

# ENVIRONMENTAL DEFENDERS IN DANGER



## The situation in Mexico and Central America in the context of the mining industry

Report prepared by the  
Center for International Environmental Law

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The Center for International Environmental Law (CIEL) has prepared this report as a contribution to the thematic hearing of the *Inter-American Commission on Human Rights on the Situation of Environmental Defenders in Mesoamerica*. The hearing was requested by:

CIEL, The Departmental Assembly of Huehuetenango in Defense of Renewable and Non-Renewable Natural Resources (ADH), The Association of Non-Governmental Organizations (ASONOG), the Interamerican Association for Environmental Defense (AIDA), Center for Environmental Advocacy – Panama (CIAM), The Mexican Centre for Environmental Law (CEMDA), The Committee in Solidarity with the People of El Salvador (CISPES), The Guatemalan National Coordinating Committee of Widows (CONAVIGUA), The San Miguel Defense Front (FREDEMI), The Due Process of Law Foundation (DPLF), The Movement of Mayan Youth (MOJOMAYAS), The National Roundtable Against Metal Mining – El Salvador, The Mexican Network of Mine-Affected Communities - Chiapas, and Waqib Kej.

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Cover photo: Resident of Barrio La Revolución in El Estor, Izabal, Guatemala, laments as his home goes up in flames during the violent eviction of five Maya Q'eqchi' villages near the CGN Nickel Mine. January 9th, 2007.

Photo courtesy James Rodríguez / [www.MiMundo.org](http://www.MiMundo.org)

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# **ENVIRONMENTAL DEFENDERS IN DANGER: THE SITUATION IN MEXICO AND CENTRAL AMERICA IN THE CONTEXT OF INDUSTRIAL MINING**

## **Executive Summary**

The Center for International Environmental Law (CIEL) has prepared this report as a contribution to the thematic hearing of the *Inter-American Commission on Human Rights on the Situation of Environmentalists in Mesoamerica*. The hearing was requested by 15 non-governmental organizations<sup>1</sup> from throughout the region to call attention to the increasing incidence of human rights abuse against environmental defenders in Mexico and Central America.

**To address the disturbing trend of violence against environmental defenders, this report makes four recommendations:**

- (1) States must strengthen the institutional mechanisms to protect environmental defenders;**
- (2) States must reinforce the legal structures governing the environmental and social impacts of the mining sector;**
- (3) States must recognize and implement the right of mining-affected communities to free, prior, and informed consent;**
- (4) Both individual States and the international community must recognize the responsibility of home states for harm caused by the foreign operations of their mining companies and take measures to meet that responsibility.**

Environmental defenders are those who seek to protect the environment and defend the rights of victims of environmental degradation. The term is not limited to persons formally affiliated with “environmental” organizations. Rather, it encompasses many thousands of individuals struggling to protect themselves, their families and their communities from the impacts of a degraded environment on their lives, health, livelihoods, resources, natural and cultural heritage, and fundamental rights.

This report focuses on the plight of environmental defenders in the context of the mining sector. In recent years, the high price of gold and other precious metals on international markets has spurred increased foreign investment in mining projects in Mexico, Central America, and elsewhere in the Americas. The potential social and environmental costs of these projects are high,

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<sup>1</sup> CIEL, The Departmental Assembly of Huehuetenango in Defense of Renewable and Non-Renewable Natural Resources (ADH), The Association of Non-Governmental Organizations (ASONOG), The Interamerican Association for Environmental Defense (AIDA), Center for Environmental Advocacy – Panama (CIAM), The Mexican Centre for Environmental Law (CEMDA), The Committee in Solidarity with the People of El Salvador (CISPES), The Guatemalan National Coordinating Committee of Widows (CONAVIGUA), The San Miguel Defense Front (FREDEMI), The Due Process of Law Foundation (DPLF), The Movement of Mayan Youth (MOJOMAYAS), The National Roundtable Against Metal Mining – El Salvador, The Mexican Network of Mine-Affected Communities - Chiapas, and Waqib Kej.

generally externalized, and borne disproportionately by families and communities living nearby. Mining poses substantial environmental risks, including contamination of water, air, and soil, reduced access to water, and noise pollution. This environmental degradation, in turn, causes serious impacts on the health and well being of communities and ecosystems. It also carries serious social risks, including government corruption, violence, and forced displacement of communities. From this perspective, mining that results in social conflict and environmental contamination does not contribute to development.

The case studies herein demonstrate the substantial personal risks facing those who confront the environmental, social and human rights impacts of mining. They document how those who speak out against mining often become the targets of threats and violence, including destruction of private property, forced displacement, death threats, arbitrary detention, kidnapping and even assassination. They also provide evidence of violations carried out with tacit acceptance of States.

The case studies, drawn from Mexico, Guatemala, El Salvador, Honduras, and Panama, demonstrate these abuses are not limited to a single mining company or to a single country. To the contrary, the case studies reflect a growing trend throughout the region toward repression and violence against those who protest mines and mining impacts.

The increased trend in violence against environmental defenders results from two underlying causes. First, it results from the failure of States to properly manage the environmental impacts of mining projects. In addition to its direct and often severe impacts on the human rights of adjacent communities, this failure creates the conditions of conflict that precipitate violence.

Second, it results from the failure of the State to fully protect the human rights of environmental defenders in a manner consistent with its international human rights obligations. This includes permitting high levels of impunity for those people and companies committing the human rights violations. Importantly, this problem of impunity is not limited to host countries. Rather, there is a corresponding failure on the part of the companies' home states, frequently Canada and the United States, to enact (and enforce) effective legislation to prevent and punish human rights violations that result from their companies' operations abroad.

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## I. INTRODUCTION

The environmental and social risks associated with the mining industry are particularly high, and in many cases, the rights of people and communities living near projects have been affected. In recent years, environmental defenders have worked to confront the social and environmental impacts of the mining industry and as a result, they have been subjected to human rights violations which include threats, kidnappings, violent attacks and murder. The case studies examined in this report reveal how this aggression is a growing trend in Mexico and Central America.

Mining's substantial environmental risks include contamination of water, air, and soil, reduced access to water, and noise pollution all of which lead to serious impacts on the health and well being of people and ecosystems. Mining also brings significant social risks including government corruption, violence, and forced displacement of communities. Despite recognition of the importance of work done by human rights defenders, the frequency of assault and intimidation against them has increased.

The Inter-American Commission on Human Rights (IACHR) defines human rights defenders as persons who act individually and in association with others, to promote and strive for human rights and fundamental freedoms at the national and international levels.<sup>2</sup> Environmental defenders are people who seek environmental protection and defend the human rights of victims of environmental degradation.<sup>3</sup> In the case of *Kawas Fernández v. Honduras*, the Inter-American Court of Human Rights (IAHR Court) recognized that an undeniable relationship exists between environmental protection and the realization of other human rights.<sup>4</sup> Consequently, environmental defenders are considered within the category of human rights defenders.

As the IAHR Court upheld in the case of *Kawas Fernández*, “The recognition of work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region in which an increasing number of incidents has been reported as involving threats, acts of violence against, and murders of environmentalists owing to their work.”<sup>5</sup>

The information in this report comes from a number of sources: the IACHR; the IAHR Court; the Office of the High Commissioner for Human Rights, the United Nations Educational, Scientific and Cultural Organization; and the International Centre for Settlement of Investment Disputes.

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<sup>2</sup> IACHR, *Report On The Situation Of Human Rights Defenders In The Americas*, Doc. 5 rev.1, March 7, 2006, paragraph 13, <http://www.cidh.org/countryrep/Defenders/defenderstoc.htm>. See also: The United Nations *Declaration On The Right And Responsibility Of Individuals, Groups And Organizations Of Society To Promote And Protect Universally Recognized Human Rights And Fundamental Freedoms*. U.N.Doc.No. A/RES/53/144. March 8, 1999. Article 1. <http://www2.ohchr.org/english/law/freedom.htm>.

<sup>3</sup> Center for Human Rights and Environment & Center for International Environmental Law (CIEL), *Teodoro Cabrera García y Rodolfo Montiel Flores against The United States of Mexico*, Brief of Amicus Curiae for Case No. 12.449 to the IACHR, copy archived with CIEL.

