



## **“Canada’s Systematic Failure to Fulfill its International Obligations to Human and Environmental Rights Defenders Abroad”**

*Submission to the UPR Working Group of the United Nations Human Rights Council  
In anticipation of the 2023 Universal Periodic Review (UPR) of Canada  
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The **Justice & Corporate Accountability Project (JCAP)** is a volunteer-driven transnational, collaborative, community-based legal clinic based in Canada. JCAP assists in holding corporations and states to account by offering legal knowledge and advocacy support to communities that are negatively affected by natural resources extraction. JCAP has cultivated specific expertise in supporting Indigenous and Campesino communities in the Americas and has also supported communities in Africa to defend their environmental and human rights.

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**MiningWatch Canada** works in solidarity with Indigenous peoples and non-Indigenous communities who are dealing with potential or actual industrial mining operations that affect their lives and territories, or with the legacy of closed mines, as well as with mineworkers and former workers seeking safe working conditions and fair treatment. MiningWatch works toward a world in which Indigenous peoples can effectively exercise their rights to self-determination, communities must consent before any mining activities may occur, and mineworkers are guaranteed safe and healthy conditions.

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Canadian Union of Public Employees (CUPE)  
Kairos: Canadian Ecumenical Justice Initiatives  
Inter Pares  
Canadian Lawyers Association for International Human Rights (CLAIHR)  
Canadian Centre for Policy Alternatives (CCPA)  
Breaking the Silence Network (BTS)  
Mining Justice Action Committee (MJAC)  
Environmental Defender Law Center (EDLC)  
Rights Action  
Projet Accompagnement Québec-Guatemala (PAQC)  
Atlantic Region Solidarity Network (ARSN)  
Canadian Foreign Policy Institute (CFPI)  
Common Frontiers  
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Plataforma Canada Guatemaltecs Exiliads por Terrorismo de Estado  
Association for the Rights of Household and Farm Workers  
Red Internacional de Solidaridad con Guatemala  
Canadian Partnership for International Justice  
Mining Injustice Solidarity Network (MISN)  
Mining Justice Alliance (MJA)  
Community Peacemaker Teams (CPT)  
Committee for Human Rights in Latin America (CDHAL)  
Grandmothers Advocacy Network (GRAN)  
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## Submission Outline

<i>Introduction</i> .....	5
<b>1. The Human &amp; Environmental Rights Significance of Canadian Economic Diplomacy</b> ...	<b>6</b>
a. Background on the UPR Mandate .....	8
b. 2018 UPR Outcome Report for Canada .....	9
<b>2. Policy Context for Canadian State Support for Companies &amp; HRDs Abroad</b> .....	<b>10</b>
a. Canadian Economic Diplomacy.....	10
b. Voices at Risk Guidelines (2016 and 2019).....	11
c. Canadian Ombudsperson for Responsible Enterprise (created in 2019) .....	12
d. Responsible Business Strategy (2022) .....	12
<b>3. Canada’s Public International Law Obligations to HRDs Abroad</b> .....	<b>13</b>
a. Canada is Obligated Under International Law to Protect HRDs.....	13
b. Canada’s History of Failing to Fulfill its Obligations to Protect HRDs Abroad .....	16
c. Conclusion on Canada’s Extraterritorial Obligation to Protect HRDs.....	18
<b>4. The Systemic Human &amp; Environmental Rights Harms of Canadian Economic Diplomacy &amp; Failure to Support HRDs</b> .....	<b>18</b>
a. Theme 1: Canada supports companies despite notice of alleged human and environmental rights violations.....	20
b. Theme 2: Systematic disregard for Canada’s domestic and international obligations .....	22
c. Theme 3: Canadian officials have contributed to the risk of harm for HRDs .....	27
<b>5. A 2021 Example: The Canadian Embassy in Ecuador &amp; the Shuar Arutam People</b> .....	<b>28</b>
<b>6. Recommendations</b> .....	<b>29</b>
<i>Appendices</i> .....	<i>31</i>

## Introduction

This submission begins in Part 1 by describing the human and environmental rights significance of Canadian economic diplomacy, as well as the direct relevance of this topic to the UPR process. Next in Part 2 it describes Canada's current policy approach to providing state support to Canadian resource companies, as well as human and environmental rights defenders (HRDs) abroad. In Part 3, the submission cites a wide range of UN bodies and treaties to summarize Canada's international obligations to support and protect HRDs who are impacted by the operations of Canadian companies abroad. It also cites international commentary that expresses concern specifically about Canada's track record in this area.

Part 4 synthesizes the findings in four major case studies of Canadian economic diplomacy, with impacts on HRDs. These studies are based on events that took place between 2009 and 2017 in Mexico, Guatemala and Peru. This part identifies three main themes, present across all four studies, and illustrates each theme with examples from the case studies. These themes are: (1) Canada supports companies, despite notice of alleged human and environmental rights violations; (2) Canada systematically disregards its domestic and international obligations in this area; and (3) Canadian officials have contributed to the risk of harm for HRDs. Part 5 outlines a recent and very straightforward example, from 2021 in Ecuador, that illustrates how Canada's failures in this area are ongoing.

Finally, Part 6 respectfully requests that the UPR Working Group make the following recommendations to Canada:

1. Recommend that Canada reform its policy and legal approach to economic diplomacy and HRDs abroad to an approach that can ensure that the actions of Canadian officials comply with Canada's international human and environmental rights obligations.
2. Recommend that such reforms be developed only after a fulsome and meaningful process of civil society engagement. This should include HRDs, Indigenous peoples, communities, and groups who are directly impacted by industrial resource extraction abroad, with the support of the Canadian government and diplomatic missions.

This consultation should follow the principle that policy and law reforms should be informed by empirical research like that cited in this submission, as well as by the lived experience and perspectives of those who are directly impacted by the policies under discussion.

3. Recommend that Canada conduct a comprehensive review of the failures of Canadian officials to uphold Canada's international human and environmental rights obligations in the four case studies cited in this report. This review should identify the appropriate remedies owed to any individuals who were harmed directly or indirectly by Canada's actions.

## 1. The Human & Environmental Rights Significance of Canadian Economic Diplomacy

This section summarizes statements by multiple UN bodies with respect to the human and environmental rights significance of Canada's policy of providing political support, known as economic diplomacy, to Canadian resource extraction companies operating abroad. It then connects this issue directly with the Universal Period Review (UPR) mandate and summarizes the relevant recommendations to Canada following the 2018 UPR process.

Canada's international mining industry is one of the most significant globally. Canada is the home jurisdiction to "almost half" of the world's publicly listed mining companies<sup>1</sup> and Canadian mining companies operate in nearly 100 countries globally.<sup>2</sup> The number of Canadian companies investing in mining abroad continues to grow. In 2021, 748 Canadian mining companies had mining assets abroad, which was up from 650 companies in 2018.<sup>3</sup> Finally, the mining sector is a "significant contributor" to Canadian Direct Investment Abroad (CDIA), with the mining sector accounting for \$89.2 billion, or 6.4% of CDIA.<sup>4</sup>

The success of Canadian mining companies abroad is due in part to considerable government support for the sector, including through economic diplomacy. However, a growing body of empirical research demonstrates that embassy staff, Trade Commissioners, and senior government officials often continue to support and defend Canadian resource companies amid strong community opposition, significant levels of violence and criminalization, and credible evidence of environmental contamination.<sup>5</sup> This research suggests that the policies and actions of the Canadian state, designed to ensure that extractive projects succeed, have exacerbated specific conflicts in Guatemala, Peru, Mexico, Ecuador and Honduras, among other countries, and escalated the risk

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<sup>1</sup> Natural Resources Canada, "Canadian Mining Assets Information Bulletin", (last modified 14 February 2023), online: *Government of Canada* <<https://natural-resources.canada.ca/maps-tools-and-publications/publications/minerals-mining-publications/canadian-mining-assets/19323>> [<https://perma.cc/5MA3-HG6P>].

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*; Brendan Marshall, "Facts & Figures 2020: The State of Canada's Mining Industry" (2020) at 73, online (pdf): *Mining Association of Canada* <[https://mining.ca/wp-content/uploads/dlm\\_uploads/2021/04/FF-2020-EN-Web.pdf](https://mining.ca/wp-content/uploads/dlm_uploads/2021/04/FF-2020-EN-Web.pdf)> [<https://perma.cc/3MTS-AE9M>].

<sup>4</sup> Brendan Marshall, "Facts & Figures 2020: The State of Canada's Mining Industry" (2020) at 73, online (pdf): *Mining Association of Canada* <[https://mining.ca/wp-content/uploads/dlm\\_uploads/2021/04/FF-2020-EN-Web.pdf](https://mining.ca/wp-content/uploads/dlm_uploads/2021/04/FF-2020-EN-Web.pdf)> [<https://perma.cc/3MTS-AE9M>].

