



The Global Initiative

for Economic, Social and Cultural Rights

Joint Parallel Report to the Human Rights Committee on the occasion of the consideration of the Sixth Periodic Report of Canada

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I. Canada's Extra-Territory Obligations under the ICCPR

1. Extraterritorial obligations are supported by the language of the Charter of the United Nations, and this language supports the application of extraterritorial obligations in all other treaties.

2. Article 55 of the Charter states in relevant part:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: í

3. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.¹

3. Article 56 requires that "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."²

4. Furthermore, these articles take precedent over any other international instruments, including bilateral and multilateral agreements. Article 103 of the Charter of the United Nations states:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.³

5. The International Law Commission has adopted Articles on Responsibility of States for Internationally Wrongful Acts. These articles are based on conventional and customary international law and international law jurisprudence. The Articles do not recognize a condition related to jurisdiction for a State to be held responsible for an internationally wrongful act, such as human rights violations, but rather whether an act that violates international law can be attributed to a State.⁴

6. The Articles also recognize that there may be shared responsibility for an internationally wrongful act, in other words while the State in which an internationally wrongful act occurs may also be liable and held accountable for that act, other States that have contributed to that

¹ Charter of the United Nations, Art. 55, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* 24 October 1945.

² *Id.* at Art. 56.

³ *Id.* at Art. 103.

⁴ *See*, International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, Arts. 1, 2 and 3 (adopted by the ILC in 2001).

internationally wrongful act share responsibility and consequently can be held accountable. Specifically, Article 16 states that:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.⁵

7. Furthermore, the Articles on Responsibility of States for Internationally Wrongful Acts address violations of preemptory norms, which could include gross violations of human rights.⁶ Article 40 considers serious breaches of preemptory norms as those that involve "a gross or systematic failure by the responsible State to fulfill the obligation"⁷ in question. And Article 41 addresses consequences for such serious breaches, including cooperating "to bring to an end through lawful means any serious breach within the meaning of Article 40"⁸ and mandates that "no State shall recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in maintaining that situation."⁹

8. The obligations clause in Article 2(1) of the ICCPR reads:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁰

9. The phrase "within its territory and subject to its jurisdiction" has been interpreted as meaning "within its territory *or* subject to its jurisdiction."

10. For instance, in its General Comment No. 31, the Human Rights Committee elaborated upon the issue of jurisdiction, stating that:

States Parties are required by Article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of the State Party,

⁵ *Id.* at Art. 16.

⁶ The international community has twice stated that forced evictions amount to gross violations of human rights; see UN Commission on Human Rights resolutions 1993/77 and 2004/28.

⁷ *Id.* at Art. 40.

⁸ *Id.* at Art. 41(1).

⁹ *Id.* at Art. 41(2).

¹⁰ International Covenant on Civil and Political Rights, Art. 2(1), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976.

even if not situated within the territory of the State Party. í This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtainedí .¹¹

11. In its 2003 Concluding Observations of Israel, however, the Human Rights Committee moved away from the effective control test and instead stated that õconduct by [Israeli] authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international lawö constitute violations of the ICCPR. In other words, the Human Rights Committee applied the standard adopted by the International Law Commission in the Articles of Responsibility of States for Internationally Wrongful Acts, namely whether or not the act is attributable to a State and a violation of an international legal obligation.

12. The Human Rights Committee has also implied that even where a person is located outside a State's territory, jurisdiction or effective control, State's retain their obligation to respect and to protect rights in the ICCPR. For instance, in its Concluding Observations on Iran in 1993, the Human Rights Committee condemned õthe fact that a death sentence has been pronounced, without trial, in respect of a foreign writer, Mr. Salman Rushdie, for having produced a literary work and that general appeals have been made or condoned for his execution, even outside the territory of Iran.ö¹² In even stronger language contained in individual complaint jurisprudence, the Human Rights Committee asserted that õit would be unconscionable to permit a State to perpetrate violations on foreign territory which violations it could not perpetrate on its own territory.ö¹³

13. This application of extraterritorial obligations under the ICCPR was also reaffirmed by the International Court of Justice in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. In that Advisory Opinion, the ICJ stated that:

í the *travaux préparatoires* of the [ICCPR] show that, in adopting the wording chosen, the drafters of the [ICCPR] did not intend to allow States to escape from their obligations when they exercise jurisdiction outside their national territory.¹⁴

14. The Maastricht Principles on Extra-Territorial Obligations were adopted in 2011 by leading international human rights experts and provide a concise restatement of existing customary and conventional international law in the area of extra-territorial human rights

¹¹ Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) at para. 10.

¹² Human Rights Committee, Concluding Observations: Iran, UN Doc. CCPR/C/79/Add.25 (3 August 1993) at para. 9.

¹³ Human Rights Committee, *Lopez Burgos v. Uruguay*, Communication No. R 12/52 (6 June 1979) at para. 10.3.

¹⁴ International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (9 July 2004) at para. 109.

obligations.¹⁵ Principle 3 makes clear that “All States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially”¹⁶ and Principle 24 makes clear that extra-territorial obligation to protect includes that “All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights.”¹⁷

15. Principle 25 states that:

States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: a) where the non-State actor has the nationality of the State concerned; and b) where the non-State actor is a corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;¹⁸

16. In its 2012 Concluding Observations on Germany, the Human Rights Committee recognized the extra-territorial obligation to ensure Covenant rights enshrined in the ICCPR, stating that:

While welcoming measures taken by the State party to provide remedies against German companies acting abroad allegedly in contravention of relevant human rights standards, the Committee is concerned that such remedies may not be sufficient in all cases (Art. 2, para. 2).

The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is also encouraged to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.¹⁹

17. The Committee on Economic, Social and Cultural Rights recently adopted Concluding Observations on China addressing extra-territorial obligations, and these Concluding Observations can serve as persuasive guidance for the extra-territorial application of the

¹⁵ The Maastricht Principles are a restatement of law based on existing conventional and customary international law. They were adopted by leading experts from around the world, including a former member of the Human Rights Committee and members and former members of other treaty bodies. Drawn from international law, the Maastricht Principles clarify the content of extra-territorial State obligations to realize economic, social and cultural rights but also explicitly apply to the full spectrum of civil, cultural, economic, political and social rights.

¹⁶ Maastricht Principles on Extra-Territorial Obligations of States in the area of Economic, Social and Cultural Rights, Principle 3 (adopted 28 September 2011).

¹⁷ *Id.* at Principle 24.

¹⁸ *Id.* at Principle 25.

¹⁹ Human Rights Committee, Concluding Observations: Germany, UN Doc. CCPR/C/DEU/CO/6 (31 October 2012) at para. 16.

International Covenant on Civil and Political Rights. Specifically, the Committee on Economic, Social and Cultural Rights adopted the following:

12. While the Committee welcomes that in the framework of international cooperation, the State party has provided economic and technical assistance to over 2,100 projects in more than 120 developing countries, the Committee is concerned that some of such projects have reportedly resulted in violations of economic, social and cultural rights in receiving countries. (arts. 2 and 11).

The Committee calls upon the State party to adopt a human rights-based approach to its policies of international cooperation, by:

(a) Undertaking a systematic and independent human rights impact assessment prior to making funding decisions;

(b) Establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries and to take remedial measures when required; and

(c) Ensuring that there is an accessible complaint mechanism if violations of economic, social and cultural rights occur in the receiving countries.

13. The Committee is concerned about the lack of adequate and effective measures adopted by the State party to ensure that Chinese companies both State-owned and private, respect economic, social and cultural rights, including when operating abroad (art. 2, para.1).

The Committee recommends that the State party:

(a) Establish a clear regulatory framework for companies operating in the State party to ensure that their activities promote and do not negatively affect the enjoyment of economic, social and cultural human rights; and

(b) Adopt appropriate legislative and administrative measures to ensure legal liability of companies and their subsidiaries operating in or managed from the State party's territory regarding violations of economic, social and cultural rights in their projects abroad.²⁰

18. The above makes clear that Canada has extra-territorial obligations under the ICCPR and these obligations include the extra-territorial obligation to respect Covenant rights abroad as well as the extra-territorial obligation to ensure Covenant rights by, *inter alia*, regulating the activities of corporations and other business entities incorporated or domiciled in its territory and/or its jurisdiction for activities undertaken abroad and to investigate and appropriately sanction any

²⁰ Committee on Economic, Social and Cultural Rights, Concluding Observations: China, UN Doc. E/C.12/CHN/CO/2 (23 May 2014) at paras. 12 – 13.

activities that violate human rights and ensure that accountability mechanisms and effective remedies are available to victims of those violations.

II. Background Emblematic Cases

A. Bil'in Village, Palestine

19. Bil'in Village is north of the city of Jerusalem and west of the city of Ramallah in the occupied West Bank of Palestine. Several residents of the Bil'in Village were forcibly evicted from agricultural land on which they earned their livelihood to make way for the illegal Israeli settlement of Modi'in Illit. Two Canadian transnational corporations, both incorporated in and legally registered in Quebec, were complicit in the forced evictions and were responsible for building, marketing and selling the homes in the Israeli settlement.

