Submission from the Canadian Network on Corporate Accountability for the Senate Standing Committee on Human Rights study of Bill S-211, *Fighting Against Forced Labour and Child Labour in Supply Chains Act*

March 31, 2022

Honourable Senators,

I am writing to you today on behalf of the Canadian Network on Corporate Accountability (CNCA) to bring to your attention our network's serious concerns regarding Bill S-211 (*Fighting Against Forced Labour and Child Labour in Supply Chains Act*).

It is well documented that some Canadian overseas business operations are linked to human rights and environmental harms. Canada's failure to regulate, investigate and ensure access to remedy for these harms is a stain on our global reputation and an impediment to fulfilling our international human rights commitments. This failure has attracted the attention of UN and regional human rights bodies,[1] communities and workers from around the world,[2] and Canadians from across the country.[3]

It is imperative that the Government of Canada move quickly to address the widespread reports of forced labour, child labour and other human rights abuses in the global operations of Canadian companies and in Canadian global supply chains. It is equally imperative that the measures implemented by the Government of Canada are effective in preventing and remedying harms.

We welcome the Senate's interest in addressing these issues and are pleased that the Senate Standing Committee on Human Rights is studying Bill S-211. However, we believe that – despite its laudable intention – Bill S-211 misses the mark and will not be effective in addressing forced labour and other human rights abuses in Canadian supply chains. We invite the committee to

[1] Including the UN Working Group on Business and Human Rights, the UN Committees on the Elimination of All Forms of Racial Discrimination and the Elimination of Discrimination Against Women, the UN Human Rights Committee, the International Committee on IESCR and the Inter-American Human Rights Commission. See here for more information.

[2] For example, this letter from 240 signatories from 56 countries.

[3] Over 500,000 postcards were sent to members of Parliament in 2009 to call for accountability for Canadian mining companies engaged in abuses overseas. Over 80,000 signed action cards calling for an ombudsperson for the overseas extractive sector were delivered to MPs at a rally on Parliament Hill in 2014. Tens of thousands of other Canadians have joined the Open for Justice campaign through petitions, letter writing and meet-your-MP events organized by CNCA members across the country. Most recently, on October 19, 2020, petition e-2564 - with 6,130 signatories - was presented to the House of Commons.

consider a more appropriate approach, one that will better address these abuses, help Canada catch up to global momentum on eradicating forced labour, and assist Canada in fulfilling its international human rights commitments.

About the CNCA

Our network unites 40 human rights, labour, international development, environmental and faith-based organizations from across Canada that collectively represent the voices of millions of Canadians. Together we call for Canadian law and policy reform to ensure that impacted communities can access remedy in Canada if they are harmed by Canadian businesses and supply chains abroad; Canadian companies respect human rights in their global operations; and, if companies are involved in abuses abroad, they face real consequences in Canada. Our member list is attached.

Many of our members have decades-long relationships with people who have been negatively affected by Canadian businesses overseas, especially in the mining sector. We are subject matter experts on corporate accountability and business and human rights. Examples of our members' work to put an end to forced labour include Above Ground's 2021 report *Creating Consequences: Canada's Moment to Act on Forced Labour*; the 2020 report by the Centre international de solidarité ouvrière on preventing forced labour in Canadian food supply chains; the Canadian Labour Congress' submission and Amnesty International Canada's submission to the House of Commons subcommittee on international human rights study on child labour and modern slavery (2017); and intervention by CNCA members in the Supreme Court of Canada case involving Canadian company Nevsun Resources' links to forced labour in Eritrea (see, for example, here and here).

The CNCA's reform proposals focus on preventing and remedying corporate abuse that occurs outside of Canada. Nonetheless, we recognize that business-related abuse occurs both within and beyond our borders, and that impacted people in Canada also face challenges in preventing harms and accessing remedy. This is particularly true for First Nations communities, environmental defenders and migrant workers. The CNCA's focus on impacts outside of Canada is largely because law and policy reform aimed at the overseas abuses of Canadian companies is the jurisdiction of the federal government, whereas regulating Canadian companies operating inside Canada is generally the jurisdiction of the provinces.

