



The Global Initiative

for Economic, Social and Cultural Rights

Joint Parallel Report to 57th Session of the Committee on Economic, Social and Cultural Rights on the occasion of the consideration of the Sixth Periodic Report of Canada

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and
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I. Introduction

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the GI-ESCR is of a world where economic, social and cultural rights are fully respected, protected and fulfilled and on equal footing with civil and political rights, so that all people are able to live in dignity.

2. The International Human Rights Clinic at Western New England University School of Law is a law school clinic that has worked in partnership with local actors in Central America and elsewhere, including by monitoring human rights violations in the context of activities by transnational corporations.

3. The GI-ESCR is a member of the Extra-Territorial Obligation Consortium (ETO Consortium) and serves on the Consortium’s Steering Committee.

II. Extra-Territorial Obligations under the International Covenant on Economic, Social and Cultural Rights

4. 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.

5. 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

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

6. 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

7. Furthermore, these articles take precedent over any other international instruments, including bilateral and multilateral financial and development assistance 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

8. 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 territorial 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

9. 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 including acting within inter-governmental organizations such as international financial institutions that have contributed to

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).

that 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

10. Furthermore, the Articles on Responsibility of States for Internationally Wrongful Acts address violations of preemptory norms, which could include gross or systemic 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" in question.⁷ 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" 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

11. This application of extra-territorial obligations under the ICESCR 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*.¹⁰

12. The Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights 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 obligations.¹¹ 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" and that "States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States

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

¹¹ 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.

¹² Maastricht Principles on Extra-Territorial Obligations of States in the Area of Economic, Social and Cultural Rights, Principle 3 (adopted 28 September 2011).

is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct¹³ and that “All States have the obligation to refrain from conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories.”¹⁴

13. Furthermore, Principle 24 makes clear that the 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.”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: í b) where the non-State actor has the nationality of the State concerned; and c) as regards business enterprises, where the 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;í .¹⁶

14. Regarding the extra-territorial obligation to fulfil Covenant rights abroad, Principle 29 requires that:

States must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.

The compliance with this obligation is to be achieved through, inter alia:

a) elaboration, interpretation, application and regular review of multilateral and bilateral agreements as well as international standards;

b) measures and policies by each State in respect of its foreign relations, including actions within international organisations, and its domestic measures and policies that can contribute to the fulfilment of economic, social and cultural rights extraterritorially.¹⁷

15. Principle 15 makes clear that:

As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an

¹³ *Id.* at Principle 13.

¹⁴ *Id.* at Principle 20.

¹⁵ *Id.* at Principle 24.

¹⁶ *Id.* at Principle 25.

¹⁷ *Id.* at Principle 29.

international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.¹⁸

16. In the event that a State Party fails to abide by Covenant rights extra-territorially, access to justice, including accountability mechanisms and effective remedies, must be provided. According to the Maastricht Principle 37:

States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim.

To give effect to this obligation, States should:

- a) seek cooperation and assistance from other concerned States where necessary to ensure a remedy;
- b) ensure remedies are available for groups as well as individuals;
- c) ensure the participation of victims in the determination of appropriate remedies;
- d) ensure access to remedies, both judicial and non-judicial, at the national and international levels; and
- e) accept the right of individual complaints and develop judicial remedies at the international level.¹⁹

17. In its 2014 Concluding Observations on China, the Committee on Economic, Social and Cultural Rights applied the extra-territorial obligations under the Covenant. Regarding business and economic, social and cultural rights, the Committee recommended the establishment of a clear regulatory framework to ensure that corporations' activities promote and do not negatively affect the enjoyment of human rights, and to adopt appropriate legislative and administrative measures to ensure legal liability of corporations regarding violations of human rights, including abroad.²⁰

18. Similarly, regarding international cooperation, the Committee called for the adoption of a human rights-based approach to policies of international cooperation, including undertaking systematic and independent human rights impact assessment prior to making funding decisions, establishing effective monitoring mechanisms to assess human rights impact of policies and

¹⁸ *Id.* at Principle 15.

¹⁹ *Id.* at Principle 37.