<sup>5</sup> In addition to the four reports reviewed in Part 4 of this submission, see also "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](http://miningwatch.ca/news/2010/4/29/canadian-ambassador-sued-defaming-documentary-film-maker-steven-schnoor)> [[perma.cc/2KN6-CP93](https://perma.cc/2KN6-CP93)]; Charlotte Connolly, Jen 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). 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](http://miningwatch.ca/blog/2013/10/8/backgrounder-dozen-examples-canadian-mining-diplomacy)> [[perma.cc/K7LA-5T8B](https://perma.cc/K7LA-5T8B)]; Jen Moore, "In the National Interest?: Criminalization of Land and Environment Defenders in the Americas" (2015) at 14, online (pdf): *MiningWatch Canada* <[miningwatch.ca/sites/default/files/inthenationalinterest\\_fullpaper\\_eng\\_1.pdf](http://miningwatch.ca/sites/default/files/inthenationalinterest_fullpaper_eng_1.pdf)> [[perma.cc/7834-AKHR](https://perma.cc/7834-AKHR)]; Jen Moore, "More than a few bad apples: 'Militarized neoliberalism' and the Canadian state in Latin America," (2016), online: *Canadian Centre for Policy Alternatives* <[policyalternatives.ca/publications/monitor/more-few-bad-apples](http://policyalternatives.ca/publications/monitor/more-few-bad-apples)> [[perma.cc/KL5E-XWKQ](https://perma.cc/KL5E-XWKQ)].

of harm for affected communities and human and environmental rights defenders (HRDs) who face threats, kidnappings, and assassinations.<sup>6</sup>

Multiple international treaty bodies have taken note of this research and these impacts, and have expressed concern about the adverse effects of Canadian companies' extractive activities abroad.<sup>7</sup> The Inter-American Commission for Human Rights (IACHR) and the UN Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises ("the UN Working Group on Business & Human Rights") have expressed specific concern about the human rights impacts of economic diplomacy, and called on 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 corporate economic interests.<sup>8</sup> The Committee on Economic, Social, and Cultural Rights (CESCR) has also called on member states to revise relevant tax codes and export credits, and other forms of state support, privileges, and advantages in order to align business incentives and diplomatic support with human rights responsibilities.<sup>9</sup>

However, in a 2018 report on Canada, the UN Working Group on Business & Human Rights noted that while the potential for loss of state support can be an important policy lever, "it was unclear how effective it had been in producing tangible results with respect to changes in corporate practices or in providing greater access to effective remedies," and that withdrawal of trade support appears to have happened in only two instances.<sup>10</sup> The Working Group's statements suggest that Canada's policy framework in this area, described in more detail in the next section, is inadequate. The present submission further demonstrates that when Canadian officials fail to follow applicable domestic policies and international legal standards, they may undermine the protection of human rights and the environment for some of the most vulnerable communities and ecosystems on the

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<sup>6</sup> Working Group on Mining and Human Rights in Latin America, "The impact of Canadian Mining in Latin America and Canada's Responsibility" (2013), online (pdf): *Due Process of Law Foundation* <[www.dplf.org/sites/default/files/report\\_canadian\\_mining\\_executive\\_summary.pdf](http://www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf)> [perma.cc/AXT9-538H]; Shin Imai, Leah Gardner & Sarah Weinberger, "The "Canada Brand": Violence and Canadian Mining Companies in Latin America" (2017), *Justice and Corporate Accountability Project*, online: <[digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1272&context=all\\_papers](http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1272&context=all_papers)> [perma.cc/5ECZ-RMNL].

<sup>7</sup> See e.g. Commission on Human Rights, "Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights", UNECOSOCOR, 59th Sess, UN Doc E/CN.4/2003/56/Add.2 (2003) at para 126; "Concluding observations on the combined 21st to 23rd periodic reports of Canada: Committee on the Elimination of Racial Discrimination": addendum, UN Doc CERD/C/CAN/CO/21-21 (2019) at paras 21—22; Committee on Economic, Social and Cultural Rights (CESCR), "Concluding observations on the sixth periodic report of Canada", UNECOSOCOR, UN Doc E/C.12/CAN/CO/6 (2016) at paras 15—16, online: <[undocs.org/E/C.12/CAN/CO/6](http://undocs.org/E/C.12/CAN/CO/6)> [perma.cc/3NTF-RDB3].

<sup>8</sup> OAS, Inter-American Commission on Human Rights (IACHR), 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) at paras 79—80, 334 (13), online: <[www.oas.org/en/iachr/reports/pdfs/extractiveindustries2016.pdf](http://www.oas.org/en/iachr/reports/pdfs/extractiveindustries2016.pdf)> [perma.cc/UF72-NG2H]; "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 35.

<sup>9</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, UNECOSOCOR, UN Doc E/C.12/GC/24 (2017) at para 15.

<sup>10</sup> "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.

planet, and moreover, that these same policy deficiencies in turn create significant barriers to holding Canadian officials to account for these failures and harms.

### **a. Background on the UPR Mandate**

We understand that the UPR is a novel and critical process that flows from the mandate of the Human Rights Council to "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments".<sup>11</sup> The goal of the UPR is to assess how each State addresses human rights and to provide "technical assistance" to support States in effectively upholding human rights.<sup>12</sup>

The UPR Working Group consists of all 47 member states of the Human Rights Council.<sup>13</sup> Each State's review is conducted by "an interactive discussion" between the State under review, the 47 members of the UPR Working Group, and any interested UN Member States.<sup>14</sup> The end result of each State review is an "outcome document" including recommendations for the State, which the Human Rights Council then discusses and adopts.<sup>15</sup>

The discussion for each State is based on 1) a report prepared by the State under review and 2) two reports prepared by the Office of the United Nations High Commissioner for Human Rights (the "OHCHR"). One OHCHR report is based on UN information about the State under review and the other is a summary of reports submitted by other stakeholders, including civil society actors.<sup>16</sup> Civil society stakeholders can engage with the UPR process by submitting written documents for inclusion in the OHCHR report, and they can observe the Working Group session and make oral statements at the Human Rights Council meeting when they discuss the outcome document.<sup>17</sup>

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<sup>11</sup> "Basic facts about the UPR" (2023), online: *United Nations Human Rights Council* <<https://www.ohchr.org/en/hr-bodies/upr/basic-facts>> [<https://perma.cc/LZ6K-SG75>]; Human Rights Council, 60/251, United Nations General Assembly, Sixtieth Sess, 05-50266 (2006) at 3.

<sup>12</sup> "Basic facts about the UPR" (2023), online: *United Nations Human Rights Council* <<https://www.ohchr.org/en/hr-bodies/upr/basic-facts>> [<https://perma.cc/LZ6K-SG75>].

<sup>13</sup> See "Calendar of reviews for the 4<sup>th</sup> cycle" and "Calendar of tentative deadlines for stakeholders' submission for the 4<sup>th</sup> cycle", online: *United Nations Human Rights Council* <<https://www.ohchr.org/en/hr-bodies/upr/uprcycle4>> [<https://perma.cc/NLN6-4YPA>].

<sup>14</sup> "Basic facts about the UPR" (2023), online: *United Nations Human Rights Council* <<https://www.ohchr.org/en/hr-bodies/upr/basic-facts>> [<https://perma.cc/LZ6K-SG75>].

<sup>15</sup> "4<sup>th</sup> UPR cycle: contributions and participation of "other stakeholders" in the UPR" (2023), online: *United Nations Human Rights Council* <<https://www.ohchr.org/en/hr-bodies/upr/ngos-nhris>> [<https://perma.cc/9EMB-G55R>].

<sup>16</sup> "4<sup>th</sup> UPR cycle: contributions and participation of "other stakeholders" in the UPR" (2023), online: *United Nations Human Rights Council* <<https://www.ohchr.org/en/hr-bodies/upr/ngos-nhris>> [<https://perma.cc/9EMB-G55R>].

<sup>17</sup> Note that attending the Working Group and *Human Rights Council* sessions requires accreditation; "4<sup>th</sup> UPR cycle: contributions and participation of "other stakeholders" in the UPR" (2023), online: *United Nations Human Rights Council* <<https://www.ohchr.org/en/hr-bodies/upr/ngos-nhris>> [<https://perma.cc/9EMB-G55R>].



## **b. 2018 UPR Outcome Report for Canada**

Following Canada's third UPR, the Human Rights Council adopted the outcome report for Canada on September 28, 2018.<sup>18</sup> The outcome report contained 275 recommendations for improvements to Canada's human rights compliance. Of these, Canada fully supported 205 recommendations.<sup>19</sup> Among these 205, several reflect concerns about the impacts of Canadian companies' operations abroad. These are:

Recommendation 142.97: Consistency with the United Nations guidelines with regard to the [access] of the victims of Canadian companies operating abroad to justice in Canada;

Recommendation 142.92: Ensure that Canada's mining, oil and gas companies are held accountable for the negative human rights impact of their operations abroad;

Recommendation 142.93: Adopt additional measures to guarantee the accountability of transnational corporations and other business enterprises with regard to allegations of human rights abuses in third countries throughout their chain of production and operation;

Recommendation 142.94: Strengthen measures aimed at ensuring access to justice and remedies for violations of rights of persons by transnational corporations registered in Canada operating abroad; and

Recommendation 142.91: Take further steps to prevent human rights impacts by Canadian companies operating overseas, as well as ensuring access to remedies for people affected...<sup>20</sup>

Following these recommendations, the UN High Commissioner for Human Rights sent a letter to the Canadian Minister of Foreign Affairs detailing the areas of human rights that Canada needs to pay particular attention to before the next UPR.<sup>21</sup> This letter placed particular emphasis on the recommendations that Canada adopt "additional measures to guarantee the accountability of transnational corporations and other business enterprises with regard to allegations of human rights

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<sup>18</sup> Letter from Michelle Bachelet, United Nations High Commissioner for Human Rights to Chrystia Freeland, Minister of Foreign Affairs (2 November 2018) at 1, online (pdf): <[https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/CA/HC\\_LetterCanada\\_30Session\\_EN.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/CA/HC_LetterCanada_30Session_EN.pdf)> [<https://perma.cc/RSL9-BFS6>]; Decision outcome of the universal periodic review, Human Rights Council, 39/11, Human Rights Council thirty-ninth sess, (2018), online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/296/21/PDF/G1829621.pdf?OpenElement>>.

<sup>19</sup> "Canada" Infographic, online (pdf): *United Nations Human Rights Office of the High Commissioner* <[https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/CA/CANADA\\_Infographic\\_30th.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/CA/CANADA_Infographic_30th.pdf)> [<https://perma.cc/4SZ3-BLLY>].

