

Permanent Mission of Canada
to the United Nations
and the World Trade Organization



Mission permanente du Canada
auprès des Nations Unies
et de l'Organisation mondiale du commerce

GENEV- 9654

The Permanent Mission of Canada to the United Nations and the World Trade Organization at Geneva presents its compliments to the Office of the High Commissioner for Human Rights, and has the honour to refer to the Joint Communication AL CAN 4/2024, dated 17 April 2024.

In this regard, the Permanent Mission of Canada has the honour to submit Canada's response.

The submission consists of one document.

The Permanent Mission of Canada to the United Nations and the World Trade Organization at Geneva avails itself of the opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 13 November 2024.



Response by the Government of Canada to the Joint Communication from Special Procedures
Reference AL CAN 4/2024

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

The Government of Canada takes Special Procedure communications seriously and expresses its deep concern regarding the allegations in the joint communication.

The Government of Canada expects all Canadian companies active abroad to abide by all relevant laws, to respect human rights, to operate transparently, and in consultation with host governments and local communities, as well as work in a socially and environmentally responsible manner that is consistent with internationally respected guidelines on responsible business conduct (RBC). This includes the *UN Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises*.

Canada has been closely following the situation in the Palo Quemado area, where the Ministry of Environment (MAATE) has been conducting an environmental consultation in relation to the La Plata mining project of the Canadian company Atico. MAATE has also completed an environmental consultation and issued an environmental license for the El Domo project of the Canadian company Adventus Mining.

Under the 2008 Constitution of Ecuador, the residents of communities affected by medium- or large-scale projects affecting the natural environment have a right to be consulted and to provide input on how the environmental and social impacts of said projects will be managed. The Government of Ecuador attempted to regulate this right to environmental consultation through Decree 754. When the Constitutional Court initially granted an injunction suspending application of the decree, over 170 projects across a range of sectors (not just mining) were unable to proceed.

In November 2023, the Constitutional Court confirmed that the environmental consultation process must be defined through an organic law (statute), but that until such a law was passed by the National Assembly, Decree 754 on Environmental Consultation – issued by the previous government – would remain in effect. This decision allowed environmental consultations to proceed on the many delayed projects, including the two projects included in your letter.

The court decision also clarified that the environmental consultation process must be conducted by Government of Ecuador officials, via the Ministry of Environment. As such, the Canadian companies in question have not technically been part of this environmental consultation process, apart from having previously providing technical inputs such as an environmental impact assessment. Rather, the Government of Ecuador has determined that neither the El Domo or the La Plata projects is subject to a process of Free, Prior, and Informed Consultation because the zone of project influence does not include Indigenous communities or traditional territories. The Government's position in this regard has recently been upheld by the Courts in the two project locations.



With respect to the allegations of human rights abuses or infringements included in your letter, Canada takes these allegations seriously but remains concerned by the lack of compelling evidence to support these allegations.

Canada is concerned by claims of abuse as well as other, credible information (including from government sources, the Defensor del Pueblo, and members of the Palo Quemado community) that protesters violently attacked MAATE officials, police, community members, and company officials, and have destroyed government vehicles in an effort to disrupt and prevent the implementation of the environmental consultation process, particularly given that the citizens in the area of influence of the mine have a constitutional right to be consulted.

Several individuals have recently been tried and convicted for acts of violence against community members in the town of Las Naves in relation to protests against the El Domo project. In addition, as you note, court challenges have also been filed against the Government in relation to the consultation processes for both the El Domo and the La Plata projects. Recently, local Courts in Sigchos and Las Naves dismissed both of these legal challenges.

Your office has recently posted online the response of the Government of Ecuador to these allegations, and we believe that their response provides full and detailed information on the relevant legal framework and processes, and the nature of events in the two proposed mining sites.

We continue to encourage all stakeholders to verify claims made with all parties involved.

We hope that this process through OHCHR special procedures will help to clarify the facts of these specific cases and also ensure more information is available at the international level on Ecuador's framework and processes for environmental and Indigenous consultation in relation to natural resource development projects.

