

## EXECUTIVE SUMMARY

# CANADIAN MINING PROJECTS IN THE TERRITORY OF THE DIAGUITAS HUASCO ALTINOS AGRICULTURAL COMMUNITY IN CHILE

## HUMAN RIGHTS IMPACT ASSESSMENT



OBSERVATORIO CIUDADANO

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## EXECUTIVE SUMMARY

This report examines the human rights impacts of two mining projects in the territory of the Diaguitas Huasco Altinos Agricultural Community (known in Spanish as the Comunidad Agrícola de Los Diaguitas Huasco Altinos [CADHA]), an indigenous community settled in Huasco Province, in the Atacama region of Chile. The two mining projects are Pascua Lama, of Barrick Gold Corporation, and El Morro (which became Corredor following a merger in 2014 and is currently called New Union, or NuevaUnión), of Goldcorp and Teck Resources Ltd., all Canadian companies.

The impact that these mining projects have had, or could have in the future, on this indigenous community is evaluated using the Human Rights Impact Assessment (HRIA) methodology, an approach based on the active participation of the affected communities that is particularly relevant in the context of investment projects that potentially adversely affect human rights. In HRIAs, communities take the lead in identifying and analyzing the main human rights impacts caused by investment projects in their territories. The rights assessed include those that have been recognized by both national and international law applicable to indigenous people and to investment projects. The UN Guiding Principles on Business and Human Rights are also considered as a reference in this methodology.

The HRIA methodology employs a tool called Getting it Right, which was designed by the Canadian organization Rights & Democracy for this purpose. As specified by the International Federation for Human Rights (FIDH), which promotes the use of this tool, Getting it Right has been used for over a decade by various entities including human rights and financial organizations and by corporations themselves, globally, to identify the differences between the commitments made by the state (human rights in principle) and the possibility of enjoying those rights within the country's actual situation (human rights in practice). Getting it Right guides communities and nongovernmental organizations (NGOs) step by step in measuring the actual or potential impact of an investment project on human

rights. It outlines the preparation of a final report and the formulation of recommendations that can serve as a basis for promoting dialogue between the community and public and private stakeholders involved in the project.

This HRIA was conducted from March 2015 to April 2016 by a team made up of Isabel Madariaga, as an external consultant and foremost investigator, and Nancy Yanez and José Aylwin from the Observatorio Ciudadano (Citizen Watch), and included the active participation of members of the CADHA. The responsibility for the contents of this report rests solely with Observatorio Ciudadano. We thank Isabel Madariaga for the diligent research work she carried out for this study. We also thank the CADHA for the support granted by its leaders and its members without whom this study would not have been possible. We also thank Terry Mitchell, a professor at Wilfrid Laurier University, and Charis Enns, a doctoral student at the same university, who enthusiastically collaborated from Canada by gathering information on the human rights policies of these companies, and who tried, unsuccessfully, to interview representatives from these companies' headquarters in Toronto and Vancouver. We finally thank Katherine Kunhardt for her support in the translation of this report into English.

This study was made possible thanks to Oxfam America. We thank Oxfam America for its support in the preparation of this report, both for advice in the use of the HRIA methodology and for facilitation of resources that made possible this report's development and publication. We also appreciate the support provided for the implementation of the HRIA by the Social Sciences and Humanities Research Council (SSHRC) of Canada through a project coordinated by Terry Mitchell from Wilfrid Laurier University. Finally, we express our gratitude to the International Work Group for Indigenous Affairs (IWGIA) and to the Ford Foundation for the institutional support given to the Observatorio Ciudadano, which also made possible the implementation of this research project.

We hope that this study provides information in relation to the mining projects analyzed for decision-makers, including the governments and companies involved, in order to remedy the serious consequences that the projects have had and to prevent further impacts on the human rights of the Diaguitas Huasco Altinos and their territory. We also hope that the study will be useful to that community as a tool to defend their rights—those already violated and those threatened.

