

5 April 2018

RECOMMENDATIONS FOR THE UNIVERSAL PERIODIC REVIEW OF CANADA

This is a summary, with some updated information, of the 2017 joint UPR submission by the Women's International League for Peace and Freedom (WILPF) and the *Plataforma Internacional contra la impunidad* that focused on the impact of Canadian mining companies on human rights, particularly women's and Indigenous peoples' rights, in other countries.¹

Canada is one of the world's top mining countries; large numbers of companies that invest in the metal mining sector in Latin America are Canadian. Operations by these companies have often been accompanied by social conflicts in the communities where their projects are implemented as well as by negative environmental impacts. Women are particularly affected. They are often disproportionately impacted by the detrimental socio-economic and environmental changes caused by mining operations and face gender-based violence connected to them. Victims of human rights abuses by Canadian companies that operate abroad face enormous challenges in accessing justice and receiving effective remedies. Women face additional barriers, indigenous women even more so. Over the years, numerous UN human rights bodies have urged Canada to address the human rights impact of Canadian extractive companies operating abroad and to provide accountability when rights are violated.

1. Violations of Indigenous Peoples' Rights

Mining often affects Indigenous lands. For example, industrial-scale mining of metals in Guatemala is predominantly based in rural areas. Because of this, mining has a disproportionate impact on Indigenous peoples, who tend to live in rural areas. Disputes around mining have been widespread in recent years in the country. Many of the high profile mining companies operating in Guatemala are subsidiaries of Canadian companies. Canada decided in 2016 to fully support and implement the United Nations Declaration on the rights of Indigenous Peoples.² The obligations under the Declaration, including the FPIC principle, should be duly implemented in the context of Canadian businesses' activities outside Canada.

Recommendations

- Take effective measures to ensure Canadian businesses respect the UN Declaration on the Rights of Indigenous Peoples, in particular the principle of free, prior and informed consent, including in their activities outside Canada and with particular attention to extractive industries;
- Ratify the International Labour Organization Indigenous and Tribal Peoples Convention, 1989, No. 169, without delay.

2. Violations of women's rights by Canadian mining companies operating abroad

a) 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 scarcity and drought for affected communities. Given women's central role in the management of water resources for personal, domestic and community use, women are particularly affected by these impacts. A recurring issue in women's resistance to mining is the claim concerning accelerated deterioration of family health, especially in skin, respiratory or reproductive diseases, caused by mining companies' operations. Tasks relating to the care of sick community members continue to fall mainly and disproportionately on women, which means this additional burden is placed on women without any recognition or remuneration.

b) Economic violence: Low employment of women in mining

Large mining corporations offer limited job opportunities to women. The opportunities are normally confined to services required by miners, such as cooking and cleaning, which perpetuates the gendered segmentation of labour.

¹ The report is available at: https://wilpf.org/wp-content/uploads/2017/12/UPR_Canada_WEB.pdf

² <https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958#a2>

c) Women human rights defenders

Women have been victims of physical and sexual violence in the context of social conflict linked to Canadian mining projects in Latin America. In some cases, the violence has been perpetrated by the employees responsible for providing private security to Canadian mining companies. Canada is a party to the Voluntary Principles for Security and Human Rights.³ However, these principles remain voluntary in nature and do not incorporate any gender perspective, including regarding the prevention of the risk of sexual or gender-based violence by private security companies. Canada cosponsored General Assembly's resolution 72/247 that, *inter alia*, urged States to adopt relevant policies and laws to hold all companies, including transnational corporations and other business enterprises, to account for involvement in threats or attacks against human rights defenders.⁴ In cases involving a Canadian company, Canada's 'Guidelines on supporting human rights defenders' envisage the possibility for a Canadian diplomatic mission "to deny or withdraw trade advocacy support" to the company in question or to seize Canada's Corporate Social Responsibility Counsellor for "an advisory or intervention role" in case of conflict between a Canadian company and a local community.⁵ However, this is not enough. The Guidelines should envisage more severe sanctions.⁶

d) Access to justice

Women face a series of structural and circumstantial obstacles when they seek access justice in their own country. This means that although the legal remedies are formally available in legislation, in practice they have proven to be inefficient and difficult for women to access, especially in rural areas. Some victims have turned to the Canadian courts to seek the justice that they have not found in their home countries. These include Maya-Q'eqchi villagers who have brought cases against Canadian mining company HudBay Minerals and its subsidiary in the context of a mining project in Guatemala. The plaintiffs claim that security personnel employed by HudBay's local subsidiary shot and killed school teacher and anti-mining activist Adolfo Ich Chamán, shot and paralyzed youth Gernam Chub Choc, and gang-raped 11 Maya-Q'eqchi' women during a forced eviction from their ancestral lands. Although in recent years Canadian courts have agreed to examine some cases involving Canadian companies operating abroad, the vast majority of victims still face significant barriers to access the Canadian justice system.

Recommendations

- Strengthen its legislation governing the conduct of corporations under its jurisdiction in relation to their activities abroad, including by requiring those corporations to conduct gender, human rights and environmental impact assessments, before making investment decisions;
- Adopt measures to facilitate access to justice for women who are victims of human rights violations committed by businesses and ensure that judicial and administrative mechanisms put in place take into account a gender perspective, including the newly created Ombudsperson for Responsible Enterprise;
- Ensure that Canadian companies, including those working transnationally, respect the legitimate role of human rights defenders, and refrain from actions that undermine the capacity of human rights defenders to operate free from hindrance and insecurity, including women human rights defenders.

3. Gaps in Canada's business and human rights framework for the extractive industry

On 17 January 2018, the Minister of International Trade announced the creation of a Canadian Ombudsperson for Responsible Enterprise, which will investigate complaints concerning the overseas operations of Canadian companies, issue public findings on allegations of harm and make recommendations for redress.⁷ This is a long-overdue and positive development. However, to be effective, the ombudsperson must have all the powers required to meaningfully fulfil its mandate.

Recommendations

- Grant the Ombudsperson for Responsible Enterprise robust powers to independently investigate allegations of human rights abuses linked to Canadian corporate activity abroad, including the power to compel companies to disclose information on the human rights and gendered impacts of their activities;
- Adopt, in full consultation with civil society, a national action plan to comprehensively implement the UNGPs on business and human rights;
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

³ <http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/>

⁴ Resolution adopted by the General Assembly on 24 December 2017, Twentieth anniversary and promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, operative paragraph 12, available at: https://digitallibrary.un.org/record/1467235/files/A_RES_72_247-EN.pdf

⁵ http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders-defenseurs_droits.aspx?lang=eng

⁶ http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders-defenseurs_droits.aspx?lang=eng

⁷ https://www.canada.ca/en/global-affairs/news/2018/01/the_government_ofcanadabringingleadershiptoresponsiblebusinesscond.html