



## **Universal-Periodic-Review (UPR) 23rd Session**

(2<sup>nd</sup> to 13<sup>th</sup> November 2015)

### **Human Rights Situation in Australia**

**With focus on the Government of Australia's responsibility toward the human rights violation committed by Australian corporations.**

**Joint Submission of :**

**Franciscans International (FI)**

**Europe Third World Center (CETIM)**

**Alyansa Tigil Mina (ATM)**

**Fundacion de Estudios para la Aplicacion del Derecho (FESPAD)**

Geneva, March 2015

## **Introduction**

1. The organisations listed below present this submission concerning the human rights situation in Australia for consideration by the UPR Working Group at its 23<sup>rd</sup> session, November 2015. The human rights issue addressed is **Government of Australia's responsibility toward the human rights violation committed by Australian corporations abroad.**
2. **Franciscans International (FI)** is a faith-based International Non-Governmental Organization (INGO) with General Consultative Status with the Economic and Social Council of the United Nations. It was founded in 1982 to bring to the UN the concerns of the most vulnerable.
3. **Alyansa Tigil Mina (ATM)** is a coalition of mining-affected communities and their support groups, including non-governmental organizations, faith-based groups, academic institutions, and other groups collectively challenging the promotion of destructive large-scale mining in the Philippines. ATM works to protect Filipino communities and natural resources that are threatened by large-scale mining operations. Human rights is a central basis for ATM's work, particularly in defending community and individual rights. The alliance aims to shift the policy framework on extracting minerals in the Philippines, from simply "extracting and profiting from mining minerals" to "mineral management towards national industrialization". ATM also believes this shift will drive local sustainable development, promote resilient communities and facilitate national industrialization.
4. **Europe Third World Center (CETIM)** is a not-for-profit association with general category consultative status with the United Nations Economic and Social Council (ECOSOC). Founded in 1970, CETIM pursues its research and publications devoted to North-South relations. CETIM has steadfastly focused on human rights and participated actively in related United Nations work.
5. **Fundacion de Estudios para la Aplicacion del Derecho (FESPAD)** is a non-governmental organization based in El Salvador that promotes and defends human rights. It was founded in 1988.
6. This UPR Submission will present the human rights violation committed by Australian corporations abroad by bringing the cases of the alleged human rights violations by OceanaGold Corporation in the Philippines and in El Salvador. The reports will focus on the impact of the extractive activities on the enjoyment of human rights of Indigenous Peoples, Local Communities, Women and Human Rights Defenders.

## **Government of Australia's responsibility toward the human rights violation committed by Australian corporations**

### ***First-Cycle UPR Recommendations***

7. Australia was reviewed by the Universal Periodic Review Working Group on its 8<sup>th</sup> meeting on 27 January 2011. Among the UPR recommendations accepted by Australia, there are three recommendations which are relevant for the extra-territorial responsibility of the Government of Australia for human rights violations committed by Australia corporations.
8. The first two recommendations are the recommendation from Cambodia "Continue to promote and protect human rights internationally through bilateral and multilateral dialogue to enhance human rights capacity regionally across the Asia-Pacific and globally through the AusAID (recommendation

86.144) and the recommendation from Chad, “Continue its efforts for the promotion and protection of human rights in the world and in their country (recommendation 86.145)”.<sup>1</sup> The acceptance of these two recommendations by the Government of Australia shows that Australia is committed to promote and protect human rights, not only within its own territory, but also beyond, as expressed in its UPR National Report which explained that “Actions taken by the Australian Government since 2007 demonstrate its commitment to engaging with the UN and affirm Australia’s longstanding commitment to the international protection of human rights.”<sup>2</sup>

