



**CNCA’s submission to the 2020 consultation on Canada’s 2014 CSR Strategy**  
**“Doing Business the Canadian Way: A Strategy to Advance CSR in Canada’s Extractive Sector Abroad”**

**October 26, 2020**

**A. Introduction**

Formed in 2005, the Canadian Network on Corporate Accountability (CNCA) unites 39 environmental and human rights NGOs, religious organizations, labour unions and solidarity groups who have joined together to ensure that the fundamental rights of all peoples are respected by Canadian mining, oil and gas companies, no matter where they operate. Many of our member organizations have been working on the issue of corporate accountability for decades and have long standing relationships with communities, workers, Indigenous people, and environmental and human rights defenders from around the world.

We welcome the review of Canada’s Corporate Social Responsibility Strategy and the opportunity to make a submission on Canada’s proposed Responsible Business Conduct strategy. We are among the groups that advocate for policy coherence around a rights agenda and Canada’s international human rights obligations. We see this review as a critical opportunity for Canada to move beyond a narrow focus centred on voluntary measures to help companies learn about CSR and manage risks in their global operations to a whole-of-government approach that places priority on Feminist Foreign Policy and international development goals and champions human rights across all of Canada’s global engagements, commitments and agreements.

Global Affairs Canada’s issue paper identifies Responsible Business Conduct as being “at the nexus of many priorities for Canada such as the respect for human rights, fighting climate change, inclusive trade, and respecting the rights of Indigenous communities.” We agree that the absence of effective corporate accountability measures are a key barrier to achieving Canada’s goals in these areas. The issue paper goes on to focus almost exclusively on the role of the private sector, in particular in regard to helping companies manage risks. It does not include adequate attention to the role and responsibility of the federal government in ensuring respect for human rights, fighting climate change, creating inclusive trade, and respecting the rights of Indigenous communities. Furthermore, impacted communities are largely erased from the conversation.

Prioritization of the Sustainable Development Goals, Reconciliation with Indigenous Peoples, Climate Change, and Due diligence and supply chain legislation in the issue paper’s discussion on government context and commitments is meaningful. We note with dismay that this same section which purports to articulate key Government of Canada commitments, and the section on

international frameworks, do not include any reference to Canada's international human rights commitments with respect to overseas Canadian business conduct beyond references to the UNGPs and the OECD guidelines for MNEs. In fact, the only reference to international human rights law is found in reference to new technologies. Fulfillment of Canada's international human rights obligations should be not only central to the orientation of Canada's CSR strategy, it should be *the* decisive metric upon which the strategy is designed and evaluated.

We would like to highlight some important elements documented in the interim *What We Heard So Far* report:

- “There was a consistent theme expressed by some stakeholders that voluntary measures are not sufficient to accelerate take-up of responsible business practices by Canadian companies operating overseas.”
- Participants recommended
  - that the Canadian government should “Strengthen dispute resolution mechanisms” and “adopt mandatory measures including human rights due diligence legislation, monitoring and enforcement”.
  - That the tools and incentives in the RBC strategy should include:
    - Making “good Responsible Business Conduct practices a condition of access to federal government trade, advocacy and programming support”
    - Requiring “corporate disclosures to improve transparency and provide information to investors and other stakeholders” and
    - Developing “policy, legislation and tax measures to mandate or incentivize responsible business practices.”

We would also like to highlight some important elements that are absent from the *What We Heard So Far* report:

- Critical analysis about the ineffectiveness and inadequacy of Canada's National Contact Point for the OECD Guidelines on Multinational Enterprises and the Canadian Ombudsperson for Responsible Enterprise (as currently constituted).
- Clarification that the *Multi-stakeholder advisory body on responsible business conduct*, as a result of the [mass resignation of all of the civil society and union members in July 2019](#), cannot properly be called a multi-stakeholder body, given that its membership is composed only of industry representatives and government officials. The government of Canada should be frank with readers of the proposed RBC strategy that the MSAB is currently moribund, and assess the continued utility of the advisory body: it should either be renamed (industry advisory body to the minister) or decommissioned.

