

In the National Interest?

Criminalization of Land and Environment Defenders in the Americas



Summary, August 2015

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Cover Photo: A campesino woman protesting against Canadian mining operations in southern Ecuador watches police while she weaves; *Photo: Jen Moore*

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“They use the law to do what they can’t do with their guns”

— Alfredo Molano, *The Dispossessed*¹

Here in Canada and throughout the Americas, many governments are embracing resource extraction as a key sector to fuel economic growth. This is creating unprecedented demand for land and other resources, such as water, energy and capital investment. In Latin America, economic dependency on intensive primary resource extraction for export has become known as “**extractivism**”. Increasingly, when Indigenous and Afro-Descendant peoples, farmers, environmentalists, journalists, and other concerned citizens speak out against this model for economic growth, particular projects and their impacts, they are targets of threats, accusations, and smears as well as attempts to label them as enemies of the state, opponents of development, delinquents, criminals, and terrorists. In the worst cases, they are targets of violence and assassination. With a focus on connections between this trend and Canadian extractivism at home and abroad, this discussion paper finds that in order to defend the land and the environment from the tremendous costs that extractivism entails for communities, workers and the environment, we must organize to defend dissent and to question the underlying development model.

This joint effort between the International Civil Liberties Monitoring Group (ICLMG) and MiningWatch Canada, with important contributions from several individuals who have participated in the process, was undertaken to make connections between Canadian mining interests and the growing trend of criminalization against dissent and social protest involving **land and environment defenders** in the Americas. This is particularly relevant

given that the Canadian government boasts that some 75% of the world’s mining companies register in Canada and has undertaken significant efforts to protect and promote this industry abroad. Latin America is the principal destination for Canadian overseas investment in the mining sector — , despite tremendous impacts on the living environment and wellbeing of affected communities. Meanwhile, at home, the government’s agenda is increasingly influenced by the oil sector, including serious set backs in environmental protections and intransigence with regard to respect for indigenous rights. As such, the model that Canada promotes abroad is informed by decades of neoliberal deregulation and a colonial past and present that — with renewed fervour — views those who challenge extractivism as a threat to the national interest and hence a target for spy agencies, tax audits, funding cuts and policing.

The criminalization of land and environment defenders is not a new phenomenon. In Canada and around the hemisphere, the current wave is aimed at disciplining and quashing individuals and groups where **considerable gains have been made** to stop or slow the development of new mega-industrial projects and related infrastructure in defence of Indigenous and Afro-Descendant peoples, other affected communities, and the natural commons more broadly. Often taking place in the name of the national interest or national security, what are really at stake are matters of profound public interest that threaten our collective wellbeing and urgently require broad debate and action.

1. Quote from citation in Peace Brigades International, “Criminalisation of Human Rights Defenders,” September 2010.

What is Extractivism?

Extractivism is the extraction of immense volumes of natural resources that are exported with no or little value-added processing to then be transformed into consumer goods for mass consumption. When this is prioritized, elements central for more inclusive forms of development are frequently abandoned or sidelined.

Extractivism is not limited to mining, oil drilling, logging, industrial fishing, or industrial agriculture. It is also used to understand other activities such as bottling water and bioprospecting, as well as other means of energy production, including fracking, hydroelectric dams, and even large-scale wind power farms.

Some characteristics of the Extractive Model:

1. It is promoted and enabled through a favourable political/legal framework.
2. It has access to capital, including transnational, private or even national (See Text Box: 'Extractivism or Neoextractivism?').
3. A single or similar method of extraction is used in order to:
 - a) Maximize yields — by price and cost,
 - b) Minimize the time frame — by managing speed/duration/volume,
 - c) With high technical efficiency, and
 - d) With heightened competition in all respects.
4. The chain of production is massive and directly or indirectly integrated with the primary product that is extracted. In other words, there tends to be a strong relationship between those who export the goods and those who import them to then convert them into consumer goods.

By virtue of the above:

1. The environmental and social costs are high, including far too often at the expense of peoples' lives and with use of violence.
2. It tends toward monopolies over land ownership or other forms of territorial control.
3. It competes with other activities, for example between mining and agriculture.
4. The costs are not just local. Resources are depleted, economic dependency on the rents from natural resource extraction such as minerals tends to lead to disinvestment from other economic sectors, inflation in the value of a country's currency tends to have negative repercussions on manufacturing sectors, and the authoritarian tendencies of governments tends to be aggravated.

Corporate Globalization is the backdrop to the process that has propelled extractivism principally based on the territorial expansion of transnational corporations whose decisions and growth respond to the logic of financial capital that has, over the years, managed to install the conditions for political actors to implement policies in their favour.

Source: Miguel Angel Mijangos Leal, "El Modelo Extractivo", Presentation made in Mexico City on November 22, 2013.

The full discussion paper aims to spark conversations toward strengthening the response from our organizations and networks to the frequent threats against the important work that Indigenous and Afro-Descendant peoples, farmer, environmental, media, church and other organizations are carrying out throughout the hemisphere. With it, we hope to inform and impel a larger challenge to the restriction of political space and democratic expression being undertaken by economic and political powers in the name of “security” and to draw attention to the voices and issues being silenced.

The following section provides a snapshot of five country cases drawn from the full discussion paper that illustrate different dimensions of the criminalization of dissent of land and environment defenders in the Americas. In the full paper, the trends of criminalization, **the extractivist mining model** and the role played by

Canadian government representatives and companies in its development are examined in greater detail for each case. Guatemala, Peru and Mexico provide insights into these trends where there has been little pause in processes of neoliberal deregulation in the mining sector over the last twenty years and where the physical violence accompanying criminalization is pronounced. In Ecuador, where important measures have been achieved through social movement organizing to depart from the neoliberal model under a new left government, the role of the Canadian lobby to contain these changes and **continued state dependency on extractivism** have nonetheless contributed to a new wave of criminalization. Canada provides our final example, riding its own wave of deregulation, dependency and digression into a state increasingly intolerant of growing dissent over extractivism.



Looking at Goldcorp's Los Filos mine in Guerrero, Mexico; Photo: Cristian Leyva

The Extractivist Mining Model

In mining extractivism, the political and legal framework tends to follow a program promoted around the world by the World Bank and various rich governments, including Canada's. It led to mining code reforms in some 100 countries between the 1980s and the early 2000s.

It tends to follow a similar pattern, including:

- Privatization of state mining companies.
- An end to restrictions on foreign ownership and repatriation of profits.
- Lower rates of taxation and royalties.
- Greater flexibility within labour laws.
- Termination of performance requirements like local sourcing and hiring.
- Streamlining of administrative processes.
- Greater technical services for industry.
- Removal of "subjective" elements of bureaucratic discretion from the permitting and approvals process in order to make permitting easier. [1]

Parallel to these, additional reforms have taken place. Some have occurred to open up access to or purchase of collectively owned lands. Others have weakened environmental laws. Yet others were spurred by the signing of thousands of bilateral and multilateral free trade and investment protection agreements that cover a range of issues from tariff reductions to investment regulation and intellectual property rights. These trade and investment agreements have been described as a "mechanism through which market discipline is advanced and the power of investors in the dominant capitalist countries is consolidated." [2]

Since Canada, the US and Mexico signed onto the North American Free Trade Agreement (NAFTA) in 1994, these investor protection agreements tend to include investor-state provisions that enable companies to sue signatory governments. The governments can be sued if they take regulatory action that diminishes the company's expected earnings through an expanded concept of expropriation which obliges governments to compensate investors if they can demonstrate that their income will be adversely affected. [3] Such provisions are increasingly being used by oil, gas and mining companies to sue states for outlandish amounts of money when they make decisions that they do not like. For example, OceanaGold (formerly Pacific Rim Mining) is suing the state of El Salvador for \$301 million USD for not having granted it a permit to put a gold mine into operation, even though the company did not meet the regulatory requirements to obtain the permit. [4] As of March 2013, there were 169 cases pending at the most frequently used tribunal, the International Center for Settlement of Investment Disputes (ICSID), of which 60 (35.7%) were related to oil, mining, or gas. By contrast, in 2000, there were only three pending ICSID cases related to oil, mining, or gas. During the entire decades of the 1980s and 1990s, there were only 7 such cases filed. [5]

Source: [1] David Szablowski, *Transnational Law and Local Struggles: Mining, Communities and the World Bank*, Hart Publishing, Oxford, 2007. [2] Liisa North, Timothy David Clark and Viviana Patroni, *Community Rights and Corporate Responsibility: Canadian Mining and Oil Companies in Latin America, Between the Lines*, 2006. [3] Canadian Network on Corporate Accountability, "Dirty Business, Dirty Practices: How the Federal Government Supports Canadian Mining, Oil and Gas Companies Abroad," Ottawa, May 2007. [4] International Allies with the National Roundtable on Metallic Mining in El Salvador, "Debunking Eight Falsehoods by Pacific Rim Mining/OceanaGold in El Salvador," March 2014. [5] Sarah Anderson and Manuel Perez-Rocha, "Mining for Profits in International Tribunals: Lessons for the Trans-Pacific Partnership," Institute for Policy Studies, April 2013. [5] Sarah Anderson and Manuel Perez-Rocha, "Mining for Profits in International Tribunals: Lessons for the Trans-Pacific Partnership," Institute for Policy Studies, April 2013.