9. The Government of Australia also accepted the recommendation from Austria to “Follow up on the implementation of recommendations of human rights mechanisms.”<sup>3</sup> With regard to the extra-territorial obligation, the UN Committee on Elimination of Racial Discrimination (CERD) in its Concluding Observation for Australia in 2010 expressed its concern on the negative impact of Australian corporations at home and abroad.
10. *“The Committee notes with concern the absence of a legal framework regulating the obligation of Australian corporations at home and overseas whose activities, notably in the extractive sector, when carried out on the traditional territories of Indigenous peoples, have had a negative impact on Indigenous peoples’ rights to land, health, living environment and livelihoods...(T)he Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of Australian corporations which negatively impact on the enjoyment of rights of indigenous peoples domestically and overseas and to regulate the extra-territorial activities of Australian corporations abroad. The Committee also encourages the State party to fulfil its commitments under the different international initiatives it supports to advance responsible corporate citizenship.”*<sup>4</sup>
11. In the review of Australia by the UN Committee on The Rights of the Child in 2010, the Committee expressed that, *“Australian mining companies’ participation and complicity in serious violations of human rights in countries such as Democratic Republic of Congo, the Philippines, Indonesia ad Fiji, where children have been victims of evictions, and dispossession and killing.”*<sup>5</sup> In its Concluding Observations, the Committee recommended that Australia, *“Examine and adapt its legislative framework to ensure the legal accountability of Australian companies and their subsidiaries regarding abuses to human rights, especially child rights, committed in the territory of the State party or overseas and establish monitoring mechanism, investigation, and redress of such abuses.”*<sup>6</sup>

## ***Promotion and Protection of Human Rights on the Ground***

### **Case of OceanaGold in the Philippines**

#### **Background**

12. In the Philippines, the operations of the Melbourne-based gold producer OceanaGold Corporation, through its fully-owned subsidiary OceanaGold Philippines Inc. (OGPI), have been recognized by public authorities as a *“classic and lamentable example of how economic aggression denigrates the most*

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<sup>1</sup> A/HRC/17/10 para 86.144 and 86.145 and A/HRC17/10/Add.1 para 3.

<sup>2</sup> A/HRC/WG.6/10/AUS/1 para 142.

<sup>3</sup> A/HRC/17/10 para 86.35.

<sup>4</sup> CERD/C/AUS/CO/15-17/CRP.1 para 13

<sup>5</sup> CRC/C/AUS/CO/4, para 27

<sup>6</sup> Idem para 28

*basic of human rights.”*<sup>7</sup> Since November 2006, OGPI has held mineral extraction rights over the Didipio Gold and Copper Mine located in the municipality of Kasibu, Nueva Vizcaya province— an open pit and underground mine forecasted to produce around 100,000 ounces of gold and 14,000 tons of copper every year over an expected 16-year mine life.<sup>8</sup> OGPI obtained these rights to the Didipio mine through a 2006 merger with the Climax-Arimco Mining Corporation, and officially declared the commencement of commercial operations at the site last April 1, 2013.<sup>9</sup>

13. Today identified as *“the lowest-cost goldmine on earth,”*<sup>10</sup> the acquisition and development of the Didipio mine has been credited by OceanaGold’s Chief Executive Officer, Mr Mick Wilkes, to have almost singlehandedly transformed the company into a low-cost gold producer.<sup>11</sup> OGPI maintains that this process has been conducted with an allegedly firm commitment to the respect and protection of human rights— grounded on the Voluntary Principles on Security and Human Rights, and entailing *“close”* collaboration with officers from the Philippine Commission on Human Rights (PCHR).<sup>12</sup>
14. Yet evidence reveals that these assertions on behalf of the mining company have failed to mirror reality. Throughout the years, numerous reports from community, civil society, national government and international watchdog sources have arisen directly linking the OGPI’s operations to systematic human rights abuses of the residents inhabiting the Didipio locality, most of whom are indigenous peoples.<sup>13</sup> Indeed, none less than the PCHR, which OGPI claims to have cooperated with, has called for the probable revocation of the mineral production rights granted to the company on the basis of *“the gross violations of human rights it has committed.”*<sup>14</sup>

## **The alleged human rights violations**

### ***Bribery, intimidation, harassment and other violations of the Right to Free, Prior and Informed Consent of the People of Didipio***

15. Since the Australian company took ownership of the mine, serious questions have been raised about the project’s compliance with basic standards of community consent. Beginning in 2002, Oxfam-Australia’s Mining Ombudsman service conducted protracted investigations of the mining venture in response to community concerns, and reported the aversion of the local community against the proposed project in 2007.
16. In the Oxfam-Australia report, local residents recounted various ways by which the company attempted to bribe elected municipal council representatives with material incentives to secure their support, and to intimidate residents into selling of their lands at undervalued prices through strong-armed tactics by company lawyers. The latter included daily harassments with warnings of state-backed expropriation, written threats, and the filing of legal cases against residents.

