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Canadian Network on
Corporate Accountability

BRIEFING NOTE

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WILL CANADA BE OPEN FOR JUSTICE?

For years, Canadians have been calling on their government to take action on reports of systemic human rights abuse and environmental damage linked to Canadian oil, gas and mining projects around the globe.

The Open for Justice campaign urges the federal government to **create an independent ombudsperson** to investigate cases of alleged human rights abuse linked to the overseas operations of Canadian extractive-sector companies, and to **facilitate access to Canadian courts** for people harmed by such abuse.

Much of the world is open for Canadian business; when will Canada be open for justice?

THE PROBLEM: NO JUSTICE FOR VULNERABLE PEOPLE HARMED BY CANADIAN COMPANIES OVERSEAS

Canadian firms dominate the global mining, oil and gas sector, representing over fifty percent of extractive companies worldwide. They operate more than 8,000 projects in over 100 countries, many of which have notoriously weak human rights and environmental protections.

Canadian mining, oil or gas companies have been accused of committing serious abuses abroad, including

- driving rural and indigenous people off their lands—often with no compensation,
- employing security guards who have shot, raped or killed unarmed people who oppose their projects,
- severely polluting or drying up local water sources,
- violating workers' rights and even using indentured labour.

In many cases, victims of such abuse have **nowhere to turn to seek justice**. The legal systems in their own countries do not effectively protect their rights (because of factors such as discrimination, corruption, dysfunction or absence of protective laws). There is no international court that can hear their cases. Sometimes they turn to Canadian courts, despite the significant financial and logistical hurdles involved.

Yet Canadian courts often decline to hear cases brought by foreign plaintiffs. BC's Supreme Court, for instance, in November 2015, decided not to hear a case relating to Tahoe Resources' operations in Guatemala. That case alleges that Tahoe's private security shot and injured 7 men during a peaceful demonstration.

Meanwhile, **Canada offers considerable economic, diplomatic and political support to extractive sector companies** without making this support conditional on companies' respect for human rights and the environment. That means it's not living up to its international legal duty to protect human rights and may be complicit in abuses.

CANADIANS AND THE GLOBAL COMMUNITY ARE CALLING FOR CHANGE

More than 100,000 Canadians have endorsed the Open for Justice campaign and sent messages calling on the government to create an effective ombudsperson—just as representatives from Canadian industry and civil society recommended it do in 2007, following a national roundtable process examining this issue.

Globally, there is widespread recognition of the urgent need to improve access to justice for victims of corporate abuse. The UN's framework on business and human rights and its associated guiding principles—which Canada has endorsed—call on nation states to remove barriers that prevent legitimate cases from being brought before the courts and to create effective grievance mechanisms.

A WEAK RESPONSE BASED ON VOLUNTARY MEASURES

Despite over a decade of parliamentary study and debate on this topic, the Canadian government has yet to take strong, effective action. Instead, in 2009 it introduced a “corporate social responsibility (CSR) strategy” that consists primarily of promoting voluntary guidelines and facilitating dialogue.

Under this strategy, people affected by the overseas activities of Canadian extractive companies can appeal to one of two offices, described below, to request a “review process.” In both cases, the purpose of review is to “bring disputing parties together for ongoing dialogue.”

CANADIAN NATIONAL CONTACT POINT (NCP) FOR THE OECD GUIDELINES

The NCP is an interdepartmental committee, chaired by Global Affairs Canada, that exists to promote awareness and implementation of the OECD's Guidelines for Multinational Enterprises. These guidelines are **voluntary principles and standards** of responsible corporate conduct. Unlike its counterparts in the UK and the Netherlands, Canada's NCP **does not conduct investigations and site visits**. It **does not make public findings** on whether a company has breached the guidelines. It **does not make recommendations for remedy**.

OFFICE OF THE EXTRACTIVE SECTOR CSR COUNSELLOR

How would the average Canadian answer the following questions?

- does not investigate complaints to determine if companies have caused harm or breached human rights standards,
- cannot recommend remedy or changes to government policy, and
- is not independent: the Counsellor reports directly to the Minister of Trade.

The CSR Counsellor's office has not proved useful for victims of corporate abuse. It has **failed to successfully mediate a single case brought before it** since its creation in 2009. At least half of the companies subject to review have refused to participate. Minor changes made to the office in 2014 introduced the potential for repercussions, in some cases, for a company's refusal to participate in a review, but these are not significant enough to be likely to affect future practice. Even when companies are willing to participate, the likelihood of complainants securing effective remedy through a closed-door mediation process is remote.

WHAT'S NEEDED

People harmed by the activities of Canadian oil, gas and mining companies should have access to justice here in Canada. The Government of Canada needs to:

- 1) **Establish a human rights ombudsperson to oversee Canadian extractive sector operations outside of Canada.** This ombudsperson should be independent and impartial, with a mandate to:
 - receive complaints,
 - investigate the international operations of Canadian extractive-sector companies,
 - evaluate compliance with corporate accountability standards, and:
 - make public recommendations, to both companies and the Government of Canada, for remedy, including the suspension of government support (political, financial and diplomatic).
- 2) **Facilitate access to Canadian courts for people who have been seriously harmed by the international operations of Canadian companies.**
 - Non-Canadians who are affected by the overseas operations of Canadian extractive companies should be able to bring civil lawsuits before courts in this country.

Canada's Liberal, NDP, Green and Bloc Québécois parties all signalled they would support corporate accountability measures, including the creation of an extractive-sector ombudsperson, in their responses to a CNCA survey in September of 2015.

FOR MORE INFORMATION about the Canadian Network on Corporate Accountability, or to join our email list, visit our website at www.cnca-rcrce.ca, or contact us at coordinator@cnca-rcrce.ca or 613.731.6315 ext. 31.