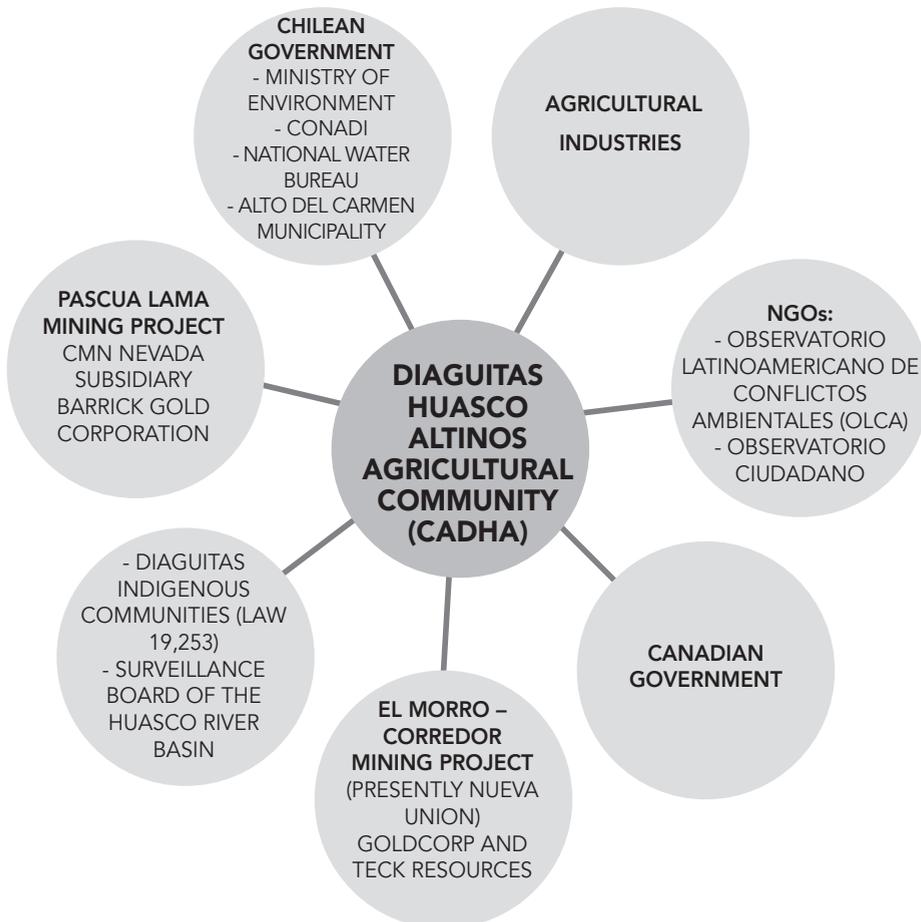
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The study is based on research focused on the participation of affected communities. Along with the participation of communities, it has tried to gather, through interviews, the vision that other stakeholders—the states and companies involved—have about these projects

and their impacts on human rights. Additional information has also been gathered from available literature sources referring to the mining projects assessed and to the national and international legal framework applicable to indigenous peoples' rights.

To represent the perspectives of all stakeholders and to follow the implemented HRIA methodology, interviews were carried out with community members and with representatives of social organizations, businesses, and government. This report focuses on the impacts on the CADHA because this indigenous organization has the legal and ancestral ownership of the territory where the mining projects being analyzed are located.

## STAKEHOLDERS MAP



As noted, the subject of this HRIA is a community of Diaguita people, one of the nine indigenous peoples which inhabit in Chile, whose population totaled about 50,000 people in 2013 (about 3.2 percent of Chile's indigenous population). Although the Diaguita were only recognized by law as an "ethnic group" in 2006, they have inhabited northern Chile since time immemorial. This group includes people who live in the territorial space of Huasco Alto; their settlement of the area is recorded in 17th-century colonial documents. This Huasco Alto community, now consisting of 262 families, preserves cultural and spiritual practices, their cosmovision (worldview), and customs inherited from their ancestors, as well as their agricultural and livestock production methods and craft activities, all of which determine their way of life. The CADHA is the only Diaguita organization that preserves ancestral lands in communal ownership.

In fact, the community owns the Estancia Huascoaltinos, a property registered in its favor in the early 20th century and regularized in 1997 through Chilean legislation relating to agricultural communities. The regularization of the property, however, determined the individualization of the property and excluded important areas of the community's territory, consolidating land usurpation processes through sales and other irregular forms of appropriation by private parties. As a result of these events, the surface area of the community land currently amounts to only 239,000 hectares.

In the past two decades several mining projects have been pushed forward and/or planned in the CADHA territory. As noted, this HRIA addresses two: Pascua Lama and El Morro.

## **Pascua Lama**

Pascua Lama is a mining project of the Nevada Mining Company (Compañía Minera Nevada SpA), a subsidiary of Barrick Gold in Chile, incorporated in Canada. Pascua Lama is an open-pit gold and silver mine, located at more than 4,000 meters of elevation on the border of Chile and Argentina. In Chile, Pascua is in Huasco Province, in the Atacama region; Lama is situated in Argentina's San Juan Province.