What is the criminalization of dissent?

Criminalization of dissent is not an isolated phenomenon. It is part of a continuum of repression wherein a variety of actions, ranging from public smear campaigns to threats of attacks and physical attacks or even murder, are part of the process of criminalizing individuals and — frequently, in the case of land and environmental struggles — whole groups.

GUATEMALA: Under the administration of President Otto Pérez Molina, stigmatization, criminalization, violent repression and militarization of struggles against megaprojects, including Canadian mining projects, has been intensifying. Once a military officer who participated in former military dictator Efraín Ríos Montt's counterinsurgency and "scorched earth" campaigns in the Quiché region of Guatemala, Molina's administration has made an explicit, reinforced commitment to serve corporate interests. This has been in evidence around Tahoe Resources' Escobal project in southeast Guatemala, particularly since 2012, a crucial time when the company was completing the final permitting stage for its project to put the mine into operation. During this time, local plebiscites in area municipalities were met with legal challenges and ninety people from municipalities where plebiscites took place faced frivolous charges, including several who served months in jail. Finally, a state of siege was temporarily put in place, since which time militarization of the site has increased.

Criminalization targeted collective efforts to organize local votes against mining; tens of thousands of people have voted against the mine in fourteen community and municipal level votes to date. Community leaders organizing consultation processes as well as their legal counsel and community members who participated in peaceful protests faced legal processes, including several who endured months in jail before being released. All but one of ninety have had their cases shelved and been absolved of all charges. The Ministry of the Interior and the company have made public statements suggesting that NGOs from outside the area are responsible for fomenting dissent against the mine in an effort to downplay local opposition and to undermine their credibility (a common aspect of criminalization processes).

Criminalization has led to violence and militarization. Notably, Tahoe Resources sued the Guatemalan government in June 2012 demanding that it better protect its interests.



Under President Otto Pérez Molina in Guatemala, a former military general, the state pact with Tahoe Resources and other mining companies is blatant. San Rafael Las Flores where Tahoe's Escobal mine is located is site of a pilot military-led project that deems organized communities a threat to national security. *Photo: Oswaldo J. Hernández, Plaza Pública*

Although the case was dismissed in February 2013, within a month, the Guatemalan government with help from the company secretly set up the 'Interinstitutional Group on Mining Issues,' a pilot project with an office in the municipality where the Escobal project is located. This group is led by a military colonel who is part of the National Security Commission and, as one Minister has said, its mission is part of the state's renewed commitment to accompany foreign capital from start to finish. This project explicitly frames the broad opposition to mining in the area as a threat to national security. Local activists see it as a military intelligence and counterinsurgency operation. Little over a week after this office was set up, the Guatemalan government granted Tahoe its final permit to put the mine into operation sparking more protests and leading to further police repression and violence. For example, on April 27, 2013, security guards at Tahoe's Escobal mine shot at a group of men who were protesting outside the mine. The seven men who were wounded in the attack have brought a lawsuit in British Columbia against the company for negligence and battery. The company's then head of security remains under arrest awaiting trial in Guatemala. On May 2, 2013, the Guatemalan government declared a state of emergency in four municipalities, suspending civil liberties for about a month and instilling fear among locals. A military post and the office of the 'Interinstitutional Group' remain in the area.

Criminalization of dissent involves the systematic manipulation of concepts of law and order — whether administrative, civil, or criminal — and the use of the punitive powers of the state and its organs of justice — whether initiated by state or non-state actors or some combination of the two — to forbid, dissuade and/or prosecute dissent that is portrayed by state/non-state actors as contrary to fundamental societal values.

ECUADOR: Despite a new 2008 political constitution that declares Ecuador a plurinational state that promotes food sovereignty and recognizes the human right to water and the right to resist acts that could violate one's rights, human rights, environmental and Indigenous organizations have been sounding the alarm about a new wave of criminalization against social protest and dissent. Communities long opposed to large-scale extractive industry developments face stigmatization from the central government and community leaders have been criminalized on charges of terrorism, with greater use of arbitrary detention and preventative prison sentences. There is also well-grounded concern that heightened social control measures could threaten the future of all sorts of Indigenous and civil society organizations. A newly revised criminal code retains broad concepts of terrorism and sabotage that could encompass any form of social protest.

A strong Canadian lobby spearheaded by the Embassy in Quito helped protect Canadian company interests when Ecuadorian authorities passed an important constitutional decree in 2008, suspending all large-scale

mining, ordering most mining concessions revoked and ushering in a new mining law. The Embassy ensured a privileged seat for Canadian companies in the development of the new mining law. Canadian companies have used or threatened lawsuits against Ecuador under the Canada-Ecuador Foreign Investment Protection Agreement in order to contest full application of the decree and protect their projects. Furthermore, the new mining law provides them with recourse to seek Administrative Injunctions that oblige the state to come to their defence if their activities could be impeded in anyway; a legal tool that could readily be used against social protest. Since the law was passed in 2009, Canadian companies have successfully pressured for retrogressive reforms to make mine permitting easier, to loosen new tax rules, and to further undermine regulatory protections for the commons and the collective good of affected communities. Meanwhile, Indigenous and campesino community leaders have faced a new round of legal persecution under heavy charges and greater risk of being jailed.

Criminalization of protest and of community leaders in communities living downstream from INV Metal/IAMGOLD's proposed gold-silver mine in Ecuador's south-central highlands demonstrates the asymmetry in the application of the law. While the company should have lost its mining concessions after the mining mandate was issued in 2008 for overlap with water supplies and protected areas, as well as lack of prior consultation, the company retained its project. Meanwhile, local leadership faced legal persecution for a year and a half because they protested against a water law that would not help protect their wetlands, agriculture, and community wellbeing. While individuals, their families and their communities suffer from the burden and cost of such legal processes, the broader aim has been to silence protest and truncate public debate. Important questions about the country's commitment to the wellbeing of affected Indigenous and campesino communities, local visions of development and environmental protection — enshrined in the new constitution — are being quashed, while legal protections to guarantee mining company's interests are getting stronger.



"We are not terrorists; we defend life and nature". In Ecuador, where most or all companies should have lost their projects in 2008 on the basis of an important constitutional decree, community leaders have been jailed on charges of terrorism. The new mining law provides companies with recourse to Administrative Injunctions that oblige the state to defend them if their activities are impeded. Photo: Jen Moore

Extractivism or Neoextractivism?

The inclusion of Ecuador in this discussion paper obliges us to raise an important debate over the nature of extractivism taking place under new left governments in Latin America that are challenging aspects of neoliberal deregulation while continuing to rely on intensive primary resource extraction for export.

Uruguayan analyst Eduardo Gudynas refers to this as 'neoextractivism': "Neoextractivism differs from extractivism in as much as governments have adopted more interventionist policies that strengthen the role of the state in the productive arena, change contractual arrangements with transnational investors, raise the royalties and/or taxes payable, and (in some instances) seek to increase levels of domestic processing." [1]

Bolstered state participation in extractivism runs counter to the reforms that international financial institutions like the World Bank and governments of industrialized countries like the US and Canada have promoted during the last few decades. Nonetheless, these countries remain subject to many of the same constraints of the global commodities market and those that dominate it.

Ecuadoran economist Alberto Acosta remarks, "It's not traditional neoliberalism anymore, but we remain within the extractivist logic. The form of production is still being over-defined by the primary products that we export, some are mineral resources, others are oil or other primary resources, but there is no change in the raw materials-exporting modality of this extractivism, and neither is our submissive form of insertion in the international market being questioned." [2]

Argentinian professor Maristella Svampa calls this a shift away from the 'Washington Consensus' — with its promotion of the so-called free market and neoliberalism — toward a 'Commodities Consensus'. Under the 'Commodities Consensus' countries continue to rely on "accumulation based on an over-exploitation of — largely non-renewable — natural resources as well as the expansion of frontiers to territories formerly considered 'unproductive'." [3]

This ongoing expansion of extractivist activities continues to marginalize other visions of development and to pit the state against social movements and affected communities that contest dependency on extractivism leading to their dispossession and the corresponding impacts on lands, water supplies, culturally-important areas, ways of life and self-determination.