20. Those forcibly evicted from the lands sought justice in the courts of both Israel and Canada with no success. The Canadian courts summarily dismissed the case.

B. Marline Mine, Guatemala

21. The Marlin Mine is a gold and silver operation located in the Department of San Marcos in the western highlands of Guatemala.²¹ The mine is owned by Montana, a wholly owned subsidiary of Goldcorp, a Canadian corporation with its headquarters in Vancouver, British Columbia, Canada.²² It is operated by Montana Exploradora S.A., Goldcorp Inc. subsidiary company.²³

22. The Marline mine has affected the indigenous community through violence, attacks and intimidation against community leaders who have spoken out against the project.²⁴ The mine's excessive use of water has created water shortages that have negatively affected the surrounding communities' rights to water, food and health.²⁵ In response, the Inter-American Commission on Human Rights (IACHR) issued precautionary measures in 2010 to suspend activities at the mine.²⁶ The measures have since been lifted due to government and corporate pressure, yet violence continues.²⁷

²¹ Canadian National Contact Point, *Final Statement of the Canadian National Contact Point concerning the Marlin mine in Guatemala, pursuant to the OECD Guidelines for Multinational Enterprises*, (May 3, 2011), available at: http://www.goldcorp.com/mwg_internal/de5fs23hu73ds/progress?id=patWaUnH6j.

²² *Id.*

²³ *Id.*

²⁴ FIAN International, *Guatemala - Marlin Mine Report*, (November 11, 2012), available at: <http://www.fian.org/what-we-do/case-work/guatemala-marlin-mine/>.

²⁵ *Id.*

²⁶ The Council of Canadians, *Factsheet: Struggles Against Canadian Mining Companies*, (accessed September 8, 2014), available at: <http://www.canadians.org/content/factsheet-struggles-against-canadian-mining-companies-around-world>.

²⁷ MiningWatch Canada, *Human Rights Commission's Climb-down, a Wake-up Call for Human Rights Defenders in the Americas, Not Indicator of Goldcorp's Performance*, (January 5, 2012), available at: <http://www.miningwatch.ca/news/human-rights-commissions-climbdown-wake-call-human-rights-defenders-americas-not-indicator>.

C. Fenix Mine, Guatemala

23. The Fenix project is located in El Estor in northeastern Guatemala, on the shore of the country's largest freshwater lake, Lake Izabal.²⁸ Indigenous Maya Q'eqchi' communities represent more than 90 percent of the population, most of whom make a living through subsistence farming and fishing.²⁹ Hudbay, a Canadian transnational corporation, acquired Guatemalan mining company Compania Guatemalteca de Niquel (CGN) and its Fenix mine property near El Estor, Guatemala in August 2008.³⁰ Hudbay divested itself of the Fenix project in August 2011, and no longer has any operations in Guatemala.³¹

24. Members of the Maya-Q'eqchi' community have brought three separate civil claims in a Canadian court against HudBay Minerals, and its wholly controlled subsidiaries.³² They allege that security personnel working for Hudbay's subsidiaries, under the control and supervision of Hudbay, the parent company, have committed human right abuses,³³ including the shooting of German Chub, the killing of Adolfo Ich and the gang rapes of eleven women committed in the vicinity of the Fenix mining project.³⁴ Hudbay filed a motion to strike, arguing it and CGN were separate corporate personalities, and that the negligence claim was an attempt to use common law to impose absolute supervisory liability on parent and grand companies regarding the operations of their subsidiaries in foreign countries.³⁵ In July 22, 2013, in a precedent-setting en-banc ruling, Superior Court of Ontario dismissed the three motions brought by Hudbay and two of its subsidiaries that sought to have the case dismissed on the basis that no cause of action existed in Ontario, that one claim was brought outside the limitation period, and that Ontario courts had no jurisdiction over the claim against Hudbay's Guatemalan subsidiary. The Court ruled that Hudbay Minerals can potentially be held legally responsible in Canada for rapes, shooting and murder at the Fenix Mine.³⁶ As a result of the ruling, the claims will go to trial in Canadian courts.³⁷

²⁸ Environmental Justice (Atlas), *HudBay Minerals lawsuits (re nickel mining Fenix project), Guatemala*, (updated October 21, 2014), available at: <http://www.ejatl.org/conflict/duplicate-do-not-approve-hudbay-minerals-lawsuits-re-nickel-mining-fenix-project-guatemala>.

²⁹ Environmental Justice (Atlas), *HudBay Minerals lawsuits (re nickel mining Fenix project), Guatemala*, (updated October 21, 2014), available at: <http://www.ejatl.org/conflict/duplicate-do-not-approve-hudbay-minerals-lawsuits-re-nickel-mining-fenix-project-guatemala>.

³⁰ Hudbay Minerals, *The facts: Hudbay's former operations in Guatemala*, (July, 2014), available at: <http://www.hudbayminerals.com/English/Responsibility/CSR-Issues/The-facts-Hudbays-former-operations-in-Guatemala/default.aspx>.

³¹ *Id.*

³² *Choc v. Hudbay Minerals Inc.*, 2013 ONSC 1414, available at: http://www.fasken.com/files/upload/Choc_v_Hudbay_Minerals_Inc_2013_OJ_No.PDF.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Alison J. Gray and Justin R. Lambert, *Further Cause for Alarm for Canadian Corporations with Foreign Operations*, (January 27, 2014), available at: <http://blog.bennettjones.com/2014/01/27/further-cause-for-alarm-for-canadian-corporations-with-foreign-operations/#more-1754>.

D. Escobal mine, Guatemala

25. The Escobal project is a gold and silver mine located 70 kilometers southeast of Guatemala City and approximately three kilometers from San Rafael las Flores, a town of about 3,000 people.³⁸ It is owned by Tahoe Resources Inc., a precious metal extraction company incorporated in British Columbia and headquartered in Reno, Nevada.³⁹ Goldcorp, a Canadian corporation, holds 40 percent of Tahoe's shares.⁴⁰ Community leaders have faced repression, criminalization and violence for their efforts to promote community consultation processes.⁴¹ On June 18, 2014, seven Guatemalan men filed a pending civil lawsuit in a Vancouver court against Tahoe Resources Inc., for injuries they suffered when Tahoe's security personnel opened fire on them at close range while they were engaged in a peaceful protest against the company's mining operations on 27 April 2013.⁴² At the heart of the lawsuit, is whether a Canadian company can possibly be held liable for actions taken by security guards working on behalf of a subsidiary company operating overseas.⁴³ In response to the lawsuit, Ira Gostin, Vice President of Investor Relations for Tahoe Resources, told the Vancouver Observer that Tahoe "has reviewed the Notice of Civil Claim and believes it to be without merit and replete with factual errors," and that the company "is evaluating its legal options."⁴⁴

E. Cerro San Pedro mine, Mexico.

26. The Cerro San Pedro mine is a gold-silver producing mine located in Cerro San Pedro, 20km northeast of the city of San Luis Potosí in the state of Cerro San Pedro, Mexico.⁴⁵ New Gold, a Canadian based corporation now owns 100 percent of the mine and operates it through its wholly owned Mexican subsidiary Minera San Xavier (MSX).⁴⁶ The project started in 1995 and was first a project owned by Cambior Inc., later Metallica Resources and Glamis Gold, and now New Gold Inc.⁴⁷

³⁸ McGill Research Group Investigating, "Canadian Mining in Latin America, Escobal, Guatemala," (accessed September 10, 2014), available at: <http://micla.ca/conflicts/escobal/>.

³⁹ McGill Research Group Investigating, "Canadian Mining in Latin America, Escobal, Guatemala," (accessed September 10, 2014), available at: <http://micla.ca/conflicts/escobal/>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Joshua Hergesheimer, "This man says Canadians need to know what's in their government pension plan and what demanding justice cost him," Vancouver Observer, (June 24th, 2014), available at: <http://www.vancouverobserver.com/news/man-says-canadians-need-know-whats-their-government-pension-plan-and-what-demanding-justice>.

⁴⁴ *Id.*

⁴⁵ Mining Technology and Market Insight, "Cerro San Pedro Mine, San Luis Potosí, Mexico", (accessed September 20, 2014), available at: <http://www.mining-technology.com/projects/cerrosanpedromine/>.

⁴⁶ *Id.*

⁴⁷ Juan Carlos, Ruiz Guadalajara, "Canadian Mining Crimes in Mexico," (July 21, 2010), available at: <http://upsidedownworld.org/main/mexico-archives-79/2602-canadian-mining-crimes-in-mexico>.

