheff, Luke -LIMA -GR -C5; Azarian, Christin -NLA -C5; Ramirez, Claudio -NLA -C5; Galloway, Georgina -BTA -C5; McMullen, Duane -BTD -C5; Babcock, John -LCBR -C5; Caveda, Felix -BTA -C5; Guay, Karolina -GTMLA -GR -C5  
**Cc:** IM Repository / Répertoire de GI (SIE C5); Frenette, André -NLD -C5; Cesaratto, Sylvia -NLA -C5; Regimbald, Emilie -BTA -C5; Kutz, Gwyn -LIMA -HOM/CDM -C5; Mahfouz, Mazen -LIMA -TD -C5; Vanderloo, Caroline -LIMA -TD -C5; Smyl, Dale -LIMA -AG -C5; Ritchie, Brooke -LIMA -AG -C5; Pypops, Nicolas -LIMA -SP -C5; Finall, Sarah -LIMA -IM -C5; Chirica, Valentin -LIMA -IM -C5; GTMLA (GR C5); GTMLA (HOM C5)  
**Subject:** RE: Note to file: Detention of Canadian Anti-Mining Activist in Cusco

Security/Sécurité: SECRET / SECRET

PROTECTED

UPDATE: On April 26, I met with [REDACTED] to thank him for calling us about the detention of the Canadian MiningWatch member and her need for consular assistance,



CONSULTED: TD/Mahfouz, Laverdure

-----Original Message-----

**From:** Sookocheff, Luke -LIMA -GR -C5  
**Sent:** April 24, 2017 5:03 PM  
**To:** Azarian, Christin -NLA -C5; Ramirez, Claudio -NLA -C5; Galloway, Georgina -BTA -C5; McMullen, Duane -BTD -C5; Babcock, John -LCBR -C5; Caveda, Felix -BTA -C5  
**Cc:** IM Repository / Répertoire de GI (SIE C5); Frenette, André -NLD -C5; Cesaratto, Sylvia -NLA -C5; Regimbald, Emilie -BTA -C5; Kutz, Gwyn -LIMA -HOM/CDM -C5; Mahfouz, Mazen -LIMA -TD -C5; Vanderloo, Caroline -LIMA -TD -C5; Smyl, Dale -LIMA -AG -C5; Ritchie, Brooke -LIMA -AG -C5; Pypops, Nicolas -LIMA -SP -C5; Finall, Sarah -LIMA -IM -C5; Chirica, Valentin -LIMA -IM -C5  
**Subject:** Note to file: Detention of Canadian Anti-Mining Activist in Cusco

Security/Sécurité: SECRET / SECRET



PROTECTED

Colleagues: The following is a note to file on the detention of a Canadian citizen in Cusco, provided to relevant divisions in HQ in order to avoid any confusion caused by inaccurate or incomplete press reporting on the topic.

Jennifer Moore, a Canadian citizen and Latin American Program Co-ordinator for MiningWatch, an anti-mining NGO, was detained in Cusco on the evening of April 22 along with her American colleague, John Dougherty. LIMA/GR was contacted during the arrest by Francisco Soberon, Secretary General of APRODH (Association in Favour of Human Rights), an NGO contact who was accompanying the two Mining Watch officials. LIMA/GR informed LIMA/CS, who contacted authorities and the Canadian citizen to provide consular services and advice. According to Mr. Soberon, the two had just participated in the public showing of a documentary critical of HudBay Minerals' impact on the community of Flin Flon in northern Manitoba. Some fifteen police were waiting outside. The officer in charge stated they were being questioned in relation to their migration status, as they had tourist visas but had in fact engaged in paid work while in Peru.

The two were questioned for approximately four hours and then released with a citation to return to the migration office the following Monday morning.