- 2. Please provide information on the measures your Government has taken, or is considering taking, to ensure that business enterprises domiciled in your territory and/or jurisdiction respect human rights in all their activities, including investment activities.**

The Government of Canada expects all Canadian companies operating either in Canada and/or abroad – regardless of sector – to respect human rights, all applicable laws, and international standards. Canadian companies are also expected to operate transparently, in consultation with host governments and local communities, in a socially and environmentally responsible manner, and in accordance with their responsibilities under internationally recognized guidelines such as the *UN Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*. Canada takes a balanced approach to responsible business conduct (RBC), which includes prevention, legislation in select areas, and access to non-judicial dispute resolution.

Canada's expectations related to RBC are reinforced in the [Responsible Business Conduct Abroad: Canada's Strategy for the Future](#), launched in April 2022. The Strategy applies to all Canadian companies active abroad, regardless of size, sector, or scope.



Through the Trade Commissioner's network of more than 1,000 Commissioners at offices in Canada and at diplomatic and consular missions around the world, including in Ecuador, Canada actively promotes best practices, and provides advice on, RBC and due diligence to Canadian companies active abroad.

Trade Commissioners work with Canadian businesses to help them grow by connecting them with international opportunities, funding, and support programs. Global Affairs Canada provides RBC training to its Trade Commissioners on how to support Canadian companies to do business in a socially and environmentally responsible manner, consistent with internationally recognized standards and practices. Canada's Trade Commissioner Service requires Canadian companies to sign an Integrity Declaration when seeking certain types of services abroad, such as trade advocacy. Companies that sign the Integrity Declaration attest that they understand the Government of Canada's RBC expectations, have not been charged, convicted, or sanctioned for bribery or corruption, and will not engage in such illegal activities. As of April 2024, over 1,100 Integrity Declarations were in force.

The Government of Canada advises Canadian extractive companies operating in Ecuador to continue to pursue partnerships with relevant government offices, academic institutions, Indigenous organizations, and NGOs to benefit from existing local knowledge. Partnerships can be sought to improve communications, pursue effective and long-lasting CSR projects, develop local economies through training and purchase locally sourced goods and services. There are many examples of Canadian extractive companies undertaking just this sort of collaborative approach with a range of stakeholders.

Canada has taken several measures to help ensure that business enterprises respect human rights in all their activities. Among these are regular meetings with companies and officials to discuss best practices, compliance with international standards, and the importance of human rights due diligence.

The Canadian Embassy regularly engages with Canadian companies operating in Ecuador to better understand their operations, their approaches, and the social and environmental context in which they operate. Where possible, the Embassy (including the Ambassador) undertakes site visits as part of this strategy of getting a better understanding of the context.

Canadian officials have conducted site visits to the projects in question, including to the El Domo-Curipamba mining project on March 29, 2023, and to La Plata mining project on May 30th, 2023. Both site visits were an opportunity to observe community engagement and relations developed by both Canadian mining companies and actual or proposed physical works and actual or proposed environmental mitigation measures. These site visits have provided an opportunity to observe project plans, worker conditions, environmental plans, and community engagement measures impact.

Canadian officials have met in situ and in Quito with local workers, management, community members, local businesses, elected officials, non-elected government officials, and representatives of non-governmental organizations to hear their perspectives on challenges and opportunities related to proposed projects. The Embassy also continually monitors social media and ongoing court cases in relation to specific projects of Canadian companies.



Additionally, the Canadian Embassy in Ecuador supports activities promoting RBC and best practices in areas such as environment, business ethics, responsible mining, Indigenous participation, and anti-corruption. For example, in May 2022, Canada organized a workshop on protecting watersheds and sensitive forests targeting the Ministry of Energy and Mines and MAATE technical staff. In January 2024, Canada supported a workshop on mining legislation for Ecuador's National Assembly Members and advisors that are tasked with advancing Ecuador's responsible mining framework. The Embassy is currently helping to organize a site visit to the Lundin Gold's Fruta del Norte mine for a diverse group of members of the National Assembly, including members of key committees currently developing legislation in relation to environmental and Indigenous consultation processes.