The project in Chile is located at the headwaters of the El Estrecho and El Toro Rivers, and it involves the exploitation of a mineral deposit existing under the glaciers that sustain the Huasco Valley hydrological system. These glaciers irrigate ancestral territory of the CADHA, a territory usurped through legal loopholes in the early 20th century and purchased by the Compañía Minera Nevada for the implementation of the Pascua Lama project. In its original formulation, the project included the removal of 13 hectares of ice from three glaciers—Esperanza, Toro 1, and Toro 2—and the deposit of the removed ice onto the nearby Guanaco glacier.

The project's objective is the exploitation of mineral deposits of gold, silver, and copper and the construction of a plant in Argentina to produce doré metal (a gold-silver alloy). Geological and engineering work after 2001 identified major mineral reserves. These reserves were incorporated into the design of the original project to increase the capacity of mineral exploitation and processing from 37,000 tons per day to 48,800 tons per day. Despite these modifications, this project received a favorable environmental qualification by the Atacama Regional Environmental Commission, through Exempt Resolution No. 039 of 2001, subsequently amended by Exempt Resolution No. 059 of 2001. The further expansion of mining was approved by Exempt Resolution No. 24 of 2006. To facilitate the implementation of Pascua Lama, the Chilean and Argentine governments signed a series of agreements and specific protocols in 2007 that were added to the Mining Integration and Complementation Treaty signed in 1999 to facilitate cross-border mining.

Although the project is situated on the ancestral territory of the CADHA, the community was not consulted before operations began. This human rights violation, along with other human rights impacts listed in the American Convention on Human Rights, led the CADHA to file a complaint to the Inter-American Commission on Human Rights; this complaint was declared admissible in 2009. Furthermore, in addition to the Pascua Lama mining project's violation of the fundamental right of consultation and the other human rights violations noted, it has failed to fulfill the environmental requirements of Chile's Environmental Qualification Resolution (the Resolución de Calificación Ambiental [RCA]).

On October 19, 2015, after several years of mining work that have directly impacted the glaciers, the waters (the Estrecho and Chollay Rivers), and the high Andean wetlands (water meadows and bogs), Pascua Lama suspended operations and announced a partial temporary closure plan in all its activities associated with the construction phase. This decision was made in compliance with the provisions of Exempt Resolution No. 477, dated May 24, 2013, of the Superintendence of the Environment. Among other actions, the Superintendence ordered the adoption of a series of urgent and transitional measures to mitigate the environmental impacts of the project, maintaining the suspension of the project until the Water Management System is carried out in the manner provided in Environmental Qualification Resolution No. 24 of 2006, considering that the greatest impacts of the project relate to the water and natural reservoirs that provide water.

Through the media, Barrick Gold in July 2016 announced that it was studying the development of a new modular project for Pascua Lama that could make it viable and that it was considering options for operating a smaller open-pit mine on the Chilean side of the project and then another underground mine on the Argentine side. The mining company did not indicate whether this change affects the project's impacts and/or complies with the

requirements imposed by the environmental authority—or considers the Diaguita people and citizens in general. The company also did not refer to the way it will comply with the obligation of consulting the Diaguita people, particularly the CADHA, on whose ancestral territory the project is located.

## **El Morro**

The second project under study is the El Morro mining project, originally owned by Goldcorp Inc., also headquartered in Canada. The project involves the exploitation of an open-pit gold and silver mine, which contains proven and probable reserves of 8,9 million ounces of gold and 6.5 billion pounds of copper at the close of December 2014. El Morro's worksites, located in Huasco and Copiapó Provinces, cover an area of approximately 2,460 hectares, out of which 1,420 hectares correspond to legally registered territory of the CADHA.

In 2008, the Sociedad Contractual Minera El Morro submitted an environmental impact assessment (EIA) to the Regional Environmental Committee of the Atacama region, thereby presenting the "El Morro Project" to the Environmental Impact Assessment System. After a series of addenda, the project was approved by Exempt Resolution 049 of 2011.

