

# Creating an international Gender and Peace agenda:

## Impact of Canadian mines in Latin America

Extraterritorial obligations of Canada  
Shadow report to CEDAW 65th session

**Pi** plataforma  
internacional  
contra la impunidad



WOMEN'S INTERNATIONAL LEAGUE FOR  
**PEACE & FREEDOM**

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## **I. Summary**

Through this submission the Women's International League for Peace and Freedom (WILPF) and the International Platform against Impunity wish to draw the attention of the CEDAW Committee to the following issues:

- The failure of the Canadian Government to meet its obligations to protect the human rights of women outside Canadian territory which have been violated as a result of Canadian mining companies' operations.
- The failure of the Canadian Government to establish effective administrative and judicial mechanisms to ensure access to justice for women outside its territory whose human rights have been violated as a result of Canadian mining companies' operations.

## **II. Introduction**

### **States' extraterritorial obligations with regard to human rights**

In this globalised world, human rights violations cannot be understood without addressing the extraterritorial dimension of States' obligations in relation to human rights. International human rights law establishes States' duty to prevent, investigate, punish and remedy human rights violations committed by state agents or private individuals. Various regional and international human rights mechanisms have affirmed that States also have extraterritorial obligations in relation to human rights violations committed by non-state actors under their jurisdiction, including transnational corporations.

In its General Recommendation 28, the CEDAW Committee has affirmed that the obligations of States Parties contained in the Convention also extend to acts of national corporations operating extraterritorially and that, therefore, States should ensure that private actors do not commit acts of discrimination against women, as defined by CEDAW (Committee on the Elimination of Discrimination against Women).<sup>1</sup> General Recommendation 30 affirms that States Parties are responsible for all their actions affecting

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<sup>1</sup> General Recommendation 28 of the CEDAW Committee **on the Core Obligations of Party States under Article 2 of CEDAW**

human rights, regardless of whether the affected persons are on their territory. Moreover, it affirms that the Convention also requires States Parties to regulate the activities of domestic non-State actors within their effective control who operate extraterritorially.<sup>2</sup>

Recently, the CEDAW Committee, in its General Recommendation 34, affirmed that States Parties should regulate the activities of non-state actors within their jurisdiction, including those operating extraterritorially. It also affirms that States are obliged to take “regulatory measures to prevent any actor under their jurisdiction, including private individuals, companies and public entities, from infringing or abusing the rights of rural women outside their territory.”<sup>3</sup>

Along the same lines, the Committee for Economic, Social and Cultural Rights has affirmed that States have an obligation to protect the rights to health, water and fair working conditions of persons outside their territory and who are impacted by the activity of enterprises under States’ jurisdiction.<sup>4</sup> The Special Rapporteur on the human right to safe drinking water and sanitation has also warned that failure to fulfil extraterritorial obligations is of growing concern with regard to the rights to water and sanitation, for example, in the context of the activities of transnational corporations.<sup>5</sup>

### **III. Impact of Canadian mining in Latin America**

Canada is one of the world’s top mining countries. According to the Canadian Government, in 2013 over 50% of publically listed exploration and mining companies were headquartered in Canada. In Latin America, more than 80% of companies that invest in the metal mining sector are Canadian. The operations of more than one thousand Canadian companies operating in the region have been accompanied on several occasions by social

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<sup>2</sup> General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations

<sup>3</sup> General Recommendation 34 on the rights of rural women

<sup>4</sup> General Observation 14 of the Committee for Economic, Social and Cultural Rights on the right to the best possible health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), 22nd session period, paragraph 39, 2000 and General Observation 15 of the Committee for Economic, Social and Cultural Rights on the right to water (Article 12 of the International Covenant on Economic, Social and Cultural Rights), 29th session period, paragraph 33, 2002, General Observation 23 of the Committee for Economic, Social and Cultural Rights on the right to fair working conditions (Article 7 of the International Covenant on Economic, Social and Cultural Rights), 2016, paragraph 69

<sup>5</sup> Report A/HRC/ 27/55, 30 June 2014, paragraph 70

conflicts in the communities where their projects are implemented as well as by negative environmental impacts.