Ms. Moore made a public statement to the effect that the Embassy was aware of her activities. This remark is accurate to the extent that Ms. Moore informed the consular section of her travel plans and her concerns for her safety; she received consular advice in response. Due to privacy considerations, no other sections of the embassy were informed of her visit. (There is a good reason for this firewall; Canadian citizens need to know that information they share with consular officials will be treated in confidence. That said, it is unfortunate that the impression left by Ms. Moore's statement is that the Canadian embassy as a whole was aware of her activities and/or supportive of them,

On social media and in regular media, the Peruvian NGO Cooperacion and the Peruvian Congressman Marco Arana (Frente Amplio) criticized the detention as an abuse of freedom of speech. In response, Peru's Ministry of the Interior issued a press release stating the following:

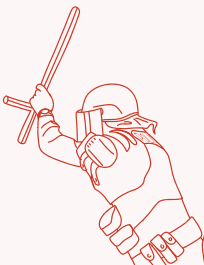
- \* - Ms. Moore and Mr. Dougherty entered Peru on tourist visas on April 15
- they "incited local populations and communities against Canadian mining activity in Peru, in particular against HudBay's Constancia mine in Cusco, though HudBay had all the required state permits to operate"
- the conduct of the two foreigners justified expulsion, on the grounds that their actions constituted "activities against public order, internal order and national security"
- the press release also recalled that there were violent protests in Cusco in August and November 2016 which resulted in road blockages and damage to public and private property, including a takeover of a mining site "which could have had tragic results."

On Sunday, Ms. Moore and Mr. Dougherty went to the Lima airport, accompanied by Congressman Arana, by a lawyer, and other supporters, and they boarded a plane for La Paz, Bolivia. If Ms. Moore returns to Peru, she may face arrest for having failed to respect the citation to return to the migration office.





# **APPENDIX 5: ATIP RECORD - EMAIL FROM HUDBAY TO DUANE MCMULLEN**



**Azarian, Christin -NLA**

---

**From:** Ramirez, Claudio -NLA  
**Sent:** April-24-17 4:27 PM  
**To:** Azarian, Christin -NLA; Laverdure, Alexandra -LIMA -TD  
**Subject:** Fw: Recent Foreign activist arrests in Peru

Sent from my BlackBerry 10 smartphone on the Rogers network.

---

**From:** McMullen, Duane -BTD <[Duane.McMullen@international.gc.ca](mailto:Duane.McMullen@international.gc.ca)>  
**Sent:** Monday, April 24, 2017 1:03 PM  
**To:** [REDACTED]  
**Cc:** Galloway, Georgina -BTA; Noftle, Francine -BTA; Mahfouz, Mazen -LIMA -TD; Cesaratto, Sylvia -NLA; Ramirez, Claudio -NLA  
**Subject:** RE: Recent Foreign activist arrests in Peru

[REDACTED]

Thank you for this message. I am sharing it with a few more people here.

Regards,

Duane McMullen  
 Director General | Directeur général  
 Trade Operations Bureau | Direction générale des opérations commerciales  
 Global Affairs Canada | Affaires mondiales Canada  
 Government of Canada | Gouvernement du Canada

[duane.mcmullen@international.gc.ca](mailto:duane.mcmullen@international.gc.ca)  
 343.203.1879

**From:** [REDACTED] [mailto:[REDACTED]@hudbayminerals.com]  
**Sent:** April-24-17 3:24 PM  
**To:** McMullen, Duane -BTD  
**Subject:** Recent Foreign activist arrests in Peru

Duane - I expect you are aware of the news reports of two foreign nationals (Canadian and American citizens) arrested in Peru on Saturday, including Jennifer Moore of Mining Watch. Subsequently, accusations by some groups have emerged that these arrests are attributable to Hudbay. This is not true.

While we were aware that these two individuals were travelling earlier last week with local activists to communities in the vicinity of our mine, and showing the film "Flin Flon Flim Flam" to small audiences in these communities, the accusation that the arrests are "about Hudbay trying to exert control over what information communities living around its Constancia mine have access to" is completely false. In fact, the two had already completed the screenings in communities local to Hudbay. Further, the movie has been widely available, in Spanish, on YouTube for some time and promoted as such.

The video, produced by one of those arrested, is a negative portrayal of Hudbay funded by one of the opponents to our proposed mine in Arizona. While we take issue with the way the film characterizes Hudbay and the

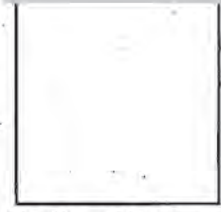
numerous inaccuracies in it, we have in no way tried to block access to the film. We believe its lack of objectivity and merit speaks for itself.