Soon thereafter, judicial actions were filed against the El Morro project for violation of constitutional guarantees, in particular because the indigenous consultation was not performed as established in the International Labour Organization Convention 169 on Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169), ratified by Chile and in force since 2009. These actions found acceptance in the courts, which ordered the annulment of the Exempt Resolution. Owing to this judicial decision, the company decided to temporarily withdraw the project from the Environmental Impact Assessment System and to indefinitely suspend its execution. Nevertheless, in 2015, Goldcorp, with Teck Resources, a company also based in Canada, announced their intention to amend the original project to give rise to the Corredor project that combines the El Morro mining project with another adjacent project called Relincho. The combined project was later named New Union, or NuevaUnión, in reference to this merger. As in the case of Pascua Lama, the NuevaUnión project has not publicly stated whether this modification substantially affects the impacts of the project and/or allows compliance with the requirements imposed by the Diaguita people and citizens. In addition, the indigenous consultation is still pending.

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These mining projects are analyzed in this HRIA in light of national and international human rights regulations applicable to indigenous peoples. As detailed in this report, the legal framework for indigenous peoples in Chile grants the Diaguita and the CADHA, as part of this indigenous group, protection against initiatives such as these mining projects. Indeed, under Law 19,253 of 1993 on “promotion, protection and development of indigenous peoples,” amended in 2006 to recognize the Diaguita as an ethnic group, the Chilean State recognizes indigenous individuals, ethnic groups, and their communities, and undertakes to respect, protect, and promote their development, cultures, families, and communities and to protect their land. More importantly, the human rights recognized in ILO Convention 169 ratified by Chile in 2008, in accordance with Article 5, paragraph 2, of Chile’s Constitution, must be respected and promoted by state bodies. According to ILO Convention 169, indigenous peoples have, among other rights applicable to projects such as those proposed in Diaguita territory that are under analysis in this HRIA, the right to respect of their cultures, ways of life, and traditional institutions; to ownership and possession of their traditionally occupied lands; and to consultation and effective participation in decisions that affect them. Consultation, especially prior to undertaking or permitting programs for the exploration or exploitation of resources existing on their lands, is a fundamental right of the Diaguita people. In the same way, they are entitled to participate in the benefits of such activities, and to receive fair compensation for any damage they may suffer as a result of such activities.

Also applicable to indigenous peoples are rights that have been recognized through various international human rights instruments. Equally relevant for the implementation of these rights is their interpretation by the bodies responsible for their supervision: the treaty bodies of the United Nations, the Inter-American Commission on Human Rights (IACHR), and the Inter-American Court of Human Rights.

Highlighted among the rights that assist indigenous peoples that are applicable to the Diaguita people and to the CADHA and that are evaluated in this HRIA, are the following:

- The right to equality and nondiscrimination, which includes the right not to be discriminated against for ethnic or cultural identity reasons, a right that not only assists the Diaguita as individuals who are members of the CADHA but also as collective subjects.
- The right to self-determination, autonomy, and self-government; to maintain and strengthen their own political, legal, economic, social, and cultural institutions; and to decide their own priorities for the process of development. These rights are recognized by the UN Declaration on the Rights of Indigenous Peoples of 2007, a declaration adopted by Chile.

- The indigenous peoples' right to ownership of their lands, territories, and natural resources, including the right to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those they have acquired otherwise.
- The right to consultation regarding measures that may affect them directly with the objective of achieving agreement or consent. In accordance with applicable international standards of such consultations, which constitute a duty or obligation of the state, these consultations must be prior, free, informed, and in good faith. They must also be enacted through culturally appropriate procedures.
- Finally, the right to prior, free, and informed consent, particularly in the case of relocation, of storage of hazardous materials in lands and territories of indigenous peoples, or of large-scale investment projects that would have great impact, such as the impacts that mining projects usually have within the territory or community of indigenous people, including those analyzed in this study.

As discussed in this HRIA, there is also a growing recognition in international law of the responsibility of states to respect and ensure human rights. This responsibility is required not only for the actions of the states and their agents, but also for acts committed by private persons or entities domiciled in these states. In the same way, there is consensus, expressed in the 2011 UN Guiding Principles on Business and Human Rights, that ensuring the observance of human rights in the context of business activity requires the participation of state and business enterprises. The Guiding Principles are organized into three "pillars" outlining state and business responsibilities:

- Pillar 1: The state should provide protection against human rights abuses committed by third parties, including businesses, through appropriate measures, regulatory activities, and the submittal to justice.
- Pillar 2: The companies have the duty to respect human rights, which implies the duty to avoid infringing on the rights of people and includes pursuing due diligence processes on human rights matters and redressing the negative consequences of their activities.

- Pillar 3: Effective repair mechanisms must be established, and states and business enterprises must ensure that victims of human rights abuses by companies have access to effective judicial and extrajudicial remedy mechanisms.