In 2014, the Working Group on Mining and Human Rights in Latin America (Grupo de Trabajo sobre Minería y Derechos Humanos en América Latina)<sup>6</sup> presented to the Inter-American Commission on Human Rights (IACHR) a report systematising and documenting 22 projects carried out by Canadian mining companies in 9 countries in the region. The report reveals the businesses' systematic practice of human rights violations of the community members. Some common patterns identified in the report are: the denial of participation, consultation and prior, free and informed consent of the affected communities, soil and water contamination, breach of labour rights, and acts of violence perpetrated by private security guards managed and supervised by mining companies against human rights defenders. A constant feature identified in the 22 cases featured in the report is that the Canadian Government is aware of the problems and that it has nevertheless continued to provide political, financial and legal support to companies that violate human rights.

### **3.1 Canada and mining**

Some Canadian corporations have taken advantage of the weaknesses in environmental and human rights laws in the countries where they implement their projects to carry out their activities without complying with environmental standards and human rights contained in Canadian laws. The operations have continued despite the lack of proper prior, free and informed consultation with indigenous peoples inhabiting the territories and serious concerns about their environmental impacts.

The Canadian Government, through its missions, embassies and consular offices, provides support to the extractive mining industry. In 2009, the government launched the policy called "Strategy Corporate Social Responsibility" (CSR Strategy) for transnational extractive sector companies, which was revised in November 2014. Under this policy all extractive companies operating outside Canada must respect human rights standards enshrined in Canadian laws, including those contained in the UN Guiding Principles on

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<sup>6</sup> In 2010 seven non-governmental organisations based in various Latin American countries formed a group with the aim of reflecting and taking action concerning mining and its impact on human rights in the region.

Business and Human Rights. However, the only consequence for breaching the policy (CSR Strategy) is the loss of Canadian government's trade advocacy support.

In addition, the policy does not establish a process to determine which authority can assess that a company has not respected human rights standards and according to what criteria.

In 2009, Canada established the Office of the Extractive Sector CSR Counsellor, which has a mandate to provide advice to businesses and serve as a mediator to resolve conflicts that arise between mining companies and the communities in which they operate. The Counsellor can offer advice and guidance for all stakeholders on implementing CSR performance guidelines, review the CSR practices of Canadian extractive sector companies operating outside Canada and begin a conflict resolution process at early stages of a dispute. However, the Counsellor lacks the mandate to investigate and determine whether mining companies have violated human rights. In addition, the process is voluntary, which means that at any time of the dispute resolution process, the parties can leave the mediation table.

Since 2009, only six cases have reached the Counsellor. In three of them, the companies decided to withdraw from the process. In another case, the Counsellor suggested to the plaintiffs to first exhaust the internal processes provided by the company. The last case was closed without the relevant report being published.<sup>7</sup> The Counsellor's post has been vacant for a year.

In the absence of an administrative mechanism that can monitor mining companies' compliance with human rights, some victims have turned to the Canadian courts to seek the justice that they have not found in their home countries. Although in recent years Canadian courts have agreed to examine some cases of human rights violations committed by Canadian companies operating abroad<sup>8</sup>, the vast majority of victims still face significant barriers to access to the Canadian justice system, such as determination of which court has

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<sup>7</sup> [http://www.international.gc.ca/csr\\_counsellor-conseiller\\_rse/publications-publications.aspx?lang=eng](http://www.international.gc.ca/csr_counsellor-conseiller_rse/publications-publications.aspx?lang=eng)

<sup>8</sup> Choc v Hudbay Minerals Inc., 2013. ONSC 1414.

[http://www.fasken.com/files/upload/Choc\\_v\\_Hudbay\\_Minerals\\_Inc\\_2013\\_OJ\\_No.PDF](http://www.fasken.com/files/upload/Choc_v_Hudbay_Minerals_Inc_2013_OJ_No.PDF)

the authority to hear the cases, the enormous financial costs, the time they have to invest in the process, and the lack of legal expertise or assistance.<sup>9</sup>

This issue has already been examined by UN treaty bodies.

