



UNITED NATIONS HUMAN RIGHTS COUNCIL  
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**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION  
TO THE UNIVERSAL PERIODIC REVIEW OF CANADA**

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*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

## **ICJ SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF CANADA**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Canada. In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) an overview and suggested recommendations relevant to: (1) the activity of the business sector and its implication for human rights, as this relates to the mining sector and the recent Bill to impose guidelines of responsible and human rights compliant behaviour for Canadian mining, gas and oil companies operating overseas; (2) the use and exportation of asbestos to other States; and (3) Canada's engagement with international human rights instruments and mechanisms.

### **Mining Companies and Human Rights**

2. Canada is reportedly home to roughly 75 per cent of the world's major mining and exploration companies.<sup>1</sup> The industry has constituted a pillar of the Canadian economy. There are credible allegations according to which Canadian mining companies have increasingly been involved in incidents of gross human rights abuses abroad against local communities inhabiting lands where mining companies are conducting operations.

3. For example, Anvil Mining Congo, a subsidiary of the Australian/Canadian mining company Anvil Mining, is accused of having provided logistical assistance to the Congolese military involved in the unlawful killings of more than 70 people near the town of Kilwa in the Democratic Republic of Congo in 2004. Three employees of the mining company Anvil Mining Congo were also accused of complicity in these killings, in particular by providing transport for the military personnel involved. On 8 November 2010, an association of relatives of victims and survivors - which is supported by a coalition of Canadian, international and Congolese non-government organizations - filed a class action in a Montreal court against Anvil Mining Limited.<sup>2</sup> The judge hearing the case ruled that the case could be heard in the Superior Court of Quebec, as there are no other avenues through which these victims and their families can seek justice. In response, Anvil called for the right to file an appeal to the Judge's decision, and was granted this right. On 25 November 2011 a trial began in a Montreal court to determine the legitimacy of this appeal,<sup>3</sup> but the appeals court overturned the decision of Judge Emery anyway. Plaintiffs have appealed this decision to the Supreme Court of Canada.<sup>4</sup>

4. Another example relates to gang rapes and other abuses allegedly carried out by employees of Barrick Gold, a Canadian company that is the world's largest gold producer operating in the Porgera mine in Papua New Guinea. In a 94-page report by Human Rights Watch, *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*, systemic failures are identified that kept Barrick Gold from recognizing the risk of abuses, and responding to allegations that abuses had occurred. The report examines the impact of Canada's failure to regulate the overseas activities of its companies and also calls on Barrick to address environmental and health concerns around the mine with greater transparency. In a public statement, Barrick Gold called the results of its internal investigation "disturbing" and announced the termination of several security personnel for involvement in, or failure to report, alleged incidents of sexual violence. Police arrested three current and former Porgera Joint Venture employees in January 2011. Two were charged with rape and the third with inflicting grievous bodily harm.<sup>5</sup>

5. On 27 October 2010, Bill C-300 was defeated in the House of Commons of the Canadian Parliament. The Bill had been drafted in order to give the Canadian Government the means of establishing guidelines for responsible behaviour for Canadian gas, oil and mining companies operating overseas based on established principles of international human rights law. The Government would have had the power, *inter alia*, to investigate credible allegations of Canadian companies ignoring the guidelines and to withhold Government assistance where companies were found to have breached the guidelines.<sup>6</sup> The Bill would have gone a long way towards satisfying Canada's requirement for a human rights compatible regulatory framework, articulated for example by the UN Committee on the Rights of the Child,<sup>7</sup> and the Guiding Principles on Business and Human Rights adopted by the Human Rights Council. The Bill was defeated by 140-134 votes. The Canadian Government has not set up any alternative framework to date.

### **Canadian Asbestos Exports and Human Rights**

6. When inhaled, asbestos poses an extremely high risk of causing lung cancer and mesothelioma and it has been banned in many countries, although it is still heavily used in less

industrialised countries where little protection is provided for workers.<sup>8</sup> While Canada has been actively removing all traces of asbestos from Canadian buildings, it has remained one of the world's largest chrysotile asbestos exporters, especially to developing countries. Officials insist that asbestos can be harmless if handled according to proper safety standards and note the hundreds of jobs created by mining operations in central Quebec, the only region of Canada where the material is still extracted. However, the World Health Organisation (WHO) estimates that more than 107,000 people die each year from asbestos-related lung cancer and mesothelioma, and that all forms of asbestos are strongly carcinogenic. Further, safety practices in the developing world are often so inadequate that it is impossible to guarantee secure use of the substance, thereby significantly multiplying the risk of cancer.

7. While a number of mines in Quebec have steadily seen a decrease in the size of their operations, the Government of Quebec, as recently as July 2012, approved a \$58-million (CAD) bank-loan guarantee to keep the Jeffery chrysotile mine running.<sup>9</sup> The active promotion of asbestos production and exportation cannot be harmonised with Canada's human rights obligations.<sup>10</sup> Not only does increased use of asbestos in developing countries with often lax safety standards substantially increase the risk of people falling victim to asbestos related health problems, but the likelihood of direct exposure to asbestos by children is substantially higher in the developing world where minimum working age requirements are either nonexistent or inadequately enforced.

### **International Human Rights Instruments and Mechanisms**

8. The Government of Canada is a party to several of the core human right treaties, but it is yet to become party to the Optional Protocol (OP) to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the OP to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Third OP to the Convention for the Rights of the Child (CRC), the International Convention for the Protection of the Rights of All Migrants Workers and Members of Their Families (ICRMW), and the International Convention for the Protection of All Persons from Enforced Disappearances (CPEd).