<sup>4</sup> Case of *Kawas Fernández v. Honduras*. Merits, Reparations and Costs. CorteIDH, Judgment of April 3, 2009, Series C No. 196, paragraph 148, [www.corteidh.or.cr/docs/casos/articulos/seriec\\_196\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf).

<sup>5</sup> Case of *Kawas Fernández*, *supra* note 3, paragraph 149.



In addition, information from the following non-governmental organizations is used: the Honduran Association of Non-Governmental Organizations; the Committee of Family Members of the Detained and Disappeared in Honduras (COFADEH); the Committee for Human Rights in Latin America; the Committee in Solidarity with the People of El Salvador; Ecoportal; Ecosystem Restoration; Forest Peoples Programme; the Broad Opposition Front to the San Xavier mine in San Luis Potosí, México (FAO); the National Coalition Against Metallic Mining of El Salvador; MiningWatch Canada; the Latin American Observatory of Mining Conflicts; and the Mexican Network of Mine-Affected Communities. Finally, articles from the national press are included from: El Mirador of Guatemala, La Jornada of Mexico y prensa.com of Panama.

This report focuses on the situation of environmental defenders in the mining sector in Mexico and Central America where there is a marked tendency for violence against those who confront the impacts of this industry. Moreover, the inadequate institutional framework in these countries does not protect environmental defenders, nor does it provide a channel for citizen participation nor, for that matter, prevent negative environmental impacts. Therefore, it is necessary to strengthen institutional protection mechanisms for environmental defenders and to reinforce legal structures governing the social and environmental impacts of the mining industry. This must include respect for the right of mine-affected communities to free, prior, and informed consent.

This report is divided into five parts. The first will present the main social and environmental impacts of the mining sector. The second will examine the response of environmental defenders to these impacts. The third will describe the tendency toward human rights violations against environmental defenders. The fourth will present case studies from five countries: Mexico, Guatemala, Honduras, El Salvador and Panama. The last part of this report will present conclusions and recommendations.

## **II. MAIN SOCIAL AND ENVIRONMENTAL IMPACTS** **OF THE MINING SECTOR**<sup>6</sup>

The mining industry's impacts on the environment and nearby communities are made worse by the lack of an effective legal framework that would help prevent damage, as well as the absence of effective monitoring by the state. Furthermore, the majority of mining companies are foreign-owned and host countries do not have effective controls or norms that would guarantee the rights of those negatively affected. As a result, people and ecosystems close to mines are at high environmental and social risk. For this reason, there is an undeniable relationship between environmental protection and the full enjoyment of human rights. When confronted with these impacts, communities have organized to

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<sup>6</sup> The information in this section is from various sources and represents the generally accepted opinions of the scientific community regarding the environmental impacts of the mining industry. Main sources: Ecosystem Restoration, *Environmental Impacts of Mining*, <http://ecorestoration.montana.edu/mineland/guide/problem/impacts/default.htm>; Forest Peoples Programme, *La minería y su grave impacto sobre los Bosques y los Pueblos*, August, 2003, [www.ecoport.net/content/view/full/21502](http://www.ecoport.net/content/view/full/21502); Camilo Salvadó, *¿Por qué oponerse a la minería de metales?*, April 9, 2010, [www.ecoport.net/content/view/full/92196](http://www.ecoport.net/content/view/full/92196); Gustavo Castro Soto, *¿Qué es la barita? La explotación de la canadiense Blackfire en Chiapas*, October 12, 2009, [www.ecoport.net/content/view/full/89084](http://www.ecoport.net/content/view/full/89084); AECO-AT for the National Coalition Against Open-Pit Gold Mining, Costa Rica, *¿Qué es la minera a cielo abierto?*, November 4, 2009, <http://lavozdelanahuac.blogspot.com/2011/02/que-es-la-mineria-cielo-abierto.html>

defend their rights. Their efforts, however, have made them the target of threats and violence, which affect their individual rights and those of their families, especially of children that are deprived of their mothers and fathers.

We will begin by describing the environmental and social impacts of the mining industry to explain why environmental defenders feel it necessary to confront the way projects are carried out.

In general terms, the mining process has a number of steps: exploration, construction of the mine, production, mineral processing and mine closure. The environmental impacts vary in relation to each step. For example, during exploration, the right to free and informed consent is critical to prevent activity that will harm the environment and communities. During the production stage, the proper handling of toxic waste is key to preventing contamination of soil and water. Finally, mine closure creates challenges to ensure that abandoned mines do not become liabilities that contaminate nearby communities.

Environmental and social impacts differ according to the method of production (either surface mining: quarry, open pit or mountaintop removal; or underground mining). The impacts of an open-pit mine are different from those of an underground mine. Metal mining is also different from non-metal mining. Generally, the environmental impacts of metal mining are worse because of the dangerous chemicals used for leaching and mineral processing.

Although social and environmental impacts are interrelated, it is possible to consider them as two separate categories. Social impacts include the forced relocation of communities, prostitution, alcoholism and corruption of government institutions. Environmental impacts include water, air and soil contamination.

These impacts can interfere with the right to food, water, property, life, personal safety, privacy, and culture, among others. At the same time, the work of environmental defenders is directly related to the right of association and participation, access to information and the right to effective judicial remedies.

Finally, it is important to remember how children in particular are affected. Their size and level of physical development makes them more susceptible to environmental pollution. Also, the loss of family members, parents in particular, can have more profound effects on children due to their level of intellectual and emotional development. Lastly, violence and the threat of violence—exacerbated by the impunity of perpetrators—are not compatible with conditions in which children are able to play, study and develop to their full potential. Therefore, children require special protection against the environmental and social impacts of mining.

## **A. SOCIAL IMPACTS**

Social impacts in nearby communities are diverse and may include forced relocation, violence, prostitution, alcoholism and corruption. First, construction of the mine may cause communities to be relocated away from the area; this may constitute a violation of the right to free, prior and informed consent, as well as property rights. Second, mining operations lead to an increase in migration to the area by people in search of work. This usually creates social tensions in communities related to prostitution and alcoholism. Third, in order to protect mining installations, companies usually contract private security groups and this frequently gives rise to violence in communities. In this sense, companies, usually with government acquiescence, are responsible for violence, threats and murders of environmental defenders. This situation constitutes a clear violation of the right to life, as well as other human rights.



## B. ENVIRONMENTAL IMPACTS

The environmental impacts of mining are diverse and depend on the method of mining involved, as well as the security measures that have been put in place. The lack of an adequate legal framework and effective monitoring systems means that individuals living near mines will see environmental impacts such as lack of access to water and contamination of water, air and soil.

### *i. Water*

Water is the source of life, health and well-being and the UN General Assembly and the UN Human Rights Council have recognized access to water as a fundamental and legally binding right.<sup>7</sup> We begin by highlighting two mining impacts on water: contamination and reduced access.

The chemicals used in the leaching process to dissolve and separate metals from the ore can cause water contamination. Moreover, this process may result in the release of heavy metals into the environment. Such threats are exacerbated by the lack of effective legislation to control the use of chemicals in mines, increasing the incidence of accidents and concomitant contamination by heavy metals and chemicals such as cyanide and arsenic used in leaching.

Other sources of water contamination come from highly toxic tailings dumps. Chemicals and minerals filter into underground water from these dumps, and heavy metal particles separate from waste and are spread by the wind to water bodies. Additionally, acid mine drainage, produced when minerals in mining dumps oxidize, also contributes to water contamination.

Mining uses high volumes of water during extraction, leaching and other processes that not only increase the risk of contamination but threaten access to water. In areas where water is taken from surface sources like rivers, communities often witness decreased flow. Where water is taken from underground sources, the water table is affected and this can lead to depletion of wells and springs.

Individuals and nearby community systems are profoundly affected when mining leads to a loss of access to water or sources are contaminated. The dissolved minerals, metals and chemicals accumulate in body tissues causing illnesses or even poisoning that can be fatal. Communities often lack alternative sources of water for irrigation or consumption. As such, impacts on water also affect animals, aquatic life and plants, and may lead to deforestation. Communities that depend on the land as a source of food, medicine and cultural resources are even more seriously affected.