The UN Human Rights Committee, in its concluding observations on the sixth periodic report of Canada (2015)<sup>10</sup>, and the CESCR, in its Concluding Observations on the sixth periodic report of Canada (2016)<sup>11</sup>, stated as one of their main concerns allegations of human rights violations committed by Canadian companies operating abroad, particularly mining companies, and the limited access to judicial remedies before courts. In particular, the Human Rights Committee regretted the absence of effective independent mechanisms with the power to investigate complaints of abuses by such companies that affect the enjoyment of human rights by victims as well as the absence of an adequate legal framework. For its part, the CESCR expressed its concern that existing non-judicial remedial mechanisms, such as the Office of the Extractive Sector Corporate Social Responsibility Counsellor, have not always been effective.<sup>12</sup>

#### **IV. Specific impacts of Canadian mining operations on women's lives. Specific violation of the obligations contained in Articles 2, 3, 14 of the CEDAW, in relation to Recommendations 19, 28, 30 and 34 of the CEDAW Committee**

The aim of this section is to highlight the main specific impacts of Canadian mining projects on the lives of women, as well as the corresponding violations of the obligations of CEDAW States Parties. The main violations are illustrated with two cases of mining projects in Guatemala in which women's human rights have been violated. Information on the specific cases can be found at the end of this document.

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9 Mining Watch Canada. Submission to the UN Committee on Economic, Social and Cultural Rights. January 2015.

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fICO%2fCAN%2f19290&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fICO%2fCAN%2f19290&Lang=en)

<sup>10</sup> CCPR/C/CAN/CO/6 , 13 August 2015, paragraph 6

<sup>11</sup> E/C.12/CAN/CO/6 , 23 March 2016, paragraphs 15 and 16

<sup>12</sup> CCPR/C/CAN/CO/6 , 13 August 2015, paragraph 6; E/C.12/CAN/CO/6, 23 March 2016, paragraph 15

#### **4.1. Water availability and pollution resulting from Canadian mining operations and impact on the life, health and rights of women**

Several reports documenting the impacts caused by Canadian mining in Latin America have identified a systematic pattern of contamination of water sources as well as a problem of over-exploitation of aquifers that results in problems of scarcity and drought for affected communities. (See the Marlín Mine Guatemala case, Annex 2)<sup>13</sup>.

As the ones mainly responsible for the management of water resources for personal, domestic and community use, women are particularly affected by mining projects established in their communities. When water sources are lost, controlled or contaminated by companies, women are forced to travel to distant places to access water, and this affects other aspects of their life, such as the use of time and personal safety, as explained below (in the section *Specific Acts of Violence*). The Special Rapporteur on the human right to safe drinking water and sanitation has warned that inordinate amounts of time spent by women and girls carrying water have major impacts on the enjoyment of other rights, such as access to paid employment and education.<sup>14</sup>

Deteriorating environmental conditions caused by mining, particularly the pollution of rivers and water sources, have increased health problems in communities. (See the Marlín Mine Guatemala case, Annex 2). Mining companies have defended their actions by arguing the lack of rigorous studies to determine the direct impact of mining on the health of women and their communities. However, it is necessary to consider that the health impacts caused by mining should be analysed long-term in all their manifestations.<sup>15</sup> A recurring issue in women's resistance to mining operations is the claim concerning accelerated deterioration of family health, especially in skin, respiratory or reproductive diseases, caused by mining companies' operations.<sup>16</sup> In addition to the deterioration of women's own

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<sup>13</sup> Working Group on Mining and Human Rights of the Interamerican Committee on Human Rights, Report on the Impact of Canadian Mining in Latin America and Canada's Responsibility, 2013. See also Amnesty International, Guatemala: *Mining in Guatemala: Rights at Risk*, 2014.