A key aspect of Global Affairs Canada's international assistance as it relates to natural resource governance is building the capacity of governments to respect and promote the rights of women, Indigenous Peoples, and marginalized groups. Global Affairs Canada financially supports and engages with multilateral organizations and initiatives such as the Intergovernmental Forum on Mining Metals and Minerals and Sustainable Development (IGF) of which Ecuador is a member. The IGFs [Mining Policy Framework](#) is the basis upon which IGF engages with member countries (including Ecuador). The Framework provides mining policy best practice guidelines that increase the capacity of governments to, for example, respect and protect human rights and Indigenous Peoples' rights.

Canada is also a supporting member of the Extractive Industry Transparency Initiative (EITI), for which Ecuador is an implementing country. EITI promotes international transparency standards in the oil, gas and mining sectors with the aim of deterring corruption and improving the governance of natural resources. Mining, oil, and gas operations have substantial environmental impacts, which are often a focal point of public debate. As such, EITI seeks to foster the inclusion of Indigenous Peoples' organizations in national multi-stakeholder groups, composed of government, companies and civil society, which support the implementation of the EITI Standard in implementing countries. Further, the EITI Standard requires implementing countries to disclose material environmental payments to governments and encourages the disclosure of information related to environmental impact and monitoring.

Canadian Embassies, including in Ecuador, are strong supporters of Women in Mining local organizations, and participate regularly in their events and initiatives that seek to expand the participation of women in the mining industry at all levels.

Canada is also a member and current Chair of the [Voluntary Principles on Security and Human Rights \(VPs\)](#) Initiative. This multi-stakeholder framework provides guidance to companies, governments, and civil society organizations to anticipate and mitigate human rights risks related to the deployment of public and private security forces around industrial natural resource sites.

- 3. Please provide information on concrete progress made by your Excellency's Government in requiring or encouraging business enterprises domiciled in your territory and/or jurisdiction to implement human rights due diligence processes, in accordance with the UN Guiding Principles on business and human rights.**



The Government of Canada promotes the implementation of responsible business practices, including meaningful engagement with host governments, communities, Indigenous Peoples, and all relevant stakeholders, as appropriate.

As referenced in Question #2, the Government aims to provide guidance on responsible business practices to Canadian companies active outside of Canada. Through its network of Trade Commissioners at offices in Canada and at diplomatic missions around the world, the Government of Canada actively promotes RBC best practices and provides advice on RBC and due diligence to Canadian companies active abroad.

Canada's expectations related to RBC are reinforced in Canada's Responsible Business Conduct Strategy, launched in April 2022. The Strategy applies to all Canadian companies active abroad, regardless of size, sector, or scope.

Canada has long been a proponent of the *United Nations Guiding Principles on Business and Human Rights* and actively promotes their adherence by Canadian companies. This expectation is underscored in Canada's 2022 RBC Strategy. Owing to the federal, provincial, and territorial separation of powers in Canada, and a range of RBC-related measures already in place, Canada is not pursuing a National Action Plan currently.

Nevertheless, the Embassy of Canada to Ecuador continues its efforts to foster dialogue among stakeholders, including NGOs and civil society organizations. The promotion of EITI in Ecuador has included the support of the civil society organizations that are part of the multi-stakeholder group focused on this topic.

4. Please explain what steps your Excellency's Government has taken to ensure that export credit entities, including Export Development Canada, respect human rights in their transactions, including through human rights due diligence – either for their own decision-making or as a requirement for their clients.

EDC is a Crown corporation that reports to Canada's Parliament through its responsible Minister, the Minister of Export Promotion, International Trade and Economic Development. Through its responsible Minister, the Government of Canada has provided clear expectations to the organization with respect to human rights due diligence. This instruction includes a [2018 letter of expectation](#) from the Minister to the Chair of EDC's Board of Directors outlining the Government's position regarding EDC's consideration of human rights in its activities and transparency associated with these processes. This instruction has been further augmented by more recent Statement of Priorities and Accountabilities letters from the Minister to the Chair, including as recently as [December 2022](#), containing sections outlining expectations for EDC related to responsible business conduct, due diligence, and addressing forced labour in supply chains.