### *ii. Air*

Air pollution from mining activities comes from many sources: detonations of dynamite and other explosives to expose and remove the mineral ore; movement by heavy machinery, including transportation of materials; heavy metal particles that separate and migrate from tailings; gas emissions from burning fossil fuels; and chemical evaporation from the artificial ponds made during extraction and leaching. Air pollution can cause respiratory illnesses and disorders in humans, and diminish photosynthesis in plants and trees.

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<sup>7</sup> United Nations *The human right to water and sanitation*, A/Res/64/292, August 3, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/479/35/PDF/N0947935.pdf?OpenElement>; OHCHR, *Human Rights Council starts Interactive dialogue with Independent Experts on Safe Drinking Water and Sanitation and on Extreme Poverty*, September 15, 2010, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10334&LangID=E>.

*iii. Soil*

Heavy metal particles and chemicals that separate from waste materials change the soil's chemical composition. Plants may be destroyed and those that survive may pose a risk to the health of people and animals that eat them. Agricultural productivity may be reduced, and ecosystems may be altered, affecting biodiversity and the communities dependent on that diversity. In addition, the exploration and exploitation phases of mining demand wood for construction and fuel, and the resultant deforestation affects soil, habitats and biodiversity.

*iv. Other environmental impacts*

Environmental impacts include traffic noise from trucks transporting ore, and from other heavy machinery operating at the mine. Detonations and blasting can be not only annoying and inconvenient, but also unbearable and disruptive to people and animals.

### **III. THE RESPONSE OF ENVIRONMENTAL DEFENDERS**

Environmental defenders are usually members of communities in the mine-affected area and directly experience the social and environmental impacts of the mine. Their work is key to protecting rights and the environment because the government is often poorly informed about how the mining sector operates. Environmental defenders provide information about company practices and pressure governments to protect the rights of affected communities. However, governments frequently lack political will to assume this role.

In other instances, governments ignore rights violations related to environmental degradation caused by mining companies because economic interests have corrupted or co-opted the governing political structures. Where governments share the responsibility for rights violations, risks to and threats against the physical safety and indeed the lives of environmental defenders intensify.

Environmental defenders frequently report that foreign mining companies violate human and environmental rights in local communities and operate in ways that would violate laws in their countries of origin. This highlights the fact that foreign investor governments share the responsibility for the violence and violation of rights perpetrated by their mining companies.

With the increase in recent years in mining activity in Mexico and Central America where there is inadequate environmental protection, environmental defenders have found themselves at the centre of social conflicts. Leaders at the community level and in NGOs are symbols of resistance to environmental degradation and rights violations, and have therefore have been the target of threats and violence: destruction of personal and communal property; forced relocation; death threats, kidnappings and arbitrary detention; and murder. This growing trend towards violence and rights violations against environmental defenders will be analyzed in greater detail below.

## **IV. TENDENCY TO VIOLATE THE HUMAN RIGHTS OF ENVIRONMENTAL DEFENDERS IN MEXICO AND CENTRAL AMERICA**

A pattern has emerged in the Mexican and Central American region of attacks and murders committed against environmental defenders who oppose industrial mining. Though the facts are distinct in each country, the violence can be separated into four categories:

- Attacks committed by government employees outside the scope of their duties;
- Attacks committed by employees of mining companies;
- Attacks committed by private groups with the help and/or acquiescence of mining companies or governments; and
- Situations of conflict where the installation or operation of mining projects divide a community and lead to social violence.

The first directly implicates government agencies; the second and third are examples of government corruption or an unwillingness by authorities to act. The last has a direct relationship to mining operations and the absence of human rights protection.

The majority of studies provide confirmation of the impunity enjoyed by perpetrators of violence and corporations in the host country; and by the corporation in its home country. Impunity is made possible by the fact that host countries lack effective punitive measures to protect the environment and individuals from the social and environmental impacts of mining; and because of an absence of effective legislation in companies' home states that would prevent and punish rights violations that occur outside their jurisdiction.

The tendency of violence against environmental defenders has become accentuated in recent years with the increased number of mining projects in Mexico and Central America. This rise is due in part to the high price of metals on the international market, as well as increased globalization encouraged by the opening up of markets to free trade and foreign investment.

Although governments try to present mineral exploitation as being in the public interest, it is often evident that government decision-makers have been co-opted by particular groups. Public interests are sacrificed for private interests and the rights of communities affected by mining are ignored. In this context, it must be made clear that mining that leads to violence and pollution does not contribute to community development. Moreover, the murders, kidnappings, destruction of property and other forms of violence presented in the case studies detailed below show a worrisome regional tendency toward rights violations against environmental defenders.

## **V. CASE STUDIES**

### **A. MEXICO**

#### *i. Blackfire*

Blackfire Exploration is a Canadian mining company that operates barite, titanium and magnetite mines in Chiapas. Mariano Abarca was an indigenous leader and member of the Mexican Network of Mine-Affected Communities Affected (REMA) which had publicly denounced the negative environmental and

social impacts of Blackfire's mine and demanded its closure<sup>8</sup>.

In November 2009, Mariano was murdered<sup>9</sup> as he sat in front of his house with another member of the network, Orlando Velázquez, who was wounded in the attack. According to witnesses, the murder was committed by an individual riding a motorcycle.<sup>10</sup> A few days earlier, Mariano had filed a complaint against two Blackfire employees who he alleged had uttered death threats against him for having organized protests against the company.<sup>11</sup>

REMA members maintain that Abarca's murder is related to his protests against the mining company<sup>12</sup> and they have presented documents to the attorney general of Chiapas that show that the company is implicated in the corruption of municipal authorities as part of efforts to intimidate people opposed to the mine.<sup>13</sup> The attorney general has detained two individuals with ties to Blackfire,<sup>14</sup> but there has been no investigation into the charges of corruption.<sup>15</sup> On October 20, 2010, a Federal Judiciary tribunal ordered the mine to remain closed until Blackfire complied with state environmental laws.<sup>16</sup>

## ii. *San Xavier Mine*

In December 2009, activists from the Broad Opposition Front to the San Xavier mine (FAO)<sup>17</sup> were beaten and attacked with stones a short time before a scheduled visit from a commission of federal deputies.<sup>18</sup> The FAO is made up of community groups, the telephone operators union, the national

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<sup>8</sup> MiningWatch Canada, *Groups File Documentation with RCMP on Canadian Mining Company's Involvement in Mexican Corruption Case*, March 10, 2010, <http://www.miningwatch.ca/en/groups-file-documentation-with-rcmp-canadian-mining-company-s-involvement-mexican-corruption-case>; Observatorio de Conflictos Mineros de América Latina (de aquí en adelante OCMAL), *Asesinan a líder mexicano opositor a la operación en una mina*, 28 de noviembre de 2009, <http://www.conflictosmineros.net/contenidos/23-mexico/5138-asesinan-a-lider-indigena-mexicano-opositor-a-la-operacion-en-una-mina>.

<sup>9</sup> MiningWatch Canada, *Urgent Action: Stop Murders and Threats Against Mexican Activists Fighting Mining Abuses in Chiapas*, December 1, 2009, <http://www.miningwatch.ca/en/urgent-action-stop-murders-and-threats-against-mexican-activists-fighting-mining-abuses-chiapas>.

<sup>10</sup> *Id.*

<sup>11</sup> OCMAL, *Corrupción e intimidación de minera canadiense en México*, December 22, 2009, <http://www.conflictosmineros.net/contenidos/23-mexico/5195-corrupcion-e-intimidacion-de-minera-canadiense-en-mexico>.

<sup>12</sup> OCMAL, *Clausuran autoridades de Chiapas mina de Blackfire*, December 9, 2009, <http://www.conflictosmineros.net/contenidos/23-mexico/5163-clausuran-autoridades-de-chiapas-mina-de-blackfire>.

<sup>13</sup> *Corrupción e intimidación de minera canadiense en México*, *supra* note 10.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Angeles Mariscal, *Mina de barita en Chiapas seguirá cerrada hasta que cumpla normas*, LA JORNADA, October 20, 2010, <http://www.jornada.unam.mx/2010/10/20/index.php?section=estados&article=034n2est>.

<sup>17</sup> Frente Amplio Opositor, *Alto a la Minera San Xavier*, <http://www.angelfire.com/rebellion2/antimsx/index.htm>.