27. Cerro de San Pedro is a historical center with 400 years of history.⁴⁸ Known for its wealth in ore, as well as for its historical and natural significance, the village of Cerro de San Pedro was short-listed as a UNESCO World Heritage Site.⁴⁹ The mountain is being collapsed by implosions.⁵⁰ Gold and silver are then extracted from the crushed rock using a technique known as cyanide heap leaching.⁵¹ Heap leaching at the Cerro de San Pedro mine requires an estimated 32 million liters of water daily.⁵² Juan Carlos Ruiz, an FAO organizer, is concerned that the mine is polluting an aquifer that supplies much of San Luis Potosí's drinking water. The high use of cyanide was of major concern as it was part of the daily operations of the mine pit.⁵³ There were issues with cyanide leaking into the water supply, which serves about 1.5 million inhabitants of the surrounding area.⁵⁴ Additionally the high use of twenty-five tons of explosives per day raised safety concerns.⁵⁵ Research of the Autonomous University of San Luis Potosí (hereinafter UASLP - *Universidad Autónoma de San Luis Potosí*) has shown that large parts of the municipality are contaminated with heavy metals, with the most prevalent heavy metals being arsenic and lead.⁵⁶

F. Dikulushi Mine, Republic of Congo

28. The Dikulushi mine is a copper and silver mine in the Democratic Republic of the Congo (hereinafter DR Congo).⁵⁷ Anvil Mining Congo SARL, incorporated in the Democratic Republic of the Congo, operated the mine.⁵⁸ Anvil Mining Holdings Limited, incorporated in the United Kingdom, owned ninety percent of the company.⁵⁹ Ten percent was owned by two trusts, with the local communities affected by the mine as the beneficiaries.⁶⁰ Both trustee companies, and the U.K. Company were wholly owned subsidiaries of Anvil Mining Management NL, incorporated in Australia. The Australian company was in turn a wholly owned subsidiary of Anvil Mining Limited, incorporated in Canada.⁶¹ The part of the Anvil enterprise involved in operating the Dikulushi mine consisted of six separate companies, each one, a separate legal

⁴⁸ Tatiana, Gomez, "Canadian Mining in Mexico, A close-up look at the impacts of gold mining in San Luis Potosí", (September 25, 2008), available at: <http://www.dominionpaper.ca/articles/2036>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Mines and Communities, "Grave concern about the activities of Canadian mining company Metallica Resources Inc. in Mexico" Joint letter to Foreign Affairs Minister Peter MacKay and Minister of International Trade David Emerson, (April 28, 2006), available at: <http://www.minesandcommunities.org/article.php?a=3767>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Didi Stoltenborg, "Under-mining land and water rights Conflict over land and water rights in a gold mining case Cerro de San Pedro, Mexico", MSc thesis, (August, 2014), available at: <http://edpot.wur.nl/312988>.

⁵⁷ McBeth, Adam, "Crushed by an Anvil: A Case Study on Responsibility for Human Rights in the Extractive Sector", Yale Human Rights and Development Law Journal, (January 1, 2008), available at: <http://www.highbeam.com/doc/1G1-183981041.html>.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

person, incorporated in four different jurisdictions.⁶² This is consistent with Canadian mining corporations relying on the separate legal personality of subsidiary corporations, to shield the parent corporation from direct legal liability for the activities of the subsidiary, making accountability difficult.

29. On 13 October 2004, the Congolese Armed Forces (hereinafter *FARDC*) moved into Kilwa to regain control of the town, which was briefly in the hands of a rebel group.⁶³ In the process, the soldiers engaged in summary executions, torture, rape and looting.⁶⁴ An investigation by the United Nations Organization Mission in the Democratic Republic of Congo (hereinafter *MONUC*) concluded that over seventy 70 people were killed and highlighted a string of other grave crimes and human rights violations.⁶⁵ The MONUC report also indicated that Anvil, whose Dikulushi mine was only fifty kilometers away from Kilwa, admitted to MONUC that it had provided logistical support to the FARDC in the form of vehicles, company drivers, flights, food and money following the requests from the high command of the 6th military region, Colonel Ademars in Pweto and the Governor of Katanga in Lubumbashi.⁶⁶ The Commander of the 6th military region in Lubumbashi also informed MONUC in October 2004, that the intervention of the FARDC to bring safety back to Kilwa was made possible thanks to the logistical assistance given by Anvil Mining.⁶⁷

30. The Canadian Association against Impunity (hereinafter *CAAI*), filed a class action lawsuit against Anvil Mining before Quebec Superior Court on behalf of survivors and families of victims of the 2004 massacre at Kilwa in November, 2010.⁶⁸ Plaintiffs sought to hold Anvil accountable for complicity in the rape, massacres and brutalization of people of Kilwa by the Congolese army.⁶⁹ In April 2011, a Quebec Superior Court ruled that the case could proceed to the class certification stage.⁷⁰ On appeal by Anvil mining, the Quebec Court of Appeal overturned the decision, holding that Canadian courts lacked jurisdiction over actions committed abroad by Canadian corporations, and that the dispute did not relate to Anvil's activity in Canada.⁷¹ The Supreme denied a review.⁷² A member of CAAI noted that the case highlights the extreme difficulty victims of gross human rights violations face when trying to receive justice.⁷³

⁶² *Id.*

⁶³ Feeney, Patricia, *Anvil mining and the Kilwa massacre* (March 7, 2012), available at: <http://www.osisa.org/openspace/global/anvil-mining-and-kilwa-massacre-patricia-feeney>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ MONUC (United Nations Mission in the Democratic Republic of Congo), Special Investigations Report, (10 November 2004), available at: <http://www.raid-uk.org/sites/default/files/monuc-final-report.pdf>.

⁶⁷ *Id.*

⁶⁸ MiningWatch Canada, *Corporations Fight Against Access to Domestic Courts for Harm Caused Overseas* (November 26, 2012), available at: http://www.miningwatch.ca/article/corporations-fight-against-access-domestic-courts-harm-caused-overseas#_ftn7.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Court of Appeal, Province of Quebec, *Canadian Association Against Impunity (CAAI) v. Anvil Mining Ltd.*, File No. 500-09-021701-115 (judgment of 24 January 2012).

⁷² MiningWatch Canada, *supra* note 9.

⁷³ *Id.*

It has been eight years since the Kilwa massacre and the victims and their families have yet to find justice.⁷⁴ Without access to Canadian court, Kilwa victims of Anvil's human rights violation may be out of options, since they could not possibly get access to justice in the DRC.⁷⁵ In the only previous examination of the massacre through a military trial in the DRC, three of Anvil Mining's employees, including one Canadian citizen, were indicted and then acquitted.⁷⁶ Anvil Mining's Congolese subsidiary (hereinafter *Anvil Mining Congo*) was also absolved of any wrongdoing.⁷⁷

G. North Mara Gold Mine, Tanzania

31. The North Mara gold mine is located in northeast Tanzania in the Tarime district of the Mara region, 30 kilometers from the Kenyan border.⁷⁸ It is a high grade open pit mine consisting of three open pit deposits in Nyabirama, Gokona and Nyabigena.⁷⁹ The mine commenced production under Africa Mashariki Gold Mine Ltd in 2002.⁸⁰ In 2003, it was acquired by Placer Dome.⁸¹ Barrick Gold Corporation (Barrick) acquired Placer Dome with the mine in 2006.⁸² African Barrick Gold (ABG) a UK-registered company assumed control of North Mara as a part of the IPO in 2010.⁸³ As of March 10, 2014, Barrick, is majority owner of ABG.⁸⁴

32. Desperately poor villagers reportedly commonly pay mine security and police bribes to gain access to waste rock dumps and the pits hoping to collect rocks containing gold.⁸⁵ When conflicts escalate, they open fire on the same people who normally do business with them.⁸⁶ Barrick is aware of the widespread reports that the police allow the intrusions in exchange for bribes.⁸⁷ Tarime Rorya special police zone commander, Assistant Commissioner Constantine Massawe, revealed to journalist investigating the killing at the mine, that four policemen had been disciplined for violation of ethics while on duty at North Mara gold mine.⁸⁸

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Africa Barrick Gold, "North Mara", (accessed October 15, 2014), available at: <http://www.africanbarrickgold.com/operations/operating-mines/north-mara.aspx>.

⁷⁹ *Id.*

⁸⁰ African Barrick Gold, "North Mara - Site Presentation", (March 2014), available at: <http://www.africanbarrickgold.com/mwginternal/de5fs23hu73ds/progress?id=oPX3OpVcfP>.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ MiningWatch Canada and RAID (UK), "Complete Human Rights Assessment: Violence Ongoing at Barrick Mine in Tanzania" (July 2014), available at: <http://www.miningwatch.canada> and www.raid-uk.org.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Marato, George, "Tarime killings: The inside story", The Guardian (Tanzania), (May 22nd, 2011), available at: <http://protestbarrick.net/article.php?id=733>.