The Top Four Reasons Why Bill S-211 Misses the Mark

#1 Bill S-211 only requires that companies report on their actions

Bill S-211 only requires companies to report on what steps, *if any*, they have taken to prevent and reduce the risk of forced or child labour in their supply chains. It does not require companies to stop using child or forced labour. It does not require companies to conduct human rights due diligence (HRDD). As long as the company reports on what risks of forced

labour they identified and any steps they took to address those risks – no matter how inadequate those steps were – the company would be in full compliance with the law.

In practice, a company that uses child or forced labour and takes no steps to prevent or address it could be in full compliance with the law, so long as they publish an annual report saying they are taking no steps to address forced labour in their supply chains. On the other hand, a company that has rigorous protocols and exceptional labour practices but fails to produce an annual report could be guilty of an offence.

In addition, concerned consumers wishing to purchase goods not made by forced labour would be required to proactively look up the reports of every company they wish to purchase from to verify whether the companies are taking steps on forced labour. This is highly unreasonable.

Bill S-211 *does* include important investigatory powers and an offence with a fine for failure to report or for knowingly publishing a false report. However, these apply only when ascertaining whether the company accurately reported on the steps they took. Neither the investigatory powers nor the offence help to establish whether there is actually child or forced labour in company supply chains or punish companies that are profiting from abuse. Bill S-211 also does not provide for liability for harm or access to remedy for impacted people.

Experience shows that legislation centered on reporting fails to curb abuse

The UK's 2015 *Modern Slavery Act*, which similarly centers on reporting requirements, failed in its objective to protect victims of forced labour. When it closed its Modern Slavery Registry in 2020, the Business & Human Rights Resource Centre reported on the impact of five years of company reporting. The registry "revealed no significant improvements in companies' policies or practice", and that the act "has failed to be an effective driver of corporate action to end forced labour, even in high-risk sectors and regions."[4]

Australia's 2019 *Commonwealth Modern Slavery Act* established a national Modern Slavery Reporting Requirement. The February 2022 report *Paper Promises? Evaluating the Early Impact of Australia's Modern Slavery Act* provides an in-depth review of the first modern slavery reports published by 102 Australian companies sourcing from four sectors with known modern slavery risks and found that:

- 77% of companies failed to comply with the mandatory reporting requirements;
- 52% of companies failed to identify obvious modern slavery risks in their operations or supply chains; and

a mere 27% of companies appear to be taking any effective action to address modern slavery risks.[5]

[4] https://www.business-humanrights.org/en/from-us/modern-slavery-statements/
[5] https://www.hrlc.org.au/reports/2022/2/3/paper-promises-evaluating-the-early-impact-of-australias-modern-slavery-act

#2 Bill S-211 fails to address other egregious and interrelated human rights abuses

Modern slavery cannot be looked at in isolation. The UN Guiding Principles on Business and Human Rights (UNGPs) clearly stipulate that human rights are interrelated, interdependent and indivisible. It is impossible to effectively prevent forced labour, without also protecting other human rights, like the right to non-discrimination or to organize collectively. The violation of one right often contributes to the violation of another.

While it is vital that Canada take action to address forced and child labour, our actions should not exclude other prevalent human rights violations. Allegations of sexual violence, bodily harm and killings linked to the operations of Canadian mining companies are widespread and have been brought to Canadian courts. The collapse of the Rana Plaza garment factory in Bangladesh killed 1,132 people and brought to light the occupational health and safety violations that injure and kill workers on a daily basis. Several Canadian brands sourced from the factory.[6]

#3 The scope of Bill S-211 is too narrow

The definition of entities to which the bill would apply exempts a large number of Canadian companies. Internationally recognized guidelines, including the UNGPs and the OECD Due Diligence Guidance for Responsible Business Conduct (OECD Guidance for RBC) clearly stipulate that such laws should apply to all companies, regardless of size, sector, or where the company operates.