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<sup>7</sup> Philippine Commission on Human Rights, Resolution CHR (IV) No. A2011-004, page 1.

<sup>8</sup> <http://www.oceanagold.com/our-business/philippines/didipio-mine/>

<sup>9</sup> Idem

<sup>10</sup> <http://www.smh.com.au/business/oceanagold-gains-backing-20131103-2wuso.html>

<sup>11</sup> OceanaGold Fact Book 2014, p. 9.

<sup>12</sup> <http://www.oceanagold.com/sustainability/human-rights/>

<sup>13</sup> *Unpublished report of FIDH on the Case of Mining Operation in Didipio, Philippines*, p. 4.

<sup>14</sup> Philippine Commission on Human Rights, Resolution CHR (IV) No. A2011-004, page 18.

17. From the outset, the company failed to provide clear and accessible information about the mine's likely social and environmental impact. The full negative impacts of the project were not expressed in the local dialect, and the promises of employment to residents have not been substantiated in the company's later plans. Also, the level local support for the project was publicly misrepresented to shareholders, Oxfam-Australia, and the general as having achieved unqualified community support.<sup>15</sup>
18. Significantly, the Oxfam-Australia report also marked irregularities surrounding the formulation of a required Memorandum of Agreement (MoA) between OGPI and supposed members of the Didipio village council in 2006. Such a MoA is a prerequisite for the project to be granted a permit to proceed by the Philippine Department of Environment and Natural Resources.<sup>16</sup> The MoA appeared not to have been signed by the village council, but rather mainly by company employees presenting themselves as a multi-sectoral "*Didipio Community Negotiating Panel*" without the consent of the entire village council.<sup>17</sup> Instead of strong support for the Didipio mine, the said council passed a resolution on June 2007 expressly denouncing the 2006 MoA and rejecting the mining project.<sup>18</sup>
19. Since the 2007 Oxfam report, there is no indication of improvement on community consent. In November 2013, the International Federation for Human Rights (FIDH), in a fact-finding mission to the Didipio locality, observed a lack of due process regarding access to information, community consultation and participation.<sup>19</sup> In their report, which will be published on April 2015, FIDH highlights OGPI's and pro-mining village officials' continuing failure to substantively inform and adequately consult the broader community. Information about the project has remained geographically inaccessible to residents, while the drafting of a new village resolution in August 2013 in support of government requirements have not complied with procedural consultation requirements.<sup>20</sup>
20. Symptomatic of this lack of consent and information was the crafting of a new MoA between the OGPI and the Didipio village in October 2013. Residents who were not members of the village council were at no point afforded any meaningful opportunity to participate in negotiations leading to the MoA, nor provided with a copy of the said document once it had been signed.<sup>21</sup> In fact, one interviewed village councilor admitted that these consent requirements were knowingly bypassed given the high likelihood of community opposition to the MoA.<sup>22</sup>

***Violations of the Rights to Adequate Housing, Right to Property, and Right to Freedom of Movement of the People of Didipio***

21. Forces linked to OGPI have engaged in transgressions of the right to adequate housing, the right to property and the right to freedom of movement of numerous residents of the locality.
22. In 2011, the Philippine Commission on Human Rights released a resolution which condemned illegal evictions, demolition of homes, and the installation of perimeter fences by OGPI's security personnel

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<sup>15</sup> Oxfam-Australia, Mining Ombudsman case report: Didipio gold and copper mine, 4-5,18-19, 24, 31, 35..