While the Minister provides EDC with broad strategic direction, the Crown corporation is responsible for its own internal due diligence and has a robust set of Environmental and Social Risk Management (ESRM) policies and a Financial Crime Policy, which guide its activities and are aligned with Government instruction. EDC's ESRM policies, including its [Human Rights Policy](#) (first established in 2019), are reviewed at three-year intervals and are crafted with the



support of stakeholder consultations. Its policies are aligned to various international agreements and standards, including the OECD Common Approaches for Officially Supported Export Credits, the OECD Guidelines on Multinational Enterprises, the UN Guiding Principles on Business and Human Rights (UNGPs), and the Equator Principles. On March 22, 2023, EDC published its updated ESRM policies after conducting a review with stakeholders from across the Canadian trade and business ecosystems, including civil society and international peers.

EDC's Human Rights Policy, which is aligned to the UNGPs and other international best practices, governs EDC's approach to respecting human rights and its internal decision-making in connection with its customer relationships. Complementing the policy, EDC's Principles on Leverage and Remedy—developed with support from Shift, the leading center of expertise on the UNGPs—guide EDC during the due diligence process to prevent and effectively manage human rights risks and impacts and ensure EDC's efforts are focused on achieving better outcomes for people and the environment.

The EDC Board of Directors oversees its Environmental Social and Governance (ESG) direction, strategy and risk management policies, including the Human Rights Policy. Formal progress updates on the implementation of EDC's Human Rights Policy and various human rights-related initiatives are provided to the Board on a regular basis. EDC has also established a Chief Compliance and Ethics Officer and a management committee to review ESG-related risks of prospective transactions.

Detailed information related to EDC's [due diligence pathway](#), [due diligence framework for human rights](#), and [human rights disclosures](#) (published every two years) can be found on EDC's website. Additional information can be found in EDC's [Integrated Annual Report](#).

5. Please provide information on the steps your Excellency's Government is taking or considering taking to ensure that individuals affected by the activities of business enterprises domiciled in your jurisdiction have access to remedy in your country, through judicial or extrajudicial State-based mechanisms.

From an international law perspective, Canada's international human rights obligations apply to those within its territory and subject to its jurisdiction. In conformity with the principle of sovereignty of States, a State may not exercise jurisdiction over the territory of another State without the latter's consent.

Canada expects all Canadian companies to respect international human rights standards, international standards related to responsible business conduct, and the applicable law in the jurisdictions where they are operating.

Canada has two non-judicial dispute resolution mechanisms related to RBC abroad.

Firstly, as an adherent to the *OECD Guidelines for Multinational Enterprises*, Canada maintains a National Contact Point (NCP) to help facilitate the resolution of complaints against multinational enterprises operating in or from Canada. The NCP is mandated to review complaints about observance of the *OECD Guidelines*, which cover a wider range of areas, including human rights and the environment. Upon reviewing a complaint, the NCP may offer to



facilitate dialogue or mediation aimed at helping the parties achieve a mutually agreeable resolution to the issues raised.

Secondly, the Canadian Ombudsperson for Responsible Enterprise (CORE) was established in 2018, with the first Ombudsperson appointed in 2019, to strengthen Canada's longstanding and extensive engagement in RBC. The CORE demonstrates Canada's commitments to business and human rights and RBC abroad. The Office receives and reviews complaints concerning alleged human rights abuses involving Canadian companies outside of Canada in the garment, mining, and oil and gas sectors. The CORE can also initiate reviews on its own initiative.

Non-judicial dispute resolution mechanisms are generally considered to be more accessible, faster, and more cost-effective than a judicial approach. Bringing a complaint to the CORE or NCP does not preclude a party from pursuing a complaint in other fora, such as the courts.