<sup>18</sup> OCMAL, *Cobardes ataques contra opositores a Minera San Xavier*, 13 de diciembre de 2009, <http://www.conflictosmineros.net/contenidos/23-mexico/5169-cobardes-ataques-contra-opositores-a-minera-san-xavier>.

union of farm workers, the TY Collective and the General Tire union, among others. The San Xavier project—a subsidiary of Canadian company New Gold—is a gold mine located in San Luis de Potosí, Mexico.<sup>19</sup> In September 2009, operations were ordered stopped because the company had not complied with national laws;<sup>20</sup> however, the mine remains in operation.<sup>21</sup>

Various environmental defenders from the FAO and Kolektivo Azul were assaulted, wounded and stripped of personal property. One of them, Armando Mendoza Ponce, had been threatened and attacked previously because of his work in defence of the environment. Other environmental defenders from the community had also been victims of threats, assaults and acts of vandalism<sup>22</sup>. Municipal authorities remained at a distance of 200m from the location where the assaults took place and did not intervene; police did not arrive until half an hour after the report of violence<sup>23</sup>. This demonstrates the government's unwillingness to prevent or end these assaults.

The FAO holds Jorge Mendizabal Acebo (manager of the New Gold San Xavier mine), Narciso Avarado (New Gold employee), and the Gutierrez Marquez family (which received money from the company) responsible for the violence; and it also assigns blame to the mayor of San Pedro for having failed to intervene despite knowing about the attack.<sup>24</sup>

The FAO claims that New Gold's San Xavier mine continues to employ people who were involved in the assaults. Moreover, these same people frequently work with the San Pedro town council. As a result, New Gold is able to maintain control of the police and a climate of violence and corruption prevails. Finally, the FAO has claimed that included among the perpetrators were individuals from other communities who have received money from the company.<sup>25</sup>

### iii. 'La Guitarra' Mine

Three environmental inspectors and a local resident were murdered in the community of Albarran, Temascaltepec in central Mexico when they made a site visit on Thursday May 20, 2010 to investigate the environmental impacts of the 'La Guitarra' mine.<sup>26</sup> When the bodies were found the next day, they

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<sup>19</sup> MiningWatch Canada, *Canadian Company Accused of Disobeying Court, Misleading Shareholders*, 10 November 2009, <http://www.miningwatch.ca/en/canadian-company-accused-disobeying-court-misleading-shareholders-citizens-group-argues-new-gold-vio>.

<sup>20</sup> OCMAL, *New Gold—Minera San Xavier debe acatar las leyes mexicanas*, 4 de noviembre de 2009, <http://www.conflictosmineros.net/contenidos/23-mexico/5094-new-gold-minera-san-xavier-debe-acatar-las-leyes-mexicanas>; *Canadian Company Accused of Disobeying Court, Misleading Shareholders*, *supra* nota 18.

<sup>21</sup> OCMAL, *Otorgan ampara a Minera San Xavier; continuará operaciones*, 22 de diciembre de 2009, <http://www.conflictosmineros.net/contenidos/23-mexico/5192-otorgan-amparo-a-minera-san-xavier-continuara-operaciones>.

<sup>22</sup> Comité por los Derechos Humanos en América Latina, *Cerro de San Pedro, México – Activista ambiental amenazado*, 11 de enero de 2010, <http://cdhal.org/es/actions/cerro-de-san-pedro-mexico-activista-ambiental-amenazado>.

<sup>23</sup> *Cobardes ataques contra opositores a Minera San Xavier*, *supra* nota 17.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> OCMAL, *Asesinato de Funcionarios en Labor de Defensa del Medioambiente*, June 9, 2010, <http://www.conflictosmineros.net/contenidos/23-mexico/5593-asesinato-de-funcionarios-en-labor-de-defensa-del-medioambiente>.

exhibited probable signs of torture.<sup>27</sup> Two of the victims, Juan Gavia Xingu and Bernardo Sanchez Venegas, worked for the attorney general's office for environmental protection; the third victim, Valentin Reyes Garcia, was the local representative from the national commission for protected natural areas.<sup>28</sup> The fourth victim was a guide from Temascaltepec, Isidro Ruiz Alonso, who accompanied the inspectors.<sup>29</sup> The Mexican Centre for Environmental Law (CEMDA) has called for the state and federal governments to guarantee the safety of individuals who work in defense of the environment.<sup>30</sup>

*iv. Cuzcatlan Mining Company*

On June 19, 2010, a confrontation took place between municipal authorities and the people of San José del Progreso, El Cuajilote and Maguey Largo where the latter had organized protests against the Cuzcatlan mining company because of environmental destruction from its gold and silver mine. Two people died and a number of others were wounded; the police detained 11 people.<sup>31</sup>

*v. Other Cases in Mexico*

Dante Valdez led peaceful protests to defend the land and environmental rights in the indigenous community of Huizopa, Chihuahua where the community had organized against nearby mining operations. On August 13, 2008, Dante Valdez was assaulted by a group of approximately 30 people inside a school in the municipality of Madera where he had been attending a training course for teachers. The majority of the group of attackers were identified as workers for the mining company. During the attack, they advised Valdez not to meddle in their affairs.<sup>32</sup>

## **B. GUATEMALA**

Guatemala continues to be one of the countries in the western hemisphere with the highest indicators of violence; and the situation is worsening with regard to assaults on and the killings of employees of environmental organizations and indigenous leaders.<sup>33</sup> Fourteen years after the end of a brutal internal armed conflict, Guatemala finds itself in danger of becoming a failed state plagued by illegal drug trade, government corruption and the absence of the rule of law. The country continues to see high levels of

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<sup>27</sup> El Universal, *Localizan cuerpos de inspectores de Profepa en Valle de Bravo*, May 22, 2010, <http://www.eluniversal.com.mx/nacion/177889.html>.

<sup>28</sup> OCMAL, *Asesinato de Funcionarios en Labor de Defensa del Medioambiente*, June 9, 2010, <http://www.conflictos-mineros.net/contenidos/23-mexico/5593-asesinato-de-funcionarios-en-labor-de-defensa-del-medioambiente>.

<sup>29</sup> *Id.*; OCMAL, *Tres inspectores ambientales fueron asesinados*, May 26, 2010, <http://www.conflictosmineros.net/contenidos/23-mexico/5562-tres-inspectores-ambientales-fueron-asesinados>.

<sup>30</sup> *Id.*

<sup>31</sup> OCMAL, *Exigen respeto a derechos de oaxaqueños*, June 23, 2010, <http://www.conflictosmineros.net/contenidos/23-mexico/5631-exigen-respeto-a-derechos-de-oaxaqueños>.

<sup>32</sup> UN Office of the High Commissioner for Human Rights in Mexico, *Informe Defender los Derechos Humanos: Entre el Compromiso y el Riesgo*, October 13, 2009, <http://www.hchr.org.mx/documentos/libros/informepdf.pdf>.

<sup>33</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala in 2008*, February 2009, paragraph 10, <http://daccess-ods.un.org/TMP/1179774.html>

impunity—98% of crimes are not prosecuted.<sup>34</sup> In 2010, environmental defenders as a sector represented the most at-threat of all human rights defenders, with the exception of women's rights defenders and development workers.<sup>35</sup> The actual number would be higher if defenders of indigenous lands were also considered environmental defenders in recognition of the close link between indigenous rights and environmental issues.