<sup>20</sup> "Thematic List of Recommendations, UPR of Canada 3<sup>rd</sup> cycle – 30<sup>th</sup> session", online: *United Nations Human Rights Council*, under "Matrix of Recommendations" <<https://www.ohchr.org/en/hr-bodies/upr/ca-index>> [<https://perma.cc/PJS6-8BGY>].

<sup>21</sup> Letter from Michelle Bachelet, United Nations High Commissioner for Human Rights to Chrystia Freeland, Minister of Foreign Affairs (2 November 2018) at 1, online (pdf): <[https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/CA/HC\\_LetterCanada\\_30Session\\_EN.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/CA/HC_LetterCanada_30Session_EN.pdf)> [<https://perma.cc/RSL9-BFS6>].

abuses in third countries; and to ensure access to justice for violations of rights of persons by transnational corporations registered in Canada, operating abroad.”<sup>22</sup>

The present submission with respect to economic diplomacy is directly relevant to these recommendations. Economic diplomacy can and should be part of the framework of holding companies to account for any harmful impacts of their activities, to the extent that economic diplomacy is properly conditioned on a company’s due diligence and avoidance of harm. This relates to a fundamental principle that the Canadian state should not be providing political support to companies that are perpetuating human or environmental rights harms. Rather, as we will see here, Canada’s diplomatic approach to HRDs impacted by Canadian companies has often done the opposite, elevating the risk for defenders and supporting the company regardless of credible evidence of harm.

## **2. Policy Context for Canadian State Support for Companies & HRDs Abroad**

### **a. Canadian Economic Diplomacy**

Canada has long provided political, economic, financial, and legal support for Canadian resource companies operating abroad.<sup>23</sup> Economic diplomacy in particular has a long history in shaping the culture of the federal foreign service. In 2007, the federal government introduced the Global Commerce Strategy, followed by the 2013 Global Markets Action Plan, which entrenched the practice of “economic diplomacy” as the “driving force behind the Government of Canada’s trade promotion activities.”<sup>24</sup> This policy committed to marshalling “all diplomatic assets of the Government of Canada...on behalf of the private sector” in order to support the commercial success of Canadian companies and investors abroad.<sup>25</sup> As part of this plan, Canada sought to “improve and coordinate [the] branding and marketing of Canada abroad” to make its private sector more competitive on international markets.<sup>26</sup>

Canada’s *Enhanced Corporate Social Responsibility Strategy to Strengthen Canada’s Extractive Sector Abroad* (2014) describes economic diplomacy as a suite of services offered to Canadian businesses engaged in trade and export, including the “issuance of letters of support, advocacy efforts in foreign markets and participation in Government of Canada trade missions.”<sup>27</sup> The Trade

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<sup>22</sup> Letter from Michelle Bachelet, United Nations High Commissioner for Human Rights to Chrystia Freeland, Minister of Foreign Affairs (2 November 2018) at 3, online (pdf): <[https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/CA/HC\\_LetterCanada\\_30Session\\_EN.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session30/CA/HC_LetterCanada_30Session_EN.pdf)> [<https://perma.cc/RSL9-BFS6>].

<sup>23</sup> See Todd Gordon & Jeffery Webber, *Blood of Extraction: Canadian Imperialism in Latin America* (Halifax: Fernwood Publishing, 2016).

<sup>24</sup> Foreign Affairs, Trade and Development Canada, *Global Markets Action Plan: The Blueprint for Creating Jobs and Opportunities for Canadians Through Trade*, Catalogue No FR5-84/2013E (Ottawa: Foreign Affairs, Trade and Development Canada, 2013) at 4, online (pdf): <[https://publications.gc.ca/collections/collection\\_2013/aecic-faitc/FR5-84-2013-eng.pdf](https://publications.gc.ca/collections/collection_2013/aecic-faitc/FR5-84-2013-eng.pdf)> [[perma.cc/Q9NH-VFG8](https://perma.cc/Q9NH-VFG8)].

<sup>25</sup> *Ibid* at 11.

<sup>26</sup> *Ibid*.

<sup>27</sup> Global Affairs Canada, *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada’s Extractive Sector Abroad*, Catalogue No FR5-164/1-2014E (Ottawa: Global Affairs Canada, 2014) at

Commissioner Service plays a key role in advancing Canada’s economic diplomacy mandate by offering companies “privileged access to foreign governments, key business leaders and decision-makers,” in addition to on-the-ground intelligence.<sup>28</sup> Embassy personnel and government ministers also advocate on behalf of Canadian companies in meetings with foreign public officials and at major trade shows.<sup>29</sup> Export Development Canada (EDC) provides credit and finance to get projects off the ground. Together, these state agencies aim to strengthen Canadian businesses in foreign markets.<sup>30</sup>

## **b. Voices at Risk Guidelines (2016 and 2019)**

The federal government introduced another relevant policy in 2016 (updated in 2019) entitled, *Voices at Risk: Canada’s Guidelines on supporting human rights defenders*, which creates specific obligations for embassies to promote respect for and support HRDs abroad, “even when they allege or appear to have suffered human rights abuses by a Canadian company that receives support from Canada’s Trade Commissioner Service.”<sup>31</sup> This policy states 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>32</sup>

Both versions of the Voices at Risk Guidelines are very similar, and they purport to function as a “practical tool” for Canadian officials to use to take action to empower and protect HRDs. They include specific guidance on how Canadian officials should proceed when HRDs are at risk, including Canadian HRDs.<sup>33</sup> However, 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.

The Hudbay Report, cited in section 4 below, is the only known in-depth study that responds to this significant gap in knowledge about Canada’s implementation of the Guidelines in situations of risk and threat to a 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 a Canadian HRD.

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12, online (pdf): <[https://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced\\_CS\\_Strategy\\_ENG.pdf](https://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced_CS_Strategy_ENG.pdf) [perma.cc/8UN7-J44A]>.

<sup>28</sup> “Trade Commissioner Service – Eligibility and Services” (last modified 1 March 2023), online: *Government of Canada* <[www.tradecommissioner.gc.ca/about-a\\_propos/services.aspx?lang=eng](http://www.tradecommissioner.gc.ca/about-a_propos/services.aspx?lang=eng)> [perma.cc/K855-5WXR].

<sup>29</sup> “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 (2 May 2018) at paras 9, 24, online: <[undocs.org/A/HRC/38/48](http://undocs.org/A/HRC/38/48)> [perma.cc/9C48-K6EY].

<sup>30</sup> *Ibid* at para 3.

<sup>31</sup> Global Affairs Canada, *Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders*, Catalogue No FR5-110/2019E (Ottawa: Global Affairs Canada, 2019) at 21, online: *Global Affairs Canada* <[www.international.gc.ca/world-monde/assets/pdfs/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/rights\\_defenders-guide-defenseurs\\_droits\\_en.pdf?\\_ga=2.65464426.570807074.1624291594-1582140248.1619455244](http://www.international.gc.ca/world-monde/assets/pdfs/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders-guide-defenseurs_droits_en.pdf?_ga=2.65464426.570807074.1624291594-1582140248.1619455244)> [perma.cc/4MYK-6EZC].

<sup>32</sup> *Ibid* at 11. An updated version of the policy, released in 2019, adopted a similar approach and nearly identical language.

<sup>33</sup> *Ibid*.

### c. Canadian Ombudsperson for Responsible Enterprise (created in 2019)

The Canadian Ombudsperson for Responsible Enterprise (CORE) has a primary mandate of investigating allegations of human rights violations on the part of Canadian companies in the resource extraction and garment industries. The CORE also 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>34</sup> As such, the CORE has the power to play a role in supporting practical, as well as more fundamental, reforms to Canada's policy approach to HRDs.

However, unfortunately, in spite of the body of research described in this submission, to our knowledge, the CORE has not made any recommendations in this area. 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>35</sup> This is because the CORE is a public servant and her employment is at the discretion of the Minister of International Trade, whose very policies she might review. 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.

### d. Responsible Business Strategy (2022)

Canada newest policy in this area is the 2022 *Responsible Business Conduct Abroad: Canada's Strategy for the Future* ("2022 RBS").<sup>36</sup> Despite strong critiques of Canada's previous approaches, this new strategy retains many of the hallmarks of previous strategies, thereby signally, in the words of Professor Simons "the government's current intransigence in moving beyond a voluntary self-regulation regime" on human and environmental rights due diligence.<sup>37</sup> The 2022 RBS does not mandate due diligence on the part of companies, and instead creates some

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<sup>34</sup> 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, 6 September 2019, online: *Government of Canada* <orders-in-council.canada.ca/attachment.php?attach=38652&lang=en> [perma.cc/3ABA-VMTR].

<sup>35</sup> See, e.g., 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> [https://perma.cc/MR79-56YQ]; Mike Blanchfield "UN official criticizes Canadian delays setting up corporate ethics watchdog", *CBC News* (20 April 2019), online: <cbc.ca/news/politics/un-watchdog-carrcorporate-ethics-1.5116399> [https://perma.cc/AC4Z-M95A]. 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.

<sup>36</sup> Government of Canada, *Responsible Business Conduct Abroad: Canada's Strategy for the Future* (2022) at 13, online (pdf): <https://www.international.gc.ca/trade-commerce/assets/pdfs/rbc-cre/strategy-2021-strategie-1-eng.pdf> [https://perma.cc/NHQ9-EU7J].

