



EXECUTIVE SUMMARY

THE TWO FACES OF CANADIAN DIPLOMACY

UNDERMINING HUMAN RIGHTS AND ENVIRONMENT DEFENDERS TO SUPPORT CANADIAN MINING



Title: Executive Summary: The Two Faces of Canadian Diplomacy: Undermining Human Rights and Environment Defenders to Support Canadian Mining

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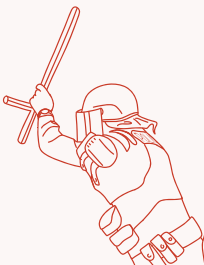
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EXECUTIVE SUMMARY

Globalized industrial resource extraction is unsustainable from an environmental and social perspective, and Indigenous peoples are often on the front lines of alerting humanity to the resulting harms. Community members and their allies become environment and human rights defenders (HRDs) when they publicly allege harms on the part of state or company actors. As extraction intensifies around the world, so has the criminalization, threats, attacks, and even killings of HRDs. International bodies now regularly refer to this situation as a global crisis.

In 2017, while working as Latin America Program Coordinator for MiningWatch Canada, Canadian Jennifer Moore collaborated with local organizations to screen a documentary film among original Quechua communities affected by the Constancia Mine, located in southern Peru and owned by Canadian company Hudbay Minerals Inc. The documentary presented critical community and expert testimony about Hudbay's operations across the Americas. In the midst of the film screenings, Peruvian authorities detained Moore, banned her from re-entering the country, and labelled her a threat to national security. Moore was narrowly able to flee the country. In 2019, 2020, 2021, and 2022, the Peruvian courts found that Peru's actions violated Moore's human rights. The courts also made findings that Peruvian police were biased against Moore in part because of their services contract with Hudbay, and that the officers involved should be investigated.

Canada is a "home state" to many mining companies operating globally and has played a strategic role in facilitating the global dominance of Canadian companies in the extractive sector. For more than a decade, international bodies have articulated the obligations of home states to support HRDs abroad, especially when their work relates to an extractive project supported by that home state. In response to international pressure, in 2016, Canada announced *Voices at Risk: Canada's guidelines on supporting human rights defenders*, updated in 2019. This document specifies how Canadian embassies and other officials should support HRDs, including Canadian HRDs, and promote responsible conduct on the part of Canadian companies operating abroad. \ In spite of this, there is a lack of research on the critical question of whether or not the Guidelines have actually improved support for HRDs in practice. There is a lack of transparency about how Canadian officials implement the Guidelines, and there is no system of evaluation, monitoring, public reporting, or accountability. This report is a first attempt to respond to this significant knowledge gap. It documents and analyzes a case study of how Canadian officials responded to the criminalization of Canadian HRD Jennifer Moore.

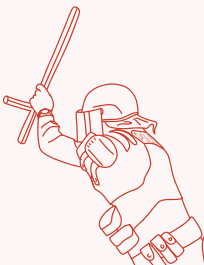


PROYECCIÓN DEL DOCUMENTAL: “FRAUDE DE FLIN FLON”



Image used to promote the documentary “Flin Flon Film Flam” in Cusco, April 2017
Source: CooperAcción

Citing hundreds of pages of government records, this report documents how Canadian officials utterly failed to comply with the Guidelines and take meaningful steps to support Moore. Beyond simple neglect, the records show that Canadian public servants held political bias against Moore; actively refused to recognize her as an HRD in spite of clear evidence and widespread expressions of civil society support for her work; and made statements to UN bodies that were false and misleading with respect to what they knew about Hudbay’s potential involvement. The records reveal that these failures were systemic, persisted over time, and involved dozens of Canadian officials at all levels. In light of these serious and systemic failings, this report makes recommendations that pertain specifically to Moore’s case, while underscoring the need for fundamental reforms to Canada’s broader law and policy framework in this area.



SUMMARY OF RECOMMENDATIONS

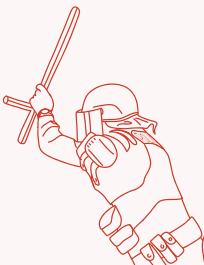
This report reveals that the Guidelines in their current form have not ensured that Canadian officials achieve the stated objective of effectively supporting HRDs. It also illustrates a number of basic rule of law issues with Canada's Guidelines, including the lack of reporting and transparency in their implementation; the lack of clarity regarding the nature of Canada's normative obligations described in the Guidelines; and the lack of independent oversight to ensure accountability for their implementation. In spite of this, we have specifically chosen not to include recommendations with respect to Canada's policy approach to economic diplomacy and HRDs abroad.

We believe that such recommendations should only be developed after a fulsome process of civil society engagement. This should include HRDs, Indigenous peoples, communities, and groups who are directly impacted by the impacts of industrial resource extraction abroad, which enjoys the support of the Canadian government and diplomatic missions. This follows the principle that policy reforms should be informed by empirical research like that undertaken in this report, as well as by the lived experience and perspectives of those who are directly impacted by the policies under discussion.