<sup>14</sup> A/HRC/27/55, 30 June 2014

<sup>15</sup> Bermudez Rico, Rosa Emilia (Coord.), *Los territorios, la minería y nosotras: las mujeres nos preguntamos; Guía de trabajo*, published by Censat Agua Viva – Amigos de la Tierra Colombia, Colombia, 2014.

<sup>16</sup> On 22 February 2010 the Human Rights Prosecutor in Guatemala filed a public case for violation of the human right to health, based on information which had appeared in the press concerning skin problems complained of by the residents of the municipalities of Sipacapa and San Miguel Ixtahuacán, PDH, EXP.EIO-SM.01- 2010/DESC (February 2010). The case is currently ongoing. See also the report *Human and*

health and that of their families, it should be taken into account that tasks relating to the care of sick community members continue to be fall mainly and disproportionately on women, which means this additional burden is placed on women without any recognition or remuneration.

#### **4.2. Economic violence: Low employment of women in mining**

The mining industry privileges the hiring of male labour over that of women. Large mining corporations offer limited job opportunities to women. The opportunities are normally confined to services required by miners, such as cooking and cleaning. These jobs are usually subcontracted by local companies, which offer poor working conditions, low wages, lack of benefits and social security and unstable labour relations.<sup>17</sup> Ultimately, mining companies usually perpetuate the gendered segmentation of labour.

#### **4.3. Specific acts of violence against women perpetrated by Canadian mining companies' private security guards and women's access to justice**

Women have also been victims of violence in the context of social conflict that exists following the implementation of Canadian mining projects in Latin America. In this scenario physical and sexual assaults against women have intensified as a strong expression of gender-based violence. In some cases, the violence has been perpetrated by the employees responsible for providing private security to Canadian mining companies.<sup>18</sup> A common pattern among some Canadian mining companies has been to outsource private security activities to companies in countries where they operate, even with the knowledge that in those countries there are not the necessary government controls to ensure that security companies respect the human rights of the members of the communities. In some cases, it has been even shown that the security companies are staffed by former military or police members operating with a mentality of repressive security typical of the military regimes of the seventies and eighties in Latin America, in which sexual violence against women was part of a strategy of social repression (see the Guatemala Hudbay case, Annex

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*Environmental Impact: The Marlín Mine in Guatemala* by the Interamerican Association for Environmental Defense.

<sup>17</sup> Bermudez, Rosa Emilia (Coord.). *Mujer y Minería. Ámbitos de análisis e impactos de la minería en la vida de las mujeres. Enfoque de derechos y perspectiva de género.* Sensat Agua Viva. Bogotá, 2011, p 11

<sup>18</sup> Ibid.

1). Various reports show that security companies overstep their duties and design strategies to counter protests by community members against the presence of mining companies in their communities. Cases have been documented of members of security companies perpetrating violence against human rights defenders, including sexual violence against women of the community who oppose the projects (See the Huidobro Guatemala case, Annex 1 and the Marlín Mine Guatemala case, Annex 2).

### **Access to justice**

In order to access justice in their own country, women have to face a series of structural and circumstantial problems; this means that although the legal remedies are formally available in legislation, in practice they prove to be inefficient and difficult for women to access, especially in rural areas. Because of the financial interests at stake and the institutional weakness of Latin American countries, it is unlikely that States in which mining operations are carried out require companies to meet basic standards of human rights.

## **V. Violations of CEDAW, in particular Articles 1, 2, 3, 14 in relation to General Recommendations 19, 28 and 34 of the CEDAW Committee**

The CEDAW Committee has affirmed that gender-based violence is discrimination as defined in Article 1 of the Convention.<sup>19</sup>

CEDAW Article 3 requires States Parties to ensure the full enjoyment and exercise of human rights by women.

CEDAW Article 2 e) requires States Parties to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. Moreover, the CEDAW Committee, in its Recommendation 28, affirms that States Parties must ensure women's protection against any act of discrimination committed by national companies operating outside the territory of the country, by providing access to national courts and other public institutions:

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<sup>19</sup> General Recommendation 19 of the CEDAW Committee on "Violence Against Women"

“States Parties must also adopt measures that ensure the effective elimination of discrimination against women and women’s equality with men. This includes measures that ensure that women are able to make complaints about violations of their rights under the Convention and to have access to effective remedies (...)