<sup>37</sup> Penelope Simons, "Developments in Canada on business and human rights: One step forward two steps back" (2023) *Leiden Journal of International Law* at 25.

limited mechanisms to encourage it.<sup>38</sup> While it requires companies who receive trade advocacy support to “attest” that their operations are consistent with certain international human rights standards, this attestation is “vague and weak”.<sup>39</sup> Added to this, the strategy states that Canada “may” consider a company’s responsible business practices before providing advocacy support, and that advocacy services “may” be withdrawn if a business fails “to comply with Canada’s RBC laws, policies and standards.”<sup>40</sup> As a result, we agree with Professor Simons that the 2022 RBS “does not mandate Canadian officials to consider whether such companies are indeed operating in line with those initiatives”<sup>41</sup> and leaves Canadian officials “with significant discretion to support companies who violate human rights [and] harm the environment”.<sup>42</sup> Unfortunately, the 2022 RBS makes no meaningful progress in imposing mandatory obligations on Canadian officials or Canadian companies.

### 3. Canada’s Public International Law Obligations to HRDs Abroad

This section summarizes Canada’s international obligations to support and protect HRDs, with particular attention to HRDs who are impacted by the operations of Canadian companies abroad. Next it reviews international commentary suggesting that Canada is falling short of this obligation.

#### a. Canada is Obligated Under International Law to Protect HRDs

Canada bears certain extraterritorial responsibilities to ensure its extractive companies respect human rights abroad,<sup>43</sup> particularly in the context of projects that receive government services under the policy of economic diplomacy.<sup>44</sup> The following summarizes how these extraterritorial obligations arise under Canada’s ratified UN treaty commitments, along with relevant commentary from other international bodies.

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<sup>38</sup> Government of Canada, *Responsible Business Conduct Abroad: Canada’s Strategy for the Future* (2022) at 13, online (pdf): <<https://www.international.gc.ca/trade-commerce/assets/pdfs/rbc-cre/strategy-2021-strategie-1-eng.pdf>> [<https://perma.cc/NHQ9-EU7J>]. Note that there is an additional attestation required for companies operating in a region with heightened risks of human rights violations: *ibid* at 12. See Simons, *ibid* at 13.

<sup>39</sup> Simons, *ibid* at 12.

<sup>40</sup> Government of Canada, *Responsible Business Conduct Abroad: Canada’s Strategy for the Future* (2022) at 11, online (pdf): <<https://www.international.gc.ca/trade-commerce/assets/pdfs/rbc-cre/strategy-2021-strategie-1-eng.pdf>> [<https://perma.cc/NHQ9-EU7J>].

<sup>41</sup> Penelope Simons, “Developments in Canada on business and human rights: One step forward two steps back” (2023) *Leiden Journal of International Law* at 12.

<sup>42</sup> *Ibid* at 24.

<sup>43</sup> UN Committee on Economic, Social & Cultural Rights (CESCR), *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): <[www.refworld.org/pdfid/4538838d0.pdf](http://www.refworld.org/pdfid/4538838d0.pdf)> [[perma.cc/ZF9D-54FB](https://perma.cc/ZF9D-54FB)]. States have an extra territorial obligation 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” (see para 39).

<sup>44</sup> Global Affairs Canada, *Canada’s Enhanced Corporate Social Responsibility Strategy to Strengthen Canada’s Extractives Sector Abroad*, (2014) at 12, online: <[www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?](http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?)> [<https://perma.cc/289Q-JBKN>]. Economic diplomacy is a suite of services offered to Canadian businesses engaged in trade and export, including the “issuance of letters of support, advocacy efforts in foreign markets and participation in Government of Canada trade missions” at 12.

## *The International Covenant on Civil and Political Rights (ICCPR)*

In 2019, the UN Human Rights Committee (UNHRC) recognized that the right to life in Art. 6 of the ICCPR requires states to protect HRDs.<sup>45</sup> Additionally, states are obligated to protect extraterritorial HRD's right to life where HRDs are under the power or effective control of that foreign state and the person's right to life is affected by a domiciled company in a "direct and reasonably foreseeable manner".<sup>46</sup> These foreign state obligations include:

- a) a duty to require due diligence in relation to private entities;<sup>47</sup>
- b) a duty to prevent reasonably foreseeable threats to life from private entities;<sup>48</sup> and
- c) a duty to take special protective measures towards "specific threats or pre-existing patterns of violence", which includes human rights defenders.<sup>49</sup>

There is an emerging consensus that this Art. 6 duty to support and protect HRDs extends to home states who are directly involved in procuring investment in host states.<sup>50</sup> For instance, the UN Special Rapporteur on the Situation of Human Rights Defenders 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>51</sup> The UN Working Group on the Issue of Human Rights and Transnational Corporations (UN Working Group on Business & Human Rights) echoes this recommendation by calling upon home states to enable effective adjudication to prevent, investigate, punish and redress all forms of threats and attacks against HRDs.<sup>52</sup>

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<sup>45</sup> UNHRC, *General Comment No. 36: Article 6, Right to Life*, UN Doc CCPR/C/GC/36 (2019) at para 53, online: <undocs.org/CCPR/C/GC/36> [perma.cc/G937-EUUY].

<sup>46</sup> *Ibid* at paras 21-23, 63.

<sup>47</sup> *Ibid* at para 7.

<sup>48</sup> *Ibid*.

<sup>49</sup> *Ibid* at para 23.

<sup>50</sup> 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] (threats to HRD are compounded by State inaction, including from the business's home state); 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*, UN Doc A/HRC/38/48 (2018) at para 22, online: <undocs.org/A/HRC/38/48> [perma.cc/V669-Z9DP] (trade missions may provide avenue for addressing the risks faced by HRD when business receiving support from home government).

<sup>51</sup> 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 51, online: <undocs.org/en/A/72/170> [perma.cc/9G72-X2LR]; see also *Report of the Special Rapporteur on the rights of Indigenous peoples*, UN Doc A/HRC/39/17 (2018) at para 91, online: <www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.39.17.pdf> [perma.cc/97V5-YPFX] (calls on states to also provide effective redress and remedy); see also *Report of the Special Rapporteur on the situation of human rights defenders*, "Final warning: death threats and killings of human rights defenders" (2020) A/HRC/46/35 at paras 29, 108 (foreign states have a duty to protect against corporations that they have jurisdiction over; foreign embassies should publicly denounce threats to HRDs).

<sup>52</sup> 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].

## *The International Covenant on Economic, Social and Cultural Rights (ICESCR)*

In 2017, the UN Committee on Economic, Social and Cultural Rights (CESCR) reiterated that “States parties’ obligations under the Covenant did not stop at their territorial borders”.<sup>53</sup> State parties are instead “required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction [...] without infringing the sovereignty [...] of the host States”.<sup>54</sup> These ICESCR obligations are extraterritorial because the Covenant does not express any restrictions linked to territory.<sup>55</sup> According to CESCR, extraterritorial obligations “arise when a State party may influence situations located outside its territory [...] by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction, and thus many contribute to the effective enjoyment of economic, social and cultural rights outside its national territory”.<sup>56</sup>

Pursuant to the ICESCR, Canada has an extraterritorial obligation to respect,<sup>57</sup> to protect<sup>58</sup> and fulfill economic, social and cultural rights of persons outside of their national territories.<sup>59</sup> Further, 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>60</sup> Such a risk is expressly indicated as a possibility in the extractive industry, and as such “particular due diligence is required with respect to mining-related projects and oil development projects”.<sup>61</sup> Canada would be in breach of its obligations where it fails “to take reasonable measures that could have prevented” a private entity’s harm, even when “other causes contributed to the occurrence of the violation.”<sup>62</sup>

Accordingly, Canada bears extraterritorial responsibilities to ensure its extractive companies respect human rights abroad,<sup>63</sup> particularly in the context of projects that receive government services under the policy of economic diplomacy.<sup>64</sup>

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<sup>53</sup> CESCR, *General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, E/C.12/GC/24 at para 26.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid* at para 27.

<sup>56</sup> *Ibid* at para 28.

<sup>57</sup> *Ibid* at para 29.

<sup>58</sup> *Ibid* at paras 30 – 35.

<sup>59</sup> *Ibid* at paras 36 – 37.

<sup>60</sup> *Ibid* at para 32.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> CESCR, *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): <[www.refworld.org/pdfid/4538838d0.pdf](http://www.refworld.org/pdfid/4538838d0.pdf)> [perma.cc/ZF9D-54FB] (extraterritorial obligations of states to prevent third parties from violating human rights in other countries arises “if they are able to influence these third parties by legal or political means” at para 39).

<sup>64</sup> See Global Affairs Canada, *Canada’s Enhanced Corporate Social Responsibility Strategy to Strengthen Canada’s Extractives Sector Abroad* (2014) at 12, online: <[www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?](http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?)> [https://perma.cc/289Q-JBKN].

### *The UN Human Rights Defenders Declaration*

The 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 (1998) (the “HRD Declaration”), to which Canada is a signatory, outlines state’s obligation to protect 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>65</sup>

### *Relevant Commentary from Other UN & OAS Bodies*

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>66</sup> Further, guidance and jurisprudence from both the IACHR, as well as the Inter-American Court for Human Rights firmly establishes the obligations of states to support and protect human rights wherever they exercise jurisdiction or effective authority and control.<sup>67</sup>

#### **b. Canada’s History of Failing to Fulfill its Obligations to Protect HRDs Abroad**

In December 2015, the IACHR 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

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<sup>65</sup> 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*, (1999) A/RES/53/144 at art 12, online: <documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement> [perma.cc/EZR4-PYM4].

<sup>66</sup> 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 42-43, online: <documents-dds-ny.un.org/doc/UNDOC/GEN/G21/161/49/PDF/G2116149.pdf?OpenElement> [perma.cc/4HEZ-C3R5].; see also 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(c), online: <www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.39.17.pdf> [perma.cc/97V5-YPFX].

<sup>67</sup> ELAW, *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: <www.elaw.org/IACHR\_CO2317> [https://perma.cc/7PYS-V5L3] (“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” at para 102); 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 at para 308, online: <oas.org/en/iachr/decisions/2018/USPU10573-EN.pdf> [perma.cc/UZG9-S3RV].