Beyond our frustration with being falsely implicated in these arrests, we are sympathetic to the concerns of the Peruvian government with the social unrest that is getting stirred-up by a combination of political opponents of the current government, ideological opponents of mining, and the role that foreign activists may be playing. These efforts are often based on mischaracterization, if not plain untruths, of local mining activities. Such activities are not helpful to improving the lives of those in the remote regions of Peru, and in some cases have set the stage for violent confrontations between community members and police with tragic results.

We believe there is a role for industry, government and civil society to play in ensuring that rights and the environment are appropriately protected. We don't believe the actions of the two individuals in Peru were constructive towards that goal, but we certainly did not orchestrate the situation they found themselves in.

If you have any questions or comments please let me know.

[Redacted]  
[Redacted] Corporate Social Responsibility  
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# APPENDIX 6: ATIP RECORD - GOVERNMENT OF CANADA RESPONSE TO OHCHR





**RESPONSE OF THE GOVERNMENT OF CANADA  
TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES:**

**THE WORKING GROUP ON THE ISSUE OF HUMAN RIGHTS AND  
TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES; THE  
SPECIAL RAPPORTEUR ON THE ISSUE OF HUMAN RIGHTS OBLIGATIONS  
RELATING TO THE ENJOYMENT OF A SAFE, CLEAN, HEALTHY AND  
SUSTAINABLE ENVIRONMENT; THE SPECIAL RAPPORTEUR ON THE  
PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION  
AND EXPRESSION; AND THE SPECIAL RAPPORTEUR ON THE SITUATION OF  
HUMAN RIGHTS DEFENDERS**

15 December 2017

## I. INTRODUCTION

1. On 19 September, 2017, Canada received a joint communication from the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders.
2. The joint communication brings to Canada's attention information that was obtained by the Special Procedures concerning alleged criminal charges, arbitrary detention and defamation campaigns against Ms. Jennifer Moore and Mr. John Dougherty following their awareness-raising activities about the human rights impact of the activities of the Canadian Company Hudbay Minerals in Peru.
3. In relation to these allegations, the letter brings to Canada's attention Articles 9,14, 19 and 21 of the *International Covenant on Civil and Political Rights*, Articles 1 and 2 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*,<sup>1</sup> Human Rights Council resolutions 12/16, 15/12 and 22/6, and the *Guiding Principles on Business and Human Rights (A/HRC/17/31)*
4. The letter requests Canada's observations, within 60 days (with a subsequent 30-day extension), on the following three matters:
  - (i) Any additional information and/or comment(s) on the allegations;
  - (ii) Information on the measures taken by the Government of Canada to ensure that Hudbay Minerals implements its responsibilities under international human rights laws, including the UN Guiding Principles on Business and Human Rights, in its overseas operations;
  - (iii) Information on the measures taken by the Government of Canada to address allegations in this case within the framework of Canada's Enhanced Corporate Social Responsibility Policy as well as Canada's "Voices at Risk: Guidelines on Supporting Human Rights Defenders."
5. The Canadian Government takes allegations of human rights abuses involving Canadian companies, and requests for consular assistance from Canadian citizens, very seriously. The Government of Canada's responses to the requests for information contained in the joint communication is provided below.

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<sup>1</sup> Adopted as an Annex to General Assembly resolution 53/144 (9 December 1998).



**II. CANADA'S RESPONSE TO THE REQUEST FOR INFORMATION CONTAINED IN THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES**

6. In the joint allegation letter, the Special Rapporteurs request Canada's observations on the following three matters:

**A) INFORMATION AND/OR COMMENTS ON THE ALLEGATIONS MENTIONED IN THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES**

7. The joint communication sent by the Special Procedures conveys information concerning alleged criminal charges, arbitrary detention, and defamation campaigns against human rights defenders Ms. Jennifer Moore, a Canadian national, and Mr. John Dougherty, a US national, following their reported awareness-raising activities about the human rights impact of the activities of the Canadian company Hudbay Minerals in Peru.
8. The Government of Canada expects all Canadian companies operating abroad to respect human rights, all applicable laws and international standards, and to operate transparently and in consultation with host governments and local communities. These expectations are set out in Canada's Corporate Social Responsibility Strategy, and in international standards endorsed by Canada, including the UN Guiding Principles on Business and Human Rights, of which Hudbay Minerals is aware.
9. By and large, Canadian legislation does not apply to activities of Canadian corporations outside of Canada. The allegations contained in the joint communication occurred outside of Canada's territory, and within the territory and jurisdiction of Peru. Apart from a narrow set of circumstances, we do not apply our laws extraterritorially.
10. The Government of Canada is not aware of any evidence that Hudbay Minerals was involved in the actions of Peruvian authorities in detaining and questioning Ms. Moore. If any such evidence is available, we would be grateful if it could be shared with the Canadian Government.
11. Regarding Ms. Moore's communications with the Canadian embassy before her visit to Peru, during her time in Peru, and after she left Peru, we are not able to release any information about the consular services and advice that were provided due to Canadian privacy laws.