33. There have been multiple incidents of death and casualties around the North Mara gold mine.⁸⁹ However, the mine gained international notoriety when, on 16 May 2011, five residents were shot and killed by police on or near the mine site after an altercation between locals, who were searching the mine's debris for gold, and mine security personnel and police.⁹⁰

H. Mount Canatuan, Manila Philippines

34. TVI Resource Development Philippines, a Canadian subsidiary of Canada based Toronto Ventures Incorporated, or TVI Pacific (hereinafter *TVI*) began operating on the site of Mount Canatuan in 1996.⁹¹ TVI's mine includes 500 hectares of land located in Siocon Town, Zamboanga del Norte.⁹² The Subanon peoples were given by the Traditional Judicial Authority, the Gukom of the Seven Rivers Council, a certificate of ancestral domain title to land that comprised of 5,000 hectares of land including, the 500 which were given to TVI to operate the mine.⁹³ The local Subanon peoples claim that TVI never received their consent to operate the mine on their ancestral lands.⁹⁴

35. In 2007, the local Judicial Authority Tribunal found TVI guilty of human rights violations, including physical violence, damages to personal property and environment, as well as failing to obtain consent to commence operation of the site from the Subanon peoples.⁹⁵ TVI finally admitted to those violations in 2011.⁹⁶ In 2001 there was a complaint filed against TVI to the UN Working Group on Indigenous Peoples.⁹⁷ That complaint alleged that TVI committed militarization and acts of violence and intimidation, blockading necessities and foods, as well as disrupting travel.⁹⁸ It is also alleged that TVI worked with the private security force SCAA, a local government trained security force as well as a separate subset of those guards to be under TVI's direct control, the "blue guards."⁹⁹

⁸⁹ Mlowe, Pasience and Olungurumwa, Onesmo, *Killings around North Mara Gold Mine: The Human Cost of Gold in Tanzania – The Shooting of the Five*, Fact Finding Mission Report, Legal Human Rights Centre (LHRC), Dar es Salam, Tanzania (May, 2011), available at: http://www.academia.edu/7827818/KILLINGS_AROUND_NORTH_MARA_GOLD_MINE_THE_HUMAN_COST_OF_GOLD_IN_TANZANIA-THE_SHOOTINGS_OF_THE_FIVE.

⁹⁰ The Presbyterian Church in Canada, *Land: Resource Extraction and Canadian Mining Companies*, from the Acts and Proceedings of the 138th General Assembly (2012), available at: <http://www.kairoscanada.org/wp-content/uploads/2013/11/WD-PCC-138Assembly-ResourceExtraction.pdf>.

⁹¹ Isa Lorenzo & Philip Ney, *After Marcopper: The Canadian Quandary*, A special Report of the Philippine Center for Investigative Journalism, (December 29, 2008), available at: <http://www.minesandcommunities.org/article.php?a=9033>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ John Ahni Schertow, *Canadian Mining Firm Admits Wrongdoings to Subanon People*, (May 25, 2011), available at: <https://intercontinentalcry.org/canadian-mining-firm-admits-wrongdoings-to-subanon-people/>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Ellen Red, *TVI Executive Asks Forgiveness for Human Rights Violations Committed by the Company to the Subanon Tribe*, (June 20, 2007), available at: <http://www.minesandcommunities.org/article.php?a=6072>.

⁹⁸ *Id.*

⁹⁹ Kairos, *Press Statement: The Rock Hard Truth-Philippine Learning Tour Raises Concerns About Mining-Related Human Rights Violations in Zamboanga Peninsula*, (August 6, 2014), available at:

I. Porgera Joint Venture, Papua New Guinea

36. Barrick Gold, a Canadian corporation, owns and operates 95 percent of the gold mine in Porgera, which opened in 1990.¹⁰⁰ Barrick maintains a private security force of over 400 people to maintain the safety of its mine from independent local gold miners.¹⁰¹ There were at least six separate incidents of rape of women committed by the Barrick security forces while on Barrick property.¹⁰² Additionally villagers complain that Barrick dumped about 16,000 tons of waste into the Porgera River.¹⁰³ Due to the loose rocky mountain terrain of the sites location, when large rain falls, drop mudslides often occur.¹⁰⁴ In December of 2009, the combined weather elements resulted in a mudslide that killed ten people on Barrick gold mine property.¹⁰⁵

37. During the totality of Barrick's operation at the Porgera Joint Venture, Barrick's security guards raped a total of 170 indigenous women.¹⁰⁶ Barrick acknowledged the rapes in 2008.¹⁰⁷ Barrick has attempted to implement an out of court process for those alleging rape.¹⁰⁸ However Barrick is conditioning any benefits package for those who can substantiate their rape allegation on signing away their individual right to sue Barrick¹⁰⁹

III. Application of ICCPR

A. Article 1

38. **Green Park International Inc. and Green Mount International Inc.; Bil'in Village, Palestine:** The land transference that gave development rights to Green Park International Inc.

<http://www.kairoscanada.org/sustainability/resource-extraction/press-statement-the-rock-hard-truth-philippine-learning-tour-raises-concerns-about-mining-related-human-rights-violations-in-the-zamboanga-peninsula/>.

¹⁰⁰ Human Rights Watch, "Gold Costly Divided: The Porgera Joint Venture", (February 11, 2011), available at: <http://www.hrw.org/news/2011/02/01/papua-new-guinea-serious-abuses-barrick-gold-mine>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Jesse Riseborough, "Barrick Says 10 People Killed in Papua New Guinea Mine Mudslide", (December 5, 2008), available at: <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aJgFyzSPY4II>.

¹⁰⁵ *Id.*

¹⁰⁶ MiningWatch Canada, "International Condemnation for Barrick Gold's Effort to Seek Immunity from Legal Action by Rape Victims", (June 6, 2013), available at: <http://www.miningwatch.ca/news/international-condemnation-barrick-gold-s-effort-seek-immunity-legal-action-rape-victims>.

¹⁰⁷ MiningWatch Canada, "Villagers' Houses Burnt Down Again at Barrick Gold Mine in Papua New Guinea", (June 11, 2014), available at: <http://www.miningwatch.ca/news/villagers-houses-burnt-down-again-barrick-gold-mine-papua-new-guinea>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

and Green Mount International Inc., deprived the residents of Bil'ın village their right to self-determination and to freely pursue their economic, social and cultural development as guaranteed by Article 1 of the ICCPR.¹¹⁰ Green Park International Inc. and Green Mount International Inc., have deprived the residents of Bil'ın village of being able to freely dispose of their natural wealth, resources and have prejudiced them via international economic cooperation with the state of Israel, which is expressly prohibited by this article. Additionally, this has deprived the residents of Bil'ın village of their means of subsistence.¹¹¹

39. **Marline Mine, Guatemala:** Goldcorp's land acquisition violates the right to self-determination of the indigenous people of San Miguel Ixtahuacan and Sipacapa. The violation of Article 1 is based on the lack of respect for the indigenous populations' objections to the mine, and the total disregard of the affected populations' right to free and informed consent in relation to the project.¹¹² As the mine was being established in 2005, the people of Sipacapa organized a referendum in which 95 percent of those voting rejected the expansion of mining activities into their region.¹¹³ Neither the Government nor Goldcorp respected the results.¹¹⁴ The Indigenous People of San Miguel Ixtahuacan and Sipacapa are still unable to exercise their right to self-determination based on Goldcorp activities.

40. **Fenix Mine, Guatemala:** HudBay Minerals' land acquisition violated the right to self-determination of the indigenous Maya Q'eqchi' communities of El Estor. A number of Maya Q'eqchi' families claim ownership of the land, which they consider to be their ancestral lands.¹¹⁵ The local Mayan Q'eqchi' has never accepted the legality of the mining concession or the alleged transfer of land to Exmibal.¹¹⁶ The indigenous community also asserted that CGN's claim to the land was illegitimate since it is based on titles awarded to it by the military government in 1965, at a time when local indigenous people were being massacred and driven off their lands in the context of the internal armed conflict.¹¹⁷ The Mayan community was not consulted before the granting of the exploration license to Skye Resources in 2006, nor was it aware of the sale transaction between INCO and Skye Resources.¹¹⁸ The indigenous groups protested the

¹¹⁰ Deborah Guterman, "Canadian Corporations Cash-In on Occupation: The Case of Bil'in v. Green Mount / Green Park International", *Litigating Palestine* (Spring-Summer 2009), available at: www.badil.org/en/article/74/item/15-article-5, 2009.

¹¹¹ *Id.*

¹¹² FIAN International, "Guatemala - Marlin Mine Report", (November 11, 2012), available at: <http://www.fian.org/what-we-do/case-work/guatemala-marlin-mine/>.

¹¹³ Canadian National Contact Point, "Final Statement of the Canadian National Contact Point concerning the Marlin mine in Guatemala, pursuant to the OECD Guidelines for Multinational Enterprises", (May 3, 2011), available at: http://www.goldcorp.com/mwg_internal/de5fs23hu73ds/progress?id=patWaUnH6j.

¹¹⁴ Chris Hufstader, "Marlin Mine: Violence and pollution lead to call for suspension", (October 17, 2011), available at: <http://www.oxfamamerica.org/explore/stories/marlin-mine-violence-and-pollution-lead-to-call-for-suspension/>.