²⁰ Committee on Economic, Social and Cultural Rights, Concluding Observations: China, UN Doc. E/C.12/CHN/CO/2 (23 May 2014) at para. 6.

projects, to take remedial measures if necessary, and to ensure access to complaint mechanisms for violations of relevant human rights abroad.²¹

19. It should be made clear in subsequent Concluding Observations, including in the context of the present review of Canada, that such systematic and independent human rights impact assessments include both assessment of potential negative and potential positive human rights obligations in the context of the full range of obligations to respect, to protect and to fulfill human rights abroad, thereby ensuring that any development projects or other forms of international cooperation abide by the human rights-based approach to development and further Covenant rights while prioritizing the needs of marginalized or vulnerable segments of society..

20. In summary, Canada has extra-territorial obligations under the ICESCR and these obligations include the extra-territorial obligation to respect Covenant rights abroad, the extra-territorial obligation to protect Covenant rights including by regulating the activities of corporations and other business entities incorporated or domiciled in its territory and/or its jurisdiction for activities undertaken abroad, and the extra-territorial obligation to fulfill Covenant rights abroad through both bilateral and multilateral international cooperation, including within the context of decisions taken within inter-governmental organizations including international financial institutions. Additionally, Canada has the obligation to investigate and appropriately sanction any activities that violate human rights abroad and ensure access to justice including ensuring that accountability mechanisms and remedies are available to victims of those violations.

III. Background Emblematic Cases: Extra-Territorial Obligation to Protect

21. The following emblematic cases demonstrate that Canada violated its extra-territorial obligation to protect Covenant rights by not adequately regulating Canadian transnational corporations from directly or being complicit in violations of the ICESCR, including the right to self-determination, the right to the highest attainable standard of living, the right to adequate housing, the right to food, the right to water, the right to the highest attainable standard of health, and the right to access to remedies. Furthermore, Canada violated its extra-territorial obligation to protect Covenant rights by not allowing access to accountability mechanisms and remedies for those affected by these violations.

A. Bil'in Village, Palestine

22. 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.

²¹ *Id.* at para. 5.

23. 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. Marlin Mine, Guatemala

24. The Marlin Mine is a gold and silver operation located in the Department of San Marcos in the western highlands of Guatemala.²² The mine is owned by Montana, a wholly owned subsidiary of Goldcorp, a Canadian corporation with its headquarters in Vancouver, British Columbia, Canada.²³ It is operated by Montana Exploradora S.A., Goldcorp Inc. subsidiary company.²⁴

25. The Marlin mine has affected the indigenous community through violence, attacks and intimidation against community leaders who have spoken out against the project.²⁵ The mine's excessive use of water has created water shortages that have negatively affected the surrounding communities' rights to water, food and health.²⁶ In response, the Inter-American Commission on Human Rights (IACHR) issued precautionary measures in 2010 to suspend activities at the mine.²⁷ The measures have since been lifted due to government and corporate pressure, yet violence continues.²⁸

C. 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.²⁹ 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).³⁰ The project started in 1995

²² 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.

²³ *Id.*

²⁴ *Id.*

²⁵ FIAN International, *Guatemala - Marlin Mine Report*, (November 11, 2012), available at: <http://www.fian.org/what-we-do/case-work/guatemala-marlin-mine/>.

²⁶ *Id.*

²⁷ 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>.

²⁸ 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>.

²⁹ 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/>.

³⁰ *Id.*

and was first a project owned by Cambior Inc., later Metallica Resources and Glamis Gold, and now New Gold Inc.³¹

27. Cerro de San Pedro is a historical center with 400 years of history.³² 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.³³ The mountain is being collapsed by implosions.³⁴ Gold and silver are then extracted from the crushed rock using a technique known as cyanide heap leaching.³⁵ Heap leaching at the Cerro de San Pedro mine requires an estimated 32 million liters of water daily.³⁶ Juan Carlos Ruiz, an FAO organizer, is concerned that the mine is polluting an aquifer that supplies much of San Luis Potosi's drinking water. The high use of cyanide was of major concern as it was part of the daily operations of the mine pit.³⁷ There were issues with cyanide leaking into the water supply, which serves about 1.5 million inhabitants of the surrounding area.³⁸ Additionally the high use of twenty-five tons of explosives per day raised safety concerns.³⁹ 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.⁴⁰

D. Dikulushi Mine, Republic of Congo

28. The Dikulushi mine is a copper and silver mine in the Democratic Republic of the Congo (hereinafter DRC).⁴¹ Anvil Mining Congo SARL, incorporated in the Democratic Republic of the Congo, operated the mine.⁴² Anvil Mining Holdings Limited, incorporated in the United Kingdom, owned ninety percent of the company.⁴³ Ten per cent was owned by two trusts, with the local communities affected by the mine as the beneficiaries.⁴⁴ Both trustee companies, and the U.K. Company were wholly owned subsidiaries of Anvil Mining Management NL,

³¹ 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>.