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>68</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>69</sup> The Special Rapporteur concluded that companies domiciled in these three countries accounted for 25% of the 450 reported attacks against HRDs globally in 2015 and 2016.<sup>70</sup>

In 2018, the UN Working Group on Business & Human Rights published a report raising concern “about reports of the persecution of human rights defenders who have raised concerns about the operation of Canadian companies abroad”.<sup>71</sup> The Working Group directed the Canadian government to provide support to defenders to enable “more effective protection of the legitimate activities of defenders”.<sup>72</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>73</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, among other things, it has repeatedly recommended that states... “raise the issue of risks to HRDs in the context of trade missions..., maintain 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>74</sup>

The Working Group recommended the following specifically in regard to Canada, “ensure that Global Affairs Canada explores additional tools of economic diplomacy that it could leverage to promote greater business respect for human rights”.<sup>75</sup>

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<sup>68</sup> 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), at paras 13, 78-81, online (pdf): <[www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf](http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf)> [perma.cc/6PE7-5LVJ].

<sup>69</sup> Michel Forst, *Report of the Special Rapporteur on the situation of human rights defenders*, UNGAOR, 72nd Sess, UN Doc A/72/170 (2017) at paras 3-5, online: <[undocs.org/en/A/72/170](http://undocs.org/en/A/72/170)> [perma.cc/9G72-X2LR].

<sup>70</sup> *Ibid* at para 5.

<sup>71</sup> 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 45.

<sup>72</sup> *Ibid*.

<sup>73</sup> *Ibid* at para 44.

<sup>74</sup> 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 48-51, online: <[documents-dds-ny.un.org/doc/UNDOC/GEN/G21/161/49/PDF/G2116149.pdf?OpenElement](http://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/161/49/PDF/G2116149.pdf?OpenElement)> [perma.cc/4HEZ-C3R5].

<sup>75</sup> *Ibid* at para 79(h).

### c. Conclusion on Canada’s Extraterritorial Obligation to Protect HRDs

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 for failing to discharge its obligations. 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>76</sup>

### 4. The Systemic Human & Environmental Rights Harms of Canadian Economic Diplomacy & Failure to Support HRDs

This part sets out three themes arising from a review of four substantial reports published by Canadian civil society groups between 2013 and 2022, detailing Canada’s approach to conflicts between Canadian resource companies operating in Central and South American countries and HRDs. These reports were predominantly based on records obtained through federal access to information and privacy (“ATIP”) legislation and they relate to events occurring between 2007 and 2017. While the findings in these reports reveals disturbing trends, it is important to note that the picture remains incomplete because the ATIP records upon which they are based contain many redactions.

The first report, published in 2013 by a coalition of Canada civil society groups, entitled “Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy”<sup>77</sup> (the “Blackfire Report”). This report focuses on Blackfire Exploration Ltd.’s operation of the Payback mine in Chiapas, Mexico from 2007 to 2010. It documents the Canadian embassy’s response to a conflict between Blackfire and Ejido<sup>78</sup> communities impacted by the mine, including the murder of community leader Mariano Abarca in the context of this conflict.

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<sup>76</sup> See e.g., International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Universal Declaration on Human Rights. See also Global Affairs Canada, *Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders*, Catalogue No FR5-110/2019E (Ottawa: Global Affairs Canada, 2019) at 5-6, online: *Global Affairs Canada* <[www.international.gc.ca/world-monde/assets/pdfs/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/rights\\_defenders-guide-defenseurs\\_droits\\_en.pdf?\\_ga=2.65464426.570807074.1624291594-1582140248.1619455244](http://www.international.gc.ca/world-monde/assets/pdfs/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders-guide-defenseurs_droits_en.pdf?_ga=2.65464426.570807074.1624291594-1582140248.1619455244)> [perma.cc/4MYK-6EYC].

<sup>77</sup> Jennifer Moore & Gillian Colgrove, “Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy” (May 2013), *MiningWatch Canada, United Steelworkers and Common Frontiers*, online (pdf): <[https://miningwatch.ca/sites/default/files/blackfire\\_embassy\\_report-web.pdf](https://miningwatch.ca/sites/default/files/blackfire_embassy_report-web.pdf)> [https://perma.cc/W8CU-VPCX] [“Blackfire Report”].

<sup>78</sup> From the Blackfire Report at 1: “An *ejido* is a social and territorial unit governed by a General Assembly that administers, regulates, and makes decisions over its territory and natural goods found above the surface. Until the signing of the North American Free Trade Agreement in 1994, it was not possible for *ejido* land to be parcelled off or sold.”

The second report, entitled “Unearthing Canadian Complicity: Excellon Resources, the Canadian Embassy, and the Violation of Land and Labour Rights in Durango, Mexico”<sup>79</sup> (the “Excellon Report”), was published by MiningWatch Canada in 2015. It focuses on events that took place from July to November 2012 at Excellon Resources Inc.’s La Platosa mine in Durango, Mexico. This includes the embassy’s response to protests that took place at the Ejido La Sierrita, the community on whose land the La Platosa mine is located.

The third report, entitled “The Two Faces of Canadian Diplomacy: Undermining International Institutions to Support Canadian Mining”<sup>80</sup> (the “Marlin Report”), was published in 2022 by the Justice & Corporate Accountability Project. It relates to Goldcorp Inc.’s (“Goldcorp”) operation of the Marlin Mine in Guatemala. The report documents the steps that Canadian officials took between 2010 and 2011 to strengthen Goldcorp’s opposition to a petition filed by indigenous Mayan communities to the IACHR, alleging multiple human and environmental rights violations.

The fourth report, entitled “The Two Faces of Canadian Diplomacy: Undermining Human Rights and Environment Defenders to Support Canadian Mining”<sup>81</sup> (the “Hudbay Report”) relates to Hudbay Minerals Inc.’s (“Hudbay”) operation of the Constancia Mine in Peru. The report focuses on events that took place in 2017 which impacted Canadian HRD Jennifer Moore and original Quechua communities.

This most recent report is of significant interest because it outlines how Canadian officials failed to uphold the Voices at Risk Guidelines in response to human rights violations perpetrated by Peruvian authorities against a Canadian HRD in Peru.<sup>82</sup> In 2017, Jennifer Moore, the MiningWatch Canada’s Latin America Program Coordinator at the time, was working with local organizations in Peru to screen a documentary film concerning alleged social and environmental harm at Hudbay-owned mines across the Americas, including among communities affected by the company’s Constancia Mine in Peru.<sup>83</sup> While Moore was in Peru for the screening, Peruvian authorities detained her, labelled her a threat to national security, and indefinitely banned her from re-entering the country.<sup>84</sup> Peruvian court decisions in 2019, 2020, 2021, and 2022, found that these actions violated Moore’s constitutional rights.<sup>85</sup> The courts also found that the Peruvian

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<sup>79</sup> Jen Moore, “Unearthing Canadian Complicity: Excellon Resources, the Canadian Embassy, and the Violation of Land and Labour Rights in Durango, Mexico” (February 2015), *MiningWatch Canada* and *United Steelworkers*, online (pdf): <[https://miningwatch.ca/sites/default/files/excellon\\_report\\_2015-02-23.pdf](https://miningwatch.ca/sites/default/files/excellon_report_2015-02-23.pdf)> [<https://perma.cc/S36H-95B4>] [“Excellon Report”].

<sup>80</sup> Charlotte Connolly & Charis Kamphuis, “The Two Faces of Canadian Diplomacy: Undermining International Institutions to Support Canadian Mining” (4 February 2022), *Justice and Corporate Accountability Project*, online: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4025474](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4025474)> [<https://perma.cc/7XW6-LQFN>] [“Marlin Report”].

<sup>81</sup> Charis Kamphuis, et al., “The Two Faces of Canadian Diplomacy: Undermining Human Rights and Environmental Defenders to Support Canadian Mining” (10 December 2022), *Justice and Corporate Accountability Project*, online (pdf): <[https://miningwatch.ca/sites/default/files/2022-12-09\\_jcap\\_thetwofacesofcanadiandiplomacy\\_reduced-2.pdf](https://miningwatch.ca/sites/default/files/2022-12-09_jcap_thetwofacesofcanadiandiplomacy_reduced-2.pdf)> [<https://perma.cc/HXB5-82W9>] [“Hudbay Report”].

<sup>82</sup> Hudbay Report, *supra*.

<sup>83</sup> Hudbay Report, *supra* at 61.

<sup>84</sup> Hudbay Report, *supra* at 65-71.

<sup>85</sup> Hudbay Report, *supra* at 76-77.

National Police displayed bias towards Moore and seemed to favour Hudbay because of a police services contract with Hudbay.<sup>86</sup>

Among other things, the Hudbay report found that Canadian officials failed to support and protect Moore when she and local organizations expressed concern over her safety in Peru before and during her detention, and when they sought further support from Canadian officials after her detention.<sup>87</sup> The report also found that Canada failed to cooperate with international bodies and made misleading statements to these bodies when questioned about the events surrounding Moore's detention and criminalization in Peru.<sup>88</sup>

This part of the submission identifies three themes that are present in all four reports. For each theme described below, we offer examples drawing from the four reports.