Also relevant to this HRIA is the growing recognition by international law of the responsibility of states to ensure the protection of human rights, not only within their territories but also outside their borders, when human rights are affected by the activities of companies domiciled in them. Extraterritorial obligations (ETOs) of states—in relation to the rights of indigenous peoples often affected by the actions of transnational corporations domiciled outside the territories in which they operate—have been the special subject of concern of UN treaty bodies and the inter-American human rights system, and therefore are also analyzed in this HRIA. Specifically, this report focuses on Canada, the country of origin of the businesses that own the projects under assessment.

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This HRIA found that the mining projects imposed or projected in the territory of the CADHA have had a series of impacts on the human rights of the community. A fundamental right that has been violated in this case is the right to equality and nondiscrimination. This violation is seen in the preferential ownership right granted to the mining concession to impose easements on the owners of the land, even when the land is owned by indigenous communities; the actions of the Environmental Qualification Resolution that approved the project; and related to the latter, the refusal of the state to acknowledge the indigenous status of the CADHA.

Along with this violation to equality and nondiscrimination, the community's right to self-determination, autonomy, and self-government, to preserve their own institutions in the various fields of cultural life, and, consequently, to decide their priorities for development have also been violated.

The Pascua Lama and El Morro projects also violated the rights of the CADHA over the community's lands, territories, and natural resources. This violation is the consequence of the state's historical lack of protection of these ancestral lands, which has resulted in their usurpation by private parties. Specifically, the state's refusal to recognize the indigenous status of these lands has meant that these lands have been excluded from the special

protection provided by Chilean law for lands registered as indigenous. Through their actions, the state and the companies have obviated the irreplaceable relationship that this indigenous group has with its territory, which constitutes the foundation of their way of life and customs and gives them an ethnic identity.

In the case of large projects that could cause significant impact on the way of life and customs of the CADHA, and pursuant to applicable law, the state also evaded its obligation to obtain free, prior, and informed consent from the community for these projects. Moreover, the state has not ensured the participation of the CADHA in the benefits of these projects, beyond the compensations paid by Barrick Gold in the case of Pascua Lama, which, as explained in this report, have been aimed at achieving the adhesion of some groups affected by the project that do not hold rights over ancestral territory and have also resulted in breaking the social fabric of the Diaguita people.

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Following the UN Guiding Principles on Business and Human Rights that have been taken into consideration in the development of this HRIA concerning the CADHA's rights, this research found a fundamental responsibility of the governments and the business owners of these projects.

In relation to the State of Chile, this study concluded that it has not complied with its obligation to protect against human rights abuses committed by third parties, in this case by companies. In fact, the state did not comply with domestic and international laws, such as Chilean Law 19,253, and ILO Convention 169, which ensure respect for the rights of the CADHA and its members in the face of these mining projects. For example, the State of Chile has refused to recognize the lands of the CADHA as indigenous lands to date, and, as a result, provide the protection that Law 19,253 grants to these lands.

Nor did the Chilean government evaluate other in-force legislation, such as the Mining Code, the Water Code, and environmental legislation and its regulations referring to the environmental impact assessment of projects such as those discussed in this HRIA, to see whether they adequately protected the human rights of the CADHA. Had the government done so, it could have overcome deficits and omissions in these matters. Likewise, it did not submit to the justice system the projects owners whose activities resulted in the violation of human rights of this community.

Moreover, the Chilean government signed agreements with the Argentine government to facilitate cross-border mining, as well as reached a trade agreement with Canada. These agreements were instrumental in facilitating the Canadian mining investments without ensuring proper adherence to their international commitments on human rights and without performing an assessment of their impact on those rights. It is also evident that the Chilean State did not regulate the companies that own the projects analyzed in this HRIA, by imposing the pro homine principle of respecting human rights in their activities, and by insisting that they prevent and/or remedy the impact of their activities on human rights. Finally, the Chilean government did not ensure effective access to judicial or administrative mechanisms of redress against violations of human rights of this community committed by the owners of these mining projects, nor did it facilitate access to nonstate complaint mechanisms.