9. The Government of Canada has failed to adhere to the following periodic reporting deadlines to the treaty bodies:

- Submission of its sixth periodic report to the Human Rights Committee (HRCttee), due on 20 October 2010;
- Submission of its sixth periodic report to the Committee on Economic, Social and Cultural Rights (CESCR), due on 30 June 2010; and
- Submission of its seventh periodic report to the Committee against Torture, due on 1 June 2012.

10. Although the Government extended a standing invitation to the Special Procedures in April 1999, it has three pending requests for visits by the Special Rapporteur on the human rights of migrants, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the sale of children, child prostitution and child pornography.<sup>11</sup>

### **Recommendations**

11. The ICJ calls upon the Working Group and the Council to recommend to the Government of Canada to:

#### *Concerning Canadian mining companies*

- i). Adopt a legislative framework enabling legal accountability of Canadian companies in Canada for human rights and environmental abuses perpetrated or contributed to abroad;
- ii). Adopt effective monitoring mechanisms to monitor Canadian companies or multinational enterprises operating abroad through subsidiaries or joint ventures in order to ensure respect for human rights, and the provision of effective remedies for those whose rights are impaired;
- iii). Undertake prompt, effective and independent investigations into allegations of human rights abuses by Anvil Mining Congo, a subsidiary of the Australian/Canadian mining company Anvil Mining, and Barrick Gold, a Canadian company;

#### *Concerning Canadian asbestos exports*

- iv). Adopt a legislative framework and policy to ensure a substantial decrease in use of asbestos and in particular in the export of asbestos to developing countries;

- v). Establish an effective monitoring mechanisms to monitor the use of Canadian-sourced asbestos abroad and the safety conditions of workplaces in which Canadian-sourced asbestos is being used;

*Concerning international instruments and mechanisms*

- vi). Become party to: the OP to the ICESCR, the OPCAT, the Third OP to the CRC, the ICRMW and the CPED;
- vii). Provide without delay its sixth periodic report to the Human Rights Committee, its sixth periodic report to the Committee on Economic, Social and Cultural Rights, and its seventh periodic report to the Committee against Torture;
- viii). Accept the requests of the Special Rapporteur on the human rights of migrants, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the sale of children, child prostitution and child pornography to undertake official missions in Canada at the earliest possible opportunity, and extend to them all reasonable cooperation and assistance to facilitate a timely and effective country mission;
- ix). Present to the Council, as soon as possible after adoption of the outcome document for the UPR of Canada, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and
- x). Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

ENDNOTES:

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<sup>1</sup> Human Rights Watch, *Canada: Monitoring of Mining Companies Long Overdue*, available at <http://www.hrw.org/news/2010/10/27/monitoring-mining-companies-long-overdue> (last viewed 10 September 2012).

<sup>2</sup> Global Witness, *Congolese victims file class action against Canadian mining company*, available at <http://www.globalwitness.org/library/congolese-victims-file-class-action-against-canadian-mining-company> (last viewed 10 September 2012).

<sup>3</sup> Mennonite Central Committee, *Canadian Anvil Mining Ltd taken to Court for massacre in the Congo*, available at <http://ottawa.mcc.org/stories/news/canadian-anvil-mining-ltd-taken-court-massacre-congo> (last viewed 10 September 2012).

<sup>4</sup> <http://www.globalwitness.org/library/congolese-victims-pursuit-justice-against-canadian-company-goes-supreme-court> (last viewed 10 September 2012)

<sup>5</sup> Human Rights Watch, *Papua New Guinea: Serious Abuses at Barrick Gold Mine*, available at <http://www.hrw.org/news/2011/02/01/papua-new-guinea-serious-abuses-barrick-gold-mine>, (last viewed 10 September 2012)

<sup>6</sup> Amnesty International, *Bill C-300: Canada misses crucial opportunity to protect rights*, available at <http://www.yenihayatnews.com/news/?p=5205>, (last viewed 10 September 2012).

<sup>7</sup> The CRC has called on States to provide a regulatory framework for "rights-based environmental and social impact assessments" for mining projects. Committee on the Rights of the Child, *Concluding Observations: Peru*, UN Doc. CRC/C/PER/CO/3, 27 January 2006, para. 51.

<sup>8</sup> The Ecologist, *Plans to reopen asbestos mine will create 'new generations' of victims*, available at [http://www.theecologist.org/News/news\\_round\\_up/702954/plans\\_to\\_reopen\\_worlds\\_largest\\_asbestos\\_mine\\_will\\_create\\_new\\_generation\\_of\\_victims.html](http://www.theecologist.org/News/news_round_up/702954/plans_to_reopen_worlds_largest_asbestos_mine_will_create_new_generation_of_victims.html), (last viewed 10 September 2012).

<sup>9</sup> <http://miningfacts.org/Blog/Mining-News/Asbestos-subsidies--Canadian-taxpayers-should-not-be-required-to-subsidize-uneconomic-activities/> and <http://www.mesotheliomaoptions.com/news/government-loan-resuscitates-quebecs-asbestos-industry/> (last viewed 10 September 2012).

<sup>10</sup> Eg Article 24(c) of the Convention on the Rights of the Child imposes the necessary condition of a clean environment and an obligation upon States to ensure adequate living conditions, while under Article 27(1) every child has the right to a standard of living adequate for his/her development. The Convention also calls on States to promote international cooperation to progressively reach the full realisation of the right to the full enjoyment of the highest attainable standard of health (Article 24(4)).

<sup>11</sup> Requests for country visits were made by the following Special Procedures in the year provided in parenthesis: Special Rapporteur on the human rights of migrants (2006), the Special Rapporteur on extrajudicial, summary or arbitrary executions (2010), and the Special Rapporteur on the sale of children, child prostitution and child pornography (2010).