*i. Marlin Mine, San Marcos*

The Marlin mine, a subsidiary of Canadian company Goldcorp, Inc., has generated numerous conflicts in affected areas since the company began acquiring land in 1999 through Peridot, S.A., Marlin. This gold and silver mine, which has both open pit and underground installations, uses cyanide to extract the gold. The primary complaints of nearby communities are two fold: lack of free, prior and informed consent, and negative health impacts that have resulted from water contamination from the mine.<sup>36</sup> The *Human Rights Assessment of Goldcorp's Marlin Mine* by On Common Ground Consultants Inc. (financed by Goldcorp) states that,

“Security incidents at the mine follow a pattern similar to other unresolved grievances regarding the company's performance such as those pertaining to land acquisition, consultation, right of way agreements, and the environment. The company has failed to undertake a serious review of these complaints. The lack of access to remedy has lead to confrontation and escalation of violence, and has thus put the human rights of community members at risk.”<sup>37</sup>

In 2005, the army and the federal police intervened to end a 40-day blockade on the Pan-American Highway near Sololá that had prevented the transport of a mill to the mine. During the confrontation, one person died and 16 others were injured. The public ministry investigated the incident and criminal proceedings were initiated against some alleged leaders of the blockade. However, the agency eventually reported that “no suspects were identified, prosecuted or charged. All cases have been closed with the exception of the widow's claim for compensation, which remains pending with the Attorney General for Human Rights (PDH).”<sup>38</sup>

As a rule, the government has been attentive to company complaints against community members. In

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<sup>34</sup> Web page of the Office of Human Rights of the Archbishop of Guatemala, <http://www.odhag.org.gt>.

<sup>35</sup> UDEFEGUA, *Criminalización, una forma de paralizar y debilitar la respuesta social*, first semester 2010, [http://www.protectionline.org/IMG/pdf/informe\\_udefegua\\_sememstral.pdf](http://www.protectionline.org/IMG/pdf/informe_udefegua_sememstral.pdf).

<sup>36</sup> E-Tech International, *Resumen ejecutivo del Estudio de Evaluación de Impacto Ambiental y Social*, August 2010, [http://goldcorpoutofguatemala.files.wordpress.com/2010/07/e-tech-resumen\\_ejecutivofinal.pdf](http://goldcorpoutofguatemala.files.wordpress.com/2010/07/e-tech-resumen_ejecutivofinal.pdf); Médicos para los Derechos Humanos, *Metales Tóxicos y Poblaciones Indígenas cerca de la Mina Marlin en Guatemala Occidental: Posibles Exposiciones e Impactos a la Salud*, May 2010, <http://physiciansforhumanrights.org/library/documents/reports/guatemala-metales-toxicos.pdf>; Johan Van de Wauw, Universidad de Gante, *¿Están la sobre extracción de agua subterránea y la reducida infiltración contribuyendo a problemas de salud relacionados con el Arsénico cerca de la mina Marlin (Guatemala)?*, October 15, 2010, [http://www.catapa.be/files/Wetenschappelijk%20artikel%20UGent\\_spaans.pdf](http://www.catapa.be/files/Wetenschappelijk%20artikel%20UGent_spaans.pdf).

<sup>37</sup> On Common Ground Consultants, *Human Rights Assessment of Goldcorp's Marlin Mine*, May 2010, page 177, <http://hria-guatemala.com/en/MarlinHumanRights.htm>

<sup>38</sup> *Id.*, page 164.



2007, Goldcorp filed a lawsuit against seven community members who had contested the amount they had been paid for their land. Five of the cases ended in acquittal and two resulted in guilty sentences, which were subsequently appealed in federal court.<sup>39</sup> In 2008, Goldcorp filed a lawsuit against eight women claiming they had sabotaged the electricity lines to a processing plant; the women countered that the poles had been installed on their property without permission. The lawsuit led to police issuing orders for the women's detention.<sup>40</sup> The quick response by the government to lawsuits filed by Goldcorp gives the appearance that the company alone has access to the legal system while the communities do not.<sup>41</sup>

In May 2010, the IACHR granted precautionary measures for 18 Mayan communities and asked the Guatemalan government to suspend the mine, implement measures to prevent environmental pollution and "adopt any other necessary measures to guarantee the life and physical integrity of the members of the 18 aforementioned Mayan communities"<sup>42</sup>

Since the IACHR issued this order, tension has been on the rise in the communities. The case of Deodora Hernández exemplifies this situation. In July 2010, environmental defender Deodora Antonia Hernández Cinto was severely injured when two unidentified men entered her home and shot her in the right eye causing significant loss of blood and loss of her eye.<sup>43</sup> One of her attackers worked for Goldcorp and another was a contractor with the company; Goldcorp has denied involvement in the incident.<sup>44</sup> Deodora Hernández had been active in her community, Sacmuj, where Goldcorp holds large exploration interests and where community members fear mining will jeopardize their sources of drinking water, and violate their right to free consent.<sup>45</sup> Before the attack, Deodora Hernandez and fellow activist Carmen Mejía had been threatened a number of times because of their participation in the movement against the mine.<sup>46</sup> Once Deodora Hernandez returned home from the hospital, she

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<sup>39</sup> *Id.*, page 165.

<sup>40</sup> *Id.*, page 170: "The current pattern is that none of the investigations against public security forces have resulted in prosecutions, whereas investigations against community members have resulted in criminal charges and arrest warrants – even if these are not always enforced."

<sup>41</sup> *Id.*, page 171.

<sup>42</sup> Elizabeth Abi-Mershed, *Medidas cautelares a favor de las comunidades del pueblo Maya en San Marcos por la CIDH*, EL MIRADOR, April 5, 2010, [http://www.elmirador.org.gt/index.php?option=com\\_content&view=article&id=1347:medidas-cautelares-a-favor-de-las-comunidades-del-pueblo-maya-en-san-marcos-por-la-cidh&catid=41:comunicados&Itemid=64](http://www.elmirador.org.gt/index.php?option=com_content&view=article&id=1347:medidas-cautelares-a-favor-de-las-comunidades-del-pueblo-maya-en-san-marcos-por-la-cidh&catid=41:comunicados&Itemid=64); CIDH, *Medidas Cautelares otorgadas por la CIDH durante del año 2010*, <http://www.cidh.oas.org/medidas/2010.sp.htm>.

<sup>43</sup> OCMAL, *Aumento de Violencia en San Miguel Ixtahuacán*, July 19, 2010, <http://www.conflictosmineros.net/contenidos/15-guatemala/5707-aumento-de-violencia-en-san-miguel-ixtahuacan>.

<sup>44</sup> Letter from Goldcorp to Grahame Russell (Rights Action) and Javier de Leon (Asociación de Desarrollo Integral San Miguelense), a copy is archived with CIEL.

<sup>45</sup> MiningWatch Canada, *Urgent Action: Shooting of Community Leader Opposing Goldcorp Inc.'s Marlin Mine in Guatemala; Threats Against Local Leaders Escalate*, July 13, 2010, <http://www.miningwatch.ca/en/urgent-action-shooting-anti-mining-community-leader-opposing-goldcorp-incs-marlin-mine-guatemala-thr>.

<sup>46</sup> Amnesty International, *Guatemala: One mining activist shot, another threatened: Deodora Hernández and Carmen Mejía*, July 1, 2010, <http://www.amnesty.org/en/library/asset/AMR34/008/2010/en/957fdd4a-e9c5-429d-8682-07d10bf5da42/amr340082010en.html>.

discovered that her cooking utensils had been stolen. Not only did she lose belongings but she also was persecuted and harassed.

ii. *'Cerro Blanco' Mine Project*

In June 2010, a group of three environmentalists, Guatemalan and Salvadoran members of the Center for Research in Trade and Investment (CEICOM) and the Office for Peace and Justice of the Franciscan Order (JPIC) were detained for about two hours and threatened with death. The environmentalists were on their way to participate in a meeting to discuss the 'Cerro Blanco' mine project, which would affect the Ostúa and Lempa rivers and Güija Lake.<sup>47</sup> An armed group of six men intercepted the environmentalists along the highway to Guatemala City. After interrogating and robbing them of personal belongings, the perpetrators left them with threats to kill them if they did not comply with their orders.<sup>48</sup>

iii. *El Estor, Izabal*

In 1965, Guatemala issued a mining licence to the Canadian owned International Nickel Company Ltd. (INCO). The licence covered 365 square kilometres in the area of El Estor and was granted without local consent.<sup>49</sup> Since then, there have been conflicts about who holds rights to the land. Although the mine project has changed hands, the violations continue. In 1999, while the subsidiary Exploraciones y Explotaciones Mineras Izabal S.A. (EXMIBAL) operated in the area, activist and leader of a Maya Q'eqchi development organization Carlos Coc Rax "disappeared" while on his way to a negotiation on behalf of some indigenous communities. Before his death, the environmental defender had received death threats from a landowner. His family sought justice but dropped the case as a result of threats they received.<sup>50</sup>

In January, 2007, government security forces and a private security firm contracted by the Compañía Guatemalteca de Niquel (CGN) violently evicted the community of Lote 8, destroying the houses and belongings of 100 families living there. In a second round of evictions, 12 women from Lote 8 claim that they were raped by a group of security forces that included both state armed forces and private security guards contracted by CGN.<sup>51</sup> The land disputes continue. According to witnesses, on September 27, 2009, CGN security forces opened fire during an eviction of residents (CGN calls them "invaders"). Adolfo Ich Chaman, a teacher and community leader, was shot and killed. Eight other people were

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<sup>47</sup> OCMAL, *Amenazan de muerte a ambientalistas en resistencia a la minera*. August 4, 2010, <http://www.conflictosmineros.net/contenidos/14-el-salvador/5778-amenazan-de-muerte-a-ambientalistas-en-resistencia-a-la-mineria>; REMA, *Proyecto Minero Cerro Blanco en Guatemala Contaminaría el Río Lempa y Lago de Güija*, September 9, 2010, <http://remamexico.org/leer.php/1678570>.