Sources: [1] From *Extractives and Development in the Andes*, "Thinking about extractives: the contribution of Eduardo Gudynas," Accessed May 19, 2015; [2] Carmelo Ruiz Marrero, "The New Latin American "Progresismo" and the Extractivism of the 21st Century", February 17, 2011; <http://www.cipamericas.org/archives/4025>; [3] Maristella Svampa, "Resource Extractivism and Alternatives: Latin American Perspectives on Development," in *Beyond Development: Alternative Visions from Latin America*, Transnational Institute, 2013; <http://www.tni.org/briefing/beyond-development>.

||| The manipulation of concepts of law and order can give rise to the use of violence and sometimes deadly force by state and non-state actors. Public armed forces with heightened immunity for violence during repressive events may be responsible.

PERU: Whether communities are opposed to mining on their lands or near their water supplies, or are fighting for modifications in existing projects and contracts, there has been increasing state violence against communities involved in the struggle against extractivism in Peru. Ongoing legal reforms to facilitate foreign investment have taken place in parallel with legal measures to punish protest and dissent. As a result, foreign investment has grown exponentially and mining concessions have been granted over some 26% of national territory, principally affecting highland communities. In parallel, associated levels of conflict have skyrocketed. From 2006 to 2014, 230 people were killed and 3,318 wounded in connection with socio-environmental conflicts. State armed forces, who may be directly employed by mining companies and who now enjoy immunity when they kill or harm on the job, are frequently the aggressors. As of mid 2014, some 400 people were facing legal persecution under accusations that companies, company staff or public prosecutors have made, including for rebellion, terrorism and violence among other charges. The Peoples' Ombudsman's office currently counts over 200 active and latent mining conflicts. Legal reforms have continued paving the way for greater criminalization and state

violence, blatantly intended to serve the corporate interest, while Indigenous and farming communities are stigmatized as terrorists and anti-development.

Reforms to put police and army at the corporate bidding began under the dictatorial regime of Alberto Fujimori in the 1990s and have continued under successive governments until today. Former President Alan García (2006-2011) reformed the criminal code to extend the definition of extortion to include any act that could be interpreted as extracting economic benefits under pressure, such as impeding flow of traffic, public services or the construction of legally authorized public works. His administration also boosted possible sentences for such crimes up to 25 years in jail, while the period of preventive detention was raised to seventy two months and restrictions were tightened for NGOs. Military forces were also permitted to intervene in police operations to maintain order and the use of lethal force was allowed in order to protect private property. Since 2011, President Ollanta Humala has been heavily criticized for deepening earlier reforms, notably giving armed forces 'a licence to kill' with the passage of Law No. 30151 that exempts police and army from criminal liability if they kill or injure through the use of weapons while on the job.

The Canadian state's interventions in Peru's mining sector have consistently been oriented to reinforce the neoliberal framework for mining. Since the late 1990s, projects funded with overseas development aid have been framed so as to reinforce a role for the state as either absent, servile to corporate interests or highly reliant on short-term mining rents. From 1998-2011, the then Canadian International Development Institute ran the Peru-Canada Resources Reform Project (PERCAN) in cooperation with the Peruvian Ministry of Mines and Energy, whose main objective was "the mitigation of 'violent crises,' in which the desirability of carrying out mining activity and its priority over the other uses of the soil and its resources [was] determined *a priori*." Notably, during this same period the number of socio-environmental conflicts grew to over 200. There is also at least one documented incident from 2005 of the Canadian Embassy in Peru threatening to cut off a Canadian NGO's funding if it continued to support Peruvian organizations



In Peru, police now have a licence to kill. From 2006 to 2014, 230 people were killed and 3,318 wounded in connection with socio-environmental conflicts. Photo: Thomas Quirynen and Marijke Deleu, CATAPA

that were questioning mining activities. With Canada's diplomatic advances and development aid toward Peru's extractive sector stepped up in the last couple of years, it is important to question what role Canada has played in further deregulation of the sector.

The Peruvian legal framework to enable investment and criminalize dissent has consistently benefited Canadian firms. Canada is now the third most important foreign investor in the Peruvian mining sector after China and the US, with an estimated 89 Canadian companies operating in the country. One recent example of how corporate interests are favoured over affected-communities is the case of the community of San Juan de Cañaris in the department of Lambayeque. In this community there is strong opposition to open-pit copper mining given overlap between the project and important water supplies. Neither Canadian-based Candente Copper nor the Peruvian state is

interested in recognizing the community's right to self-determination, least of all the results of a community vote in which San Juan de Cañaris pronounced a resounding no to this project. Instead, the company has been slandering community members, accusing them of being manipulated by people from outside the area and suggesting that they are infiltrated by terrorists. Community members' protests have faced police repression resulting in injuries. Further to this, the state refuses to acknowledge the indigeneity of this community, which has land titles dating back to the 1700s, because doing so would make them subject to a new prior consultation law. The ramifications of recognizing San Juan de Cañaris as indigenous is not only aimed at protecting Candente Copper's project, but also to avoid putting in limbo various other mining projects that are located on the territories of highland Andean communities.

Defining 'Land and Environment Defenders'

Whether or not they view themselves as such, individuals and groups who are fighting to protect their lands, their water supplies, a healthy living environment, and the self-determination of their communities — or who are contributing to such efforts through reporting or accompanying these struggles, for example by providing technical or legal support — are land and environment defenders.

The legal definition of a human rights defender indicates that one must use lawful means to carry out one's work. This is often the case in the struggles of mining-affected communities. However, we note that individuals and groups may also resort to civil disobedience, particularly when their concerns are not heard or addressed through formal channels, as is very frequently the case. Recognizing the legitimacy and importance of civil disobedience in such asymmetrical conflicts in which the historic marginalization of Indigenous, Afro-descendent, and farming communities is often reinforced, we use the concept of land and environment defenders in this way, going beyond those who would fall under the legal definition of Human Rights Defenders. We consider the use of civil disobedience in these struggles to be an important and a legitimate expression of dissent where institutional and legal mechanisms fail for a variety of reasons to respond to their democratic mandates.

For taking direct action, communities and groups are frequently characterized as disturbing the peace and putting public security at risk. In fact, legal repression often focuses on the acts of protest themselves, for example in Canada, through the use of pre-emptive injunctions leading to contempt-of-court charges, in order to avoid bringing the underlying issues before the courts. Despite all efforts to stigmatize such actions as completely intolerable to a peaceful and law-abiding society, we appreciate such civil disobedience as an important part of dissent. It is further justified when considered in parallel to the rampant and seemingly systemic impunity that corporate and state forces enjoy for the harms that they have been inflicting on affected communities through the course of business-as-usual and repressive acts.

Why is one considered lawful and peaceful when the other is not? Why should actions such as the destruction of water supplies, sacred areas, forests, and productive land — jeopardizing the peoples that rely on them — not be considered criminal and violent and duly prosecuted? Ultimately, this raises questions about the legitimacy of pertinent laws, about who has designed them and for whom they have been designed.

IV Stigmatization and criminalization of dissent can also lead to attacks from interested parties, hired assassins, or illegal armed groups.

MEXICO: Over the same period Canadian investment in Mexico's mining sector has expanded exponentially: since the North American Free Trade Agreement was signed in 1994, Mexico has become one of the deadliest countries in which to be a defender of land and the environment. Mexico is the pinnacle of openness and stability for foreign investment from the point of view of mining companies, with an estimated 30% of national territory under mining concession. Canadian companies make up some 70% of the foreign firms in the country. The unprecedented rapaciousness with which the extractive model in Mexico threatens collectively owned lands and peoples far out measures colonial times. In the current context, individual community members, movement leaders, human rights organizations and journalists are under frequent attack. Recent entrenchment of the mining model through privatization of the energy sector might as well be an outright declaration of war on rural and Indigenous communities.

The criminalization and murder of Mariano Abarca in 2009 in connection with Blackfire Exploration's Payback mine in the municipality of Chicomuselo, Chiapas, illustrates how criminalization can be a precursor to targeted violence. The response of Canadian authorities in this case further reveals how Canadian state involvement may contribute to or fail to address repression and violence.