**a. Theme 1: Canada supports companies despite notice of alleged human and environmental rights violations**

*In all the reports reviewed, Canadian officials had direct notice of credible allegations of human rights violations and/or risk to the human rights defender (HRD) connected with the Canadian resource company in question, and yet they failed to undertake any due diligence and investigate the matter. Rather, in these circumstances, Canadian officials continued to support the Canadian resource company and failed to meaningfully support the HRD in question.*

**(1) Blackfire Report: failure to investigate and continued support in spite of lethal violence**

As mentioned, the Blackfire Report relates to Blackfire's operation of the Payback mine in Chiapas, Mexico. Local communities and activists alleged that there had been serious lack of consultation, social division, threats from people in the employ of the company, and environmental harms. Tensions eventually culminated in community leader Mariano Abarca being shot and killed on November 27, 2009.<sup>89</sup> In this case study, the Canadian Embassy was consistently made aware of the escalating tensions between the local community and Blackfire.<sup>90</sup> For instance, when Abarca was detained by police without charges, in response to a complaint filed by a Blackfire employee, the Embassy received 1,400 emails expressing support and concern for his safety.<sup>91</sup>

Instead of following up on these allegations and concerns regarding Blackfire's operations, the Embassy intervened with Mexican authorities on the company's behalf to try to protect the company's interests and the continued operation of the mine.<sup>92</sup> For instance, amidst Abarca's detention, the Canadian Trade Commissioner offered to coordinate messaging with Blackfire, suggesting that he would "check with you [Blackfire employee] and [name redacted] to see what

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<sup>86</sup> Hudbay Report, *supra* at 80.

<sup>87</sup> Hudbay Report, *supra* at 61-74, 100-101.

<sup>88</sup> Hudbay Report, *supra* at 102-108.

<sup>89</sup> Blackfire Report, *supra* at 18.

<sup>90</sup> Blackfire Report, *supra* at 9.

<sup>91</sup> Blackfire Report, *supra* at 11.

<sup>92</sup> Blackfire Report, *supra* at 8.

the current situation is, and to fashion appropriate messaging”<sup>93</sup> in advance of a potential meeting between the Canadian Ambassador and the Governor of Chiapas.

Then, weeks before Abarca’s murder, as part of its lobbying activities on behalf of Blackfire, Canadian officials travelled to Chiapas where they took a tour of Blackfire’s mine and met with the Secretary General of the State of Chiapas. The Canadian Embassy’s stated goal was to “advocate for greater attention by Chiapas to try to resolve challenges that Blackfire [was] facing,” namely economic problems caused by “lengthy blockades.”<sup>94</sup>

A report drafted by a Political Counsellor at the Embassy following Abarca’s murder, and distributed widely in Canadian government,<sup>95</sup> showed that the Embassy knew how unfavourably Blackfire was seen in the community. The report revealed that the Embassy knew about allegations that Blackfire had used threats to gain power in the community and had caused environmental damages.<sup>96</sup> In spite of this, the Embassy’s support for Blackfire did not appear to diminish. For instance, only five days after the report was circulated, a Canadian Trade Commissioner reached out to other Canadian officials on Blackfire’s behalf to see if they could help file an arbitration claim against the state of Chiapas under the North American Free Trade Agreement.<sup>97</sup>

A few days after Abarca’s murder, internal communications revealed that the Embassy was aware that three individuals associated with Blackfire had been detained.<sup>98</sup> Instead of encouraging Mexican authorities to undertake a full investigation, the Embassy sought to distance itself from the proceedings. Internal documents show that proposed messaging which would have encouraged Mexican officials to undertake a fulsome investigation was toned down in favour of the message that this issue was a “a matter for Mexican officials”.<sup>99</sup>

## **(2) Excellon Report: continued support in spite of serious social risks**

The Excellon Report focuses on events that took place in Mexico in 2012, impacting Ejido La Sierrita, the agricultural community on whose land the La Platosa mine operates. Community members became unhappy with the company when it failed to comply with various social supports that it had committed to as part of a land rental agreement signed with the Ejido in 2008. At the same time, workers began to seek to exercise their right to form a union in response to health and safety concerns at the mine.<sup>100</sup> After filing two official complaints in Canada and when the company repeatedly refused to listen to community members and workers on these issues, protestors formed a legal blockade on private property in front of the mine with the consent of the

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<sup>93</sup> Blackfire Report, *supra* at 17.

<sup>94</sup> Shin Imai, “Submission to the Public Sector Integrity Commissioner in Relation to the Embassy of Canada in Mexico” (5 February 2018), *Justice and Corporate Accountability Project* at 6, online (pdf): <<https://miningwatch.ca.nmsrv.com/sites/default/files/2psicpublicfinal.pdf>> [<https://perma.cc/8JL4-R5GE>].

<sup>95</sup> Blackfire Report, *supra* at 24.

<sup>96</sup> Blackfire Report, *supra* at 25-26.

<sup>97</sup> Blackfire Report, *supra* at 26.

<sup>98</sup> Blackfire Report, *supra* at 18.

<sup>99</sup> Blackfire Report, *supra* at 20.

<sup>100</sup> Excellon Report, *supra* at 4.

landowner, who was supportive of the protest.<sup>101</sup> In spite of this, after persistent lobbying by the company with support from the Embassy, 100 Mexican police officers and security forces removed the peaceful protest by force.<sup>102</sup>

As early as a month before the crackdown, Canadian officials were aware, based on their regular communication with the company, that repressive tactics were being planned against the peaceful and legal protest. Further, the night before police and armed forces moved in on the Ejido encampment, Excellon told a Canadian Trade Commissioner that Mexican police had decided that they had the authority to “make arrests in the face of this ongoing trespass”, in response to which the Canadian official wished the company well.<sup>103</sup> In internal communications, the Trade Commissioner informed fellow Embassy colleagues that “the company accessed the mine today with the assistance of the Federal, State and Municipal police as well as the military”.<sup>104</sup> No one at the Embassy appeared to show any concern whatsoever for the welfare of the community members and workers or the protection of their right to protest.

During and following these events, the Embassy continued to actively assist Excellon by lobbying key Mexican officials on the company’s behalf and offering support. In one example, an Excellon executive asked a Canadian Trade Commissioner to secure a meeting with the state Governor. After the Embassy arranged for the meeting, the Excellon executive thanked the Commissioner for the “favour”.<sup>105</sup> Later, when the company notified the Trade Commissioner that Ejido protests were once again occurring, and that the company was considering its legal options, the Commissioner’s response was: “Please let us know if we can facilitate in any way.”<sup>106</sup>

## **b. Theme 2: Systematic disregard for Canada’s domestic and international obligations**

*In supporting the company and failing to support the HRD, Canadian officials systematically disregarded Canada’s applicable domestic policies and international obligations, despite notice and knowledge of alleged violations and risks detailed above.*

### **(1) CSR Strategy: failure to facilitate dialogue and dispute resolution**

As mentioned, the Marlin Report relates to Goldcorp’s operation of the Marlin Mine in Guatemala. The report found that Canadian officials failed to adhere to Canada’s CSR Strategy commitments to facilitate dialogue and expect Canadian companies to respect human rights. The report explains how this latter commitment by definition requires a minimum level of due diligence on the part of Canadian officials.<sup>107</sup> The Marlin Report documents numerous credible reports of human rights violations and environmental contamination connected to Goldcorp and the operation of the

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<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> Excellon Report, *supra* at 10.

<sup>104</sup> *Ibid.*

<sup>105</sup> Excellon Report, *supra* at 9.

<sup>106</sup> Excellon Report, *supra* at 11.

<sup>107</sup> Marlin Report, *supra* at 26.

mine.<sup>108</sup> In spite of this, there was no evidence that Canadian officials considered this body of research before deciding to support the company in opposing a human rights complaint launched by local Indigenous communities.<sup>109</sup> Rather, Canadian officials developed their talking points based exclusively on information from the company. Talking points for meetings between Canadian and Guatemalan officials show that Canadian officials simply asserted their confidence that Goldcorp's was in compliance with international standards and local laws,<sup>110</sup> in total disregard of evidence to the contrary, including the findings of two UN bodies.

## **(2) An apparent failure to report evidence of potential corruption**

The Blackfire Report describes a conflict between Blackfire Exploration and local communities concerned with the social and environmental impacts of Blackfire's Payback Mine. It details how Blackfire filed a complaint with the Chiapas State Congress in June 2009 alleging that a local mayor had been demanding payments from Blackfire to keep the townspeople from "tak[ing] up arms" against the mine.<sup>111</sup> The company's complaint included evidence of 15 payments that the company had made to the mayor's personal account between March 2008 to April 2009. According to the complaint, Blackfire also paid for "airline tickets for the mayor, his family and his associates". It was only once the mayor's demands became "ridiculous" that Blackfire no longer felt comfortable cooperating and decided to bring the matter to the State Congress.<sup>112</sup> This matter was reported on in the Mexican media immediately, it was picked up in the Canadian press in December 2009 when the *Globe and Mail* published a story on it.<sup>113</sup>

Despite Abarca's murder in connection with Blackfire earlier in 2009, and these media reports of potential corruption on the part of the company, the embassy did not withdraw its support for the company.<sup>114</sup> There is also no evidence that the Embassy ever asked Blackfire about the payments, undertook its own investigation, or called upon Mexican authorities to do so.<sup>115</sup>

The Canadian *Corruption of Foreign Public Officials Act*<sup>116</sup> makes it a criminal offence for a Canadian company to bribe foreign public officials,<sup>117</sup> and it is government policy that public officials have an obligation to report suspected corruption.<sup>118</sup> There is no evidence that the embassy made any such report to the Royal Canadian Mounted Police (the RCMP). It was only

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<sup>108</sup> Marlin Report, *supra* at 38.

<sup>109</sup> *Ibid.*

<sup>110</sup> Marlin Report, *supra* at 39.

<sup>111</sup> Blackfire Report, *supra* at 23.

<sup>112</sup> Blackfire Report, *supra* at 23.

<sup>113</sup> Andy Hoffman, "Mayor blackmailed us, Canadian mining company says," *The Globe and Mail* (11 December 2009), online: <<http://www.theglobeandmail.com/news/world/mayor-blackmailed-us-canadian-mining-company-says/article1205944/>> [<https://perma.cc/G4VX-WRJN>].