#4 Bill S-211's enforcement mechanisms are inadequate

Fines apply only for the failure to report or for false reporting, not for the use of forced labour

As outlined above, the fines and investigatory powers in the bill apply only to the requirement to report. There is no fine for using forced labour and no fine for failing to take any steps to identify the use forced labour.

Canada's import ban on goods produced by forced labour is not adequately enforced, and bill S-211 will not help improve its enforcement

Since July 2020 and the coming into force of the Canada-United States-Mexico Agreement (CUSMA), Canada's *Customs Tariff Act* prohibits the import of goods made, manufactured or produced in whole or in part by forced labour. Bill S-211 proposes the extension of the import ban to goods made with child labour. However, there is evidence that no more than a single shipment[7] has been excluded from import as a result of the ban and enforcement remains a

[6] For more on links to Canadian brands see https://www.business-humanrights.org/en/latest-news/what-have-canadian-firms-done-since-rana-plaza/

[7] Meeting No. 12 FAAE - Standing Committee on Foreign Affairs and International Development available at https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2?fk=11566392

challenge.[8] Bill S-211 will not help ramp up enforcement of the ban because the bill only requires companies to report on what steps they are taking. It does not require them to ascertain and report on whether they are making use of forced or child labour. In other words, the reports will not help authorities to identify the presence of forced or child labour in Canadian supply chains.

Some examples of the lack of enforcement of Canada's import ban

While the U.S. Customs and Border Protection (CBP) banned goods produced in some of Top Glove's Malaysian subsidiaries in July 2020, under the suspicion that goods were being made by forced labour,[9] and in March 2021 found that Top Glove was indeed using forced labour,[10] Canada never followed suit. Canadian companies have continued to import gloves from at least one Malaysian Top Glove factory.[11] Since 2018, at least 18 companies, including Medline Canada and Superior Glove,[12] have imported into Canada goods from Top Glove and its subsidiaries.[13]

Canada has also continued to allow the importation of goods from Supermax Corporation, another Malaysian manufacturer alleged to use forced labour despite the U.S. enforcing the ban on imports for the same factory.[14]

[8] Above Ground. Creating Consequences: Canada's moment to act on slavery in global supply chains. June, 2021. P. 12-13 https://aboveground.ngo/wp-content/uploads/2021/06/Above-Ground-forced-labour-report-June-2021.pdf Accessed January 4, 2022.

[9] Lee, Liz. Amid virus crisis, U.S. bars imports of Malaysia's Top Glove over labour issues. *Reuters*, July 16, 2020. https://www.reuters.com/article/us-top-glove-usa/amid-virus-crisis-us-bars-imports-of-malaysias-top-glove-over-labor-issues-idUSKCN24H0K2 Accessed January 22, 2022

[10] Reuters. U.S. Customs says forced labour used at Malaysia's Top Glove, to seize gloves. *Reuters*, March 29, 2021. https://www.reuters.com/world/asia-pacific/us-customs-determines-forced-labour-malaysias-top-glove-seize-gloves-2021-03-30/ Accessed January 22, 2022.

[11] A review of U.S. import database Panjiva shows various Canadian companies importing from Top Glove Sdn Bhd, whose parent company is Top Glove Corporation Bhd, according to Panjiva. (see Panjiva.com.)

[12] CBC Marketplace. The truth about your lifesaving PPE. January 15, 2021. See list at 15 minutes 16 seconds. https://www.cbc.ca/news/marketplace/the-truth-about-your-lifesaving-ppe-1.5874589 Accessed January 22, 2022. Above Ground. Creating Consequences: Canada's moment to act on slavery in global supply chains. June, 2021. P. 10. https://aboveground.ngo/wp-content/uploads/2021/06/Above-Ground-forced-labour-report-June-2021.pdf Accessed January 4, 2022. Also see Above Ground. Report finds high risk of slavery in Canadian supply chains, calls for stricter import controls and new due diligence law. Press release, June 2021. https://aboveground.ngo/report-finds-high-risk-of-slavery-in-canadian-supply-chains/ Accessed January 4, 2022

[13] Above Ground. Creating Consequences: Canada's moment to act on slavery in global supply chains. June, 2021. P. 10. https://aboveground.ngo/wp-content/uploads/2021/06/Above-Ground-forced-labour-report-June-2021.pdf Accessed January 4, 2022.