Mere months before Mariano was shot and killed in broad daylight in front of his restaurant in Chicomuselo, on November 27, 2009, undercover police detained Mariano on false allegations that were filed by Blackfire's Public Relations Officer. The company representative alleged that Abarca was responsible for the crimes of "illicit association, organized crime, attacks on communication routes, damages against the company and disturbing the peace, and threats against bodily integrity, as well as collective integrity and the integrity of state heritage." After being held for eight days, Mariano was released without charge for lack of evidence.

The Canadian Embassy in Mexico was well aware of tensions around Blackfire's mine; Abarca himself had told the Embassy about armed workers being used to intimidate peaceful protesters. When Abarca was detained, a few weeks after making his testimony to the Embassy, the Embassy received some 1,400 letters expressing dire concern for Abarca's wellbeing. Nonetheless, the Embassy's response was oriented to dispel doubts over the legitimacy of Blackfire's operation. When Embassy officials undertook a fact-finding mission to Chiapas in October 2009, there is no evidence that they tried to speak with affected community groups and activists directly involved in the conflict; instead they raised concerns with the state government about possible increases in royalty payments levied on Blackfire. Six weeks later, Mariano was murdered. All of the suspects in his killing had some connection to the company.

To date, justice has not been served and the Embassy denies any responsibility, arguing that to respond in favour of the lives of community leaders facing criminalization would be tantamount to interfering in Mexican sovereignty. Meanwhile, the Embassy's frequent efforts to troubleshoot in favour of corporate interests, including to pressure state authorities, is not similarly viewed.



Before he was murdered in Chicomuselo, Chiapas, Mariano Abarca was criminalized. Despite having heard the community complaints, there was no question about whose side the Canadian Embassy was on. The Embassy continued defending Blackfire Exploration even after his murder. *Photo: Jen Moore*

What is Criminalization?

Based on our analysis, we have come to understand criminalization of dissent as a continuum of repression:

- Criminalization of dissent involves the systematic manipulation of concepts of law and order — whether administrative, civil, or criminal.
- It further entails the use of the punitive powers of the state and its organs of justice — whether initiated by state or non-state actors or some combination of the two.
- The aim of criminalization is to forbid, dissuade and/or prosecute dissent that is portrayed by state and/or non-state actors as contrary to fundamental societal values.
- Such manipulation can give rise to the use of violent and sometimes deadly force.
- Public armed forces with heightened immunity for using violence during repressive events may be responsible.
- Stigmatization and criminalization of dissent can also lead to attacks from interested parties, hired assassins, or illegal armed groups.

For an excellent overview of the ways in which criminalization takes place see: “Criminalisation of Human Rights Defenders” Peace Brigades International UK Section, 2012; http://www.peacebrigades.org/fileadmin/user_files/groups/uk/files/Publications/Crim_Report.pdf

Criminalization in Canada

In Canada, we are witnessing a phenomena parallel to that in Latin America with regards to attacks by the government as it seeks to delegitimize and silence dissent, and deny the rights to free expression and association.

Over the last decade, the Canadian Security Intelligence Service (CSIS) and Royal Canadian Mounted Police (RCMP) security reports, along with government policy documents — notably on Canada’s anti-terrorism strategies — have equated “economic interests” with Canada’s “national interests” and portrayed any group opposed to these interests as a threat to Canada’s national security. The main victims have been First Nations and environmental activists, as well as civil society organizations supporting them.

The discourse of government and security agencies has shifted to seek to equate dissent with terrorism, including threats to prosecute acts of civil disobedience or low-level violence under Canada’s *Anti-Terrorism Act*.

Groups opposed to government policy, particularly surrounding the development of the energy and extractive sectors, have been infiltrated and the object of surveillance by both CSIS and the RCMP. This includes people and community groups participating in the public Environmental Assessment process of the Northern Gateway pipeline project. First Nations activists are especially targeted and have been the object of special spy operations carried out by the Canadian military. Intelligence gathered was shared with energy companies during private briefings by security agencies, including CSIS. Such actions warrant questions about their legality and violations of Canada’s Charter of Rights and Freedoms.

These actions have been supported by what appears to be a concerted campaign, by Conservative ministers, members of Parliament and senators, to demonize and delegitimize civil society organizations opposed to government policies — especially but not uniquely in the environmental sector — , as well as by a tightening

of rules and regulations governing the political and international fundraising activities of charities and their reporting obligations.

Now, the proposed Anti-Terrorism Act, Bill C-51, which aims to give enhanced powers to Canadian intelligence agencies, redefines security to include preventing interference with the economic or financial stability of Canada. This bill also lowers the threshold for making preventative arrests and obtaining a peace bond and

extends the period of time that recognizance conditions can apply; it expands criteria to prevent an individual from boarding a plane without the need for a judicial warrant; and includes provisions that will criminalize “advocating” or “promoting” terrorism, in general. All of this raises further concerns about how it could be used in particular against Aboriginal peoples and organizations that contest the extractivist agenda in this country.

What do we conclude and what is at stake from this trend of criminalization?

As a result of our examination of five case studies in the Americas, discussed at greater length in the full discussion paper, we observe several patterns and draw a few conclusions. First, we see a trend of intensified criminalization of dissent of land and environment defenders in the Americas. Second, we see a reinforced role of the state to enact discipline and punishment through stigmatization, biased application of the law and/or legal reforms that toughen measures for social control and security in favour of the extractive industry that is giving rise to violence and militarization. Third, we find that the Canadian government has consistently promoted the interests of Canadian mining companies to influence decisions over extractive projects and related policies through its diplomatic services, aid money, and trade and investment policy. Fourth, we see a parallel trend within Canada of repression and deregulation to favour neocolonial extractivism that is consistent with the model that Canada promotes beyond its borders.

What is at stake from this? In the context of extractivism and processes of criminalization, states, companies and other related actors regularly accuse mining-affected communities and their allies of working against the so-called “national interest”. In this framework, mining-affected communities and their allies are alleged to be working against the nation and denying society what it needs for economic growth, jobs and social programs. In other words, in defending their land, their water, their livelihoods, their health, and their self-determination — which may have been stolen or systematically denied to

them and that they want to protect for future generations — they are allegedly somehow denying others employment, health care, or education programs. Dissent itself may be stigmatized as contrary to the public interest and the common good.

Used in this way, the idea of the national interest obfuscates the challenge that resistance and opposition to mining poses to states and societies reliant on extractivism. Extractivism is a prominent expression of the current development model and its inherent reliance on the sacrifice of lands, livelihoods, ways of life and self-determination, in particular of Indigenous, peasant farmer and Afro-descendant communities that have been historically oppressed. Such neocolonial extractivism is inherently conflictive. It pits the wellbeing and self-determination of affected communities against a certain notion of the national good. In so doing it violates their individual and collective rights, putting people and the natural commons at risk. It tends to jeopardize peoples who have been historically dispossessed and marginalized, whose communities are forced to live with the long-term damage from mining — often with little or no guarantee of any clean-up. Even when some clean-up takes place, significant environmental damage is often irreparable and the social and economic fabric of communities can be left in tatters. The social, economic and environmental costs born by the public more broadly to facilitate these investments and to clean up their mess is also rarely weighed.

These struggles also pose a challenge to who has a legitimate claim to lands and the minerals below them. With only a few exceptions, states in the hemisphere consider subsurface resources to belong to them and thus consider that the state can grant these minerals in concessions, leases, or other forms of claim or title, to individuals or corporations. This has been done across almost entire departments of Peru, along the Andes and southern Amazon of Ecuador and Colombia, by the hundreds of concessions in Honduras and Guatemala, and across an estimated 30% of Mexican national territory. In Canada acquiring mineral rights can be as simple as paying a nominal fee and clicking the area desired in an online map. Hundreds of companies are involved and there is virtually no government oversight in the acquisition process. In the province of Quebec there are approximately 250,000 individual mineral claims covering 8% of the provincial territory. As a result, beyond economics, resistance to extractivism across the hemisphere calls into question who has a sovereign claim to lands and minerals, who can decide when and how to grant such lands and minerals to others, and under what conditions or restrictions, as well as who sets the agenda and development plan according to which to do so.