¹¹⁵ *Choc v HudBay Minerals Inc.*, 2013 ONSC 1414, 22 July 2013, available at:

http://www.fasken.com/files/upload/Choc_v_Hudbay_Minerals_Inc_2013_OJ_No.PDF.

¹¹⁶ See Plaintiff's amended claim. *Schnoor v. Attorney General of Canada*, (accessed 09/20/2014), available at: <http://www.schnoorversuscanada.ca/docs/statement-of-claim.pdf>.

¹¹⁷ *Choc v HudBay Minerals Inc.*, 2013 ONSC 1414, 22 July 2013, available at:

http://www.fasken.com/files/upload/Choc_v_Hudbay_Minerals_Inc_2013_OJ_No.PDF.

¹¹⁸ See Plaintiff's amended claim. *Schnoor v. Attorney General of Canada*, *supra* note 196.

development of the project and opposed the removal and resettlement of their homes and community.¹¹⁹ The International Labor Organization ruled in 2006 that Guatemala had breached international law by granting the Fenix mining concession without first consulting with local Mayan people.¹²⁰

41. **Escobal Mine, Guatemala:** Goldcorp and Tahoe Resource mining land acquisition in Escobal violates the right to self-determination of the communities of San Rafael Las Flores, Casillas, Nueva Santa Rosa, Santa Rosa de Lima y Jumaytepeque. To date, fourteen referenda have been held in which tens of thousands of people in the six municipalities closest to the project have voted against the Escobal mine given their concerns over actual and potential environmental and social impacts.¹²¹ As recent as 3 July 2011, a community referendum was organized in Nueva Santa Rosa to allow its residents to express their opinions on the mining project, 7,602 residents participated, and more than 98 percent voted against the mine.¹²² On 10 July 2011, the neighboring municipality of Santa Rosa de Lima also organized a community referendum, in which more than 98 percent of the community voted against the mine.¹²³ Inhabitants from the municipalities of San Rafael Las Flores, Casillas, Nueva Santa Rosa, and Santa Rosa de Lima y Jumaytepeque are still unable to exercise their right to self-determination due to Tahoe and Goldcorp activities.

42. **Cerro de San Pedro, México:** New Gold land acquisition for the Cerro de San Pedro Mine violated the right to self-determination of the people of Cerro de San Pedro. The Frente Amplio Opositor (hereinafter *FAO*), a coalition of activists and residents from the San Luis Potosí region, cites an October 2006 non-governmental community consultation in which 20,000 residents of the San Luis Valley participated and 97 percent of respondents opposed the installation of the mine in Cerro de San Pedro.¹²⁴ The group states that New Gold has never had the legal authority to operate the mine in Cerro de San Pedro.¹²⁵ In 2004, the Agrarian Tribunal of the 25th District (San Luis Potosí Municipality) ruled in favor of Cerro de San Pedro residents who challenged the validity of New Gold's lease.¹²⁶ The Tribunal stated that the lease was null

¹¹⁹ *Id.*

¹²⁰ See history of Fenix mine, (accessed 09/20/2014), See Plaintiff's amended claim. *Schnoor v. Attorney General of Canada* <http://www.chocversushudbay.com/history-of-the-mine>.

¹²¹ MiningWatch Canada, "Background, Tahoe Resources, Goldcorp and Mining Conflict in Guatemala", (June 18, 2014), available at: <http://www.miningwatch.ca/article/background-tahoe-resources-goldcorp-and-mining-conflict-guatemala>.

¹²² McGill Research Group, "Investigating Canadian Mining in Latin America: Escobal, Guatemala", (Accessed September 20, 2014), available at: <http://micla.ca/conflicts/escobal/>,

¹²³ *Id.*

¹²⁴ MiningWatch Canada, "Final Results of Public Referendum on Cerro de San Pedro/San Xavier Mines Released" (October 30, 2006), available at: <http://www.miningwatch.ca/en/final-results-public-referendum-cerro-de-san-pedrosan-xavier-mines-released>.

¹²⁵ *Id.*

¹²⁶ *Id.*

and void, but because courts in the agrarian system lack enforcement powers, it could only recommend that landowners take their dispute to civil and criminal courts.¹²⁷

43. **North Gold Mara Mine, Tanzania:** Barrick's land acquisition for the North Mara Mine violated the right to self-determination of the people of the District of Tarime. The contracts for the sale of the Nyamongo lands between the government of the District of Tarime and the East Africa Gold Mine (hereinafter *EAGM*) was done without adequate consultation or approval of the local community.¹²⁸ Villagers did not approve the final document and contract, which lacked consent of the majority of villagers.¹²⁹ When the land was transferred through sale to Placerdome, and subsequently Barrick, they inherited the terms of the original contract.¹³⁰ In its 2012 Corporate responsibility report, used by the company and its stakeholders to benchmark performance against others in the extractive industry, Barrick admitted it was aware that the mine had a number of legacy issues relating to land compensation and resettlement, the majority of which related to land acquisitions made prior to its purchase of the mine.¹³¹

44. **Mount Canatuan, Manila Philippines;** In failing to obtain permission from the Subanon community, TVI deprived the Subanon community of their right to self-determination and the ability to pursue their own economic, social and cultural development.¹³² Canadian corporation TVI and the Philippine government colluded together in economic co-operation to violate these rights, which is a prohibited under Article 1 (2) of the ICCPR.¹³³

B. Article 6

45. Canada has violated its extra-territorial obligation to ensure Article 6 of ICCPR, by not providing effective remedies for victims to hold Hudbay Minerals, GoldCorp, Barrick Gold, Anvil and New Gold accountable for violations of right to life, and by not regulating the activities of the corporations to ensure they do not violate Article 6 as enumerated below.

46. **Fenix Mine, Guatemala:** The summary execution of Adolfo Ich Chaman by Hudbay security violated Article 6 (1) of the ICCPR. On September 27, 2009, Adolfo Ich Chaman, a respected Maya Q'eqchi' community leader, father of six, and an open critic of human rights violations and environmental damage caused by Hudbay's Fenix corporate mining activities was

¹²⁷ *Id.*

¹²⁸ Mlowe, Pasience & Olungurumwa, Onesmo, *Killings around North Mara Gold Mine: The Human Cost of Gold in Tanzania – The Shooting of the Five*, Fact Finding Mission Report, Legal Human Rights Centre (LHRC), Dar es Salam, Tanzania (May, 2011), available at:

http://www.academia.edu/7827818/KILLINGS_AROUND_NORTH_MARA_GOLD_MINE_THE_HUMAN_COST_OF_GOLD_IN_TANZANIA-THE_SHOOTINGS_OF_THE_FIVE.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Barrick, *2012 Corporate Responsibility Report*, available at: <http://www.barrick.com/files/responsibility-report/2012/Barrick-2012-Corporate-Responsibility-Report.pdf>.

¹³² John Ahni Schertow, *Canadian Mining Firm Admits Wrongdoings to Subanon People*, (May 25, 2011), available at: <https://intercontinentalcry.org/canadian-mining-firm-admits-wrongdoings-to-subanon-people/>.

¹³³ *Id.*

shot and killed by security forces employed at HudBay's Fenix mining project.¹³⁴

47. **Escobal Mine, Guatemala:** The summary execution of Marilyn Topacio Reynoso violated Article 6 (1) of the ICCPR. Edwin Alexander Reynoso and his 16-year-old daughter, Marilyn Topacio Reynoso were attacked by gunmen on their way from a community meeting in 13 April 2014.¹³⁵ Topacio was killed in the attack, and her father, Alex seriously wounded.¹³⁶ Both father and daughter are activists in the Peaceful Resistance in Defense of Natural Resources of Mataquescuintla, Jalapa, which has organized in resistance to Tahoe Resources/Goldcorp Escobal mine in neighboring San Rafael las Flores.¹³⁷

48. **North Mara Gold Mine, Tanzania:** The summary executions of Emmanuel Magige, Nyakunguru Chacha Ngoka, Chacha Mwasi, Chiwale Bhoke and Mwikwabe Marwa on 16 May 2011 by ABG security personnel violated Article 6(1) of the ICCPR.¹³⁸ The Legal and Human Right Center (hereinafter *LHRC*) observation found that an estimated 800-1000 people entered the mine for the sake of collecting the gold from the waste rock on 16 May 2011.¹³⁹ Contrary to the government and police officials' statements after the killings, LHRC researchers found that villagers who invaded the waste rock site were not muggers.¹⁴⁰ They were normal villagers and gold-seekers that had a mutual agreement with mine security officers and police to enter the site soon after the company had finished blasting high-grade ore.¹⁴¹ The shooting started when paid security officers betrayed villagers by turning against them when fellow officers arrived for inspection.¹⁴²

49. **Dikulushi Mine, Republic of Congo:** By providing logistical support to the Congolese military during the massacre in Kilwa, Anvil was complicit in the violation of Article 6(1) of the ICCPR. MONUC report states that 100 civilian deaths were a direct result of military action and that 26 were the victims of summary execution.¹⁴³ The accounts of eyewitnesses and survivors

¹³⁴ See Plaintiff's second amended claim, (November, 2011), available at: <http://www.chocversushudbay.com/wp-content/uploads/2010/11/Second-Amended-Fresh-as-Amended-Choc-v.-HudBay-FILED.pdf>.