The obligations of States Parties... also extend to acts of national corporations operating extraterritorially.<sup>20</sup>

CEDAW Article 14 lays down specific obligations for States to ensure the implementation of the Convention provisions to women in rural areas. The CEDAW Committee recently issued General Recommendation 34 in order to clarify the scope of the obligations under CEDAW Article 2 in relation to rural women. The Committee affirmed that States Parties should regulate the activities of non-state actors within their jurisdiction, including those operating extraterritorially. It states that:

“States Parties should uphold extraterritorial obligations with respect to rural women, inter alia, by: not interfering, directly or indirectly, with the enjoyment of their rights; taking regulatory measures to prevent any actor under their jurisdiction, including private individuals, companies and public entities, from infringing or abusing the rights of rural women outside their territory (...) Appropriate and effective remedies should be available to affected rural women when a party State has violated its extraterritorial obligations.”<sup>21</sup>

## **VI. Recommendations**

**For all the above-mentioned considerations and arguments we suggest to the Committee the following recommendations for Canada:**

- ✓ Ensure the establishment of effective judicial and administrative mechanisms to ensure access to justice for women who are outside its territory and whose human rights are violated as a result of operations of Canadian companies.

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<sup>20</sup> General Recommendation 28 of the CEDAW Committee on Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, 2010, paragraph 36

<sup>21</sup> General Recommendation 34 of the CEDAW Committee on “The Rights of Rural Women”, 2016, paragraph 13

- ✓ Establish an Extractive Sector Ombudsperson mandated to receive complaints regarding the international extractive sector (e.g. mining, oil and gas) operations of Canadian companies; conduct independent investigations to evaluate compliance with corporate accountability standards; offer mediation services, if requested; and make recommendations to both companies and the Government of Canada.

In the same vein, the government should ensure that this mechanism is accessible to communities where mining projects are implemented and that its mandate includes the ability to conduct visits to those countries and to investigate whether or not committed human rights violations have been committed. Conflict resolution processes undertaken by this mechanism should be binding on all parties and reports of its investigations should be public.

The Ombudsperson's powers should not be contingent on whether a company chooses to cooperate.

- ✓ Ensure that any administrative and legal mechanism put in place for access to justice by victims of human rights violations resulting from Canadian mining operations take into account a gender perspective, and in particular the impact of mining on women's life and rights guaranteed by CEDAW.

## **VII. Presentation of cases that illustrate the specific impacts of Canadian mining operations on women's lives**

### **Annex 1. The Highbay Case (El Estor Guatemala)**

#### **Background**

The case of the Fenix Mining Project in El Estor, Izabal Department has a long history directly related to the internal armed conflict in Guatemala. The mining operations in El Estor date back to 1965, when the Guatemalan Government gave EXMIBAL

(Exploraciones y explotaciones Mineras Izabal S.A.) a 40-year concession to operate a nickel mine. The Q'eqchi Mayan communities have historically lived on the territory on which the concession was granted. Since then the project's history has been linked to disputes and violence. EXMIBAL used to be owned by the Canadian mining company INCO HD (80%), and the American Hanna Mining Company (20%). During the internal armed conflict (1960–1996) El Estor was the scene of several massacres, enforced disappearances, rape and other human rights violations. The Commission for Historical Clarification established to investigate human rights violations committed during the armed conflict in Guatemala concluded in its report that in this context EXMIBAL equipment and personnel were used to commit human rights violations. The mine ceased operation in 1980 and remained inactive until 2004, when EXMINAL was given a new operating licence. That same year, the company was acquired by Skye Resources Inc., a company headquartered in Canada.<sup>22</sup> Operations and direct control of the project, then called Fenix, were exercised directly by Skye Resources Inc.'s executives and employees and indirectly through its Guatemalan subsidiary, Compañía Guatemalteca de Niquel. In August 2008 Hudbay Mineral, headquartered in Toronto, Canada, acquired Skye Resources, including any possible liability claims brought against the company.