³² 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>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ 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>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 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>.

⁴¹ 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>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

incorporated in Australia. The Australian company was in turn a wholly owned subsidiary of Anvil Mining Limited, incorporated in Canada.⁴⁵ The part of the Anvil enterprise involved in operating the Dikulushi mine consisted of six separate companies, each one, a separate legal person, incorporated in four different jurisdictions.⁴⁶ 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.⁴⁷ In the process, the soldiers engaged in summary executions, torture, rape and looting.⁴⁸ 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.⁴⁹ 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.⁵⁰ 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.⁵¹

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, 2010.⁵² Plaintiffs sought to hold Anvil accountable for complicity in the rape, massacres and brutalization of people of Kilwa by the Congolese army.⁵³ In April 2011, a Quebec Superior Court ruled that the case could proceed to the class certification stage.⁵⁴ 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

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ 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>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 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>.

⁵¹ *Id.*

⁵² 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.

⁵³ *Id.*

⁵⁴ *Id.*

Canada.⁵⁵ The Supreme Court denied a review.⁵⁶ A member of CAAI noted that the case highlights the extreme difficulty victims of gross human rights violations face when trying to receive justice.⁵⁷ It has been eight years since the Kilwa massacre and the victims and their families have yet to find justice.⁵⁸ 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.⁵⁹ 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.⁶⁰ Anvil Mining's Congolese subsidiary (hereinafter *Anvil Mining Congo*) was also absolved of any wrongdoing.⁶¹

E. 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.⁶² It is a high grade open pit mine consisting of three open pit deposits in Nyabirama, Gokona and Nyabigena.⁶³ The mine commenced production under Africa Mashariki Gold Mine Ltd in 2002.⁶⁴ In 2003, it was acquired by Placer Dome.⁶⁵ Barrick Gold Corporation (Barrick) acquired Placer Dome with the mine in 2006.⁶⁶ African Barrick Gold (ABG) a UK-registered company assumed control of North Mara as a part of the IPO in 2010.⁶⁷ As of March 10, 2014, Barrick, is majority owner of ABG.⁶⁸

32. Desperately poor villagers, attempting to exercise their right to work and their right to a highest attainable standard of living, reportedly commonly pay mine security and police bribes to gain access to waste rock dumps and the pits hoping to collect rocks containing gold.⁶⁹ When conflicts escalate, they open fire on the same people who normally do business with them.⁷⁰ Barrick is aware of the widespread reports that the police allow the intrusions in exchange for bribes.⁷¹ Tarime Rorya special police zone commander, Assistant Commissioner Constantine

⁵⁵ 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).

⁵⁶ MiningWatch Canada, *supra* note 9.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Africa Barrick Gold, "North Mara", (accessed October 15, 2014), available at: <http://www.africanbarrickgold.com/operations/operating-mines/north-mara.aspx>.

⁶³ *Id.*

⁶⁴ African Barrick Gold, "North Mara - Site Presentation", (March 2014), available at: <http://www.africanbarrickgold.com/mwginternal/de5fs23hu73ds/progress?id=oPX3OpVcfP>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 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.

⁷⁰ *Id.*

⁷¹ *Id.*

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.⁷²

33. There have been multiple incidents of death and casualties around the North Mara gold mine.⁷³ 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.⁷⁴

F. 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 1996.⁷⁵ TVI's mine includes 500 hectares of land located in Siocon Town, Zamboanga del Norte.⁷⁶ 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.⁷⁷ The local Subanon peoples claim that TVI never received their consent to operate the mine on their ancestral lands, and consequently were forcibly evicted from their lands.⁷⁸

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.⁷⁹ TVI finally admitted to those violations in 2011.⁸⁰ In 2001 there was a complaint filed against TVI to the UN Working Group on Indigenous Peoples.⁸¹ That complaint alleged that TVI committed militarization and acts of violence and intimidation, blockading necessities and foods, as well as disrupting travel.⁸² It is also alleged that TVI worked with the private security force SCAA, a

⁷² Marato, George, "*Tarime killings: The inside story*", The Guardian (Tanzania), (May 22nd, 2011), available at: <http://protestbarrick.net/article.php?id=733>.