<sup>114</sup> Blackfire Report, *supra* at 23.

<sup>115</sup> *Ibid.*

<sup>116</sup> SC 1998, c 34.

<sup>117</sup> SC 1998, c 34 at s. 3.

<sup>118</sup> Shin Imai, "Submission to the Public Sector Integrity Commissioner in Relation to the Embassy of Canada in Mexico" (5 February 2018), *Justice and Corporate Accountability Project* at 17, online (pdf): <<https://miningwatch.ca.nmsrv.com/sites/default/files/2psicpublicfinal.pdf>> [<https://perma.cc/8JL4-R5GE>].

after nine Canadian NGOs called on the RCMP to investigate that the police raided Blackfire’s headquarters in Calgary in 2010.<sup>119</sup>

### (3) Completely ignoring the Voices at Risk Guidelines

As described above, in 2016, Canada adopted a policy called *Voices at Risk: Canada’s guidelines on supporting human rights defenders* (“the Guidelines”), updated in 2019. The Hudbay Report documents how Canadian officials failed to uphold the Guidelines in response to human rights violations perpetrated against a Canadian HRD while visiting Peru.<sup>120</sup> Against a backdrop of environmental impacts, unfulfilled and inadequate agreements with communities, protests, criminalization and violence<sup>121</sup> associated with the Constancia mine, a documentary film was screened in Peru in 2017 detailing such issues as this and at other mines across the Americas owned by the same company, Hudbay,<sup>122</sup> Jennifer Moore, the MWC Latin America Coordinator at the time, planned and organized screenings of the documentary in Peru, along with the U.S. filmmaker, John Dougherty, and local organizations.<sup>123</sup>

Before and after the screenings took place, Moore and other members of participating groups reported being filmed, questioned, and followed by Peruvian National Police (PNP) and Hudbay security personnel.<sup>124</sup> This environment of intimidation culminated after one of the screenings, in the city of Cusco, when Moore and Dougherty were detained and questioned by PNP officers, under the pretense of verifying their migration status.<sup>125</sup> After Moore and Dougherty were released, the PNP issued a report concluding that Moore’s actions related to the film screenings had violated Peruvian law. The same day, the Peruvian Ministry of the Interior published a statement on its website accusing Moore and Dougherty of inciting violence and being involved with “activities that threaten public order, internal order or national security”.<sup>126</sup> A day later, a Sunday, and without any due process, the Director of Immigration declared a “migratory alert”, indefinitely banning the pair from returning to Peru.<sup>127</sup>

These events led to significant national and international expressions of support for Moore and Dougherty. Over 90 civil society organizations signed a letter to Canadian and Peruvian authorities denouncing this treatment and a number of UN bodies sent a joint communication to Canada and Hudbay expressing concern and seeking more information.<sup>128</sup> Weeks later, a group of Peruvian human rights lawyers initiated a *habeas corpus* on Moore’s behalf in Peruvian court, of which

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<sup>119</sup> Blackfire Report, *supra* at 22.

<sup>120</sup> Hudbay Report, *supra*.

<sup>121</sup> Hudbay Report, *supra* at 41-49.

<sup>122</sup> Hudbay Report, *supra* at 61.

<sup>123</sup> *Ibid.*

<sup>124</sup> Hudbay Report, *supra* at 63-65.

<sup>125</sup> Hudbay Report, *supra* at 65.

<sup>126</sup> Hudbay Report, *supra* at 70, citing “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].

<sup>127</sup> Hudbay Report, *supra* at 70.

<sup>128</sup> Hudbay Report, *supra* at 74.



Canadian officials were made aware.<sup>129</sup> As mentioned earlier, in the course of this lawsuit, the courts repeatedly found that Moore's rights were violated.

Before, during and after the detention, Moore and her supporters reached out to the Canadian embassy numerous times requesting specific forms of support. The Guidelines place special obligations on Canadian embassies to support HRDs, and in particular Canadian HRDs, who face threats connected to Canadian multinational corporations because of their work.<sup>130</sup> In spite of this, the Hudbay Report identifies five major failures of Canadian officials to adhere to the Voices at Risk Guidelines and respond meaningfully, or at all, to these requests. Among other things, this includes the failure to engage with local authorities to help protect Moore, and to advocate for Peruvian authorities to remove criminalizing statements from a government website and to rescind the migratory alert.<sup>131</sup>

Other failures on the part of Canadian officials include the failure to show support for Moore's constitutional court case, the failure to undertake any due diligence to determine the extent to which Hudbay may have been involved in the criminalization of Moore, and a written response to UN bodies that was misleading at best with respect to what Canadian authorities knew about allegations that Hudbay was involved.

After assessing Canada's utter failure to meaningfully support Moore over a period of weeks, months and years as the migratory alert persists and as the Peruvian courts continue to find in favor of Moore, and taking into account the internal and external communications of Canadian authorities about the issue, the Hudbay Report concludes that Canadian officials depicted bias against Moore due to her work as an advocate for the human and environmental rights of communities affected by Canadian mining companies.<sup>132</sup> Thus Canadian officials were complicit in the very criminalization that the Guidelines are intended to combat.

#### **(4) Undermining Indigenous communities in an international human rights process**

In December 2007 Guatemalan Indigenous communities brought a petition to the Inter-American Commission on Human Rights (IACHR) alleging, among other rights violations, that the Guatemalan government had authorized Goldcorp's Marlin mine without their free, prior and informed consent and, in doing so, had ignored the outcome of a community-organized consultation that rejected the proposed mine.<sup>133</sup> In May 2010, the IACHR issued precautionary measures for the mine, including an order for its suspension, on the basis of concerns over the impacts of the mine on local water sources and the population's health.<sup>134</sup> In December 2011,

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<sup>129</sup> Hudbay Report, *supra* at 76.

<sup>130</sup> Global Affairs Canada, *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders*, Catalogue No FR5-110/2019E (Ottawa: Global Affairs Canada, 2019) at 10 and 21, online: *Global Affairs Canada* <[www.international.gc.ca/world-monde/assets/pdfs/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/rights\\_defenders-guide-defenseurs\\_droits\\_en.pdf?\\_ga=2.65464426.570807074.1624291594-1582140248.1619455244](http://www.international.gc.ca/world-monde/assets/pdfs/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders-guide-defenseurs_droits_en.pdf?_ga=2.65464426.570807074.1624291594-1582140248.1619455244)> [perma.cc/4MYK-6EZC].

<sup>131</sup> Hudbay Report, *supra* at 74, 84-85, 95.

<sup>132</sup> Hudbay Report, *supra* at 122.

<sup>133</sup> Marlin Report, *supra* at 23.

<sup>134</sup> Marlin Report, *supra* at 24.

without the mine ever being suspended, the IACHR amended the precautionary measures and lifted the suspension request.<sup>135</sup> The Marlin Report concludes that Canadian officials made several attempts to influence the IACHR process in the intervening period.

The report details how Canadian officials appeared to lobby the Guatemalan government not to follow the precautionary measures issued by the IACHR.<sup>136</sup> For instance, an urgent conference call took place between Canada's Minister of State for Foreign Affairs, Canada's Ambassador to Guatemala, and Guatemalan Vice-President Espada just hours before the Guatemalan government issued an interim response to the precautionary measures. The talking points prepared in advance of the call show that Canadian officials were prepared to back Goldcorp and suggest that the company was already complying with local laws and international standards, without having independently verified whether this was true.<sup>137</sup> As stated above, many of the statements in the talking points for these high-ranking Canadian officials directly contradicted the findings of the ILO Committee of Experts and a UN Special Rapporteur.<sup>138</sup> After the precautionary measures were modified and the suspension request had been lifted, congratulatory emails were circulated between Goldcorp executives and Canadian officials, including Canada's Ambassador to the Organization of American States (OAS).<sup>139</sup>

In addition to lobbying the Guatemalan government, Canadian officials communicated directly with the IACHR, gathering information about the process that they later shared with Goldcorp.<sup>140</sup> Canadian officials worked to ensure that Goldcorp had a presence at the IACHR hearing, and tried to encourage a friendly settlement process involving Goldcorp and affected communities, which is a decision reserved for the IACHR and the parties themselves.<sup>141</sup>

In the midst of all of these actions, internal communications demonstrate that Canadian officials were aware that they "should not be seen to be interfering" in the IACHR proceedings.<sup>142</sup> Officials were also aware that neither Goldcorp nor Canada were in fact parties to the proceedings.<sup>143</sup> Yet, the Marlin Report concludes that Canadian officials took steps that resulted in attempted interference with the IACHR process: they "relayed information from the IACHR to Goldcorp; took steps to leverage Goldcorp's influence during the IACHR site investigation of the Marlin mine; and strategized ways in which the company could influence the IACHR hearing on the case."<sup>144</sup>

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<sup>135</sup> *Ibid.*

<sup>136</sup> Marlin Report, *supra* at 5, 40-41.

<sup>137</sup> Marlin Report, *supra* at 33-34.

<sup>138</sup> Marlin Report, *supra* at 34.

<sup>139</sup> Marlin Report, *supra* at 42.

<sup>140</sup> Marlin Report, *supra* at 35.

<sup>141</sup> Marlin Report, *supra* at 53.

<sup>142</sup> Marlin Report, *supra* at 43.

<sup>143</sup> Marlin Report, *supra* at 53.

<sup>144</sup> Marlin Report, *supra* at 5.