### **Disputes between the Canadian company and affected communities**

Since the beginning of the project, the relationship between the Q'eqchi Mayan communities living on the land affected by the mining project and the companies operating was strained. The centre of the dispute was the ownership of the land claimed by the communities as ancestral. To date, the irregularity of the right to ownership of the disputed land is maintained.

The indigenous communities' concern in this case focuses on two issues. On the one hand, the right of indigenous peoples to be consulted on any development project that is intended to be implemented on their land or communities or that is likely to affect their rights. In particular, in the case of Guatemala, the UN Special Rapporteur on the rights of indigenous peoples stated that the country has no adequate legal or institutional framework to fulfil the

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<sup>22</sup> Amnesty International, Guatemala: *Mining in Guatemala: Rights at Risk*, 2014, p 18

state's duty to consult indigenous peoples<sup>23</sup>; therefore, communities have argued since the beginning of the project that the consultation procedures were defective.

On the other hand, the recurrent nature of acts of violence perpetrated by mining companies' private security guards against communities is concerning. Three civil lawsuits initiated by members of the Q'eqchi communities against the company Hudbay Mineral in the context of the Fenix Mining Project operations are currently pending before the Canadian courts.

### **Sexual violence against women perpetrated by the company's private security guards in the context of forced evictions**

This submission draws the Committee's attention to the complaint submitted by 11 Q'eqchi Mayan women of the Lot Eight community to Canadian courts, who allege that they were raped by members of the Canadian mining company private security guards in the context of the forced evictions carried out in 2007.

The complainants allege that on 8 and 9 January 2007, under the direction of the Company Sky Resource, private security guards, members of the police and of the military conducted forced evictions of at least 5 Q'eqchi Mayan communities located in the disputed land.

During the evictions the communities were devastated, private and state actors burned homes and belongings that allowed people to subsist, such as clothing, stored corn, grindstones and griddles, food preparation utensils, with an important symbolic significance in the indigenous culture. They stole the communities' property and ate their On the day of the eviction only women and children were present, as the men were engaged in agricultural work. *"This, in addition to being the result of the division of work by sex in a community, was due to the fact that in the face of the latent threat of eviction, the idea that the presence of women could prevent eviction, as they would be respected, prevailed in the community; the women were aware of this, so they stayed home as a defence of the*

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<sup>23</sup> James Anaya, Special Rapporteur on the Rights of Indigenous People, in his report submitted to the Human Rights Counsellor, 2012, at the 18th sessions period, addresses the issue of observations on the situation of the right of the indigenous peoples of Guatemala in relation to extraction and other projects on their additional territories.

*territory*".<sup>24</sup> However, CNG armed personnel, the National Civil Police and the army not only continued with the forced evictions but also committed massive, repeated rape against 11 of them.

On 10 January 2007, the Canadian mining company released a statement confirming that the first round of evictions had been carried out by qualified personnel to prevent violence in these situations. The company did this despite knowing of complaints filed by community members that private security forces, police and military had burnt hundreds of houses, fired guns and stolen goods in the course of those evictions.

In the week following these events the communities, in particular that of Lot Eight, returned to the disputed land to settle there again. On 17 January 2007, the complainants alleged that hundreds of police and military members and Fenix Project private security personnel returned to carry out the second round of evictions at Sky Resource's request, taking advantage of the fact that male community members were not present at that time. The complainants claim to have been subjected to sexual violence and gang rape by some of those involved in the operation, including private security personnel under the control and direction of Skye Resources. Victims allege that the company Skye Resources was negligent in the management, deployment and supervision of its security personnel in the context of forced evictions of communities. The Canadian company was aware that its subsidiary in Guatemala entrusted private security work for the mining project to a company that did not have the necessary legal authority in Guatemala to do so, besides not having the proper permits to carry and use firearms. Skye Resources was also aware, according to the complainants, that it was in the public domain that private security officers were involved in criminal structures involved in arms and drug trafficking networks.