Looked at this way, it is no wonder that those in power, with a significant economic stake in extractivist projects react negatively and often harshly to affected communities, their allies, and those documenting and reporting on the issues. It also helps clarify how criminalization of land and environment defenders tends to reinforce historic patterns of repression and marginalization. As such, in considering a way forward in solidarity with affected communities who are facing heightened repression and those resisting extractivism, we reverse the accusation that they are acting against the national interest. Instead, we ask what it will take to ensure jobs and livelihoods for all; to provide prosperity, social wellbeing and self-determination for all peoples; and to make room for ways of life and visions of development that rely on the permanent integrity of the land and water. In other words, what development model — or models — would better ensure respect for the self-determination, autonomy and visions of development of Indigenous and Afro-descendant peoples, and the integrity of the natural commons for future generations?

Social movements successes in defence of land and the environment

The intensification of criminalization and violence against mining-affected communities and other social movement actors is a response of states and industry to their successful efforts defend land and the environment. This is a shortlist of just a few successes against extractivism in the Americas:

Argentina

- Several provinces have banned open-pit mining and cyanide use and, in 2010, Argentina banned mining in glacier and peri-glacier ecosystems nationally.
- Organized communities in Esquel, Chubut and in the Famatina Mountain Range in La Rioja province have held individual projects at bay.

Canada

- In Ontario, Kitchenuhmaykoosib Inninuwug (KI), Wahgoshig and Ardoch First Nations prevented mining projects from getting past the exploration stage on their lands. Their successes contributed to opening up Ontario's 150-year-old mining act for reforms.
- The Prosperity copper-gold mine proposal that would have destroyed a lake of great importance to area First Nations in British Columbia was turned down twice after a twenty year fight.
- The James Bay Cree Nation's rejection of Strateco's Matoush advanced exploration uranium project opened the door to a possible province-wide ban on uranium mining in Québec.
- The Nunavut Impact Review Board turned down the Kiggavik uranium mine in Baker Lake, now awaiting a final decision from the Minister of Aboriginal Affairs.
- Cliffs' Ring of Fire chromite project collapsed in the face of First Nations' demands for meaningful environmental and social impact assessment (and lower metal prices).

Where do we go next?

For every instance of criminalization profiled in our full discussion paper, there are many other examples about the ways in which Indigenous and Afro-Descendant peoples, farmers, environmentalists, journalists, and concerned citizens are being methodically targeted and criminalized for speaking out against extractivism. Equally, there are examples in which Canadian state authorities and companies have been complicit in the entrenchment of the extractivist model and have tried to repress reforms that social movements and governments have sought to

More social movements successes in defence of land and the environment

Chile

- Barrick Gold was forced to suspend its Pascua Lama project in 2013. The mine is located at 4500 metres above sea level in an area dense with glaciers. It was the first project approved under a binational mining treaty and straddles the border with Argentina. Affected indigenous and downstream agricultural communities made numerous efforts to stop this project, including getting the company to withdraw a request for financing from Canadian and US export development corporations. The company announced the project's suspension after the new Chilean Environmental Superintendent ordered the halt of activities and fined Barrick over \$16 million, the largest environmental fine in Chilean history, for a number of serious breaches of its environmental licence. In October, Barrick Gold suspended activities on the Argentinean side as well.

Costa Rica

- A strong citizens' movement pressured the Costa Rican government to close down Infinito Gold's Crucitas project and pass a ban on all future open-pit metal mining in 2010. In late 2011, a Costa Rican court annulled Infinito Gold's concessions.

More social movements successes in defence of land and the environment

Colombia

- Mining is prohibited in important wetland ecosystems for which reason the Environment Ministry refused an environmental licence for Eco Oro Minerals in 2011 following protests by a broad-based coalition.
- A 2009 Constitutional Court decision suspended all mining activities in the Mande Norte case in the departments of Chocó and Antioquia, ordering the state to finalize environmental impact assessments and do prior consultation before issuing any licences.
- A 2010 Constitutional Court decision suspended all concessions in the community council of La Toma, Suarez, Cauca, until prior consultation leading to consent is undertaken with the affected Afro-descendant communities.
- Afro-descendant communities in the department of Cauca and Indigenous people of Taraira in the Amazonian department of Vaupés have successfully opposed Canadian company Cosigo Resources's efforts to enter without their consent.
- Several communities have declared their ancestral territories no-go zones for large-scale mining. The Resguardo Indígena Cañamomo Lomapieta in Riosucio and Supia, Caldas issued an internal resolution to this effect, which is constitutionally recognized under the Special Jurisdiction that Indigenous Peoples have.
- In July 2014, the municipality of Piedras, Tolima held a popular referendum with 99.2% of the population against the Colosa gold mining project proposed by the giant South-African company Anglo-Gold Ashanti.

make. Our goal with this discussion paper is not to do an exhaustive survey of cases of criminalization and Canada's role in extractivism in the hemisphere. Our intent is to provide a framework wherein we could provide examples of the criminalization of land and environment defenders with connections to Canadian interests, while including details about the kinds of resistance being undertaken to defend land and life; to urge respect for community self-determination, autonomy and other visions of development; and to hold up the dominant political and economic development model to greater scrutiny given its destructive implications for affected communities and the commons, and the important role that the Canadian state has assumed in order to promote its expansion at home and around the world.

In the context of the criminalization of dissent of land and environment defenders in the Americas, our process of reflection leads us to conclude that we urgently need to determine how to better coordinate as individuals, organizations and networks in Canada in solidarity with those being harmed by the rapacious interests of extractivism in Canada and Canadian extractive interests in the hemisphere. Given the nature of the processes of criminalization taking place in Canada, especially pressures on organizations that receive public funding and the chilling effect that this is having, we must be creative and look for opportunities to build new alliances across issues, including with those who are already working on civil liberties and criminalization in other sectors, and with those who are seeing and experiencing the impacts of extractivism in sectors such as agrobusiness and energy.

It is vital that we recognize that by and large the same extractivist model that is being imposed at home is the same as that which Canada is promoting abroad. We must see ourselves as actors in this struggle, not just allies or solidarity activists. It is paramount that we make the connections and join movements against this unjust political and economic development model, on the basis of respect for the autonomy and self-determination of affected communities, the protection of water, biological and cultural diversity and sustainable livelihoods. Central to this should be preventing harms before they happen and strengthening collective demands for state and corporate accountability for the abuses of communities, workers and the environment. Furthermore, we need to seek ways to address the financial and material dependency that we have come to have on such destructive and profit-hungry mineral extraction.

More social movements successes in defence of land and the environment

Ecuador

- Large-scale projects set to advance in 2008 continue to face delays due to opposition by environmentalist, campesino and indigenous organizations around the country, as well as policies of the current administration to bolster state participation.
- Since the 1990s, farming communities in the Intag valley in northwestern Ecuador have fought off Japanese and Canadian companies. They face an uphill struggle now against a Chilean-Ecuadorian joint venture.
- As part of a decade-long process of resistance, the community of Victoria del Portete, Azuay province expressed opposition to the Loma Larga mining project owned by Canadian firms INV Metals and IAMGOLD in a local vote held in 2011.
- In Santa Isabel, Azuay province residents boycotted a state consultation process in 2012, ensuring that Cornerstone Capital Resources could not obtain an environmental permit for exploration at its Shyris project.

El Salvador

- Since 2004, OceanaGold (formerly Pacific Rim Mining) has been unable to advance its El Dorado project in the department of Cabañas given local and now nationwide opposition.
- Since 2008, successive Presidents have committed to a not grant any mining permits.
- Three municipalities in Chalatenango have held local plebiscites, declaring their territories free of mining.

It is necessary that we cultivate spaces independent of state and industry funding for critical research and action within and among civil society organizations, academics and grassroots groups. It is important to make creative and collective use of our still considerable resources to resist deepened dependence on natural resource extraction when we urgently need to move in the opposite direction.

More social movements successes in defence of land and the environment

Guatemala

- An estimated 1 million people in mining-affected communities have said no to mining in municipal or good faith community referendums. This has influenced Guatemalan public opinion with a reported 66% of the population opposed to mining as of January 2014.
- Three civil lawsuits are proceeding in Ontario courts against HudBay Minerals for security guard violence against Maya Q'eqchi' Indigenous communities in El Estor.
- A civil suit has also been brought in British Columbia against Tahoe Resources for security guard violence against peaceful protesters in San Rafael Las Flores.

Honduras

- Nationwide organizing led to 13 articles in the 1998 mining law being declared unconstitutional and former President Zelaya instituting a moratorium on new mining licences in 2006. The moratorium on new mining licences was only recently overturned after a military-backed coup and the passage of a new mining law in 2013 with backing from the Canadian government.
- Despite the extremely violent post-coup organizing environment, at least 10 municipalities have declared themselves free of mining in local votes and, as of 2011 an estimated 91% of Honduras opposed open-pit mining.