We are concerned with the recommendation that Global Affairs Canada put public resources into internationally promoting private industry standards, such as the Mining Association of Canada's Towards Sustainable Mining (TSM).<sup>1</sup> Building Canada's reputation and creating competitive

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<sup>1</sup> In addition, the TSM has been criticized as a weak standard. In a comparison with eight voluntary global standard initiatives applicable to large-scale industrial mining, considering environmental, social and business practice standards, TSM scored lowest. The authors found that TSM had poorer issue coverage, weaker enforcement and weaker standards overall than the other comparable standards. MiningWatch Canada, October 2020. Mineral Resource Governance: Brief prepared for UNEP consultations on the United Nations Environment Assembly (UNEA) Resolution 4/19 on Mineral Resource Governance. Appendix A, p.8.

advantage for Canadian industries operating abroad cannot be achieved through the promotion of voluntary standards. It requires the establishment of robust, independent, objectively unbiased corporate accountability mechanisms that ensure stakeholders that Canadian corporate supply chains and global operations will respect human rights and the environment, or face real consequences.

Our comments focus primarily on the third area of focus for the consultations: *#3: Enhance accountability through providing access to dispute resolution, dialogue, recourse and remedy.*

## **B. Summary of recommendations to the Government of Canada**

- 1. Prioritize the prevention and remedy of human rights abuse linked to Canadian corporate activity overseas through:**
  - a. **Meaningful implementation of prior public commitments on business and human rights.** Specifically, Canada should transform the Canadian **Ombudsperson** for Responsible Enterprise (CORE) into the independent office with robust powers to investigate and compel documents and testimony that was promised.
  - b. **Advancement of new corporate accountability mechanisms in Canada** to prevent harm and offer remedy to foreign victims of rights violations. Specifically, Canada should enact **mandatory human rights due diligence legislation.**
- 2. Develop a human rights, Indigenous rights and gender responsive Corporate Accountability Framework for Canada that ensures policy coherence and a whole-of-government approach to fulfilling Canada's international human rights commitments.** Unlike the CSR strategy created in 2009 and updated in 2014, a *Corporate Accountability Strategy* would be gender responsive, focus on the rights of vulnerable individuals and communities and the advancement and fulfilment of the rights of Indigenous peoples.

### **Why Canada must transform its CSR strategy into a rights-based corporate accountability framework**

Canadian firms dominate the global extractive sector, with over fifty percent of mining companies worldwide headquartered in Canada. These firms operate more than 8,000 projects in over 100 countries, many of which have notoriously weak human rights and environmental protections. In this context, Canadian companies' overseas operations are too often associated with credible accusations of human rights abuse including forced labour, sexual violence, forced displacement and failure to respect the right of Indigenous peoples to free, prior and informed consent.

Effective accountability mechanisms for Canadian extractive companies are indispensable instruments for creating and maintaining an enabling environment for many of Canada's foreign policy goals, and for the fulfilment of Canada's international human rights obligations. Canadian companies' overseas operations are often associated with credible accusations of human rights abuse including forced labour, sexual violence, forced displacement and failure to respect the

right of Indigenous peoples to free, prior and informed consent. Yet, corporate actors routinely enjoy impunity for their wrongdoing, including in cases of serious harm.

Over the past decade, the Government of Canada has repeatedly been offered expert testimony about the negative impacts of under-regulated Canadian extractive operations overseas. For years, international human rights bodies (including the [United Nations Working Group on Business and Human Rights](#) (2017), the International Committee on the Elimination of Discrimination Against Women (2016), the United Nations Committee on Economic, Social and Cultural Rights (2016), the United Nations High Commission on Human Rights (2015), and the United Nations Committee on the Elimination of All Forms of Racial Discrimination (2007 and 2012) have called on Canada to ensure that its corporations, particularly those in the mining sector, respect human rights standards when operating abroad.

The United Nations ‘Protect, Respect, and Remedy’ Framework on Business and Human Rights, and the Guiding Principles to that framework, confirm the legal obligation of states to respect, protect and fulfill human rights. This duty includes the obligation to provide access to remedy for the victims of human rights abuse. Canada has thus far failed to fulfill these legal obligations.