⁷³ Mlowe, Pasience and 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.

⁷⁴ 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>.

⁷⁵ 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>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ 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/>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ 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>.

⁸² *Id.*

local government trained security force as well as a separate subset of those guards to be under TVI's direct control, the blue guards.⁸³

IV. Background Emblematic Cases: Extra-Territorial Obligation to Fulfill

36. The following emblematic cases demonstrate that Canada violated its extra-territorial obligation to respect Covenant rights by failing to ensure that its international cooperation activities and decisions prevent human rights violations abroad and its extra-territorial obligation to fulfill Covenant rights by failing to ensure that international cooperation is carefully and designed to further Covenant rights abroad.

A. Land Management and Administration Project, Cambodia

37. The Land Management and Administration Project (LMAP) in Cambodia was funded both bilaterally by Canada through CIDA as well as through the World Bank on which Canada sits as a Member State with decision-making authority. While the LMAP has produced some benefits, it also failed to abide by a human rights-based approach by not prioritizing the most vulnerable populations, and indeed resulted in vulnerable populations being forcibly evicted from their land. From 2008 to 2011, in the Boeung Kak area of Phnom Penh, some 3,500 households, or approximately 15,000 persons were forcibly evicted on account of the flawed LMAP implementation. For the most part the families were urban poor and some of the most vulnerable residents of Phnom Penh. The residents of Boeung Kak area, and similarly affected communities throughout Cambodia, were denied due process to enforce their security of tenure.⁸⁴

38. In its Concluding Observations on Germany in 2011 (UN Doc. E/C.12/DEU/CO/5, para. 11), the Committee considered German bilateral support to the LMAP, expressing its concern "that the State party's development cooperation programme has supported projects that have reportedly resulted in the violation of economic, social and cultural rights, such as in the case of the land-titling project in Cambodia" and recommending that "the development cooperation policies to be adopted by the State party contribute to the implementation of the economic, social and cultural rights of the Covenant and do not result in their violation." The Committee should reiterate this concern and recommendation in the context of the present periodic review of Canada, including also in the context of both bilateral assistance and Canada's decision-making within the World Bank.

⁸³ 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: <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/>.

⁸⁴ See, e.g., Inclusive Development International, *Human Rights and World Bank Safeguards Review: Lessons from Cambodia: Forced Evictions and the Limits of World Bank Accountability* (October 2013).

B. Marlin Mine, Guatemala

39. The Marlin Mine situation, mentioned above in paragraphs 24 and 25, also constitutes violations of the extra-territorial obligation to respect and the extra-territorial obligation to fulfill Covenant rights, since the mining was financed in part through a World Bank loan advanced and supported by Canada as a Member State of the Bank. The human rights violations that have occurred amount to a violation by Canada of its extra-territorial obligation to respect Covenant rights, while the fact that the Marlin Mine project failed to fulfill Covenant rights in Guatemala amounts to a violations of the extra-territorial obligation to fulfill Covenant rights including through decisions made within the context of international financial institutions.

IV. Recommended Concluding Observations

40. The State Party shall ensure that those individuals, groups and entities acting under its authority respect Covenant rights outside the territory of the State Party.

41. The State Party shall ensure that those individuals, groups and entities, including corporations and other business entities incorporated or domiciled in its territory and/or under its jurisdiction, respect Covenant rights outside the territory of the State Party.

42. The State Party shall ensure that it meets its extra-territorial obligation to fulfil Covenant rights, including through decisions and actions related to bilateral and multilateral international cooperation and development assistance, including undertaking systematic and independent human rights impact assessments prior to making funding decisions, establishing effective monitoring mechanisms to assess human rights impact of policies and projects, and to take remedial measures if necessary.

43. The State Party shall ensure 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 entitles incorporated or based in the State Party, or within the context of international cooperation and development assistance, there exists access to justice including accessible accountably mechanisms and effective remedies for victims of those violations.