The full report concludes with a short list of recommendations culled from a survey of existing reports about criminalization from various social movements and human rights organizations and with a full review of international instruments in order to consider the range of areas for further research and action that we can collectively cultivate. Generally, the recommendations provide political, structural and policy considerations that we, in our movements, can use as points of departure to build greater solidarity with affected communities. The recommendations could become organising themes in our groups, organizations and as a movement to build greater coherence and coordination to defend dissent, the wellbeing of communities, and to acknowledge the importance of these struggles to processes of decolonization and to the integrity of the commons whether that be the water we share, the air we breathe, the relationship between mineral extraction and climate change, or the depletion of mineral resources.

The recommendations are categorized, first, according to whom they are directed: a) Civil Society, Media and Researchers; b) Host States, meaning the country in which a company is operating; c) Home States, meaning the country of origin of a company; and d) Companies. They are also categorized by areas for action: a) Respect for dissent and the right to protest in defence of land and the environment; b) Protection of land and environment defenders; c) Surveillance and access to information; d) Fight against impunity; e) Preventative measures to address the root causes of the criminalization of land and environment defenders; f) How and what laws are written and applied; and g) Policing of demonstrations and other forms of protest to ensure protection of land and environment defenders. The list is not exhaustive, but we hope at a minimum that it will serve as a useful contribution to developing a common platform for action.

Overall, we are moved by a sense of urgency to raise the level of this discussion given how governments — including the Canadian government — are using any means available to protect extractive interests by seeking to criminalize anyone who questions their activities, their impacts, or the underlying model for economic growth. The general goal of criminalization is to cultivate fear and self-censorship on the individual and collective level, while debilitating social movements, swaying public opinion against anyone who dares to disagree, and, in the worst case, making any action contrary to extractivist activities and related policies illegal and a

More social movements successes in defence of land and the environment

Mexico

- In 2012, a federal court suspended more than 70 mining concessions in the area of the Wirikuta Natural Protected Area, a spiritually important area for the Wixárika Indigenous people.
- In 2012, the federal environmental authority denied a zoning permit for the Caballo Blanco project owned by Timmins Gold Corp and Goldgroup in Veracruz, which has faced strong opposition from environmental groups in particular because of its close proximity to the Laguna Verde nuclear power station.
- In 2013, the federal environmental authority denied the Esperanza project now owned by Alamos Gold an environmental licence. Area residents, environmental groups, and state authorities have opposed this project over risks to water, flora and fauna, and for its close proximity to the Xochicalco archaeological site.
- Dozens of communities with collectively held lands have declared themselves territories free of mining. For example, the Ejido Benito Juárez in Chihuahua voted to expel MAG Silver and prohibit any mining for 100 years on their lands after the murder of Ismael Solorio Urrutia and his wife Manuela Martha Solís Contreras in 2012. The respective municipal, agrarian and Indigenous authorities have made similar decisions in over seventy communities in the states of Guerrero, Colima, Morelos, Puebla, Oaxaca, and Chiapas.

target for state violence. The process of criminalization itself can lead to serious threats, violence, heightened policing and surveillance, and militarization. In this increasingly difficult context, and while recognizing that each individual struggle has its particularities, we believe that it is important to recognize the extent of the threat to lands, territories, watersheds, sacred spaces, farms and diverse peoples across the hemisphere. We need to see that we are struggling up against an

More social movements successes in defence of land and the environment

Peru

- The Cerro Quilish and massive Conga expansion projects of the Yanacocha mine, jointly owned by the US company Newmont, Peruvian Buenaventura and the World Bank, have been stalled due to local opposition over possible impacts, principally on water supplies.
- In 2002, residents of Tambogrande held a local vote demonstrating opposition to Manhattan Minerals' plans for an open pit gold mine that would displace half the town. Manhattan left, but other companies retain interests in the area.
- In 2009, Awajún and Wampis Indigenous people in the northern Peruvian Amazon came out in strong numbers for a 57-day blockade — in part — to demonstrate their opposition to Dorato Resources' attempts to explore for gold in their headwaters. The blockade ended in the death of 33 police, Indigenous and townspeople, but it also put the debate over community consent prior to any mining on the national agenda. Local resistance continues to create obstacles for gold mining in the northern Amazon.
- The Campesino Community of Cañaris organized against Candente Copper's plans for an open-pit copper project in the northern highlands principally over potential impacts on water supplies.
- In 2011, opposition from Aymara Indigenous communities to mining led to the cancellation of Bear Creek's Santa Ana project. In 2014, the company commenced international arbitration against Peru under the Canada Peru Free Trade Agreement.
- In 2011, the Municipality of Santiago de Chuco in La Libertad passed an ordinance to protect local water supplies and impede expansion of Barrick Gold's Lagunas Norte project.
- A UK High Court case led to a settlement for 25 campesinos tortured in 2005 during protests against the Rio Blanco project (formerly called Majaz) owned by Monterrico Metals and a Chinese consortium in the department of Piura.

economic and political model being imposed on affected Indigenous and non-Indigenous communities from north to south who are forced to bear the brunt of the social, environmental and economic impacts from industrial primary resource extraction that is fuelled by an unhealthy and unsustainable material and financial dependency jeopardizing the natural commons on which we all rely. At the same time that we need to strengthen our responsiveness to individual conflicts and cases of criminalization, it is urgent to make more connections between them and see them as part of a common problem deserving a more concerted response.

Finally, we hope that this discussion paper will contribute to fostering further research, organizing, and action in response to the restriction of political space and repression that is taking place in the name of “security” and the so-called national interest in order to further extractivism in

the hemisphere. We hope that it will motivate more efforts to draw attention to the voices and issues being silenced, as well as to shed light on how the governments and corporations involved are complicit in the stigmatization, threats, exhausting and costly legal processes, repression, violence, injuries and murders that are taking place in order to shamelessly shore up their interests. We also hope that it will compel greater attention to how stigmatization and criminalization in the Canadian context is oriented to try to repress debate and encourage self-censorship around root issues related to extractivism, such that we name the problem and pursue creative strategies to resist this tendency and build a stronger movement.

We look forward to your comments, reflections, input and conclusions on these same themes and proposals with the hope that we will be able to strengthen our coordination, research and actions together.

Recommendations

To Civil Society, Media and Researchers

Respect for dissent and the right to protest in defense of land and the environment

1. Undertake education and dissemination of information directed toward all State agents, the general public and the press to raise awareness about the importance and validity of the work of land and environment defenders and the criminalization of dissent and social protest, including by challenging the extractivist development model and denouncing related injustices, taking the lead from affected communities.^J
2. Publicly recognize that the exercise of the protection and promotion of individual and collective Indigenous and human rights are legitimate actions and that, by exercising these rights, land and environment defenders are helping to strengthen the rule of law and to expand the rights and guarantees of all persons;
 - a. Public opinion makers must refrain from making statements that stigmatize land and environment defenders or that suggest that organizations working on land and environmental issues act improperly or illegally, merely because they promote and defend Indigenous and human rights, the land and the environment;
 - b. Editorial boards and the governing boards of civil society organizations should give full recognition to the important work carried out by land and environment defenders;
 - c. Media outlets and civil society organizations should not tolerate the stigmatization of the work of these defenders by public officials or the media, particularly in context of social polarization, as this can foster a climate of intimidation and harassment which might encourage rejection and even violence against defenders.^C
3. Strengthen independent and public media to monitor and report on the work and struggles of land and environment defenders and the criminalization of dissent and social protest, to ensure fair and factual coverage.^B
4. Build knowledge about criminalization of dissent and social protest in defence of land and the environment. Increase collaborative efforts of Canadian scholars and activists aimed at furthering the understanding of the processes underlying criminalization of dissent and social protest by land and environment defenders in order to have greater impact in countering this trend.
5. Civil society organizations should provide independent support and expertise to mining-affected communities, and refrain from participating in partnerships with industry, whether or not they are government-sponsored, in order to not reinforce asymmetrical relationships, to strengthen communities and their organizations, and to ensure that their own organizations have the liberty to speak out when there are abuses in connection with a given extractive project and/or policy.
6. Civil society organizations, researchers and academics should nurture networks and coalitions that can research, act and speak clearly in solidarity with land and environment defenders who struggle to protect their individual and collective Indigenous and human rights.
7. In the context of government attacks on social movements, which include efforts to stigmatize, cut public funding and undertake forensic audits of not-for-profit organizations that the government deems to be critical of the extractivist agenda, it is vital that movements establish and nurture organizing spaces, such as coalitions or networks that can assert clear positions and that are not dependent on government funding.