Canada was well-positioned to be a leader in business and human rights. In 2018 the Government of Canada announced the creation of the Canadian Ombudsperson for Responsible Enterprise (CORE). However, in the implementation of the office it has not fulfilled its public commitments, including to provide the CORE with the necessary independent investigatory powers to compel documents and summon witnesses. The CORE remains unfit for purpose. The fact that Canada made this public announcement and then backtracked is a further blemish on our record. Meanwhile, there is growing international momentum, particularly in Europe, towards the establishment of mandatory human rights due diligence laws that require companies to prevent human rights abuse and environmental damage throughout their global operations and supply chains, or risk being held liable for harms. Canada went from being positioned as a leader, to that of a laggard.

If adopted, the policy and law reform recommendations detailed below would not only serve to help uphold Canada’s international human rights obligations and to enable access to remedy for impacted people, they would also have important long term benefits for Canadian companies. While Canada is a major player in the global mining sector, this sector is particularly frequently linked to the creation of conflict and community grievances. When the underlying issues are not addressed fairly and quickly, conflict escalates and companies risk significant operating delays and interruptions with serious financial repercussions. Conflicts that create negative images and publicity for companies become significant liabilities not only for the companies involved but for the entire industry as it seeks to negotiate with rights holders for access to new raw material deposits. A robust system of corporate accountability would contribute to a more stable and predictable operating environment where the responsible business practices of Canadian companies are recognized and rewarded.

Canada’s current approach has failed to serve the needs of impacted communities, failed to remedy and prevent harms, and also does not serve the business sector - the absence of credible accountability mechanisms means that all Canadian companies are painted with the same brush.

Canada's failure to keep pace with developments in other jurisdictions not only impacts our global reputation, it creates a competitive disadvantage for Canadian companies.

The 2021 renewal of Canada's Responsible Business Conduct Strategy is the perfect opportunity to meaningfully act on Canada's commitments to advance gender equality, prioritize Indigenous rights, human rights and the rights of the most vulnerable populations. Given the prominence of the Canadian extractive sector overseas, any action we take in Canada will have a significant impact around the world.

**Recommendation 1: Prioritize the prevention and remedy of human rights abuse linked to Canadian corporate activity overseas through transformation of the CORE and enactment of mandatory human rights due diligence legislation**

- 1.1. **Canada needs to meaningfully implement its prior public commitments on business and human rights.** Specifically, Canada should transform the Canadian **Ombudsperson** for Responsible Enterprise (CORE) into the independent office with robust powers to investigate - including the power to compel documents - that was promised.

The United Nations Guiding Principles on Business and Human Rights (UNGPs) and Goal 16 of the 2030 Sustainable Development Agenda prioritize access to justice. Often, the only recourse for victims of corporate abuse overseas is to seek redress in the company's 'home country'. Canada's current CSR policy, *Doing Business the Canadian Way*, does not afford the victims of corporate abuse overseas access to effective grievance mechanisms in Canada.

In January 2018, the Government of Canada [announced](#) the creation of an independent ombudsperson office with robust powers to investigate allegations of human rights abuse tied to Canadian corporate activity overseas. It has still not delivered on that promise.

Despite its explicit and public commitment, the government subsequently gutted the office's powers before it even got off the ground. In April 2019, the government [created](#) a powerless advisory post that differed little from the discredited offices that had come before it. Sheri Meyerhoffer was appointed as the Special Advisor to the Minister of International Trade Diversification, to be known as the Canadian Ombudsperson for Responsible Enterprise. It remains an ombudsperson in name only, without the independence and powers that are the foundation of an effective office.

The Government of Canada should move swiftly to transform the office of the CORE into the independent office with robust powers to investigate (including the power to compel documents and testimony) that was promised--and that impacted communities around the world urgently need.

- 1.2. **Advancement of new corporate accountability mechanisms in Canada** to prevent harm and offer remedy to foreign victims of rights violations. Specifically, Canada should enact **mandatory human rights due diligence legislation**.

Canada should catch up to growing international developments and enact comprehensive mandatory human rights due diligence (mHRDD) legislation. mHRDD legislation would require companies to identify, prevent and mitigate human rights abuses and provide for liability when companies cause harm in their global operations (subsidiaries and supply chains).