### **Social impacts on women's lives**

After the evictions, the residents of Lot Eight were forced to move to build new settlements and rebuild their homes with basic infrastructure, because they had lost most of their belongings during the evictions. They also had to set up water sources and new pedestrian

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<sup>24</sup> Mendez Gutierrez Luz, C. A. (2014). *Mujeres Indigenas Clamor por la Justicia. Violencia Sexual, Conflicto Armado y Despojo violento de Tierras*. Guatemala: F&G Editores

access. All this undoubtedly aggravated the precarious conditions in which women already lived.

The obvious physical and psychosocial consequences are still affecting women who are survivors of sexual violence today. Examples of are pain throughout the body and continuous bleeding; many of them were pregnant and due to the rape they experienced forced abortion or gave birth prematurely, which led to physical injuries that have prevented some of them from getting pregnant again.

*“Two soldiers chased me: two soldiers caught up with me and raped me. I was eight months pregnant (...). Three days later I had pains. At the time, I thought they were labour pains, but the child was stillborn.”<sup>25</sup>*

Rape survivors have faced strong stigma; they have lost leadership at the community level and kept quiet about what they experienced because of fear and shame; however, psychosocial support has helped establish a safe space where they have begun to share their experiences with each other and generate coping mechanisms. To this day, there is a latent fear and threat of new evictions; however, in light of the decision to report the event, the women have been working towards the same objective, while also facing new challenges on the road to justice.

Criminal proceedings against the security chief are currently ongoing in Guatemala; however, to date, there has been no judicial outcome. The complainants are also suing HudBay Mineral Inc. and HMI Nickel Inc. for negligence, carelessness, physical and psychological harm in the jurisdiction of Ontario, Canada, which is where the companies are headquartered<sup>26</sup>. The *Caal v. Hudbay Inc.* case sets an important precedent, since for the first time transnational Canadian companies whose operations caused harm abroad have been brought to court in Canada. It is important to note that only eight cases relating to human rights violations committed by Canadian companies abroad have reached Canadian courts, and, to date, none of them has been successfully resolved for the complainants.

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<sup>25</sup> Community Studies and Psychosocial Action (CSPA) Team, L8-14 interview, 25 May 2012

<sup>26</sup> *Caal versus HudBay Minerals Inc.*, 2016, Klippesteins, Barristers & Solicitors <http://www.caalversushudbay.com/about>

## **Annex 2. Case Marlín Mine (Guatemala)**

### **Background and disputes**

In 2003, the Guatemalan Government granted the Guatemalan company Montana Exploradora de Guatemala S.A., a subsidiary of the Canadian company Goldcorp, a 25-year licence for gold and silver mining. The mining activities were located in an area in which the local population's main source of livelihood is subsistence farming. The mining company currently exploits an area of about 6.5 km<sup>2</sup> in the municipalities of San Miguel and Sipacapa, located in the department of San Marcos.

The Marlín Mine has been the subject of community protests and disputes that show a strained relationship between communities and the company since its inception. The root causes of the protest are described by community members and local organisations as **a lack of consultation before the mine began operating and the systematic failure of the company to address risks associated with the mine.**

Since 2005, the tension has increased due to acts of violence against the settlers, perpetrated by private security guards hired by the company, and attacks by unknown individuals against human rights defenders who oppose mining activities. In 2005, a community member was fatally shot when police and soldiers broke up a protest against the transport of heavy equipment to the mine site.<sup>27</sup>

### **Social and environmental impacts**

Since 2005, several civil society organisations have denounced the impact of the Marlín Mine's activities. They have tried to draw the international community's attention to the situation.

As the ones mainly responsible for the management of water resources for personal, domestic and community use, women are particularly affected by mining projects established in their communities. When water sources are lost, controlled or contaminated by companies, women are forced to travel to distant places to access water, and this affects other aspects of their life, such as the use of time and personal safety.