<sup>48</sup> *Amenazan de muerte a ambientalistas en resistencia a la minera*, *supra* note 46.

<sup>49</sup> Indian Law Resource Center, *Mining forces Maya Q'eqchi' off their homelands*, <http://www.indianlaw.org/en/enews/april08/nickelmining>.

<sup>50</sup> Guatemala, Amnesty International, [http://www.amnestyusa.org/justearth/indigenous\\_people/guatemala.html](http://www.amnestyusa.org/justearth/indigenous_people/guatemala.html).

<sup>51</sup> Rights Action, *Human Rights Complaint to the Canadian Government Concerning Nickel Mining in Guatemala*, October 20, 2010, [http://www.rightsaction.org/articles/Complaint\\_HR\\_&Guate\\_Mining.html](http://www.rightsaction.org/articles/Complaint_HR_&Guate_Mining.html).

wounded.<sup>52</sup> Despite national and international calls for an investigation into the fore-mentioned events, to date they remain in impunity.

## C. HONDURAS

### *i. Francisco Machado Leiva*

As the director of the Association of Non-Governmental Organizations (ASONOG), Francisco Machado pressured Yamana Gold to change its mining practices. When ASONOG proposed an independent study of mining impacts in the community of San Andrés, Yamana Gold denied the inspector access to the mine. In 2008, there was a confrontation between Yamana Gold and the community during which a number of community members protested the destruction of a cemetery. Shortly thereafter, Francisco Machado learned that his name was on a blacklist. In September of that year, he was followed home and, fearing an assassination attempt, fled with his family to the United States where he obtained political asylum.<sup>53</sup>

In September 2008, the Civic Alliance for Democracy publicly denounced Minerales de Occidente (a subsidiary of Yamana Gold) for the arbitrary detention of 40 residents of Azacualpa by police, and for ongoing threats and intimidation. Information has emerged that the police action had been requested by the company as a response to complaints about the destruction of the Azacualpa cemetery.<sup>54</sup>

### *ii. Minerales de Occidente*

On November 26, 2003, Germán Rivas, director of the news company ‘CMV-Noticias,’ was murdered by a shot to the head by unknown individuals in Santa Rosa de Copán, a city near San Andrés where Yamana Gold operates.<sup>55</sup> He had previously received death threats and survived an initial assassination attempt.

Before his murder, German Rivas had denounced the construction of a mine in the Guisayote biosphere reserve and had spoken on television about the contamination of the Lara River, a tributary of the

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<sup>52</sup> Amnesty International, *Guatemala: Killings must not go unpunished*, October 14, 2009, <http://www.amnesty.org/en/library/asset/AMR34/013/2009/en/a59ee6b3-9c19-4292-b6cd-a0051c058f64/amr340132009en.html>

<sup>53</sup> Personal communication with Francisco Machado Leiva.

<sup>54</sup> OCMAL, *Denuncia contra la empresa Minerales de Occidente MINOSA*, September 23, 2008, <http://www.conflictosmineros.net/contenidos/17-honduras/4525>; Comité de Familiares de Detenidos Desaparecidos en Honduras, *MINOSA amenaza y hostiga a periodistas, ambientalistas y pobladores*, [http://www.cofadeh.org/html/noticias/minosa\\_hostiga\\_y\\_amenaza.htm](http://www.cofadeh.org/html/noticias/minosa_hostiga_y_amenaza.htm).

<sup>55</sup> UNESCO, *Director-General condemns assassination of Honduran journalist Germán Antonio Rivas*, December 3, 2003, [http://portal.unesco.org/en/ev.php-URL\\_ID=17497&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=17497&URL_DO=DO_TOPIC&URL_SECTION=201.html).

Higuito River, which provides water to 30,000 inhabitants of the city of Santa Rosa de Copán.<sup>56</sup> The company was fined only €140,000 in damages for the contamination.<sup>57</sup>

Even though at the time of Germán Rivas' death, his sister was vice-minister of the presidency, this crime remains unprosecuted.

### *iii. Mining Law*

In June 2007, during a peaceful demonstration in support of a new mining law which would have in effect protected communities, members of the national police attacked the crowd, beating people and using tear gas and firearms. Police gunfire injured three people, 17 demonstrators were beaten and another 59 detained,<sup>58</sup> an example of the violent response to peaceful protests. One month later, the Civic Alliance for Democracy and the Committee of the Families of Disappeared Detainees in Honduras publicly denounced the harassment and threats by mining companies in the area, as well as efforts to discredit people opposed to mining companies, such as Bishop Luis Alfonso Santos.<sup>59</sup>

## **D. EL SALVADOR**

The National Roundtable Against Metallic Mining is a coalition of civil society organizations in El Salvador that advocates for national legislation to control the environmental effects of mining or to prohibit metallic mining in the country. The Mesa, as it is known, has denounced environmental crimes that remain unprosecuted and violations of the human rights of environmental defenders.<sup>60</sup>

The controversial presence of Canadian mining company Pacific Rim in the department of Cabañas has led to a number of acts of violence against environmental defenders who question mining. In June 2009, the body of environmental defender Marcelo Rivera was found with signs of torture. On September 21, 2010, the Specialized Sentencing Court "B" convicted his killers. However, the Attorney General of the Republic closed the investigation that sought to determine who had planned the murder.<sup>61</sup> In June 2009, the same month that Marcelo Rivera was killed, three journalists from Radio Victoria received death threats warning them that they would "end up like Marcelo Rivera" if they continued to report on his disappearance and death. Days later, Luis Quintanilla, a priest who worked with environmental

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<sup>56</sup> ASONOG, *La Minería en Honduras*, March 2009,

<http://www.asonog.hn/2.%20Los%20programas/PARA%20WEB%20PGR/Mineria/Mineria%20en%20%20HONDURAS.pdf>.

<sup>57</sup> *Director-General condemns assassination of Honduran journalist Germán Antonio Rivas, supra*

<sup>58</sup> OCMAL, *Reprimen Manifiestan por Aprobación de Ley de Minería*, July 17, 2007,

<http://www.conflictosmineros.net/contenidos/17-honduras/3832>.

<sup>59</sup> OCMAL, *Hostigan y amenazan a miembros de la Alianza Cívica*, August 22, 2007,

<http://www.conflictosmineros.net/contenidos/17-honduras/3873>; OCMAL, *Ambientalistas exigen castigo a policías*, August 22, 2007, <http://www.conflictosmineros.net/contenidos/17-honduras/3876>.

<sup>60</sup> La Mesa Nacional Frente a la Minería Metálica, Blog *Es No Minería*, 2008-2010, <http://esnomineria.blogspot.com/>.

