



The Role of Home States in Resource Extraction and Racial Discrimination

Submission to the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance

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Above Ground is a Canadian charitable initiative that works to ensure companies based in Canada or supported by the Canadian state respect human rights wherever they operate. Through research, analysis, collaboration and outreach, we shed light on the impacts of Canadian business activity abroad and advance solutions for corporate accountability and access to justice in Canada.

We frequently encounter reports of serious harms suffered by indigenous and Afro-descendant communities as a consequence of Canadian extractive operations abroad. To give just a few examples:

- Members of the Mayan Q'eqchi' population from El Estor, Guatemala allege that between 2007 and 2009, guards employed by Hudbay Minerals at its Fenix nickel mine killed a local community leader, seriously wounded another local resident and gang-raped eleven women.¹
- Oil company Pacific Exploration & Production's operations in Puerto Gaitán, Colombia were suspended in 2015 by Colombia's Constitutional Court. The company failed to adequately consult the Sikuani indigenous nation, whose territory is affected by its operations.²
- Afro-Brazilian communities near Kinross Gold's Morro do Ouro mine were displaced from their traditional territories when the mine was dramatically expanded between 2006 and 2011.

The latter case is documented in detail in a report we published in 2017 with Brazilian organization Justiça Global: *Swept Aside: An Investigation into Human Rights Abuse at Kinross Gold's Morro do Ouro Mine*.³ We call your attention to this case in particular because it highlights the role that extractive corporations' home states can play in facilitating business activity that violates the rights of ethnic minorities abroad.

¹ See "Choc v. HudBay Minerals Inc. & Caal v. HudBay Minerals Inc.," at www.chocversushudbay.com.

² Corte constitucional de la República de Colombia, Sentencia T-764/15, 16 Dec 2015, www.corteconstitucional.gov.co/relatoria/2015/t-764-15.htm.

³ <https://aboveground.ngo/wp-content/uploads/2017/12/Swept-Aside-Kinross-Morro-do-Ouro-report.pdf>

Quilombola communities were founded generations ago by freed slaves. Their territorial and cultural rights are protected under the Brazilian Constitution. As our report shows, the expansion of Kinross's mine brought serious harm to three neighbouring quilombola communities. In 2009, Brazilian state agency INCRA reported that the company's actions resulted in the "elimination" of one of these ethnic communities.⁴

The quilombola communities had been formally recognized by federal authorities and were in the process of securing collective title to their lands when Kinross acquired the mine in 2004. State authorities granted licenses for the mine's expansion with no regard to the outstanding land claims and despite several lawsuits launched by public prosecutors to halt the licensing process until the communities' rights were addressed.

Nonetheless, over the period of the expansion, and despite an exhaustive public record from Brazilian authorities regarding its impacts on quilombola communities, Kinross received substantial financial support from the Canadian government through its export credit agency. The agency continued to finance Kinross even after Brazilian prosecutors had launched lawsuits attempting to halt the project to protect the communities' rights.

Since the publication of our report, the Brazilian government has shifted authority for indigenous and quilombola land claims to its agriculture ministry, deepening concerns regarding the primacy of commercial interests over the rights of these communities, and the attendant risk of further abuse.

The story of Morro do Ouro provides a compelling illustration of the governance gap that often surrounds the operations of multinational extractive companies. It follows a pattern seen throughout the world, in which host state governments do not protect people's rights in the context of large-scale resource development projects. Extractive companies' home states, in turn, generally lack effective laws or policies to prevent or remedy harms caused by their operations abroad — even when the company is directly financed by the state.

This pattern is well documented in the Americas by the Inter-American Commission on Human Rights. In its 2015 report, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*,⁵ the commission describes the disproportionate impact of extractive industries on indigenous, tribal and Afro-descendant communities. The commission explicitly addresses the role of

⁴ INCRA, Relatório Técnico de Identificação e Delimitação do território quilombola de Machadinho, Relatório Antropológico, 2009.

⁵ OEA/Ser.L/V/II, Doc. 47/15, 31 December 2015
<http://www.oas.org/en/iachr/reports/pdfs/extractiveindustries2016.pdf>

home states in facilitating the overseas operations of extractive companies. It identifies the need for “foreign and transnational corporations to (...) be held accountable in their home countries for actions that violate the human rights of indigenous peoples and Afro-descendants in the Americas.”⁶ It also provides this recommendation:

States of origin in the Americas should adopt appropriate mechanisms of supervision and regulation of the activities of their companies and nationals abroad in line with the relevant international human rights standards. They should also refrain from offering public support to companies involved in human rights violations and to initiatives oriented to influence the adoption of norms or public policies which are solely favorable to their economic interests, in detriment of human rights protection in the host countries.⁷

As former UN independent expert Cephas Lumina affirmed, “[w]hen a Government, directly or through its export credit agency, fails to exercise due diligence to protect human rights from the potentially harmful behaviour of non-State actors, it is in breach of its obligations under international human rights law.”⁸

We encourage you to give attention in your upcoming report to the duty of home states to protect against the violation of indigenous and ethnic communities’ human rights by non-state actors, including through the actions of public agencies charged with facilitating business activity, such as export credit agencies.

⁶ *Ibid* at page 18.

⁷ *Ibid* at page 179.

⁸ U.N. General Assembly, 66th Session. Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. 5 August 2011 (A/66/271) at para 23.