¹³⁵ MiningWatch Canada, *International Organizations Demand Justice in Deadly Attack Against Opponents of Tahoe Resources' Mine*, (May 01, 2014), available at: <http://www.miningwatch.ca/news/international-organizations-demand-justice-deadly-attack-against-opponents-tahoe-resources-mine>.

¹³⁶ *Id*

¹³⁷ *Id*

¹³⁸ The United Republic of Tanzania Office of the Prime Minister Regional Administration and Local Government District Commissioner of Tarime, *The Report of the Inquiry into the Death of Five People on 16/05/2011 shot by the police at the North Mara mine*, (Translation: 13 June 2013), available at: <http://www.mining-security.org/files/The-Report-of-the-Inquiry-into-the-Death-of-Five-People-on-16052011-shot-by-the-police-at-the-North-Mara-mine.pdf>.

¹³⁹ Mlowe, Pasience & Olengurumwa, Onesmo, *Killings around North Mara Gold Mine: The Human Cost of Gold in Tanzania – The Shooting of the Five*, Fact Finding Mission Report, Legal Human Rights Centre (LHRC), Dar es Salam, Tanzania (May, 2011), available at: http://www.academia.edu/7827818/KILLINGS_AROUND_NORTH_MARA_GOLD_MINE_THE_HUMAN_COST_OF_GOLD_IN_TANZANIA-THE_SHOOTINGS_OF_THE_FIVE.

¹⁴⁰ *Id*.

¹⁴¹ *Id*.

¹⁴² *Id*.

¹⁴³ MONUC (United Nations Mission in the Democratic Republic of Congo) Special Investigations Report (10

obtained by MONUC mentioned that after the fighting between FARDC and the insurgents, soldiers allegedly carried out house to house searches and summarily executed on the spot a number of civilians and insurgents (dressed in civilian clothes) suspected of being combatants.¹⁴⁴ The President and CEO of Anvil Mining, M. Bill Turner, during an interview made with an Australian television channel (ABC) on June 6, 2005, responded to a question concerning the use of Anvil Mining vehicles by saying “so what?”¹⁴⁵ He acknowledged that Anvil Mining had provided logistic to the army, following a request from the army of a legitimate government.¹⁴⁶ He also added: “We helped the military to get to Kilwa and then we were gone - whatever they did there, that's an internal issue.”¹⁴⁷

C. Article 7

50. **North Gold Mine, Tanzania:** The rape of local women by ABG security personnel violated Article 7 of the ICCPR. Ten women alleged that they were arrested at the North Mara mine site and sexually assaulted by company security guards or Tanzanian police.¹⁴⁸ The incidents occurred over a period of several years before their public disclosure in a company statement in May 2011.¹⁴⁹ The women told the investigators that they were taken to holding cells and threatened with imprisonment if they refused to have sex with the police or guards.¹⁵⁰

51. **Dikulushi Mine, Republic of Congo:** By providing logistical support to the Congolese military during the massacre in Kilwa, Anvil was complicit in the violation of Article 7 of the ICCPR. Four Corners travelled to the mining town of Kilwa and spoke to survivors.¹⁵¹ One boy recounted seeing his father being shot and stabbed by soldiers using an Anvil vehicle.¹⁵² His body was then dumped outside town near a mass grave that, according to villagers, contained the bodies of at least 20 other men.¹⁵³ According to UN investigators, fourteen of these victims were forced to kneel at the edge of a burial pit before being shot, one by one, in the back.¹⁵⁴ A Kilwa woman told Four Corners she found the bodies of her two sons at the mass grave.¹⁵⁵

52. **Fenix Mine, Guatemala:** Gang rape of eleven women in Mayan Q'eqchi' community of Lote Ocho by a group of uniformed Fenix security personnel violated Article 7 of the ICCPR.

November 2004), available at: <http://www.raid-uk.org/sites/default/files/monuc-final-report.pdf>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Geoffrey York, “*African Barrick to compensate assault victims*”, *The Globe and Mail* (December 19, 2013), available at: <http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/african-barrick-to-compensate-assault-victims/article16063262/>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Sally Neighbour, *The Kilwa Incident*, Four Corners, (Broadcast: 06/06/2005), available at: <http://www.abc.net.au/4corners/content/2005/s1384238.htm>.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

During the eviction of Mayan Q'eqchi' farmers in 2007, eleven women from Mayan Q'eqchi' community of Lote Ocho were gang raped by a group of uniformed Fenix security personnel while trying to leave their homes.¹⁵⁶ Among these women were Rosa Coc Ich, Margarita Caal, and Yolanda Choc Cac.¹⁵⁷ The women claim nine men raped Ms. Coc Ich and, as a result of her injuries, she is no longer able to have children.¹⁵⁸ Margarita Caal was six-months pregnant at the time of the forced evictions.¹⁵⁹ Caal's statement of claim outlines that ten men, including uniformed Fenix security personnel, raped and assaulted her.¹⁶⁰ Due to the complications from this incident, she gave birth to a stillborn baby.¹⁶¹ Yolanda Choc was three months pregnant when twelve men, including four uniformed Fenix security personnel, raped her.¹⁶² She claims her miscarriage was the result of the rape.

53. In violation of Article 7 of the ICCPR, German Chub Choc, a young father of four was shot at close range in an unprovoked attack, by HudBay's Fenix Mining head of security on September 27, 2009.¹⁶³ He survived the attack, but is now paralyzed and no longer has use of his right lung.¹⁶⁴

54. **Marline Mine, Guatemala:** In violation of Article 7 of the ICCPR, Diodora Hernandez, a staunch anti-mining activist, was shot point-blank on the right eye on 7 July 2010, outside her home in the small community of San José Nueva Esperanza ó only a few meters from a fence that delimits Goldcorp's Marlin Mine.¹⁶⁵ Ms. Diodora Antonia Hernández Cinto is part of a resistance movement against the human rights violations being committed by the company Montana Exploradora, the subsidiary of Goldcorp Inc that is operating the Marlin mine.¹⁶⁶

55. **Porgera Joint Venture, Papua New Guinea:** The rapes of local women by Barrick's security forces at its Porgera Joint Venture site violated Article 7 of the ICCPR. A total of 170 women are said to have been subjected to rape or gang rape by Barrick's security forces at its Porgera site.¹⁶⁷ One particular incident of rape included a woman named Mary who was

¹⁵⁶ See Plaintiff's Second amended claim, (November, 2011), available at: <http://www.chocversushudbay.com/wp-content/uploads/2010/11/Second-Amended-Fresh-as-Amended-Choc-v.-HudBay-FILED.pdf>.

¹⁵⁷ Susana C. Mijares Peña, *Human Rights Violations by Canadian Companies Abroad: Choc v Hudbay Minerals Inc.*, UWO J Leg Stud 3 (2014), available at:

<http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1105&context=uwojls>.

¹⁵⁸ *Id.* at 101.

¹⁵⁹ *Id.* at 102.

¹⁶⁰ *Id.* at 103.

¹⁶¹ *Id.* at 104.

¹⁶² *Id.* at 105.

¹⁶³ *Choc v HudBay Minerals Inc.*, 2013 ONSC 1414, 22 July 2013, available at:

http://www.fasken.com/files/upload/Choc_v_Hudbay_Minerals_Inc_2013_OJ_No.PDF.

¹⁶⁴ See Plaintiff's Second amended claim, (November, 2011), available at: <http://www.chocversushudbay.com/wp-content/uploads/2010/11/Second-Amended-Fresh-as-Amended-Choc-v.-HudBay-FILED.pdf>.

¹⁶⁵ James Rodriguez, *As Firm as a Tree: Portraits of Diodora, a Guatemalan Anti-Mining Activist*, (October 25, 2011), available at: <http://www.mimundo.org/2011/10/25/2011-10-as-firm-as-a-tree-portraits-of-diodora/>.

¹⁶⁶ *Id.*

¹⁶⁷ MiningWatch Canada, *International Condemnation for Barrick Gold's Effort to Seek Immunity from Legal Action by Rape Victims*, (June 6, 2013), available at: <http://www.miningwatch.ca/news/international-condemnation-barrick-gold-s-effort-seek-immunity-legal-action-rape-victims>.

detained when Barrick Gold security personnel tried to arrest illegal miners panning for gold.¹⁶⁸ Mary was detained at the dump, taken to a car and raped by all five detaining guards.¹⁶⁹ After years of denial Barrick finally acknowledged the rapes.¹⁷⁰ The company has implemented a non-judicial grievance process at the mine site to receive complaints from the rape victims and, if validated by the complaints process, the women may receive a benefits package.¹⁷¹ However, Barrick conditioned the provision of individual benefits packages on the women signing away their right to sue the company.¹⁷²

D. Article 9

56. Canada has violated its extra-territorial obligation to ensure Article 9 of ICCPR, by not providing effective remedies for victims to hold Anvil and TVI accountable for violations of right to liberty and security of person, and by not regulating the activities of the corporations to ensure they do not violate Article 9 as enumerated below.

