

United Nations Committee on the Elimination of Racial Discrimination
80th Session
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Geneva

Response to Canada's 19th and 20th Periodic Reports

The activities of Canadian corporations on the lands of Indigenous peoples in other countries

Joint submission by the following Indigenous peoples' organizations and non-governmental organizations:

Assembly of First Nations
Atlantic Regional Solidarity Network
Canadian Catholic Organization for Development and Peace
Canadian Council for International Cooperation
Canadian Union of Public Employees
Christian Peacemaker Teams Canada
La Coalition québécoise contre les ateliers de misère
CoDevelopment Canada
Common Frontiers
InterPares
KAIROS: Canadian Ecumenical Justice Initiatives
The Law Union of Ontario
Maritimes-Guatemala Breaking the Silence Solidarity Network
MiningWatch Canada
Partners in Mission Unit, The United Church of Canada
Treaty Four First Nations (Saskatchewan)
Union of British Columbia Indian Chiefs
Aso Manos Negra (Colombia)
Center for International Environmental Law
Christian Peacemaker Teams of Colombia
NISGUA
Proceso de Comunidades Negras en Colombia

In its concluding observations on Canada's seventeenth and eighteenth periodic reports, this Committee expressed concern over "reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (arts 2. 1(d)d), 4 (a) and 5(e))." The Committee went on to recommend that Canada

take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.ⁱ

Our organizations are deeply concerned that Canada has failed to provide any information on corporate accountability in its latest reports to this Committee and has, in fact, failed to comply with the Committee's recommendations or address the important human rights concerns that they reflect.

The UN Special Rapporteur on the Rights of Indigenous Peoples concludes that resource extraction and other major development projects in or near Indigenous territories constitutes "one of the most significant sources of abuse of the rights of indigenous peoples worldwide."ⁱⁱ The Rapporteur has also noted that resource extraction activities often take place in a context of "differing or vague understandings... about the scope and content of indigenous peoples' rights and about the degree and nature of the responsibility of the State to ensure the protection of these rights in the context of extractive industries."ⁱⁱⁱ

The Government of Canada actively promotes Canadian investment in resource extraction around the world through financial, material and political support and through the negotiation of bilateral and multilateral trade agreements. With this support from the Canadian government, Canadian corporations account for a significant proportion of resource extraction activities in the global South and are especially active in exploration and development activities in areas not previously subject to intensive industrial exploitation, including territories of Indigenous peoples. In supporting the activities of Canadian corporations abroad, Canada relies on national laws and mechanisms in the host country to ensure that these companies comply with relevant human rights standards.

The Canadian government has failed to establish a mechanism that can compel companies to participate in an investigation of allegations of human rights abuses in their overseas operations. Similarly, the government has failed to establish a mechanism capable of holding corporations accountable, should their operations be found to be responsible for human rights violations, either by withholding government assistance, ordering redress for victims, or other corrective measures.

The first minimal steps toward such accountability were blocked in October 2010 when the governing party voted down proposed legislation that would have established a legal framework^{iv} which would have given the government authority to investigate allegations of human rights abuses by Canadian companies operating abroad and withhold public money from those found to be contributing to such abuses. To date, the government has failed to bring forward an alternative framework with power to ensure corporate participation and compliance. A new Corporate Social Responsibility (CSR) strategy announced in March 2009 included creation of an Office of the Extractive Sector CSR Counsellor with a mandate to help mediate disputes related to the overseas operations of Canadian extractive

companies. This office, however, does not have the power to compel companies to participate and has no mandate to order corrective measures or other redress.

At the same time, the Government of Canada continues to promote Canadian extractive industries abroad, often in contexts where there is an especially high risk of human rights violations, including Mexico, Guatemala and Honduras. It is of particular concern that Canada has entered into a free trade agreement with Colombia that promotes increased investment by Canadian companies in the exploitation of natural resources in Colombia, where there has been a pattern of widespread and grave violations of the rights of Indigenous peoples and Afro-descendent communities.

Colombia's Constitutional Court has determined that 34 Indigenous nations in Colombia are on the verge of physical and cultural extinction, many of them from areas with rich natural resources.^v The National Indigenous Organization of Colombia has concluded that the number of Indigenous cultures on the verge of extinction is even higher and has stated that the activities of resource extraction corporations on Indigenous lands is a critical contributor to this grave human rights crisis.^{vi} Amnesty International reports that when Indigenous leaders and communities in Colombia try to defend their land rights and their right to free, prior and informed consent to economic developments that affect them, they commonly encounter significant opposition, especially if their lands are found to be rich in natural resources. This often leads to threats and killings of Indigenous people and their leaders, and to mass forced displacement.^{vii}

The bilateral Canada-Colombia Free Trade Agreement entered into force in August 2011 without a prior human rights impact assessment. The first such assessment will take place this year.

Our organizations encourage the Committee to consider the following recommendations to Canada:

- (1) Canada should, in collaboration with Indigenous peoples' organizations, establish and implement an effective regulatory framework for holding accountable companies registered, domiciled or operating in Canada for the human rights impact wherever they operate.**
- (2) Canadian state support to Canadian companies overseas should be contingent on independently verifiable compliance with all relevant international human rights standards, including the right of free, prior and informed consent.**
- (3) Canada must ensure meaningful participation of Indigenous peoples' and Afro descendent organizations in Colombia and Indigenous peoples' organizations in Canada in the review of the human rights impacts of the Canada-Colombia Free Trade Agreement and ensure that compliance with the UN Declaration on the Rights of Indigenous Peoples is one of the standards used in this review.**
- (4) Canada should report to the Committee on its progress in the implementation of these recommendations within one year.**

ⁱ *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, UN Doc. CERD/C/CAN/CO/18 (25 May 2007). Para. 17.

ⁱⁱ Human Rights Council. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries operating within or near indigenous territories*. 11 July 2011. A/HRC/18/35. Para. 82.

ⁱⁱⁱ *Ibid.*, Para. 60.

^{iv} Bill C-300, *Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act*, 9 February 2009.

^v Auto 004/09 Corte Constitucional de Colombia.

<http://www.corteconstitucional.gov.co/relatoria/autos/2009/a004-09.htm>

^{vi} Organización Nacional Indígena de Colombia (ONIC), *Informe, Palabra Dulce, Aire de Vida: Campaña para la pervivencia de los Pueblos Indígenas en Riesgo de Extinción en Colombia*, 2010.

^{vii} Amnesty International, *The Struggle for Survival and Dignity: Human Rights Abuses against Indigenous Peoples in Colombia*, AMR 23/001/2010.