This work also found that the State of Canada contributed to the impact on the human rights of the Diaguitas Huasco Altinos Agricultural Community in the context of the mining projects. In fact, the Canadian government has actively promoted investments in the extractive industry located in territories beyond its borders. It has signed numerous trade agreements with different states, including with the Chilean State, to promote and protect investments abroad in companies domiciled in Canada. It has also granted loans to these companies through state agencies, without safeguarding the human rights of the supported investments. The responsibility of Canada is also a result of the refusal of its government to accept the recommendations of international human rights organizations, which have urged it to adopt legislative and policy measures to meet its extraterritorial obligations for the violation of human rights by companies domiciled in Canada acting outside the country to prevent, remedy, and sanction such violations. Canada is also responsible for the support it has granted to the mining projects of this HRIA without having heard the complaints from affected communities and civil society organizations. The Canadian authorities cannot ignore these human rights claims, which were formalized through presentations to its embassy in Chile and reports submitted to international bodies such as the IACHR.

Finally, the companies involved in these projects, Barrick Gold and its subsidiary in Chile, Compañía Minera Nevada, in the case of the Pascua Lama project, and Goldcorp in the case of the El Morro project, in turn, did not fulfill their obligation to respect the human rights of the Diaguita Huasco Altinos people. In fact, in contrast to the statements made by representatives in Chile and to the institutional principles appearing in its websites in which both companies express a commitment to human rights, in general, and to the rights of indigenous peoples, in particular, they have not met their responsibility to prevent and mitigate the impacts of their activities on human rights in its operations and plans in the

territory of the CADHA. Nor have these companies avoided the violation of individual rights of its members and community groups, or remedied the negative consequences of their activities, as established in the UN Guiding Principles on Business and Human Rights. Even more importantly, the companies did not respect the right of the CADHA to express, or not, its free, prior, and informed consent for the projects referred to in this report, a right that both companies—as member parties of the International Council on Mining and Metals (ICMM)—recognize when indigenous peoples are directly affected by their operations.

In the case of Barrick Gold, the mining project was located in the territory that CADHA claimed as ancestral. In addition, the environmental impact studies developed by the company for this project did not include human rights criteria nor were they focused on measures to prevent possible negative impacts of the planned activities on the environment and on the economic, social, and cultural life of the CADHA. Such impacts, including damage to the glaciers that feed the tributaries of the Chollay River and damage relating to pollution of water resources and to the ways of life and customs of the land's inhabitants, were also not considered in the case of Pascua Lama. The lack of due diligence of the company was also manifested in the closure of access roads to the mountain range that has traditionally been used for the community's pastoral activities.

Similarly, this HRIA found that Barrick Gold's corporate practices destabilized the organizations of the Diaguita people and contributed to disintegrating their social cohesion. This destabilization was achieved through negotiations aimed at co-opting organizations, such as those negotiations carried out with Diaguitas communities constituted according to Law 19,253 and other organizations such as the Supervisory Board, and individuals, including members of the CADHA. Through these negotiations, the company agreed to compensate for damage to land, water, and natural resources located within the community property whose owner is the CADHA, without the community's consent.

Goldcorp showed similar shortcomings with regard to respect for human rights of the CADHA. As in the case of Pascua Lama, the El Morro project was located in an area that overlaps the territory of the CADHA and is legally registered in its name. The lack of due diligence of Goldcorp to identify and prevent the negative consequences of the project on this indigenous community was evident in its environmental impact study, which did not adequately consider the impacts that the project would have on this community. In 2012, this situation led the courts to nullify the environmental rating of this project because it violates constitutional guarantees of the legal right to equality and the right of territory ownership of the CADHA. The rating is nullified until completion and inclusion of a baseline study that takes the project's impacts on the community's right to communal property and their traditional way of life and customs.

The same lack of due diligence was seen in the community consultation process of the El Morro project, a process contested by the courts in 2014 for not considering the CADHA. The company did not hold dialogues with the community relating to the study of social impacts, to the adoption of compensation measures for damages caused by the project, or to the method of profit sharing.

In addition, both companies failed to establish effective mechanisms for complaint and redress for the adverse impacts of their investments, as mandated by the UN Guiding Principles on Business and Human Rights.

As for Teck Resources, a company also headquartered in Canada, which owns the Relincho project located 40 kilometers away from El Morro, and which entered into an agreement in 2015 to merge the two projects into one (initially called Corredor and now New Union, or NuevaUnión), this company has manifested in various ways its commitment to human rights in general and to the rights of indigenous peoples, including those recognized in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The merger of its mining project with El Morro on land legally owned by the CADHA, however, is not a positive sign; it remains to be seen whether Teck upholds its previous human rights commitments as the proposed mining project progresses.