<sup>16</sup> Ibid p22.

<sup>17</sup> Ibid p23.

<sup>18</sup> Idem.

<sup>19</sup> Unpublished report of FIDH on the Case of Mining Operation in Didipio, Philippines, p. 25.

<sup>20</sup> Idem, p. 24-25, 29.

<sup>21</sup> Ibid, p. 28.

<sup>22</sup> Idem

on land parcels in Didipio targeted by the company for acquisition.<sup>23</sup> These forceful demolitions have been occurring without court orders for demolition, without accompaniment by the local Sheriff, without payment of just compensation, without provision for adequate relocation, and with unnecessary violence and destruction.<sup>24</sup> Additionally, perimeter fences and security checkpoints were installed at other areas around the project location, thereby obstructing the roads ordinarily used by residences for passage in and out of the community.<sup>25</sup>

23. On the basis of community reports, site visits, and documentary investigation, the Commission expressly maintained that such acts by OGPI and its security forces were “patently unlawful and in violation of residents’ right to property and due process”, as well as “in conscious disregard of the rights of the residents of Didipio.”<sup>26</sup>
24. According to the PCHR, such human rights violations have been committed by OGPI at least in the following episodes: by June 2008, OGPI security forces had demolished some 187 houses in Didipio in the absence of the legal and administrative requirements. Residents resisting the eviction were physically beaten by security forces, and their houses bulldozed off cliffs and set on fire. In October 2009, more houses were demolished by OGPI security forces, accompanied by more than a hundred members of the Philippine National Police (PNP). Among those dispersed with the use of truncheons, shields and tear gas were the mayor of Kasibu town, and the chairperson of the Didipio village council.<sup>27</sup>
25. To date, no decisive improvement in OGPI’s violation of the right to adequate housing, property and freedom of movement has been reported. OGPI still fails to compensate and provide relocation sites for evicted residents, and there is no evidence of a policy reorientation towards the observance of human rights.<sup>28</sup> Residents’ rights to the use of their property and freedom of movement continue to be actively denied by forcefully denying residents access to lands that are closely situated to the mine, and by summarily dumping rocks on the agricultural lands that have not yet been sold to the company.<sup>29</sup> Given OGPI’s plans to further expand mining operations beyond its immediate site in Didipio, and its ongoing efforts to secure the approval of different village councils for such expansion, these rights violations are poised to escalate further in the future.<sup>30</sup>

### ***Violations of the Right to Security of Person of the People of Didipio***

26. OGPI’s operations in Didipio have also been expressly maintained by the PCHR to “constitute a continuing threat to the security of persons of the people of Didipio.”<sup>31</sup> In the 2011 Commission resolution, such threats were recognized to have come from OGPI in the guise of its security forces openly bearing arms; its persistent threatening of residents opposing the mine with violent demolitions; its criminally-charging leaders of the opposition to the mine with violations of the Philippine forestry code; and, last but not least, its involvement in several violent shootings of Didipio

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<sup>23</sup> Philippine Commission on Human Rights, Resolution CHR (IV) No. A2011-004, page 5-11.

<sup>24</sup> *Idem*, p4.

<sup>25</sup> *Idem*, p10.

<sup>26</sup> *Idem*, p7, 11.

<sup>27</sup> *Idem*, p3-4.

<sup>28</sup> Philippine Commission on Human Rights, Resolution CHR No. A2013-005, page 2.

<sup>29</sup> *Unpublished report of FIDH on the Case of Mining Operation in Didipio, Philippines*, p. 41.

<sup>30</sup> *Ibid* p. 19, 25..