### c. Theme 3: Canadian officials have contributed to the risk of harm for HRDs

*In combination, these actions and omissions on the part of Canadian officials contributed to an increased risk of harm to HRDs.*

The reports discussed in the previous sections reveal that the actions and omissions of Canadian officials can increase the risk of harm for HRDs in the context of socio-environmental conflicts related to Canadian resource extraction companies. One way that this can occur is through public omissions. When the Embassy publicly fails to act in accordance with its stated policies, in a context of systematic human rights violations of HRDs, this silence can be interpreted by certain actors as permission to continue those violations. A second way that risk can be elevated is by public actions. This can occur when a Canadian Embassy continues robust backdoor and public advocacy for a Canadian company, in spite of growing evidence of grave risks for HRDs. In this section we provide a specific example of each of these scenarios.

With respect to the first scenario, the Hudbay Report concluded that Canada's silence increased the overall risk for HRDs raising concerns about Canadian companies operating in Peru. As described above, Canadian officials were publicly silent with respect to the blatant criminalization and human rights violations being perpetrated by Peruvian authorities against Canadian HRD Jennifer Moore. The report concludes that in the context of widespread impunity and violence against mine-affected communities and HRDs working on environmental and Indigenous rights issues in Peru, silence on the part of Canada in such a high-profile case can be interpreted by some actors as a permission to continue to criminalize HRDs. This is especially the case where Canada publicly ignores its own policies by refusing to respond to numerous public requests for action from civil society organizations. The actions and statements of Peruvian authorities with respect to Moore have wider implications for any journalist, activist or academic who publicly criticizes a Canadian mining company in Peru. Canada's silence in the face of these statements perpetuates the risk created by this situation for all HRDs. It signals to local authorities that they need not worry about Canadian officials acting to protect HRDs, in spite of Canada's policies that would indicate otherwise.

In a second example, the Blackfire Report documents how Canadian Embassy officials continued robust advocacy for Blackfire, even in the wake of clear signs of escalating risk, including: the physical assault of Abarca and one of his sons;<sup>145</sup> reports of death threats against Abarca and other community members allegedly on the part of Blackfire employees;<sup>146</sup> the detention of Abarca without charges and at the behest of Blackfire executives.<sup>147</sup> In spite of this context, a delegation of Canadian officials traveled to the state capital of Chiapas to advocate for the company and pressure local officials to address opposition to Blackfire's mine.<sup>148</sup> The Blackfire Report concludes that this advocacy just weeks before Abarca's murder elevated the risk of violence against Abarca and any other opponents of the mine.

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<sup>145</sup> Blackfire Report, *supra* at 10.

<sup>146</sup> Blackfire Report, *supra* at 10-11, 14, 18, 25.

<sup>147</sup> Blackfire Report, *supra* at 11.

<sup>148</sup> Blackfire Report, *supra* at 14-16.

A judge of the Federal Court of Canada appeared to agree with this conclusion. After Canada’s Public Service Integrity Commissioner refused to investigate a complaint filed by Abarca’s family members and supporters about the embassy’s actions, they applied to the Federal court for a judicial review. In a 2019 decision, the court observed that:

Undoubtedly, the Applicants would have liked the Embassy to have acted in a certain way, and perhaps Mr. Abarca would not have been murdered.<sup>149</sup>

This admission that “perhaps Mr. Abarca would not have been murdered” if the embassy “[had] acted in a certain way”<sup>150</sup> is consistent with the Blackfire Report’s findings that the embassy’s continued public advocacy for the company, while ignoring the risks to Abarca and other affected HRDs, elevated the risk of harm for Abarca with tragic consequences.

## 5. A 2021 Example: The Canadian Embassy in Ecuador & the Shuar Arutam People

As stated previously, this submission summarizes four in-depth case studies of Canada’s approach to economic diplomacy and HRDs in the context of Canadian mining abroad. All four studies are based on records obtained from access to information requests. They document events ranging from 2009 to 2017 that depict Canada’s disregard for HRDs, its own policies and its human rights obligations. However, there is compelling evidence that this problem is on-going and that little progress has occurred in spite of the body of research cited here, and civil society’s efforts to advocate for change. We provide a recent example from 2021 to illustrate how egregious and entrenched Canada’s disregard for its own policies has become, in even the clearest of cases.

On August 26th, 2021, the Shuar Arutam People (PSHA) in Ecuador wrote to Sylvie Bédard, Canada’s Ambassador to Ecuador, with respect to Canadian company Solaris Resources Inc.’s Warintza mine project. In their letter, the PSHA detailed allegations of violations of PSHA’s indigenous rights, as well as alleged threats and violence experienced by PSHA environmental defenders at the hands of Solaris.<sup>151</sup> This included an allegation that PSHA Josefina Tunki had received a telephone death threat from Solaris’ VP Operations, that she feared for her life, that she had filed a complaint with Criminal Prosecutor Office, and that for six months Ecuadorian authorities had failed to respond to her complaint.<sup>152</sup> The PSHA’s letter to Ambassador Bédard included 137 signatories and it urged the Embassy to take a number of actions in accordance with

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<sup>149</sup> *Gordillo v Canada (Attorney General)*, 2019 FC 950 at para 66.

<sup>150</sup> MiningWatch Canada, “Federal Court Judge Concedes – If Canadian Embassy in Mexico Had Acted Differently, Mariano Abarca Might Not Have Been Murdered, But Refuses to Order Investigation” (29 July 2019), online: <<https://miningwatch.ca/news/2019/7/29/federal-court-judge-concedes-if-canadian-embassy-mexico-had-acted-differently-mariano>> [<https://perma.cc/JNQ7-NJ4H>].

<sup>151</sup> Letter from Marcelo Unkuch, external management for the Shuar Arutam People to Sylvie Bédard, Ambassador of Canada to Ecuador (26 August 2021), online (pdf): <<https://amazonwatch.org/assets/files/2021-08-26-psha-letter-to-canadian-embassy.pdf>> [<https://perma.cc/9RUQ-JDX6>].

<sup>152</sup> Letter from Marcelo Unkuch, external management for the Shuar Arutam People to Sylvie Bédard, Ambassador of Canada to Ecuador (26 August 2021) at 2, online (pdf): <<https://amazonwatch.org/assets/files/2021-08-26-psha-letter-to-canadian-embassy.pdf>> [<https://perma.cc/9RUQ-JDX6>].

the Voices at Risk Guidelines, including to help provide safety measures for PSHA President Tunki.<sup>153</sup>

More than three months later, Ambassador Bédard responded in a letter dated December 6, 2021. In her reply, the Ambassador refused to take any action at all. She stated that she had “taken note of the facts indicated” in the August 26, 2021 letter, but that in light of the criminal complaint that had been filed, the embassy would refrain from coming to any conclusions, and would simply allow the criminal complaint process to play out.<sup>154</sup>

In short, the Ambassador appears to have used the fact of a prior criminal complaint to avoid taking any of the requested actions of support under the Guidelines, in spite of the fact that the complaint in question had received no reply from authorities after more than 9 months.<sup>155</sup> In doing so, the Ambassador simply ignored the other allegations of violence and threats that Indigenous environmental defenders had detailed in their letter. This is just one recent example of Canada’s systematic disregard for the letter and spirit of its own policies, including the Guidelines.

## **6. Recommendations**

This submission has demonstrated that Canada’s policy approach to HRDs and economic diplomacy has systematically failed to ensure that Canadian officials comply with Canada’s domestic policy commitments, as well as its international human rights obligations. It has shown examples where Canadian officials continue to support a company despite allegations of human rights violations, as well as circumstances where the embassy’s actions and omissions can or have put HRDs at greater risk.

Taken together, these case studies reveal a number of longstanding basic rule of law problems with Canada’s approach to economic diplomacy and defenders. These issues persist in the most recent iteration of Canada’s Voices at Risk Guidelines, this includes: a lack of reporting and transparency in their implementation; a lack of clarity regarding the obligations of Canadian officials under the Guidelines; and a lack of independent oversight to ensure accountability for their implementation.

In light of the severity and the persistence of these issues, we respectfully request that the UPR Working Group make the following recommendations to Canada:

1. Recommend that Canada reform its policy and legal approach to economic diplomacy and HRDs abroad to an approach that can ensure that the actions of Canadian officials comply with Canada’s international human and environmental rights obligations.

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<sup>153</sup> Letter from Marcelo Unkuch, external management for the Shuar Arutam People to Sylvie Bédard, Ambassador of Canada to Ecuador (26 August 2021) at 4, online (pdf): <<https://amazonwatch.org/assets/files/2021-08-26-psha-letter-to-canadian-embassy.pdf>> [<https://perma.cc/9RUQ-JDX6>].

<sup>154</sup> Letter from Sylvie Bédard, Ambassador of Canada to Ecuador to Marcelo Unkuch, external management for the Shuar Arutam (6 December 2021).

<sup>155</sup> Letter from Marcelo Unkuch, external management for the Shuar Arutam People to Sylvie Bédard, Ambassador of Canada to Ecuador (26 August 2021) at 2, online (pdf): <<https://amazonwatch.org/assets/files/2021-08-26-psha-letter-to-canadian-embassy.pdf>> [<https://perma.cc/9RUQ-JDX6>].

2. Recommend that such reforms be developed only after a fulsome and meaningful process of civil society engagement. This should include HRDs, Indigenous peoples, communities, and groups who are directly impacted by industrial resource extraction abroad, with the support of the Canadian government and diplomatic missions.

This consultation should follow the principle that policy and law reforms should be informed by empirical research like that cited in this submission, as well as by the lived experience and perspectives of those who are directly impacted by the policies under discussion.

3. Recommend that Canada conduct a comprehensive review of the failures of Canadian officials to uphold Canada's international human and environmental rights obligations in the four case studies cited in this report. This review should identify the appropriate remedies owed to any individuals who were harmed directly or indirectly by Canada's actions.

## **Appendices**

*Note: These reports, cited throughout this submission, are included attachments that accompany the submission.*

Appendix 1: Blackfire Report

Appendix 2: Excellon Report

Appendix 3: Marlin Report

Appendix 4: Hudbay Report.