<sup>61</sup> Blog *Es No Minería*, *Comunicado de Prensa*, September 23, 2010, <http://esnomineria.blogspot.com/>.

defenders in the region, was kidnapped when leaving Radio Victoria after finishing his program. Quintanilla managed to escape.<sup>62</sup>

In December 2009, Ramiro Rivera Gómez, a member of the Mesa, and his wife Felicita Echeverría were shot to death. During the attack, a girl of 13 was also wounded. Ramiro Rivera's assassination was carried out despite the presence of two police officers who had been responsible for his protection since a prior attack against Ramiro Rivera in which he was shot eight times.<sup>63</sup> Dora "Alicia" Recinos Sorto, another environmental defender, was also assassinated that December. She was eight months pregnant and carrying her two-year-old son when she was shot.<sup>64</sup> Apart from the murder of Marcelo Rivera, the Attorney General and the police have not investigated these crimes.<sup>65</sup>

In 2009, Pacific Rim filed a lawsuit with the International Centre for the Settlement of Investment Disputes (ICSID)<sup>66</sup> claiming that the Government of El Salvador's denial of the company's applications for mining exploration permits violated the Dominican Republic-Central America Free Trade Agreement; and sought hundreds of millions of dollars in damages in its action.<sup>67</sup> On August 2, ICSID rejected El Salvador's preliminary objections and is now in the process of determining whether or not it has jurisdiction.<sup>68</sup> This lawsuit demonstrates the lack of balance between judicial mechanisms available to protect investments and lack of justice for the victims of rights violations who are vulnerable to environmental contamination.

## E. PANAMA

### i. 'Petaquilla' Mine Project

In May 2009, police from the city of Penonomé destroyed the encampment of two organizations: the Committee for the Closure of the Petaquilla Mine and the National Coordinating Committee for the Defense of Land and Water.<sup>69</sup> The former represents more than 55 communities, including dozens of

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<sup>62</sup> MiningWatch Canada, *Urgent Action: Threats and Violence Against Community Leaders in Cabañas, El Salvador*, August 21, 2009, <http://www.miningwatch.ca/en/urgent-action-threats-and-violence-against-community-leaders-caba-el-salvador>.

<sup>63</sup> MiningWatch Canada, *Second Anti-Mining Activist Killed in El Salvador*, December 24, 2009, <http://www.miningwatch.ca/en/second-anti-mining-activist-killed-el-salvador>.

<sup>64</sup> MiningWatch Canada, *Another Protester Against Pacific Rim Mining Corporations' El Dorado Project Assassinated in El Salvador — Second Community Activist Killed in Less Than a Week*, December 28, 2009, <http://www.miningwatch.ca/en/another-protester-against-pacific-rim-mining-corporations-el-dorado-project-assassinated-el-salvador>.

<sup>65</sup> Blog *Es No Minería, ¡Bienvenida la justicia!*, September 21, 2010, <http://esnomineria.blogspot.com/>.

<sup>66</sup> Committee in Solidarity with the People of El Salvador, *Release: World Bank tribunal gives green light to Canadian mining company's lawsuit vs. El Salvador*, August 6, 2010, [http://www.cispes.org/index.php?option=com\\_content&task=view&id=733&Itemid=98](http://www.cispes.org/index.php?option=com_content&task=view&id=733&Itemid=98).

<sup>67</sup> ICSID, *Pac Rim Cayman LLC v. The Republic of El Salvador, Decision on the Respondent's Preliminary Objections*, Case No. ARB/09/12, August 2, 2010, [http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC1652\\_En&caseId=C661](http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC1652_En&caseId=C661).

<sup>68</sup> *Id.*

<sup>69</sup> OCMAL, *La Verdad de la Represión a las Comunidades*, June 7, 2009, <http://www.conflictosmineros.net/contenidos/26-pana>

Indigenous and campesino communities in Panama. These two organizations had constructed an encampment in Nazareno to block two Canadian companies, Petaquilla Gold and Minera Panama, from accessing their mines.<sup>70</sup> The police fired tear gas, attacked the defenders, and detained 19 people.<sup>71</sup> The mining companies lent their helicopters to police to help them observe the incident.<sup>72</sup> On April 13, 2010, parliament approved Law 14 that prohibits the obstruction of highways by violent means. This law will seriously affect the right to free assembly and to peaceful association in order to protest. In response to community complaints of spills, in August 2010,<sup>73</sup> authorities found that tailing pond cyanide levels were 23 times higher than that permitted.

ii. *'Cerro Colorado' Mine Project*

In 2010, Yaritza Espinosa Mora, a member of the Ecological Voices Collective and the Hummingbird Ecological Association of Panama, had to briefly go into hiding because the government supposedly ordered her detention (although this was later denied) as a result of her activities in defence of the environment. Cerro Colorado is one of the largest copper deposits in the world and is expected to be opened up for production in the near future. The project lies within the Indigenous Ngöbe-Buglé Comarca, or administrative area, and would cause serious social and environmental impacts.<sup>74</sup>

On June 4, 2010, immigration officials detained Paco Gómez Nadal, journalist, president of the Latin American chapter of *Human Rights Everywhere*, and environmental defender. Gómez is a Spanish citizen and a legal resident of Panama. The officials have told him, however, that if he leaves the country he will not be allowed to return, although the reasons given for this decision frequently change.<sup>75</sup>

Panamanian environmental defender and member of the Ecological Voices Collective Olmedo Carrasquilla was detained in May 2010 for a supposedly "suspicious attitude" less than two weeks after he participated in an anti-mining protest at the Forum of Ministers of the Environment of Latin America and the Caribbean.<sup>76</sup>

iii. *The 'Sausage' (Chorizo) Law*

In June 2010, the government passed Law 30, the so-called 'Sausage' Law due to its enormous scope. It is a hard blow to environmental defenders because it eliminates obligatory environmental impact

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<sup>70</sup> *Id.*

<sup>71</sup> OCMAL, *Engaño y represión sufren en Petaquilla*, June 13, 2009, <http://www.conflictosmineros.net/contenidos/26-panama/4829>.

<sup>72</sup> *La Verdad de la Represión a las Comunidades*, *supra* note 68.

<sup>73</sup> José Arcia, *Detectan irregularidades en Petaquilla*, PRENSA.COM, October 6, 2010, <http://mensual.prensa.com/mensual/contenido/2010/10/06/hoy/panorama/2360057.asp>.

<sup>74</sup> Varios organizations, *Condenamos los deplorables sucesos ocurridos en Panamá y exigimos al Estado panameño respeto para los defensores ambientales*, 20 July 2010, <http://www.aida-americas.org/es/node/1581>.

<sup>75</sup> Human Rights Everywhere, *Persecution of Paco Gómez Nadal: When no news is news in itself*, July 24, 2010, <http://www.hrev.org/en/actualidad.php?idNoticia=301>.

<sup>76</sup> José Arcia, *Arrestan a ambientalista 'por actitud sospechosa'*, PRENSA.COM, May 12, 2010, <http://mensual.prensa.com/mensual/contenido/2010/05/12/hoy/panorama/2185074.asp>.



evaluations and allows mines to open that might create environmental problems. Furthermore, Law 30 limits the right to strike or form collective work agreements and prevents authorities from investigating cases of excessive use of force by the police – and thus has direct implications for environmental defenders. Law 30 could create a situation of impunity for the police and for mining companies with regard to their environmental responsibilities. Nonetheless, it is hoped that certain aspects of Law 30 will be improved as a result of a roundtable<sup>77</sup> established after the strike in Bocas del Toro in July 2010.<sup>78</sup> During the strike, grave human rights violations were committed.<sup>79</sup>

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

This report has analyzed the social and environmental impacts of the mining industry and the manner in which these impacts impinge on the rights of mine-affected people and communities. Environmental defenders have taken the lead to protect the environment and the rights of those affected by the impacts of mining and because of their work, they have been threatened and/or assassinated.

The case studies analyzed in this report show that violence is not limited to one particular mining company or one country. On the contrary, the case studies reflect a growing regional trend of violence against environmental defenders in the context of the mining industry. The case studies also reflect the absence of the state as guarantor of human rights. In fact, all too often states are corrupted and co-opted by economic interests, and assaults against environmental defenders occur with government support or acquiescence.

In light of this regional tendency of aggression against environmental defenders, we present four main recommendations to prevent and sanction human rights violations.

### **1. STRENGTHEN INSTITUTIONAL MECHANISMS TO PROTECT ENVIRONMENTAL DEFENDERS**

Frequently, assaults against environmental defenders are carried out with impunity, aggravating disregard for rights and causing suffering and anguish, violating the right to personal integrity. Governments must strengthen the ability of the state to thoroughly investigate attacks and sanction those responsible according to due legal process.