57. **Dikulushi Mine, Republic of Congo:** By providing logistical support to the Congolese military during their torture and inhuman treatment of Kilwa residents, Anvil was complicit in the violation of Article 9 of the ICCPR. MONUC reported that eleven suspected rebels were still being detained at the time of the MONUC visit, all of whom had been tortured, and two of whom subsequently died in custody, including Alain Kazadi.¹⁷³ The local police chief said all the vehicles used by the soldiers were from Anvil.¹⁷⁴ He was accused of collaborating with the rebels and taken to a makeshift jail with nearly 50 other prisoners and beaten.¹⁷⁵ The military detained the local priest at the Anvil Mining guesthouse in Kilwa.¹⁷⁶ Six days after the uprising, he and the police chief were taken to the local airstrip and flown out on Anvil's charter plane to be imprisoned at the nearest city Lubumbashi.¹⁷⁷ The African Association for the Defense of Human Rights (hereinafter ASADHO/Katanga) documented the rape of three women by the Congolese soldiers, in one case by seven soldiers, and reports that several other women refused to give statements for fear of being rejected by their husbands.¹⁷⁸

¹⁶⁸ Chris Albin Lackey, "Surviving Rape in Papua New Guinea, What Would You Choose- Prison or Rape?", (August 10, 2011), available at: <http://hrw.org/news/2011/08/10/surviving-rape-papau-new-guinea>.

¹⁶⁹ *Id.*

¹⁷⁰ MiningWatch Canada, *supra* note 259.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ MONUC Report, *supra* note 30.

¹⁷⁴ Sally Neighbour, "The Kilwa Incident, Four Corners, (Broadcast: 06/06/2005), available at: <http://www.abc.net.au/4corners/content/2005/s1384238.htm>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Adam McBeth, "Crushed by an Anvil: A Case Study on Responsibility for Human Rights in the Extractive Sector", Yale Human Rights and Development Law Journal, (January 1, 2008), available at: <http://www.highbeam.com/doc/1G1-183981041.html>.

58. **Mount Canatuan, Manila Philippines:** In 2012, journalists who were in the area of Sitio Balabag located in Bayog Town Zamboanga Del Sur were illegally detained.¹⁷⁹ The reporters were covering demolitions of houses that belonged to small scale miners, in an area that TVI was developing.¹⁸⁰ The arbitrary arrest and detention of these journalists, by the blue guards security forces without any report of a criminal basis violated Article 9 of the ICCPR.¹⁸¹

59. In 2007, Vivian Balingit was stopped from proceeding while she was with her husband, sister and three children when one of the armed men aimed his gun at her while pressing the rifle against Mrs. Balingit multiple times.¹⁸² When Mrs. Balingit went to report the situation to police, they refused to record the incident.¹⁸³ Mrs. Balingit is the daughter of Timuay Jose Boy Anoy, a local and leading activist against TVI's presence in the ancestral lands located in the Siocon area.¹⁸⁴

E. Article 12

60. Canada has violated its extra-territorial obligation to ensure Article 12 of the ICCPR, by not providing effective remedies for victims to hold Green Park international Inc., Green Mount International Inc., New Gold and TVI accountable for violations of the right to freedom of movement, and by not regulating the activities of the corporations to ensure they do not violate Article 12 as enumerated below.

61. **Green Park International Inc. and Green Mount International Inc.; Bil'in Village, Palestine:** Israel's prohibition on land settlement which gave land development rights to Green Park International Inc. and Green Mount International Inc., prevents the Bil'in villagers from freely and legally registering and obtaining a deed to their property.¹⁸⁵ This deprives the villagers of their guaranteed right of liberty of movement and freedom to choose his or her residence under Article 12 (1) of the ICCPR. Israel illegally acquired and gave land with land development rights to Green Park International Inc. and Green Mount International Inc.¹⁸⁶ This illegally subjects the villagers of Bil'in to movement restrictions that are not necessary by law and prohibited by Article 12 (3) of the ICCPR.

¹⁷⁹ Inter Aksyon, "Mindanao journalists held overnight by mining firm's militia", (February 21, 2012), available at: <http://hronlineph.com/2012/02/21/in-the-news-mindanao-journalists-held-overnight-by-mining-firms-militia-interaksyon-com>.

¹⁸⁰ *Id.*

¹⁸¹ Kairos, "The Rock Hard Truth-Philippine Learning Tour Raises Concerns About Mining-Related Human Rights Violations in Zamboanga Peninsula", Press Statement, (August 6th 2014), available at: <http://www.kairosCanada.org/sustainability/resource-extraction/press-statement-the-rock-hard-truth-philippine-learning-tour-raises-concerns-about-mining-related-human-rights-violations-in-the-zamboanga-peninsula/>.

¹⁸² *Id.*

¹⁸³ Mines and Communities, "UN Representative For Indigenous Peoples to Hear HR Cases", (February 2, 2007), available at: <http://www.minesandcommunities.org/article.php?a=2234>.

¹⁸⁴ *Id.*

¹⁸⁵ Deborah Guterman, "Canadian Corporations Cash-In on Occupation: The Case of Bil'in v. Green Mount / Green Park International", Litigating Palestine, (Spring-Summer 2009), available at: www.badil.org/en/article/74/item/15-article5, 2009.

¹⁸⁶ *Id.*

62. **Cerro de San Pedro, Mexico:** Jair Pineda, a lawyer and activist was followed by a mining company van as he drove, and was eventually chased to the outskirts of town, where he managed to escape in August, 2007.¹⁸⁷ Mario Martinez Ramos was attacked the same day by a group of approximately ten individuals wielding handguns and machetes.¹⁸⁸ He filed a complaint with local police, but claimed the police failed to investigate despite the incident being caught on video.¹⁸⁹ Martinez identified among his attackers some local residents who work as security guards for the mine.¹⁹⁰

63. **Mount Canatuan, Manila Philippines:** The blockage of indigenous people by TVI security forces from freely traveling to obtain food, necessities and preventing day to day travel in 2001 was a violation of Article 12 of the ICCPR. The 2001 report filed against TVI at the UN Working Group on Indigenous Peoples accused TVI of militarization and acts of violence and intimidation, establishment of checkpoints and blockade on the entry of food and other basic necessities, and disrupting travel from farm to market road

F. Article 14

64. Canada has violated its extra-territorial obligation to ensure Article 17 of the ICCPR, by not providing effective remedies for victims to hold Barrick accountable for violations of right to equality before the court, and by not regulating the activities of the Barrick to ensure they do not violate Article 14 as below.

65. **Porgera Joint Venture, Papua New Guinea:** Barrick Gold's attempt to pay a settlement package for those indigenous peoples who have a viable lawsuit is a violation of the rights guaranteed under Article 14. According to Catherine Coumans of MiningWatch Canada, "Corporate project-level remedy processes do not have any legal status, do not necessarily afford victims the safeguards and protections of a court of law – such as independent legal counsel – and are not required to provide remedy that would be commensurate with what victims may receive through a legal process."¹⁹¹

G. Article 17

66. **Green Park International Inc. and Green Mount International Inc.; Bil'in Village, Palestine:** The illegal annexation of Bil'in land falls within the meaning of home within Article 17.¹⁹² Palestinian villagers consider agricultural lands near their houses to be part of their home.¹⁹³ The agricultural land used by the Bil'in villagers for their daily livelihood was occupied. The construction of illegal settlements subjected the Bil'in villagers to arbitrary and

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² MiningWatch Canada, "Villagers' Houses Burnt Down Again at Barrick Gold Mine in Papua New Guinea", (June 11, 2014), available at: <http://www.miningwatch.ca/news/villagers-houses-burnt-down-again-barrick-gold-mine-papua-new-guinea>.

¹⁹³ Bret Thiel, *supra* note 10.

unlawful interference with their home as they were no longer able to access their land.¹⁹⁴ Indeed, in its Concluding Observations on Israel from 2014, the Human Rights Committee expressed its concern about continuing confiscation and expropriation of Palestinian land, including agricultural land, and called on Israel to put an end to the practice of expropriation of land and allocation of State land for the expansion of settlements.¹⁹⁵ The lack of provision of adequate legal protection against these types of interferences and attacks perpetrated by Green Park International, Inc. and Green Mount International, Inc. when the Bilán villagers lands were annexed and given to the two Canadian corporations is also a violation of Article 17 (2) of the ICCPR.