In addition to considering some of the narrow rule of law issues we outline above, such a dialogue should also involve more ambitious and visionary interrogations of the appropriate relationship between the Canadian state and the Canadian private sector in the overseas context. This includes the question of whether or not it is appropriate *at all* for Canada to provide diplomatic support to Canadian companies in sectors like resource extraction. This question arises due to the systematic way in which these activities violate rights, the enormous power disparities between companies and affected communities, and the ways in which domestic corporate law and international economic law currently constitute, enable, and protect transnational corporations from accountability. We firmly believe this is an important line of inquiry and we hope that this report will feed into its development.

In this report, we have focused our recommendations on the needs of defenders. We outline the need for specific actions and remedies to end the criminalization of Jennifer Moore, and to prevent similar situations from occurring to other defenders, including through the full implementation of the Guidelines on the part of Canadian officials. We also address specific actions that Canadian officials should take to discharge their responsibility to use Canada's power and influence to encourage Hudbay and Peruvian officials to respect the human and environmental rights of affected communities. The following recommendations are urgent and should be pursued as soon as possible by the Canadian officials referred to here.



RECOMMENDATIONS DIRECTLY RELATED TO THE CRIMINALIZATION OF MOORE

RECOMMENDATION 1

Canada's federal Parliamentary Subcommittee on International Human Rights should conduct a comprehensive review of the failures of Canadian officials to uphold the *Voices at Risk* Guidelines in the case of Jennifer Moore. This review should access all records, including those portions that are currently redacted. The terms of the review should be developed in consultation with Moore and the results should be published in a timely way. This case-specific review should be part of a larger evaluation of the efficacy of the Guidelines by the Sub-Committee, in consultation with groups who have direct experience supporting HRDs and the defenders with whom they partner.¹

RECOMMENDATION 2

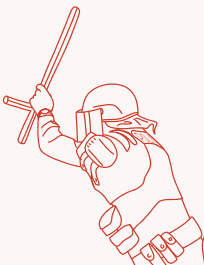
Canada's Ambassador to Peru should take immediate steps to uphold the *Voices at Risk* Guidelines with respect to Moore's case. This includes publicly expressing support for Moore's work in Peru, and the work of all filmmakers, journalists, academics, and HRDs who support mine-affected communities, including those affected by Hudbay's Constanca Mine. This further includes calling on Peruvian authorities to abide by court orders, investigate the actions of the public officials involved in violations of Moore's constitutional rights, and remove the stigmatizing and defamatory statement about John Dougherty and Jennifer Moore from the Ministry of the Interior's website.

¹ The federal Commissioner for the Environment and Sustainable Development may also have the jurisdiction to review Canada's performance pursuant to the *Voices at Risk* Guidelines.



RECOMMENDATION DIRECTLY RELATED TO CANADA'S INFLUENCE OVER HUDBAY'S CONSTANCIA PROJECT

In the second section of this report, we detail serious ongoing concerns regarding Hudbay's exploitation and expansion as part of the Constancia project. This includes ongoing social, environmental, economic and health impacts. There is evidence that the company has failed to respect its agreements with affected groups, and that it has insisted on signing agreements with original Quechua communities that are grossly unfair and inequitable. Chronic social conflict has resulted, as well as frequent, legitimate protests for which community members have been subject to excessive police presence, violent repression and, at times, criminalization, including cases of prolonged legal persecution. There is also a court finding that Hudbay's security agreement with Peruvian police contributes to police bias in favour of the company's interests, and to the detriment of defenders and affected communities.



RECOMMENDATION 3

We urge Canadian officials to

- Strictly adhere to applicable laws and international human rights treaties and policies to help address these issues within the scope of Canada's sphere of influence and regulatory power;
- Urge Hudbay and Peruvian officials to comply with the Constitutional Court's decision (Exp. No. 00009-2019-AI/TC) and with public international law standards regarding Hudbay's security arrangements with private and state security forces, including abstaining from using company-hired police to respond to protests;
- Fully respect the self-determination of affected communities and use all available channels to ensure that Hudbay's agreements with communities meet the criteria for rights-focused equitable agreements set out by former UN Special Rapporteur James Anaya in 2013;
- Use all available channels to pressure Hudbay to respect agreements signed with communities, and to ensure that these agreements do not constrain the collective rights of Indigenous communities; and
- Recognize the communities affected by Hudbay's Constancia mine as land and environment defenders, and urge all public and private actors involved to respect and protect the rights of these defenders to free expression, to social protest, and to live in a healthy environment, including to prohibit gag orders in signed agreements and to end the legal persecution and criminalization of community members who have participated in protests.

Conflicts such as those at Hudbay's Constancia mine occur, in part, because communities lack access to effective mechanisms to protect their rights and hold companies accountable. The Canadian government should ensure effective means in Canada for communities to seek meaningful accountability for the harms they have suffered due to the acts and omissions of companies domiciled or obtaining funding in Canada. In developing any interventions in support of local human rights defenders, Canadian officials should consult closely with affected communities and the social organizations that communities trust.





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