In addition, the state must promote national protection mechanisms, for instance, by appointing independent ombudspersons with the ability to investigate and make effective recommendations, and by setting up national programs that have measures for protection, emergency and relocation services, and resources for witness protection programs in cases of threats.

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<sup>77</sup> Ohigginis Arcia Jaramillo, *Dos proyectos sobre acuerdos de Ley 30 van para sanción*, PRENSA.COM, October 19, 2010, <http://mensual.prensa.com/mensual/contenido/2010/10/19/hoy/panorama/2375489.asp>.

<sup>78</sup> Manuel Vega Loo, *En la Presidencia se instala la mesa de diálogo por la Ley 30*, PRENSA.COM, [http://www.prensa.com/uhora/local\\_2010080314350358.asp](http://www.prensa.com/uhora/local_2010080314350358.asp).

<sup>79</sup> Human Rights Everywhere (HREV), *Versión actualizada del informe sobre derechos humanos en Bocas*, <http://www.hrev.org/es/actualidad.php?idNoticia=305>.



## **2. STRENGTHEN THE ENVIRONMENTAL MANAGEMENT FRAMEWORK OF THE MINING SECTOR IN COUNTRIES IN THE REGION**

The most effective method for preventing violence against environmental defenders is to recognize the close relationship that exists between environmental degradation caused by the mining industry and the violation of the rights of mine-affected people and communities. By ignoring this connection, governments and mining companies are incapable of recognizing the roots of community opposition to mining and as a result, often impose mining by force, including violence against environmental defenders.

The legal framework on mining must also strengthen environmental protection and the capacity of the state to monitor and sanction. The role of governments is to guarantee the rights enshrined in international human rights law, which requires the implementation of an adequate regulatory framework. Jurisprudence of the European Court of Human Rights related to dangerous activities and environmental protection, for example, emphasizes the role of the state to take effective protective measures to prevent environmental harm once risks associated with industrial activity have been verified. Such measures may include regulation regarding the establishment, operation, security, and supervision of the activity.<sup>80</sup> The African Commission on Human Rights and Peoples has also recognized the importance of ongoing environmental monitoring, as well as access to information by communities so that they may fully exercise their right to a healthy environment as recognized in the African Charter on Human Rights and Peoples.<sup>81</sup> As a result, the state cannot cite a lack of resources to justify the absence of effective regulation and oversight needed to ensure individual and collective rights of mine-affected people and communities.

## **3. RECOGNIZE AND IMPLEMENT THE RIGHT OF MINING-AFFECTED COMMUNITIES TO FREE, PRIOR, AND INFORMED CONSENT**

The legal framework on mining has particular relevance to the decision-making process for the installation of a mine. Effective channels for participation are essential to strengthening a democratic state based on the rule of law whereby laws are not only respected and enforced, but above all, human rights recognized at the constitutional and international levels are respected and guaranteed. The development of comparative environmental law in the region has greatly emphasized the importance of citizen participation in the decision making process. However, participatory measures are impossible to implement when those who would participate are threatened, assassinated or disappeared. This reinforces the importance of the right of communities to free, prior and informed consent.

Based on the right to free, prior and informed consent, a community that would be affected by a mine site could decide, in accordance with traditional decision-making measures, whether or not to accept the project. This right to consent puts the authority of the state over sub-soil natural resources at odds with the various rights of those affected by mineral production. Thus the rights of people and communities affected by mining, including those of environmental defenders, cannot be made subordinate to the particular interests of mining companies.

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<sup>80</sup> Dinah Shelton, *Developing Substantive Environmental Rights*, 1 J. OF HUMAN RIGHTS & THE ENV'T 89 (2010). *See also*, Marcos A. Orellana, *Derechos Humanos y Ambiente: Desafíos para el Sistema Interamericano de Derechos Humanos*, JORNADAS DE DERECHO INTERNACIONAL OEA 291 (2007).

<sup>81</sup> *Id.*

Regarding the rights of Indigenous and tribal peoples, in the case *Saramaka v. Surinam*, the IAHR Court has recognized that a lack of respect for the right to consent endangers group survival, particularly given the serious social and environmental impacts caused by large-scale investment and development projects.<sup>82</sup> There is no reason to deny the same protection to local communities that depend on their environment for their sustenance and well-being, when these are threatened by mining projects.

The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya, concluded after visiting Guatemala that “projects that have a significant impact on the rights of indigenous peoples, such as the Marlin mine, should not be implemented without the consent of the affected indigenous communities.”<sup>83</sup> The Special Rapporteur added that “the development of projects [...] without the consent of the affected peoples generates conflict with negative implications both for the social well-being of the communities concerned, as well as for the implementation of the project itself.”

#### **4. RECOGNIZE THE RESPONSIBILITY OF HOME COUNTRIES FOR THE VIOLENCE CAUSED BY THEIR MINING COMPANIES ABROAD**

Given the social violence, and particularly attacks against environmental defenders, that result from the presence and activities of foreign companies in Mexico and Central America, it is vital to reiterate the role of companies’ home countries to establish minimum standards for their operations and access to justice. In many cases, foreign companies operate using practices and methods that would not be acceptable within their countries of origin. People who suffer the effects of mining activity have no means of obtaining real judicial remedy in courts of the companies’ home country.

Many mining companies involved in the violence and attacks against environmental defenders in Mexico and Central America are of Canadian or US origin. In the US, the *Alien Tort Claims Act* allows for extraterritorial jurisdiction to compensate those who have suffered damages in violation of international law.<sup>84</sup> As well, certain laws like the *Foreign Corrupt Practices Act* impose extraterritorial obligations.<sup>85</sup> However, previous US court decisions have set a threshold that does not recognize environmental contamination as a violation of international law serious enough to merit compensation.<sup>86</sup> As a result, the US lacks effective environmental regulation to govern US companies operating abroad. In Canada, no legislation exists that would give its courts jurisdiction for violations of human rights committed abroad by Canadian companies. The Canadian government is currently debating Bill C-300 that would establish human rights standards for Canadian extraction companies operating outside Canada. It would not,

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<sup>82</sup> Case of the Saramaka People v. Suriname. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 185, [http://www.corteidh.or.cr/pais.cfm?id\\_Pais=11&CFID=1557750&CFTOKEN=35359041](http://www.corteidh.or.cr/pais.cfm?id_Pais=11&CFID=1557750&CFTOKEN=35359041)

<sup>83</sup> *Preliminary note on the application of the principle of consultation with indigenous peoples in Guatemala and the case of the Marlin mine*, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, A/HRC/15/37/Add.8 (July 8, 2010), paragraph 31.

<sup>84</sup> ATCA 28 U.S.C. § 1350 (1789).

<sup>85</sup> FCPA 15 U.S.C. §§ 78dd-1, et seq. (1977).

<sup>86</sup> *Flores v. Southern Peru Copper Corp.*, C.A.2 (NY) 2003, 343 F.3d 140.

however, create mechanisms for community members that suffer damages to seek recourse in Canadian courts.<sup>87</sup>

The definition of jurisdiction for international human rights laws is in a process of transition in the international arena.<sup>88</sup> For example, the UN Committee on Economic, Social, and Cultural Rights has affirmed that member states of the Universal Pact for Economic, Social and Cultural Rights are obligated to respect the right to water in other countries.<sup>89</sup> Also, the Committee for the Elimination of all Forms of Racial Discrimination has stated in its observations regarding Canada that the state “must take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which could negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada.”<sup>90</sup> We believe that the IACHR, in its role of encouraging the observance and promotion of human rights in the Americas, could contribute to strengthening the control of the home states of mining companies that generate violence in other countries on the continent.

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<sup>87</sup> Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil and Gas in Developing Countries, Introduced Feb. 9, 2009.

<sup>88</sup> Mark Gibeny & Sigrun Skogley eds., *Universal Human Rights and Extraterritorial Obligations* (2010).

<sup>89</sup> CESCR, General Comment 15 (2002), [www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf)

<sup>90</sup> CERD, *Concluding observations: Canada*, 25 May 2007, U.N. Doc. CERD/C/CAN/18, paragraph 17, <http://www.unhcr.org/refworld/country,,CERD,,CAN,,465fe0082,0.html>



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