67. **Marline Mine, Guatemala:** Eviction of the Mayan Q'eqchi' farmers resulting from Hudbay's mining activities violated Article 17 of the ICCPR. In or around September 2006, the Mayan Q'eqchi' who had been removed from or forced to leave the area around El Estor, as well as their descendants, reclaimed five parcels of land near El Estor by moving onto them and occupying them.¹⁹⁶ These farmers viewed their reclamation as a rightful repossession of historical Mayan Q'eqchi' land unjustly taken from them and their families during the Guatemalan Civil War.¹⁹⁷ By late 2006, they had built houses and gathering places on these parcels of land, had planted crops of corn and beans, and had organized themselves into five communities.¹⁹⁸ In early 2007, Skye Resources sought and allegedly obtained an eviction order from Guatemalan courts against the five communities around El Estor, including the communities of Barrio Revolución and Barrio Unión.¹⁹⁹ On 8, 9 and 17 January 2007, Fenix security personnel, Guatemalan police and military forces surrounded Barrio Revolución and carried out the forced eviction.²⁰⁰ Several homes in the community were set on fire and burnt to the ground by a group of workers contracted by the mining company.²⁰¹ All other homes were dismantled, and community members were ordered to leave the area.²⁰²

68. **Dikulushi Mine, Republic of Congo:** By providing logistical support to the Congolese military during their house to house search and plunder of homes in Kilwa, Anvil was complicit in the arbitrary or unlawful interference with privacy, family, and home in violation of Article 17 of the ICCPR. Once the military had prevailed over the rebels, soldiers conducted house-to-house searches for insurgents and their sympathizers.²⁰³ The house-to-house searches also

¹⁹⁴ *Id.*

¹⁹⁵ Human Rights Committee, Concluding Observations: Israel, UN Doc. CCPR/C/ISR/CO/4 (21 November 2014), at para. 17.

¹⁹⁶ See Amended-Statement-of-Claim-Chub-v.-HudBay, (November, 2011), available at: <http://www.chocversushudbay.com/wp-content/uploads/2010/11/Amended-Statement-of-Claim-Chub-v.-HudBay-FILED.pdf>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ See Plaintiffs amended claim, Schnoor v. Attorney General of Canada, (accessed 09/20/2014), available at: <http://www.schnoorversuscanada.ca/docs/statement-of-claim.pdf>.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

resulted in the looting of homes and shops.²⁰⁴

69. **Mount Canatuan, Manila Philippines:** TVI's exploitation and operation of the mine has deprived the Subanon peoples of maintaining their homes in accordance with their cultural beliefs which is tied to their sacred land including, the 500 hectares granted to TVI in their permit of operation in violation of Article 17 of the ICCPR.²⁰⁵

70. **Porgera Joint Venture, Papua New Guinea:** Arbitrary and unlawful eviction and burnings of indigenous people's houses in Wingima village and Porgera in 2009 and 2014 by the Papua New Guinea (hereinafter PNG) police Mobile Units rose to violations of Article 17 of the ICCPR.²⁰⁶ Barrick's Porgera Joint Venture mine, houses, feeds, and financially supports units of PNG's Mobile Units, in spite of their reputation for violence and their previous involvement in hundreds of house burnings in the mine's lease area, as documented by Amnesty International.²⁰⁷ Following the 2009 house burnings, the Porgera Landowners Association (PLOA) reportedly obtained an order from the National Court of Papua New Guinea restraining the State from burning down more houses.²⁰⁸ However, reportedly following a request by Barrick, the National Court removed the restraining order, arguing that the police had ultimate power to execute such operations under the terms of a State of Emergency.²⁰⁹

71. There also has been ecological degradation of the village's ability to have sustainable agricultural land and subsistence because of the Porgera River's waste flow stemming from Barrick's open pit mine.²¹⁰ A request for re-settlement was made via a Porgera Land Owner's Association complaint to Canada's National Contact Point for the OECD guidelines because of the ecological impacts of Barrick's operations.²¹¹

H. Article 21

72. **Escobal mine Guatemala:** Since 2011, more than 100 individuals involved in mine resistance have had unfounded legal charges filed against them in clear violation of Articles 21 of the ICCPR.²¹² Between March and May 2013, the peaceful, legitimate and legally located encampment outside the mine was violently evicted by the police on two occasions.²¹³ In April

²⁰⁴ Basu, Niladri, Howard Hu, and International Forensic Program of Physicians for Human Rights, *δToxic Metals and Indigenous Peoples near the Marlin Mine in Western Guatemala. Potential Exposures and Impacts on Health*”, (2010), available at: <http://goldcorpoutofguatemala.files.wordpress.com/2010/07/guatemala-toxicmetals.pdf>.

²⁰⁵ John Ahni Schertow, *δCanadian Mining Firm Admits Wrongdoings to Subanon People*”, (May 25, 2011), available at: <https://intercontinentalcry.org/canadian-mining-firm-admits-wrongdoings-to-subanon-people/>.

²⁰⁶ MiningWatch Canada, *δVillagers' Houses Burnt Down Again at Barrick Gold Mine in Papua New Guinea*”, (June 11, 2014), available at: <http://www.miningwatch.ca/news/villagers-houses-burnt-down-again-barrick-gold-mine-papua-new-guinea>.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Jen Moore, *δDaughter Killed, Father Wounded in Gun Attack Likely Linked to Tahoe Resources (Goldcorp Inc.) Mine in Guatemala*”, (April 24, 2014), available at: <http://www.rightsaction.org/action-content/daughter-killed-father-wounded-gun-attack-likely-linked-tahoe-resources-goldcorp-inc>.

²¹³ *Id.*

2013, Tahoe security guards attacked six peaceful protesters outside the mine and one was critically injured.²¹⁴ Former Tahoe security head, Alberto Rotondo, is under arrest awaiting trial for allegedly ordering the attack, facing charges for bodily harm and obstruction of Justice.²¹⁵ In May 2013, President Otto Pérez Molina declared a state of siege in four municipalities surrounding Tahoe's project, including Mataquesuintla.²¹⁶

73. **Marline Mine, Guatemala:** On 28 February 2011, 200 members of the communities of San Miguel Ixtahuacán municipality who were protesting against Guatemala's failure to suspend extraction activities in the Marlin mine were attacked and robbed in violation of Article 21 of the ICCPR.²¹⁷ Miguel Bamacá, (a farmer and public health promoter) who the IACHR had issued precautionary measures requesting the Guatemalan Government protect, and Aniceto López (coordinator who works for FREDEMI) were singled out.²¹⁸ Aniceto López was reportedly taken to the office of the local mayor where he was beaten in the face, robbed of his documents and possessions, and threatened with death.²¹⁹ Others were seriously injured, such as Fredy González, who was hospitalized due to an injury caused by being hit by a firearm.²²⁰

I. Article 27

74. **Green Park International Inc. and Green Mount International Inc.; Bil'in Village, Palestine:** The illegal annexation and appropriation of land and its development rights which were given to Green Park International Inc. and Green Mount International Inc., deprive the Bil'in Villagers the ability to enjoy their own culture through use and development of their lands in violation of Article 27 of the ICCPR.²²¹

75. **Cerro de San Pedro, México** When Metallica Resources Inc. began to operate illegally on the San Luis Potosí Gold Mine site, they infringed on the minorities right to enjoy their culture by building and operating on historical landmarks in violation of Article 27 of the ICCPR.²²²

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Jen Moore, "Daughter Killed, Father Wounded in Gun Attack Likely Linked to Tahoe Resources (Goldcorp Inc.) Mine in Guatemala", (April 24, 2014), available at: <http://www.rightsaction.org/action-content/daughter-killed-father-wounded-gun-attack-likely-linked-tahoe-resources-goldcorp-inc>.

²¹⁷ Amnesty International, "Guatemala: Mine activists attacked", (March 4, 2011), available at: <http://goldcorpoutofguatemala.com/2011/03/03/amnesty-intl-urgent-action-mine-activists-beaten-and-threatened/>.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Bret Thiel, *supra* note 10.

²²² Mining Technology and Market Insight, "Cerro San Pedro Mine, San Luis Petosí, Mexico." (accessed September 24, 2014), available at: <http://www.mining-technology.com/projects/cerrosanpedromine/>.

IV. Recommended Concluding Observations

21. The State Party shall abide by its extra-territorial obligation to respect Covenant rights by ensuring that those individuals, groups and entities acting under its authority respect Covenant rights outside the territory of the State Party.

22. The State Party shall abide by its extra-territorial obligation to ensure Covenant rights by ensuring that private individuals, groups and entities, including corporations and other business entities incorporated or domiciled in its territory and/or its jurisdiction, respect Covenant rights outside the territory of the State Party.

23. The State Party shall abide by its extra-territorial obligation to ensure Covenant rights ensuring that, in the event Covenant rights are violated by individuals, groups and entities acting under its authority or by other individuals, groups and entities, including corporations and other business entities incorporated or based in the State Party, there exists access to justice including accountably mechanisms and effective remedies for victims of those violations.