## RECOMMENDATIONS

Considering the information gathered in this HRIA, and bearing in mind the guidelines of national law and, in particular, international law on human rights applicable to indigenous peoples, the international obligations contracted by the states involved, as well as the aforementioned UN Guiding Principles, this work submits the following recommendations to the State of Chile, to the State of Canada, and to the companies responsible for these projects, as well as to the international human rights treaties bodies with jurisdictional capacity in the matters addressed:

### **TO THE CHILEAN GOVERNMENT:**

- Protect the rights of the CADHA to the community's land and territory through the recognition and subsequent registry of their land as indigenous lands under national and international law, and establish mechanisms to restore community lands that have been usurped by private parties and through the exemption on the payment of land tax.
- Recognize the CADHA as a representative institution of the Diaguita people, granting it the rights that national legislation establishes for indigenous communities and refraining from promoting the creation of other communities that fragment this institution.
- Respect and protect the right of the CADHA to define community priorities for development, granting legal recognition and protection to the initiative of indigenous and community conservation that these territories be deemed a natural and cultural reserve, as the CADHA has promoted for the past decade.

- Take an active role in protecting the human rights of the CADHA in the face of violations and abuses of these rights committed by transnational mining companies (in this case, Canadian), which intervene in their territory without consultation and against the will of those affected, damaging the environment and natural resources and undermining the internal cohesion of the community. This role should include the adoption of effective measures to prevent, investigate, punish, and remedy these violations and abuses.
- Enforce national laws aimed at protecting the rights of indigenous peoples, particularly the pertinent provisions of Law 19,253 of 1993 regarding the protection, promotion, and development of indigenous people.
- Make effective the human rights obligations assumed under the ratification of international treaties applicable to the CADHA, including ILO Convention 169, the UN International Convention on the Elimination of All Forms of Racial Discrimination, the UN International Covenant on Civil and Political Rights, and the American Convention on Human Rights, bearing in mind the interpretation of the meaning and scope of the provisions issued by the treaty bodies.
- Make effective the human rights commitments considered in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) approved in 2007 with the support of Chile.
- Review and adapt, through the co-legislator bodies (executive and legislative), the following: the Constitution, the laws and regulations that may affect members of the community relating to natural resources and human rights (including legislation relating to rights over natural resources such as water, subsurface resources, and glaciers that are found on the CADHA lands, and legislation referring to the right of consultation of indigenous peoples in the face of legislative and administrative measures), and the environmental legislation such as Law 19,300 of 1994 amended by Law 2,417 of 2010, including Executive Decree 40 of 2013, which regulates the Environmental Impact Assessment System, so as to provide effective protection to the Diaguitas Huasco Altinos from activities that companies carry out or intend to carry out in their lands and territories affecting their rights. Also, the Chilean government should ensure that consultation is implemented throughout the entire project process—including the granting of concessions of both exploration and exploitation—until mine closure.

- Recognize in said legislation and regulations the right of indigenous peoples to free, prior, and informed consent in the face of investment projects or large-scale development, such as the projects under analysis in this HRIA, that have a large impact in their territory, in accordance with the guidelines of applicable international law.
- Review and adapt existing legal and administrative mechanisms in the legal system so as to ensure that they allow for effective protection of the rights of indigenous peoples in the context of business activities, and allow remedying violations of those rights when they take place.
- Ensure the coherency of its public policy so as to ensure that free trade agreements and bilateral investment agreements signed by the state, such as the free trade agreement signed with Canada or mining agreements signed with Argentina, do not limit the possibilities of indigenous peoples to exercise the human rights that have been granted to them by national and international law.
- Establish human rights requirements as a condition for granting authorization for foreign investment in projects on indigenous lands and territories, identifying mechanisms to monitor compliance with these requirements.
- Incorporate into the National Action Plan on Business and Human Rights, under development by the current government of Chile, an analysis of the legal and political factors that enable the impact on or abuses of the rights of indigenous peoples by investment projects, such as those generated by the projects object of this HRIA in the CADHA, as well as include specific recommendations on how to prevent these impacts and how to remedy these abuses when they occur.
- Provide public resources to finance more HRIAs.
- Finally, the National Institute of Human Rights (INDH) should perform an observation mission to gather information on the current status of the mining projects addressed in this HRIA to identify the potential impacts that the resumption of the Pascua Lama project or the approval of the El Morro project, now known as NuevaUnión, may signify for the human rights of the CADHA, proposing recommendations to the various organs of the State of Chile to prevent such impacts.