<sup>31</sup> Philippine Commission on Human Rights, Resolution CHR (IV) No. A2011-004, page 11.

residents.<sup>32</sup>

27. The PCHR resolution, in particular, cited the case of the shooting of local resident Emilio Pumihic by OGPI security guards in full view of neighbors and members of the PNP during a demolition drive on March 22, 2008. Pumihic had then been trying to stop the unlawful demolition of his neighbor's house, when he was restrained by two OGPI security personnel and shot at close range by a third guard in struggling to free himself.<sup>33</sup> Similarly, during the 2013 FIDH fact-finding mission, it was discovered that both Jerry Linagga and Valentino Wanaton— a Didipio village councillor and his brother-in-law respectively— were shot and killed by a local police officer during their altercation with OGPI security personnel on December 29, 2012.<sup>34</sup>
28. These violent incidents, however, are only the most visible manifestations of a climate of fear and insecurity that the activities of OGPI have sown in the area— through the persistent harassments and threats of its personnel against residents. According to the PCHR, OGPI has been “largely responsible for continuing threats to the security of persons, given that it controls and supervises of its security forces, and that unlawful demolitions were conducted at its behest.”<sup>35</sup> Further compounding these violations against the right of security of person has been the local PNP's widely-observed siding with OGPI security actions in place of advancing the general peace and order of the Didipio community. For instance, despite personally witnessing the shooting of Pumihic by OGPI guards during a company-directed demolition, local PNP personnel neglected to apprehend the offending security forces.<sup>36</sup>

## **Case of OceanaGold in El Salvador**

### **Background**

29. The Australian-Canadian firm OceanaGold,<sup>37</sup> (formerly known as Pacific Rim Mining, based in Vancouver, Canada) has been trying to access gold deposits in northern El Salvador for close to a decade. In 2009, Pacific Rim launched a multimillion dollar lawsuit against El Salvador at a World Bank arbitration tribunal for not having granted the company the permit to put its El Dorado mine project into operation. OceanaGold, having bailed out Pacific Rim from near bankruptcy in November 2013, aims to strike a deal with the Salvadoran government or to continue with the lawsuit.
30. However, OceanaGold is hedging its bets based on shaky grounds. Pacific Rim never fulfilled the necessary requirements established in El Salvador's mining law to obtain its exploitation permit. Furthermore, communities in the surrounding department of Cabañas - and most Salvadorans - do not want mining in their country. As the smallest and most densely populated country in Latin America with already stressed water supplies, Salvadorans are unwilling to face the risks industrial metal mining represents. The company's lawsuit aims at undermining the public debate and at limiting democratic public policy-making. The government has refused to allow the project to continue and is now being sued by Oceana Gold at the World Bank's International Centre for Settlement of Investment Disputes (ICSID). The company is demanding 300 million dollars in compensation

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<sup>32</sup> Philippine Commission on Human Rights, Resolution CHR (IV) No. A2011-004, page 11-12.

<sup>33</sup> *Ibid*, page 11.

<sup>34</sup> *Unpublished report of FIDH on the Case of Mining Operation in Didipio, Philippines*, p. 34-35.

<sup>35</sup> Philippine Commission on Human Rights, Resolution CHR (IV) No. A2011-004, page 12.

<sup>36</sup> *Ibid*, page 18.

<sup>37</sup> <http://politicsofpoverty.oxfamamerica.org/2013/12/oceanagold-bails-out-pacific-rim-mining-but-el-salvador-is-not-for-sale>