Protection of land and environment defenders

8. Establish links with relevant international mechanisms, such as special rapporteurs and rights monitoring groups.⁶
9. Create and/or strengthen support networks among land and environment defenders and watchdog relevant public and private sector actors. Define a strategy and procedures for the urgent protection of land and environment defenders facing threats. A strategy should include criteria for deciding whether the situation of risk justifies communicating information to the regional and international protection networks, in which case great care must be taken to present accurate and complete information.⁸
10. Systematically monitor legal proceedings against land and environment defenders (including through trial observation), visit land and environment defenders in custody and express public support for defenders and their families.⁹
11. Pressure state authorities in the Americas, including Canada, to fulfil their obligations to protect land and environment defenders through tangible measures and to monitor the implementation of such measures. These measures could include visiting defenders facing threats and legal processes, demanding that states guarantee full, impartial and immediate investigations of threats and violence, and ensuring relocation in extreme cases of threat. Identify, support, and urge governments to implement existing recommendations related to the criminalization of land and environment defenders, such as those issued by the Inter-American Human Rights System, Special Mechanisms of the United Nations (Committees and Rapporteurs) and the United Nations Human Rights Council under the Universal Periodic Review.¹⁰

Surveillance and Access to Information

12. Strengthen networks and groups that monitor the grounds and procedures governing intelligence-gathering activities targeting land and environment defenders and their organizations to ensure due protection of individual and collective Indigenous and human rights.¹¹
13. Utilize access-to-information laws to obtain information held by the state about civil society organizations and land and environment defenders. Urge the state to establish, and where it is established, to ensure an expedited, independent, and effective mechanism for this purpose. This must include independent, civilian oversight of the government's and/or the security intelligence agencies' decisions to deny access to information.¹²

Fight Against Impunity

14. Demand that the government of Canada amend existing civil, criminal and administrative laws and introduce new judicial and non-judicial mechanisms at home to hold companies based or registered in Canada to account for individual and collective Indigenous and human rights violations committed in another country.
15. Demand that the government of Canada hold public officials to account where their acts or omissions in dealing with individual and collective Indigenous and human rights violations connected with Canadian-registered mining corporations operating internationally demonstrate negligence or another type of co-responsibility for the harms caused.

Preventive Measures to Address the Root Causes of Criminalization of Land and Environment Defenders

16. Demand that the government of Canada stop promoting, supporting through political and economic means, and protecting extractivist expansion, given systemic violations of individual and collective rights of mining-affected communities, impacts on water supplies and ecologically and culturally important areas.¹³
17. Identify and promote options that will reduce dependency on the extractivist development model, taking the lead from affected communities.

To Home States or the State of Origin of a Company — Canada

How and What Laws are Written/Applied

1. Annul, repeal or amend legislation which permits the criminalization of land and environment defenders and which, when applied, contravenes international and regional obligations of States.^E
2. Adopt Canada-wide anti-SLAPP legislation ('Strategic lawsuits against public participation' or SLAPP suits are brought with the intention of intimidating and silencing critics through expensive and exhausting legal processes). This is central to respecting and recognizing the rights to freedom of expression, democratic participation of individuals and groups in public debates, equality before the courts and academic freedom. Anti-SLAPP legislation will protect affected communities, concerned individuals, civil society organizations and academics from suits by resource-extraction companies. SLAPP suits transform the engagement of individuals and groups in public debates around the defense of environmental, cultural or economic rights into a private dispute between these individuals and organizations, while large economic interests and powers with disproportionate financial capacities try to intimidate, financially exhaust and reduce those individuals and organizations to silence.

Respect for dissent and the right to protest in defense of land and the environment

3. Publicly recognize that the protection and promotion of individual and collective Indigenous and human rights are legitimate actions and that, by exercising these rights, land and environment defenders are helping to strengthen the rule of law and to expand the rights and guarantees of all persons. Also,
 - a. Public officials must refrain from making statements that stigmatize land and environment defenders or that suggest that Indigenous and/or human rights organizations act improperly or illegally because they promote and defend Indigenous and human rights, and/or land and environmental defence. In this respect, governments should give precise instructions to their officials and should impose disciplinary sanctions on those who do not comply with such instructions;
 - b. States should give full recognition to the important work carried out by land and environment defenders;
 - c. States should not tolerate the stigmatization of the work of these defenders by public officials, particularly in a context of social polarization, as this can foster a climate of intimidation and harassment that might encourage rejection and even violence against defenders.^B
4. The government of Canada should repeal its "economic diplomacy" policy for overseas missions (as described in the November 2013 'Global Markets Action Plan') according to which "all diplomatic assets of the Government of Canada will be marshalled on behalf of the private sector in order to achieve the stated objectives within key foreign markets." In its place, the Canadian government should adopt official policies to guide the behaviour of Canada's missions abroad in accord with the international human rights instruments to which Canada is a signatory and ones that it has endorsed, including the UN Declaration on the Rights of Indigenous Peoples. Such policies could take direction from instruments such as the EU Guidelines for Human Rights Defenders.
5. Foreign missions should appoint specific liaison officers that
 - a. Where they are invited to engage with communities, would gather detailed and impartial information about the Indigenous and human rights impact of business through dialogue with land and environment defenders and mining-affected communities. This information must not be shared with other for-profit or not-for-profit actors without the express consent of the defenders and/or communities;
 - b. Make themselves available to receive land and environment defenders in missions and, when invited, visit their communities and areas of work;^J

- c. Systematically monitor legal proceedings against land and environment defenders (including through trial observation where appropriate), visit defenders in custody and express public support for defenders and their families;^E
- d. Provide, as and where appropriate, visible recognition to land and environment defenders, through the use of appropriate publicity, visits or invitations.^J

Protection of Land and Environment Defenders

6. Trade missions should raise human rights concerns with host countries where the individual and/or collective Indigenous and/or human rights of affected communities and workers are at risk or are being violated in connection with the investment activities of Canadian companies.^F
7. Canada should urge authorities in the Americas, such as national prosecutors and human rights commissioners, to fulfil their obligations to protect land and environment defenders and mining-affected communities through measures, including, among others, to guarantee full and impartial investigation into threats and violence and to hold all of those responsible to account, and to monitor the implementation of such measures.^E
8. Canada should contribute resources through its cooperation programs for national human rights institutions and institutes for legal defence.^E
9. The Department of Foreign Affairs, Trade and Development should provide support to defenders fleeing persecution due to their activities of dissent in other countries by facilitating their entry into Canada and temporary residence, as per the 1951 Refugee Convention to which Canada is a signatory.

Fight Against Impunity

10. In keeping with the Maastricht Principles on the Extraterritorial Obligations in the area of Economic, Social and Cultural Rights, Canada should amend existing civil, criminal and administrative laws and introduce new judicial and non-judicial mechanisms at home to hold companies based or registered in Canada to account for individual and collective Indigenous and human rights violations committed in another country, or clarify existing regulatory frameworks that govern how to sanction domiciled businesses and their employees for involvement in abuses abroad to include such mechanisms.^F
11. Canada should hold public officials to account where their acts or omissions in dealing with individual and/or collective Indigenous and human rights violations in connection with Canadian-registered mining corporations operating overseas demonstrate negligence or another type of co-responsibility for the harms caused.
12. Foreign missions should monitor the activities of Canadian-domiciled or financed companies operating abroad and report on any individual and/or collective Indigenous and human rights violations that they observe to the appropriate local, national and international authorities and to make a public annual report about such violations.