**B) INFORMATION ON THE MEASURES TAKEN BY THE GOVERNMENT OF CANADA TO ENSURE THAT HUSBAY MINERALS IMPLEMENTS ITS RESPONSIBILITIES UNDER INTERNATIONAL HUMAN RIGHTS LAWS, INCLUDING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, IN ITS OVERSEAS OPERATIONS.**

12. Canada's corporate social responsibility approach is focused on promoting internationally-recognised standards, developing networks and partnerships through Canada's trade offices abroad, bolstering the environment for Canadian investment by working with host



countries to strengthen their capacity to effectively manage their natural resources, and facilitating dialogue through two dispute resolution mechanisms (the Corporate Social Responsibility Counsellor for the Extractive Sector and the Canadian National Contact Point for the OECD Guidelines for Multinational Enterprises. Canada invites claims with respect to the conduct of Canadian companies abroad to be presented through either mechanism as appropriate.

13. Canada links the provision of trade advocacy and economic support in foreign markets to a company's constructive engagement with either of Canada's dispute resolution mechanisms when concerns about Canadian operations abroad are brought forward. This means that Canadian companies that choose not to engage meaningfully with either of Canada's dispute resolution mechanisms can face denial or withdrawal of Government of Canada trade advocacy and financial support in foreign markets. Their conduct will also be taken into account in the Corporate Social Responsibility-Related due diligence conducted by Export Development Canada (Canada's export credit agency).
14. In Lima, Canadian embassy staff meet regularly with Canadian companies operating in Peru to discuss operational matters, including the companies' Corporate Social Responsibility policies and approach to ensuring respect for human rights. Furthermore, the Canadian embassy in Lima is a member of an informal working group on the Voluntary Principles on Security and Human Rights, which creates a space for dialogue between embassies, the private sector and NGOs that operate in Peru, as well as Peruvian government officials, on challenges related to security and human rights. The group includes Hudbay Minerals, among other companies.
15. As part of regular outreach made with Hudbay Minerals, the company has confirmed their awareness about corporate responsibilities under the UN Guiding Principles on Business and Human Rights.

**C) INFORMATION ON THE MEASURES TAKEN BY THE GOVERNMENT OF CANADA TO ADDRESS ALLEGATIONS IN THIS CASE WITHIN THE FRAMEWORK OF CANADA'S ENHANCED CORPORATE SOCIAL RESPONSIBILITY POLICY AS WELL AS CANADA'S "VOICES AT RISK: GUIDELINES ON SUPPORTING HUMAN RIGHTS DEFENDERS."**

16. Canada recognizes the key role played by human rights defenders in protecting and promoting human rights and strengthening the rule of law. As a clear statement of Canada's commitment to promoting human rights, including by supporting the vital work of human rights defenders, *Voices at Risk: Guidelines on Supporting Human Rights Defenders* strengthen Canada's efforts on the ground, by providing Canadian diplomats with practical guidance on how to help protect and empower human rights defenders.
17. Canadian support for human rights defenders takes many forms and responds to changing needs: advocating for open civic space and human rights; working in multilateral forums to strengthen international rules; leveraging partnerships with other countries, civil society and the private sector, including Canadian business interests abroad; funding civil society organizations and grant agencies; and giving public recognition to human rights defenders for their achievements.

### **III. CONCLUSION**

18. The Government of Canada will continue to expect that Canadian companies operating abroad fully respect human rights and applicable laws, and meet or exceed international standards for responsible business conduct. Canada's approach to promoting respect for human rights and for corporate social responsibility will continue to evolve as we refine our policies, programs and dispute resolution mechanisms to better respond to the multiple challenges that remain.

Ottawa  
15 December 2017

# NOTES







JUSTICE & CORPORATE

ACCOUNTABILITY PROJECT

*Communities first!*