## The alleged human rights violations

### *Violation of the environmental rights and of public consulting in El Salvador*

31. According to the Pacific Rim Company, the water resources in El Salvador will not be affected by its mining operations.<sup>38</sup> However, Pacific Rim never undertook adequate studies to understand, much less mitigate, the potential impacts from the El Dorado project. An expert from the United States characterized the company's environmental assessment as unfit for consideration in the United States or Canada.
32. Local residents in Cabañas reported negative impacts of Pacific Rim's exploration activities, including "reduced access to fresh water, polluted water, impacts on livestock and adverse health impacts."<sup>39</sup> Rather than provide a serious response to public concerns about cyanide use in gold processing and other impacts from mining, Pacific Rim launched a "green mining"<sup>40</sup> campaign. As part of this, company representatives held public meetings in Cabañas at which they treated local residents with disrespect, trying to convince them that cyanide was safe enough, including for consumption.<sup>41</sup>
33. Water quality, hydrogeology and geochemistry expert Dr. Robert Moran carried out a review of the company's 2005 Environmental Impact Assessment and found that it would be unacceptable in Canada or the US. In addition, the study found a "near complete lack of baseline water quality and quantity data," particularly regarding groundwater, and a "lack of transparency in the public consultation process."<sup>42</sup> He also found that the assessment did not include sufficient details to allow for a serious evaluation of what measures would be needed to mitigate the consequences of a possible seismic event in the area. In 2012, Salvadoran researchers<sup>43</sup> found concentrations of arsenic in sediments above levels permissible in Canada<sup>10</sup> from two rivers near the area in which Pacific Rim operated.
34. Experiences elsewhere in El Salvador further fuel local skepticism. A now-closed gold mine in eastern El Salvador, most recently owned by the Milwaukee-based Commerce Group Company, caused water pollution from acid mine drainage. High levels of kidney and nervous system diseases have been observed among the local population.<sup>44</sup> A study<sup>45</sup> found that the nearby San Sebastian river water contains nine times more cyanide and one thousand times more iron than is safe/recommended for human consumption.<sup>46</sup> Instead of taking responsibility; Commerce Group sued the Salvadoran

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<sup>38</sup> According to its CEO, Tom Shrake, "Rivers and water are loaded with chemicals. Why are they asking all these environmental things from us when they do not have it in their own economy? Our process would bring cleaner water ... These people claim to be environmentalists, but they are not. They are against the development. They are not in favor of the environment, if they were, they would support this mine ", Canadian Broadcasting Corporation, Sunday edition, Karin Wells, " High Stakes Poker ", January 11, 2013.

<sup>39</sup> Center for International Environmental Law (CIEL) "Presentation of the Amicus Curiae Report to Pac Rim Cayman LLC v. Republic of El Salvador, ICSID Case No. ARB / 09/12" May 20, 2011.

<sup>40</sup> Jason Wallach, Upsidedownworld, "Pacific Rim Silent in Wake of Violence Against Anti-Mining Protesters in Cabañas, El Salvador," August 5, 2009.

<sup>41</sup> The Nation Robin Broad and John Cavanagh; "Like Water for Gold in El Salvador" August 1-8, 2011;

<http://www.thenation.com/article/192009/water-gold-el-salvador>

<sup>42</sup> Robert Moran, Ph.D. "Technical Review of the El Dorado Mine Project Environmental Impact Assessment (EIA), El Salvador" October 2005.

<sup>43</sup> From The Volcanology Institute of the University of El Salvador, in collaboration with the Association of Economic and Social Development (its Spanish acronym ADES).

<sup>44</sup> ADES, Engineers Without Borders, Spanish Agency for International Cooperation (its Spanish acronym AECID) and Catalan Desenvolupament Cooperation (its Spanish acronym ACCD) "Sediments in the Titihuapa River" produced as part of the "Plan for Quality and Quantity in the basin of the River Titihuapa "published on July 28, 2012

<sup>45</sup> Performed by the Ministry of Environment and Natural Resources of El Salvador in July 2013.

<sup>46</sup> Cidia Nineveh Ventura Cecilia Isabel Cortes and Diaz Quitanilla, "Characterization of Environmental Impacts Linked to Mortality in Residents Living in the Vicinity of the San Sebastián Mine, Santa Rosa de Lima, Union Department", 2011.



government before the ICSID for suspending its mining permits over these environmental concerns. However, due to lack of liquidity, Commerce Group lost the case.<sup>47</sup>