Preventive Measures to Address the Root Causes of Criminalisation of Land and Environment Defenders

13. Stop promoting, supporting through political and economic means, and protecting extractivist expansion, given systemic violations of individual and collective rights of mining-affected communities, impacts on water supplies and ecologically and culturally important areas
14. Identify and promote options that will reduce dependency on extractivist expansion at home and around the world.^I

To Host States or States in which a Company is Operating — Canada and others

How and What Laws are Written/Applied

1. Use precise and unambiguous language that narrowly defines punishable offenses, thus giving full meaning to the principle of legality in criminal law.
2. Ensure that crimes invoked to arrest land and environment defenders are formulated in accordance with the principle of legality; ensure that authorities presiding over cases issue their decisions within a reasonable period of time; ensure that authorities and third parties do not violate the principle of presumption of innocence by making statements that stigmatize land and environment defenders who are being criminally prosecuted.^A
3. Ensure that authorities or third parties do not use the policy-making and punitive power of the State and its organs of justice to harass or persecute land and environment defenders who are engaged in legitimate and lawful activities.^A
4. Annul, repeal or amend legislation which permits the criminalization of land and environment defenders and which, when applied, contravenes international and regional obligations of States.^E
5. Ensure law enforcement budgets are not contingent on economic incentives. For example, law enforcement should not be directly funded — in any way — by contracts, rents or royalties from the extractive industry.
6. Respect workers' rights, including to join or form a union of their own choosing, without fear of any repercussions or persecution.^E
7. Respect the rights of mining-affected communities, including binding prior consultation and their rejection of unwanted projects; and respect indigenous rights to self-determination and free, prior and informed consent before any mining activities are initiated on their lands, in accordance with ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and international jurisprudence.^E
8. States should instruct their authorities to ensure that, from the highest levels, forums are created for open dialogue with mining-affected communities both Indigenous and non-Indigenous, as well as Indigenous and human rights organizations regarding the development of public policies that affect them. Indigenous peoples should be consulted on such public policy decisions in accord with ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and international jurisprudence.^A

Respect for dissent and the right to protest in defense of land and the environment

9. States should
 - a. Publicly recognize that the exercise of the protection and promotion of individual and collective Indigenous and human rights are legitimate actions and that, by exercising these rights, land and environment defenders are helping to strengthen the rule of law and to expand the rights and guarantees of all persons;
 - b. Public officials must refrain from making statements that stigmatize land and environment defenders or that suggest that Indigenous and/or human rights organizations act improperly or illegally, merely because they promote and protect Indigenous and human rights, and/or land and environmental defence. In this respect, governments should give precise instructions to their officials and should impose disciplinary sanctions on those who do not comply with such instructions;
 - c. States should give full recognition to the important work carried out by land and environment defenders;
 - d. States should not tolerate the stigmatization of the work of these defenders by public officials, particularly in a context of social polarization, as this can foster a climate of intimidation and harassment that might encourage rejection and even violence against defenders.^B

10. States should appoint specific liaison officials who are independent of government to
 - a. Gather detailed and impartial information about the Indigenous and human rights impact of business through regular dialogue with land and environment defenders and mining-affected communities where they have an invitation to engage. This information must not be shared with other for-profit or not-for-profit actors without the express consent of the defenders and/or communities;
 - b. Make themselves available to land and environment defenders and mining-affected communities, including receiving them in their offices and visiting their communities and areas of work;^l
 - c. Systematically monitor legal proceedings against land and environment defenders (including through trial observation where appropriate);
 - d. Visit defenders in custody and express public support for defenders and their families^E;
 - e. Provide, as and where appropriate, visible recognition to land and environment defenders, through the use of appropriate publicity, visits or invitations.^l

Policing of demonstrations and other forms of protest to ensure protection of land and environment defenders

11. Adopt mechanisms to prevent the use of force during public demonstrations, through planning, prevention, and investigation measures.^A
12. Ensure that law enforcement officials are trained in international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other relevant treaties, declarations and guidelines.^B
13. Enforce a code of conduct for law enforcement officials, particularly with regard to crowd control and the use of force, and ensure that the legal framework contains effective provisions for civilian and independent oversight and accountability of officials, especially with regard to their responses to public protest actions.^B
14. Hold law enforcement officials to account under civil justice systems, and do not give civil or criminal immunity to law enforcement officials for abusive actions.^B
15. Stop the processes of the militarization of policing and repeal measures already in place. The military should not be involved or put in charge of law enforcement activities at any time. Law enforcement officials should not be trained in nor use military tactics and equipment . Law enforcement officials should not be deployed with soldiers.^B
16. Stop the processes of privatization of the armed forces and repeal measures already in place that allow police and other state armed forces to establish private contracts with corporations, which confuses their mandate to protect the peace for a country's population with protecting the private interests of a corporation.
17. In the context of the arrest and detention of a person, land and environment defenders should, at a minimum, have regular access to the detainee and basic information on the substance of the charges on which the detainee is held.^B

Surveillance and Access to Information

18. Revise the grounds and procedures governing intelligence-gathering activities targeting land and environment defenders and their organizations to ensure due protection of their individual and collective Indigenous and human rights. To this end, implement a mechanism for periodic, independent review of their records.^A
19. Ensure land and environment defenders and the general public have ready access to public information held by the State, as well as private information about them. Establish, maintain and adequately resource an expedited, independent, and effective mechanism for this purpose, which includes a review by civilian authorities of decisions to deny access to information, whether by state or state security authorities.^A
20. Allow land and environment defenders to perform their monitoring role and grant domestic and foreign media access to assemblies to facilitate independent coverage.^B
21. Ensure that the procedure for registering and the regulatory frameworks for organizations involved in Indigenous and human rights, land and environmental justice work do not become an impediment to their activities, and that registration is for declarative purposes, not to authorize, legalize or undermine their existence.^A
22. Do not restrict, prohibit or stigmatize access to funds, including from foreign sources, for the purpose of defending individual and collective Indigenous and human rights, land and the environment.^B

Fight Against Impunity

23. Combat impunity for attacks against land and environment defenders and individual and collective Indigenous and human rights violations by State and non-State actors, as well as those acting in collusion with them, by guaranteeing full, prompt and impartial investigations into allegations and appropriate and adequate redress and reparation to victims.^C
24. Allocate the resources and training required to build the capacity of prosecutors who are willing to pursue cases against those responsible for abuses against land and environment defenders.^F
25. Welcome and facilitate country visits from Special Rapporteurs of regional and international human rights organizations.^I

Preventive measures to deal with root causes of criminalisation of land and environment defenders

26. In Canada, stop promoting, supporting through political and economic means, and protecting extractivist expansion, given systemic violations of individual and collective rights of mining-affected communities, impacts on water supplies and ecologically and culturally important areas; identify and promote options that will reduce dependency on its expansion.^I
27. Encourage states outside of Canada when they make efforts to stop promoting, supporting through political and economic means, and protecting extractivist expansion, systemic violations of individual and collective rights of mining-affected communities, impacts on water supplies and ecologically and culturally important areas; and to identify and promote options that will reduce dependency on its expansion.^I

To Companies:

1. Companies should not support and ensure that they are not benefiting from, or remaining silent in response to the criminalization of dissent and social protest of land and environment defenders in relation to their operations or related activities.^K
2. Companies should ensure that they do not benefit from individual and collective human rights violations, such as threats, violence, murder, land theft, and destruction of water supplies and protected areas, and that their operations do not benefit illegal armed actors; that they do not enter into contract with state armed actors; and that they do not hire armed actors with a history of human rights abuses.^E
3. Companies should respect the rights of mining-affected communities, including binding prior consultation and their rejection of unwanted projects; and respect indigenous rights to self-determination and free, prior and informed consent before any mining activities are initiated on their lands, in accordance with ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and international jurisprudence.^E
4. Companies should respect workers's rights to freely join or form a union of their own choosing without fear of any repercussions or persecution.^K
5. Companies should not use their influence with law-makers, diplomats and politicians in ways which could, advertently or inadvertently, infringe the rights of local communities and lead to human rights abuses.^K
6. Companies should not launch SLAPP suits against community members, citizens, civil society organizations and academics in violation of their rights to freedom of expression, democratic participation in public debates, equality before the courts and academic freedom.

References for Recommendations

Please note: Recommendations above may be verbatim or modified from the relevant documented referenced below.

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- C. United Nations Special Rapporteur on the situation of human rights defenders, Fourth Report on the situation of human rights defenders, 2011 (http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_en.pdf)
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- I. Observatorio de Conflictos Mineros de América Latina /Observatory of Mining Conflicts in Latin America (OCMAL), Cuando tiemblan los derechos Extractivismo y Criminalización en America Latina, 2011. <http://www.conflictosmineros.net/biblioteca/publicaciones/publicaciones-ocmal/cuando-tiemblan-los-derechos-extractivismo-y-criminalizacion-en-america-latina/download>
- J. European Union Guidelines on Human Rights Defenders, General Affairs Council of 8 December 2008. http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/l33601_en.htm
- K. CIDSE, Criminalisation of Social Protest related to Extractive Industries in Latin America, Analysis and Recommendations, June 2011.
- L. CIDSE, The criminalization of human rights defenders in Latin America — An assessment from international organisations and European networks, June 2012.