Canada has a legal obligation to respect human rights and to protect against human rights violations by third parties, including companies. Canada has yet to implement mechanisms that fulfill this duty. Canadians expect their government to fulfill its international human rights commitments by putting in place effective measures to ensure that Canadian companies operating overseas will respect internationally-recognized human rights, labour and environmental standards and that non-compliant companies will face real consequences. Maintaining the status quo in Canada undermines our nation's genuine interest in creating a world where human rights are protected for all.

Canada has an obligation to ensure the supply chains of Canadian companies are free from human rights abuses. Strong laws are needed to protect the rights of workers and communities and to prevent corporations from profiting from the use of slave labour, from rape or from serious bodily harm. Canada should institute laws that require Canadian companies and those doing business in Canada to protect internationally recognized human rights throughout their supply chains and global operations.

Several jurisdictions, including France, Switzerland, the European Union and the Council of Europe, have passed, committed to enact, or are exploring legal reforms to lift obstacles that victims face in accessing justice, to establish parent company liability and to mandate human rights due diligence. The UNGPs define due diligence as the process by which companies assess actual and potential human rights impacts, integrate and act upon the findings, track responses and communicate how impacts are addressed.

To keep pace with current international best practice, Canada should enact mandatory human rights due diligence legislation that:

- Provides for liability, and remedy, if a company fails to exercise appropriate due diligence and causes harm;
- Covers the full complement of internationally recognized human rights, including those that address environmental sustainability, and is not restricted to a limited set of rights (such as forced labour);
- Articulates that companies have a responsibility to respect internationally recognized human rights and a duty to prevent human rights abuse;
- Requires companies to take appropriate measures to identify, prevent, mitigate and account for how they address human rights and environmental impacts;

- Articulates that a company's responsibility to undertake due diligence flows through its entire corporate structure, including its business relationships, and through its entire supply chain; and
- Refers to the human rights due diligence standards set forth in the UN Guiding Principles on Business and Human Rights, the OECD MNE Guidelines, the ILO Tripartite Declaration, and the OECD Due Diligence Guidance.

While we are encouraged that due diligence and supply chain legislation is receiving prominent attention in the CSR strategy issue paper, the description therein of what such legislation should entail, and what examples exist in other jurisdictions, is inadequate. The global momentum towards mandatory human rights due diligence is not limited to human trafficking and forced labour, nor is it centred on reporting. The global trend is actually towards legislation that covers all human rights, not a narrow set, and that articulates an obligation for companies to respect human rights and to undertake due diligence, not simply to report on human rights in their supply chains. CNCA's critical opinion of the Senate bill referenced in the CSR strategy consultation issue paper is available here: <http://cnca-rcrce.ca/recent-works/opinion-modern-slavery-bill-misses-the-mark-ipolitics/>.

In the spring of 2019, in association with the Employment and Social Development Canada (ESDC) led consultation on potential global supply chain legislation, civil society released consensus starting points for Canadian supply chain legislation (<http://cnca-rcrce.ca/recent-works/35-civil-society-groups-call-for-legislation-to-combat-human-rights-abuse-by-canadian-business-overseas>). These should be used as a reference point.

**Recommendation 2: Develop a human rights, Indigenous rights and gender responsive Corporate Accountability Framework for Canada that ensures policy coherence and a whole-of-government approach to fulfilling Canada's international human rights commitments.**

To meet our international human rights obligations, keep up with global trends and advance Canada's feminist foreign policy, progressive trade and international development goals, Canada must replace its CSR Strategy, which is focused on support for companies, with a Corporate *Accountability* Strategy that centres on the prevention of harm, rights-based decision-making, accountability for human rights violations and access to remedy for impacted individuals and communities. Such a strategy would be gender responsive, focus on the rights of vulnerable individuals and communities and the advancement and fulfilment of the rights of Indigenous peoples. Canada must also ensure policy coherence and a whole-of-government approach by prioritizing business and human rights outside of its CSR policy. For example, corporate accountability -- and Canada's international human rights obligations regarding overseas business activity -- should be core to Canada's Feminist Foreign Policy, which will soon be articulated in a White Paper.