### ***Attacks against environmental defenders***

35. Pacific Rim's activities in Cabañas generated conflict, aggravated social divisions, and raised the stakes around current and potential economic benefits from mining. This has contributed to the raise of threats and violence, which have yet to be fully investigated. The emergence of local opposition to the mine in Cabañas brought local community organizations, priests, and journalists into direct tension with local politicians that supported Pacific Rim.<sup>48</sup> Conservationist Richard Steiner notes in a report that substantial company funds were provided for "local initiatives aimed at winning local consent for the project."<sup>49</sup>
36. The discord in Cabañas led Steiner to conclude that the company's activities led to the creation of "corrosive communities," in which "an intense socio-political polarity has developed between proponents and opponents of mining [that has led] to social tensions, emotional stress, disintegration of civil society, political turmoil and violence."<sup>50</sup>
37. Threats against anti-mining activists are reported to have begun in 2006.<sup>51</sup> These culminated in violence in 2009 and again in 2011.<sup>52</sup> In June 2009, the body of community leader and vocal anti-mining activist Marcelo Rivera was found in a well with signs of torture, two weeks after he disappeared.<sup>53</sup> Immediately afterward, threats were issued against local activists such as Father Luis Quintanilla, who was attacked twice in July 2009.<sup>54</sup> Reporters at Radio Victoria have received constant threats.<sup>55</sup>
38. In December 2009, Ramiro Rivera Gómez, Vice President of the Cabañas Environmental Committee, was shot to death<sup>56</sup> followed six days later by the murder of activist Dora Alicia Recinos Sorto and her unborn child.<sup>57</sup> In late 2010 and early 2011, two gang members with information about Marcelo Rivera's murder were killed.<sup>58</sup> In June 2011, Juan Francisco Durán Ayala, a volunteer at the Cabañas Environmental Committee, was also murdered.<sup>59</sup> Shortly after the murders of Ramiro Rivera and Dora Alicia Sorto in 2009, the Sub-Director for the National Police Howard Cotto remarked: "Even if we

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<sup>47</sup> Performed by the Ministry of Environment and Natural Resources of El Salvador in July 2013.

<sup>48</sup> At least since 2006, when threats to environmental and human rights defenders began, the right-wing ARENA party has mostly controlled local governments in Cabañas. See 2006 election results for the department of Cabañas in which six of nine municipalities were won by the ARENA party: [elsalvador.com](http://elsalvador.com), "Municipal and Legislative Elections 2006: Interactive Map of Towns"

<http://www.elsalvador.com/Special/2006/elecciones/home/index.asp>

<sup>49</sup> Richard Steiner, "El Salvador - Gold, Guns, and Choice: the El Dorado gold mine, violence in Cabañas, CAFTA-DR claims, and the national effort to ban mining". February 2010 this report indicated that they have made several payments directly to several mayors in the region and were used for local things such as "projects, parties and significant discretionary funding." Furthermore, local mayors would be responsible for managing the royalties from the mine, if it were to be put into operation.

<sup>50</sup> Richard Steiner, February 2010.

<sup>51</sup> 36 Radio Victoria, "Chronology of Threats and Actions," 2012.

<sup>52</sup> Washington Office on Latin America, "Alarming Series of Violent Acts in Cabañas, El Salvador," February 8, 2011;

[http://www.wola.org/publications/alarming\\_series\\_of\\_violent\\_acts\\_in\\_cabanass\\_el\\_salvador](http://www.wola.org/publications/alarming_series_of_violent_acts_in_cabanass_el_salvador).

<sup>53</sup> Hector Berrios, Upsidedownworld, "Ramiro Rivera Shot to Death in Cabin," December 21, 2009;

<http://upsidedownworld.org/main/content/view/2266/1/>

<sup>54</sup> Jason Wallach, August 5, 2009.

<sup>55</sup> El Mercurio Digital (The Digital Mercury), "El Salvador: Community Radio in sight," July 12, 2011; <http://www.elmercuriodigital.net/2011/07/el-salvador-radio-comunitaria-en-la.html>; Hector Berrios, Upsidedownworld, December 21, 2009.

<sup>56</sup> Richard Steiner, February 2010.