[14] Ananthalakshmi, A. U.S. bars Malaysian glove maker Supermax over alleged labour abuses. *Reuters*. October 21, 2021. https://www.reuters.com/world/us-bars-malaysian-glove-maker-supermax-over-alleged-labour-abuses-2021-10-21/ Accessed March 21, 2022.

Even if the import ban were enforced, it would not address harms in the mining sector

Even if effectively enforced, the import ban would not address the mining sector, which is linked to serious human and labour rights violations and environmental damage worldwide. Canadian mining companies operating overseas do not generally import the minerals they extract into Canada. This is corroborated by the testimony of Ben Chalmers of the Mining Association of Canada, at the February 7, 2022 hearing of the Senate Standing Committee.[15] An import ban would have no impact on the global operations and supply chains of those Canadian companies.

The bill does not help improve access to remedy nor provide any agency for those harmed by corporate abuse

The right to remedy is a core tenet of the international human rights system, and the need for victims to have access to an effective remedy is recognized in the UN Guiding Principles on Business and Human Rights (UNGPs).[16] Several UN treaty monitoring bodies have called on Canada to do more to facilitate access to judicial remedy in Canada for victims of Canadian corporate abuse abroad.[17] Bill S-211 does not provide any role for those harmed by corporate abuse, require companies to consult with rights-holders or help eliminate the barriers faced by foreign plaintiffs seeking to access Canadian courts.[18]

A Better Approach

To receive the widespread support of Canadian and international trade unions and civil society organizations, Canada should implement an international human rights law that is aligned with global best practice and meets the guidelines set out by the United Nations, the International Labour Organization and the Organization for Economic Cooperation and Development. This means implementing a law that: 1) mandates companies to prevent harm and to conduct human rights due diligence, not just report, 2) covers all human rights; 3) applies to all Canadian companies (with exemptions set in regulation); and 4) provides for liability and remedy if a company fails to exercise adequate due diligence or causes harm.

Comprehensive human rights and environmental due diligence legislation is a better approach.

In May 2021 the CNCA published model legislation that provides Canadian lawmakers with a blueprint for writing into Canadian law the corporate responsibility to respect human rights.[19]

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[15] Hearing transcripts are available at: https://sencanada.ca/en/Content/Sen/Committee/441/RIDR/02EV-55368-E
[16] For more see: https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project
[17] See appendix A below for more on this.
[18] Existing barriers are outlined here: https://cnca-rcrce.ca/2019/03/26/why-is-it-difficult-for-victims-to-access-canadian-courts/
[19] The model legislation is available here and the executive summary here.

The model legislation would:

1. **establish a corporate duty to prevent adverse human rights impacts and environmental damage outside Canada, throughout their business relationships**

A company would need to proactively ensure it is neither encouraging human rights abuse or environmental damage in its supply chains, nor turning a blind eye to negligent or harmful practices of its business relationships. Companies would no longer be able to avoid their responsibility to respect human rights by outsourcing, operating through subsidiaries or by remaining willfully blind to the human rights impacts of their supply chains.

2. **establish a corporate duty to develop, implement, consult and report on adequate human rights and environmental due diligence procedures; and**

The purpose of human rights due diligence is to prevent and avoid adverse human rights impacts. The *Corporate Respect for Human Rights Act* would require companies to develop and implement adequate human rights due diligence procedures, consult with rights-holders in the development and implementation of these procedures, and report annually. Companies would need to develop and implement due diligence procedures with respect to their own activities, as well as with respect to their affiliates and business relationships.

3. **ensure access to remedy and enforcement of HREDD obligations.**

The legislation would establish meaningful consequences for failure to prevent serious human rights impacts and failure to undertake adequate due diligence. It would also assist impacted communities and workers to access effective remedy in Canadian courts. It does this through two mechanisms:

- civil liability for harms and/or the failure to do due diligence; and
- a commissioner empowered to enforce the production of due diligence reports.