2. Canada's Corporate Accountability Strategy must include the following elements:

2.1. **Deliver on the promise of an Independent Ombudsperson with power to independently investigate, including the power to compel documents and summon witnesses**

*See above.*

2.2. **Require companies to prevent human rights abuses and environmental damage throughout their global operations and supply chains by enacting mandatory human rights due diligence legislation**

*See above.*

2.3. **Regulate public agencies and funds that support or finance Canadian corporations (including embassies, the trade commissioner service, official development assistance, Export Development Canada and FinDev Canada)**

The Canadian government actively promotes and supports the international operations of Canadian extractive companies. This support takes many forms including financial backing (eg. financing, insurance, loans and loan guarantees are provided through Export Development Canada) and political backing (eg. support by embassies and trade commissions in opening doors overseas). The UN's Guiding Principles on Business and Human Rights (UNGPs) call on governments to adopt accountability mechanisms as part of their legally-mandated duty to protect human rights. The UNGPs recognize that, in order to fulfill that duty, states may need to require human rights due diligence by government agencies and businesses. Unfortunately, Canada has so far failed to do so.

Canada should introduce measures including effective and transparent due diligence requirements for Canadian embassies, Export Development Canada, FinDev Canada, and other government agencies to ensure these agencies operate in a manner consistent with Canada's international human rights obligations, including in the use of public funds, and to prevent these public agencies from supporting, financing and insuring business activity that is linked to human rights abuse.

Government officials should also proactively disclose information about any and all support provided to companies, any policies and protocols they develop (for example "integrity declarations" at embassies) and the content and nature of any due diligence undertaken.

2.4. **Meaningful protection of human rights defenders at risk, upholding UNDRIP, and ensuring that the opinions and views of rights-holders are actively sought out and incorporated into government policy, guidelines and operations.**

According to the Business and Human Rights Resource Center, human rights defenders working on corporate accountability issues are particularly at risk of being killed, assaulted, harassed and suppressed - and these numbers are on the rise. Those linked to mining activities are particularly at risk.<sup>2</sup> Furthermore, “Indigenous peoples around the world have suffered negative, even devastating consequences from extractive industries.” (UN Special Rapporteur on Indigenous Peoples, 2013.)

Canada’s *Voices at Risk Guidelines* must be strengthened - particularly as they relate to defenders impacted by Canadian actors overseas. In addition, it is imperative that government officials be required to implement the guidelines, and face consequences for failure to do so. Other regulations, policies and directives must not undermine the implementation of the guidelines.

Government officials should actively seek to understand and meet the needs and priorities of impacted communities, Indigenous peoples and other rights-holders, including those who are threatened because of peaceful dissent. While multi-stakeholder dialogue has its place, government engagement with civil society, human rights defenders, Indigenous peoples, etc. relating to business and human rights issues should not be restricted to multi-stakeholder spaces.

Government officials should proactively adhere to business and human rights - and responsible business conduct - guidelines, codes of conduct, strategies (including those set forward in Canada’s CSR strategy and the *Voices at Risk Guidelines*), regardless of whether they believe such codes are binding on them, and whether or not they are in fact binding on them.

Funding envelopes should be made available to enable human rights defenders, workers, and community leaders to effectively document corporate human rights abuse and make use of available grievance mechanisms, including in Canada.

This should include funding

- To provide trainings to human rights defenders and impacted communities on how to effectively document corporate human rights abuse, ensure a significant portion of those trainings are led by other rights holders;
- To enable rights-holders to document human rights abuses, including through the hiring of technical experts; and
- To enable rights-holders to bring complaints in national and international fora.

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<sup>2</sup> <https://www.business-humanrights.org/en/big-issues/human-rights-defenders-civic-freedoms/>

2.5. **Ensure policy coherence: corporate accountability and gender. Corporate accountability should be at the core of Canada’s Feminist Foreign Policy. The commitments to advance gender equality in Canada’s feminist foreign policy should be embedded across all areas of Canada’s international engagement, including in Canada’s new RBC strategy.**

Canada has international human rights obligations relating to overseas business conduct. Yet in many key areas of Canadian law and policy corporate accountability, and the fulfillment of Canada’s obligations regarding business and human rights, are entirely absent or inadequately prioritized.