<sup>57</sup> <http://www.fidh.org/es/americas/El-Salvador/Asesinato-de-la-Sra-Dora-Alicia>

<sup>58</sup> Voices on the Border, "Another Wave of Violence in Cabañas," January 5, 2011; <http://voiceselsalvador.wordpress.com/2011/01/05/another-wave-of-violence-in-cabanass/>

<sup>59</sup> SHARE Foundation, "President Funes Condemns murder of anti-mining activist," July 7, 2011.

suggest that the motive of these crimes have to do with mining or not... what is clear is that in all the areas where Pacific Rim began mining exploration, high levels of conflict occurred.”<sup>60</sup>

39. The Salvadoran Ombudsman for Human Rights has also stated that the acts of violence “are very probably related to each other, thus enabling us to infer that they are also linked to the victims’ work in defense of the environment.”<sup>61</sup> Immediately following the murder of Juan Francisco Durán in 2011, Salvadoran President Mauricio Funes called for a full investigation and offered, “...more security to the environmental movement, because its struggles and demands are just.”<sup>62</sup>
40. However, Salvadoran officials responsible for investigating the 2009 murders immediately depoliticized the potential motives for the crimes.<sup>63</sup> Six people were convicted in the Marcelo Rivera case, but questions remain about the intellectual authors of the crime.<sup>64</sup> Nine have been arrested in the Ramiro Rivera case and others from the community of Trinidad, but a full trial has yet to take place.<sup>65</sup> Radio Victoria has not seen results from any investigations into the litany of threats their group has received.<sup>66</sup> The rate of impunity for violent crimes in El Salvador is 96%.<sup>67</sup>

#### **40. Recommendations to the Government of Australia:**

- 1. To immediately review all the results of all independent investigation/fact finding conducted involving all their companies doing business in the extractive industry and to come up with the recommendations to these industry to respect all human rights laws and mechanism within its scope of work;**
- 2. To adopt without delay a national legislation regulating the impacts of the activities of Australian companies operating abroad on human rights with strong components on mandatory due diligence;**
- 3. To establish an independent mechanism in charge of monitoring the compliance of the activities of the Australian companies operating abroad with the international human right law;**
- 4. To To ensure that australian companies operating abroad carry out human rights, social and environmental impact assessments prior to starting their operations and have the free prior informed consent of local communities that might be adversely affected;**
- 5. To establish a clear mechanism to ensure effective access to justice and remedy including dispute and grievance mechanism for communities an peoples affected by the Australian companies operating abroad;**

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<sup>60</sup> Edgardo Ayala, Latin American Press, "Activists Murdered," February 4, 2010; <http://alainet.org/active/35974&lang=es>

<sup>61</sup> CIEL, March 12, 2011.

<sup>62</sup> SHARE Foundation, July 7, 2011.

<sup>63</sup> Edgardo Ayala, Latin American Press, "Activists Murdered," February 4, 2010. <http://alainet.org/active/35974&lang=es> ; and Theresa McGee, Briarpatch Magazine, "Canadian mining on trial: Murder, Impunity and Pacific Rim in El Salvador," January 1, 2012; <http://briarpatchmagazine.com/articles/view/canadian-mining-on-trial>

<sup>64</sup> Voices on the Border, "Three Convicted for the Murder of Marcelo Rivera," September 22, 2010; <http://voiceselsalvador.wordpress.com/2010/09/22/three-convicted-for-the-murder-of-marcelo-rivera/>. Note that a lawyer who worked in the Attorney General's Office in Camping lost his job after claiming that the investigation into the murder of Marcelo Rivera was corrupt and pushed for an independent investigation. See Theresa McGee, Briarpatch Magazine, January 1, 2012.

<sup>65</sup> Voices on the Border, "Preliminary Hearing for 9 Trinidad Murder Suspects Postponed ... Again," August 4, 2011; <http://voiceselsalvador.wordpress.com/tag/ramiro-rivera/>

<sup>66</sup> Email correspondence between MiningWatch Canada and Radio Victoria, December 2013; and Radio Victoria, "Chronology of Threats and Actions," 2012.

<sup>67</sup> Gabriel and Labrador and José Luis Sanz, El Faro, "Impunity in the killings reaches 96%, according to Minister of Security," February 22, 2012; <http://www.elfaro.net/es/201202/noticias/7669/>

6. To officially respect the primacy of human rights norms and obligations over free trade agreements (FTAs).