A comprehensive human rights due diligence approach benefits everyone

A comprehensive human rights and environmental due diligence approach is consistent with the Canadian civil society consensus starting points, produced during the 2019 Government of Canada consultations on possible supply chain legislation, and has been endorsed by over 150 organizations and unions representing directly-impacted people and by over 60 Canadian and international investors, NGOs and unions.

Properly crafted human rights due diligence legislation such as that outlined in the *Corporate Respect for Human Rights and the Environment Abroad Act* would help respond to all three

pillars of the United Nations Protect, Respect and Remedy Framework.[20]

It is also consistent with existing expectations of Canadian companies. For over a decade, Canadian companies have been expected to respect human rights throughout their global operations. This is an expectation set out in Canada's Corporate Social Responsibility Strategy[21] and in the UNGPs, which were unanimously adopted by the UN Human Rights Council in 2011. All Canadian companies should already be taking steps to identify, mitigate, prevent, remedy and account for human rights violations in their global operations and supply chains. What is lacking is an enforcement mechanism to ensure that companies in fact do so.

Finally, such legislation would not only serve to help uphold Canada's international human rights obligations and enable access to remedy for impacted people, it would also have important long term benefits for Canadian companies. While Canada is a major player in the global mining sector, this sector is 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.

Thank you for your time and consideration. We remain available for any further consultation or information required.

Best regards,

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[20] These include the state duty to protect against human rights violations (including by non-state actors such as Canadian companies); the corporate responsibility to respect human rights (and the role of human rights due diligence in fulfilling that responsibility) and the right of impacted people to have effective access to remedy.
[21] See, for example, Canada's Corporate Social Responsibility Strategy at https://www.international.gc.ca/trade-agreements-accords-commer- ciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng

Appendix A: United Nations commentary calls on Canada to facilitate access to remedy

Canada's failure to regulate and ensure access to remedy for harms associated with Canadian business activity overseas is inconsistent with Canada's international human rights obligations and has attracted the attention of the United Nations. For example, from 2007 to 2016, at least four United Nations treaty monitoring bodies called attention to human rights violations by Canadian extractive companies overseas and called on the Canadian government to take steps to prevent abuses and facilitate access to justice and remedy.

In **November 2016, the International Committee on the Elimination of Discrimination Against Women,** at paragraphs 18 and 19, expressed concern about violations of the rights of women and girls by Canadian mining companies operating abroad and recommended that Canada "strengthen its legislation governing the conduct of corporations registered or domiciled in the State party in relation to their activities abroad, including by requiring those corporations to conduct human rights and gender impact assessments before making investment decisions" and " adopt measures to facilitate access to justice for women who are victims of human rights violations and ensure that judicial and administrative mechanisms put in place take into account a gender perspective." CEDAW concluding observations

In **March 2016, the International Committee on Economic, Social and Cultural Rights**, at paragraphs 15 and 16, highlighted the need for Canada to introduce an independent mechanism for complaints, to facilitate access to Canadian courts, and to ensure trade and investment agreements recognize the primacy of human rights. ICESC concluding observations.

In **July 2015, the United Nations Human Rights Committee** Report, at paragraph 6, called on Canada to: "enhance the effectiveness of existing mechanisms to ensure that all Canadian corporations under its jurisdiction, in particular mining corporations, respect human rights standards when operating abroad; (b) consider establishing an independent mechanism with powers to investigate human rights abuses by such corporations abroad; and (c) develop a legal framework that affords legal remedies to people who have been victims of activities of such corporations operating abroad." UNHRC report

In **2007 and 2012 the United Nations Committee on the Elimination of All Forms of Racial Discrimination** recommended that Canada "take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of Indigenous peoples outside Canada, and hold them accountable." In 2012, the Committee expressly stated that Canada's CSR Strategy did not fulfill this recommendation: CERD concluding observations.