An important opportunity to ensure coherence is the upcoming dialogue around development of a White Paper on Feminist Foreign Policy in October-November 2020. Corporate accountability, and the gendered dimensions of business and human rights, are core to the Feminist Foreign Policy and should be adequately addressed in the forthcoming White Paper.

Furthermore, the new RBC strategy should align with the government’s broader commitment to Feminist Foreign Policy and advancing gender equality in all of its initiatives. The gender dimensions of the Guiding Principles on Business and Human Rights have been recently examined by the UNWG on BHR. Canada should take particular note of the working group’s recommendation of a three-step gender framework -gender responsive assessments, gender transformative measures, and gender transformative remedies- to help achieve substantive gender equality.<sup>3</sup>

2.6. **Ensure that Canadian companies pay their fair share of taxes and royalties**

Around the world, mineral-rich communities often receive little economic benefit from the wealth that is taken from their soil. Tax revenue on mining projects are often low. This can be the result of tax treaties between countries that restrict the right of states to tax foreign investors and foreign-owned companies. Or it can be because rates have been negotiated down by powerful companies, with the support of the home-states that represent them—such as Canada.

Further, multinational companies make extensive use of tax dodging strategies – such as the use of tax havens. While tax havens are used primarily to avoid taxes and regulations, their use can often be perfectly legal under existing international and Canadian law. Tax havens also facilitate other even more problematic practices such as [transfer mispricing](#). For example, in Africa, illicit financial outflows “constitute the single largest impediment to Africa’s development.” \$1.3 trillion has been lost in illicit outflows over the last three decades. Countries that

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<sup>3</sup><https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/gender-dimensions-guiding-principles-on-business-n-human-rights.html>

depend on resource extraction are particularly vulnerable to these outflows. The G8 and G20 have both identified the need to take action on this front. Mechanisms must be put in place to ensure that companies pay their fair share of taxes - in Canada and overseas. Canada must take concrete steps to prevent money laundering and to curtail the use of tax havens/secretcy jurisdictions by Canadians, including corporate supply chains.

### **Conclusion:**

Canada had been well-positioned to be a leader in business and human rights when it announced the creation of the Canadian Ombudsperson for Responsible Enterprise (CORE) in 2018. However, in the implementation of the office it has not fulfilled its public commitments, including to provide the CORE with the necessary independent investigatory powers to compel documents and summon witnesses and the CORE remains unfit for purpose.

Meanwhile, there is growing international momentum, particularly in Europe, towards the establishment of mandatory human rights due diligence laws that require companies to prevent human rights abuse and environmental damage throughout their global operations and supply chains, or risk being held liable for harms.

Canada went from being positioned as a leader, to that of a laggard.

Canada needs to take decisive action and replace its current CSR strategy with a corporate *accountability* framework.

Such a framework would:

1. Prioritize the prevention and remedy of human rights abuse linked to Canadian corporate activity overseas through
  - i. Meaningful implementation of prior public commitments on business and human rights. Specifically, Canada should transform the Canadian Ombudsperson for Responsible Enterprise (CORE) into the independent office with robust powers to investigate that was promised, including providing the office with the power to compel documents and testimony.
  - ii. Advancement of new corporate accountability mechanisms in Canada to prevent harm and offer remedy to foreign victims of rights violations. Specifically, Canada should enact mandatory human rights due diligence legislation.
2. Develop a human rights, Indigenous rights and gender responsive Corporate Accountability Framework for Canada that ensures policy coherence and a whole-of-government approach to fulfilling Canada's international human rights commitments.

Lastly, fulfillment of Canada's international human rights obligations should be not only central to the orientation of Canada's RBC strategy, it should be *the* decisive metric upon which the strategy is designed and evaluated.

We look forward to future opportunities to discuss these issues of vital importance to Canadians and the world.

Sincerely,

A handwritten signature in black ink, appearing to be 'Emily Dwyer', with a long horizontal flourish extending to the right.

Emily Dwyer  
Coordinator, Canadian Network on Corporate Accountability