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<sup>27</sup> Amnesty International, Guatemala: *Mining in Guatemala: Rights at Risk*, 2014, p 18

In this particular case, the company's activities have been linked to impacts in three areas:

**A) Disruption of drinking water sources:** the Mine's excessive use of water (45,000 litres per hour) stands in contrast with the fact that 47% of families in the area have no access to water sources beyond rivers and wells. Moreover, the affected populations have complained that their water sources have begun to dry up since the start of the mining operations.

**B) Impact on the population's health:** the consequences on population's health of the potential water pollution caused by the activities of the Mine is one of the main sources of concern. Studies have identified in Tzalá river pollution levels exceeding international standards set for human use and consumption resulting from acid drainage.<sup>28</sup>

**C) Attacks on human rights defenders** who oppose the mining activities, such as threats, harassment, criminalisation of and attacks on human rights defenders. The latest attack occurred in July 2010 in the village of Agel, San Miguel Ixtahuacán, in which Antonia Hernández Cinto Diodora, an opponent of the project, was seriously wounded when two men entered her house and shot her in the right eye. One of the alleged attackers, who were arrested shortly afterwards, was a former employee of the mining company and the other was a contractor. Although the company has never been involved directly in these incidents, human rights assessment funded by Goldcorp criticised the company for its lack of response to this situation.<sup>29</sup> The trial is still ongoing in Guatemala, but, to date, no one has been identified as responsible. Since 2014, the Montana Exploradora of Guatemala S.A. began a plan to reduce gold mining at the Marlín Mine. Studies have warned that there is no adequate recovery deposit for the closure and that the negative environmental impacts caused by its operations will have consequences for decades. This means that there is huge risk that the mine will cease its operations without taking responsibility for its negative impacts on the communities and women's rights.

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<sup>28</sup> Madreselva Foundation, Lic. Flaviano Bianchin, independent consultant, *Estudio técnico. Calidad de agua del Río Tzalá (municipio de Sipakapa; departamento de San Marcos)* (2006) and Pastoral Ecology Committee (COPAE), San Marcos Diocese, Annual Report to Monitor and Analyse Water Quality. *Situación actual de los ríos Tzalá y Quivichil en el área de influencia de la mina Marlín, ubicada en los municipios de San Miguel Ixtahuacán y Sipakapa, Departamento de San Marcos, Guatemala*, 2008

<sup>29</sup> AIDA (Interamerican Association for Environmental Defense), *Human and Social Impact: The Marlín Mine, Guatemala*

The Women's International League for Peace and Freedom (WILPF) is an international non-governmental organisation (NGO) with National Sections covering every continent, an International Secretariat based in Geneva, and a New York office focused on the work of the United Nations (UN).

Since our establishment in 1915, we have brought together women from around the world who are united in working for peace by non-violent means and promoting political, economic and social justice for all.

Our approach is always non-violent, and we use existing international legal and political frameworks to achieve fundamental change in the way states conceptualise and address issues of gender, militarism, peace and security.

Our strength lies in our ability to link the international and local levels. We are very proud to be one of the first organisations to gain consultative status (category B) with the United Nations, and the only women's anti-war organisation so recognised.



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The International Platform against Impunity (Pi) is a strategic alliance of European NGOs, specialising in international advocacy, which promotes international mechanisms' attention and action to address the structural causes and effects of impunity in different areas of Central America.

Our action is in support of those most vulnerable to impunity and based on the work and proposals of our members on the ground. The current members of the Platform are from Sweden, Switzerland and the Netherlands.

The Platform member organisations complement, at the international level, the action undertaken at the local level to combat impunity and defend human rights affected by it, in partnership with individuals and organisations directly involved in Central America.

As a result, we address our assessments of the situation and proposals to diplomatic missions in Central American countries and to the UN human rights system.

In the same complementary spirit, we seek partnerships with other international non-governmental organisations and networks in Central America, North America and Europe that are likely to influence human rights foreign policies in their countries or the European Union.



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