**TO THE CANADIAN GOVERNMENT (WHERE THE COMPANIES THAT HAVE OPERATIONS ON THE LANDS AND TERRITORIES OF THE CADHA ARE DOMICILED):**

- Assume extraterritorial obligations on human rights, ensuring, through the adoption of legislation and administrative measures, that companies based in Canada that operate abroad do not negatively impact the human rights of communities affected by their investment projects, in particular the rights of indigenous peoples.
- Establish legal and administrative mechanisms, including an ombudsman specialized in extraterritorial obligations of Canada on human rights, to claim responsibility for companies domiciled in Canada that violate human rights outside of the country, and when this occurs, to ensure justice and redress.
- Ensure that trade agreements, including free trade agreements and bilateral investment agreements signed with other states, do not contain provisions that may result in the restriction of human rights of indigenous peoples.
- Refrain from giving support, through its funding agencies (Export Development Canada) and its embassy in Chile, to mining projects that have been identified in this HRIA.
- Develop an exit strategy together with the CADHA in the case that the two Canadian companies have to close their operations, particularly to reverse damage to the social fabric and to the environment, pledging to strengthen the CADHA life plans, particularly in the implementation of a community protected area.

**TO THE COMPANIES OWNING INVESTMENT PROJECTS:**

- Refrain from continuing to infringe upon the human rights of the CADHA indigenous community recognized by national and international law referred to in this HRIA through both the actions of their headquarters in Canada and their subsidiaries in Chile.
- Respect the will of the community in relation to investment projects on community lands and territories and their life plans expressed in a prior, free, and informed manner through their own institutions, refraining from continuing to fragment the Diaguita community and its members in order to carry the projects out.

- Effectively repair the adverse impacts that their actions have had on the rights of the community to date, specifically, the rights to community lands and territories, rights over natural resources, including water, and the right to environment.
- Carry out due diligence processes prior to their investments, making assessments of the actual and potential impacts of their activities on the human rights of the community, safeguarding the human rights of the CADHA and refraining from activities that could generate such impact, promising to act only with the free, prior, and informed consent of the CADHA.
- Establish internal mechanisms to address and process claims of the community and its members for violations of human rights, through which the community can seek redress in face of the abuses of these rights, either directly or indirectly.
- In the event that the affected communities express their prior, free, and informed consent to such projects through appropriate processes, ensure that the CADHA participates in the profits generated and that the community benefits as a form of compliance of a right, not as a charitable concession seeking social support of the project or to minimize conflicts.

## **TO INTERNATIONAL HUMAN RIGHTS ORGANIZATIONS:**

### **To the Inter-American Commission on Human Rights**

- Request information from the State of Chile in relation to the situation of the rights of the CADHA affected by the activities of the Canadian companies that are owners of the investment projects subject to this HRIA.
- Urge the State of Chile to carry out new consultation processes with the CADHA to be directly affected by the administrative measures taken or to be taken that involve investment projects of companies located on their lands and territories, and ensure that these companies comply with human rights standards applicable to them according to the jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights on the matter.
- Prepare the background report on the petition filed with the Inter-American Commission on Human Rights by the CADHA in 2007 (Case 12,741) for the violation by the State of Chile of their human rights as a result of the Pascua Lama project.

- Monitor compliance with the recommendations of the Inter-American Commission on Human Rights' recent reports on indigenous peoples, communities, Afro-descendants, and extractive industries, particularly those related to state human rights obligations of extractive activities, exploitation, and development, and the specific obligations concerning indigenous peoples.

**To the United Nations system:**

- To the treaty bodies that have ruled on the responsibility of the State of Canada: Adopt legislation and administrative measures to prevent the negative impact on human rights by companies domiciled in that country acting outside its borders, and monitor the compliance with these recommendations by the Canadian government.
- To the UN Working Group on Business and Human Rights, established in 2011 as a special procedure to promote the UN Guiding Principles on Business and Human Rights: Visit Chile to observe the impact on the human rights of indigenous peoples as a consequence of mining projects that are currently located on indigenous lands and territories, and in particular the impact on human rights of the CADHA affected by the projects referred to in this HRIA.
- To the Special Rapporteur of the UN on rights of indigenous peoples, Victoria Tauli Corpuz: Incorporate into the analysis that she is currently developing on trade agreements and human rights an analysis of the implications of the Canada-Chile free trade agreement on the infringement of human rights of indigenous peoples as a consequence of Canadian mining investments promoted by said trade agreement.
- To the Human Rights Council: Provide support and accelerate the work initiated by the intergovernmental panel established by resolution in June 2014, so that it promptly develops a legally binding instrument on transnational corporations and other companies and human rights.