6. Please provide information on the progress made by your Excellency's Government to protect human rights defenders in the context of business activities, including when operating overseas. Please also provide information on how and whether the 'Voices at Risk' guidelines have been applied in the current context, in particular section 4.2 (Canadian Corporate Entities).

Canada recognizes and applauds the key role played by human rights defenders in protecting and promoting human rights, often at great risk to themselves, their loved ones, their communities, and the organizations and movements they often represent. [Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders](#) provides practical advice, tools, and resources to Canadian officials. The implementation of the Guidelines is tailored to local contexts and circumstances, and to the specific needs of the human rights defender(s).

Canada has a long-established record of providing support to human rights defenders, including through bilateral and multilateral diplomacy, and international assistance. Canada's support for human rights defenders takes many forms and responds to changing needs. This includes, but is not limited to:

1. Working in multilateral forums to strengthen international rules and norms;
2. Providing the necessary platform to advocate for open civic space;
3. Engaging with local authorities through bilateral diplomacy;
4. Leveraging partnerships with other countries, civil society, Indigenous Peoples and the private sector, including Canadian business interests abroad; and
5. Building capacity, including through funding for human rights organizations

Global Affairs Canada works with human rights defenders and local, regional, and international human rights organizations through its officials at Headquarters and at its missions abroad. In Ecuador, Canada has for decades been particularly active through advocacy and significant development assistance to support the rights and protection of women and of LGBTQI



communities, and has contributed to significant legal and procedural achievements to protect these rights.

More recently, again through advocacy and development assistance, Canada has made significant contributions to promoting and protecting the rights of migrants and refugees (mostly Venezuelans). Canada's funding support, which is primarily delivered via UN organizations such as the International Organization for Migration (IOM) and the UN Refugee Agency (UNHCR), has been key in enabling the Government of Ecuador to implement its progressive policies for regularization of the migration status of Venezuelans and other migrants.

Canada has also been seeking opportunities to promote the rights of Indigenous Peoples in Ecuador, including through an ongoing project with UN Development Programme (UNDP) to support dialogue and conflict resolution, and through a recent intercultural training initiative with Ministry of Government (Ministerio de Gobierno) officials led by Indigenous Canadian experts. Canada is actively seeking new opportunities to facilitate exchanges between Indigenous leaders and experts in Canada and in Ecuador on issues related to natural resources management and business in relation to the rights of Indigenous Peoples.

Through bilateral dialogue and its network of missions, Canada's Embassy in Ecuador engages with local authorities on an ongoing basis to underscore the obligation of States to protect all individuals in their territory and subject to their jurisdiction, including human rights defenders. Canada may also issue public statements, deliver speeches, and use social media or diplomatic démarches in support of human rights defenders, alone or in partnership with other countries, when such advocacy is not expected to put the safety of human rights defenders at risk.

Canada's approach to supporting human rights defenders is based on these key values:

- Human rights are universal and inalienable; indivisible; interdependent and interrelated.
- Do no harm—the safety and privacy of the human rights defenders are paramount.
- Consent—actions on specific cases should be taken with the free, full, and informed consent of the human rights defenders in question, wherever possible, or of their representatives or families, in the alternative.

In cases involving conflict between an affected community and a Canadian company, its subsidiary, sub-contractors and/or suppliers, one of Canada's non-judicial dispute resolution mechanisms can be called upon to review and make non-binding recommendations. These two mechanisms are [Canada's National Contact Point \(NCP\) for the OECD Guidelines for Responsible Business Conduct](#) and the [Canadian Ombudsperson for Responsible Enterprise \(CORE\)](#).

Canada provides international assistance to support and protect human rights defenders. This can take many forms, including multi-year funding for key human rights groups, multi-stakeholder engagement to advance awareness of responsible business conduct standards, targeted contributions that Canada's diplomatic missions offer to grassroots groups for training courses, seminars, and other initiatives. Canada also supports human rights education

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internationally in partnership with Canadian organizations and assists organizations that provide emergency assistance needs. A principal objective is to build bridges between human rights partners and stakeholders.

Canada