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Bill C-300 Position Statement

Executive Summary

Bill C-300, an Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries *is needed because the operations of Canadian extractive companies in weak governance zones have shown the potential to abuse human rights and cause serious environmental harm. There is no international regulatory system or international legal recourse for individuals harmed by the operations of Canadian extractive companies operating in weak governance zones. Voluntary Corporate Social Responsibility (CSR) measures carried out by corporations, while necessary, are not sufficient as they do not adequately reflect or assure respect for human rights, do not have effective accountability mechanisms, do not address the problems of "laggards," and do not provide for sanction or remedy. The CSR strategy recently released by the federal government of Canada[1] is fundamentally flawed as it does not reflect comprehensive human rights norms in its standards, it does not provide a mechanism to assure corporate respect for human rights, and it does not provide for sanction or remedy in cases of abuses of human rights or environments by Canadian extractive companies. Bill C-300 recognizes the legitimate role of the Canadian government to address issues not addressed through voluntary CSR measures by Canadian extractive companies operating in weak governance zones. Bill C-300 follows closely the recommendations made in the unanimously endorsed 2005 SCFAIT report "Mining in Developing Countries – Corporate Social Responsibility"[2] and is aligned with the core recommendations of the 2007 Advisory Group Report from the CSR Roundtables.[3] Bill C-300 is further supported by the findings of John Ruggie, Special Representative to the Secretary General of the United Nations on the issue of human rights and transnational corporations.*

The urgent need for Bill C-300

MiningWatch Canada was founded in 1999 by Canadian organizations and individuals who, through their work in Canada and internationally, experienced first hand the unacceptable repercussions faced by communities and environments as a result of the activities of some Canadian mining companies.

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[1] Government of Canada. 2009. *Building the Canadian Advantage*: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector. www.international.gc.ca/trade.../csr-strategy-rse-stategie.aspx

[2] Standing Committee on Foreign Affairs and International Trade. 2005. *Mining in Developing Countries – Corporate Social Responsibility*, 38th Parliament, 1st Session Fourteenth Report: June. http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=8979&Lang=1&SourceId=178650

[3] Advisory Group Report. 2007. *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries*. http://www.halifaxinitiative.org/updir/AdvisoryGroupReport-March2007.pdf

Over the past ten years MiningWatch has found itself challenged to respond to an ever expanding number of requests for assistance from communities in Latin America, Africa and Asia-Pacific who are dealing with grave human rights and environmental consequences of mining by Canadian companies. These requests are not diminishing year over year. Increasingly these requests for assistance are coming from remote and aboriginal communities.

However, we have been encouraged by a number of important international multi-stakeholder reviews of mining that have taken place in these past ten years, in particular, the industry-led Mining, Minerals and Sustainable Development process and the World Bank-led Extractive Industries Review process. Both processes were accompanied by a large number of independent and academic reports. The processes themselves and the research they generated reflect a growing awareness of the harm that can be caused by the global operations of extractive industries. These reports document case studies and provide detail regarding the nature of negative human rights and environmental impacts from mining. The ongoing United Nations-led work of John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations, is also drawing important conclusions in part from an exceptionally high percentage of cases of human rights abuses associated with the activities of extractive industries.[4]

MiningWatch Canada now finds, with few exceptions, that we no longer need to argue that there ***is*** a problem; rather we are actively working with other stakeholders to find the right solutions.

In this capacity, MiningWatch's Catherine Coumans participated on the Advisory Group of the SCR Roundtables from 2006-2007, and she co-wrote and endorsed the recommendations from that process. However, the Government of Canada's response to the Advisory Group report of 2007 has persuaded MiningWatch Canada, as well as the 20 organizations of the Canadian Network on Corporate Accountability,[5] of which MiningWatch is a member, that *there is an urgent need for the provisions set out in Bill C-300 to address ongoing human rights and environmental transgressions by some Canadian extractive companies operating overseas.*

Why Parliament got it right in 2005, and now again with Bill C-300

The 2005 SCFAIT report "Mining in Developing Countries – Corporate Social Responsibility"[6] recognized three key realities: 1) the need to protect human rights; 2) the need for legal reform, to allow for sanction and remedy; 3) the need for regulation to make "…Canadian government support – such as export and project financing and services offered by Canadian missions abroad – conditional on companies meeting clearly defined corporate social responsibility and human rights standards…."

In the subsequent National CSR Roundtable process, industry participants were consistently and adamantly opposed to legal reform and to any form of regulation. It also proved difficult to get comprehensive human rights norms included in the CSR standards set put forward. As this became a

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[4] Ruggie, John. 23 May 2008. Ruggie studied 320 random cases of human rights abuses by corporations (between February 2005 and December 2007) and found that of eight sectors studied, and a further category of "other," the extractive sector dominated the cases of abuses with 28%. Page 8-9.

[5] Members include: Amnesty International Canada; Africa-Canada Forum; Asia Pacific Working Group; Americas Policy Group; Canadian Council for International Co-operation (CCIC); Canadian Labour Congress (CLC); Canada Tibet Committee; CAW-Canada; Development and Peace; Entraide Missionnaire; Friends of the Earth (Canada); GlobalAware Canada; Halifax Initiative Coalition (HI); International Criminal Defence Attorneys Association; Inter Pares; KAIROS - Canadian Ecumenical Justice Initiatives; MiningWatch Canada; North South Institute; Steelworkers Humanity Fund; United Church of Canada

[6] Standing Committee on Foreign Affairs and International Trade. 2005. *Mining in Developing Countries – Corporate Social Responsibility*, 38th Parliament, 1st Session Fourteenth Report: June. http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=8979&Lang=1&SourceId=178650

deal breaker for non-industry members of the Advisory Group, comprehensive human rights provisions were ultimately included. In order to reach consensus, non-industry members of the Advisory Group relinquished the objectives of legal reform and regulation. These compromises were not made lightly! In return, non-industry Advisory Group members pushed for a compelling "accountability mechanism" in the form of an Ombudsman and a Compliance Review Committee. The final CSR package at the core of the 2007 Advisory Group report[7] included comprehensive human rights norms in the standard set, and included the possibility of sanction (but not remedy) in the form of withholding of government financial and political support for companies found by the Ombudsman and Compliance Review Committee not to be living up to the adopted standards.

The government's response of 2009[8] reflects two years of intensive lobbying by industry and the Chamber of Commerce.[9] The government's response does not contain comprehensive human rights provisions in the standard set and provides no possibility of sanction by the Government of Canada, thereby abdicating government accountability to Canadians. The provisions of the government's response are insufficient to assure corporate accountability and protection of human rights and environments.

Bill C-300 rights these wrongs. Bill C-300 includes comprehensive human rights norms in the standard set, includes the possibility of sanction for non-compliance with the proposed standards in the form of withdrawal of government financial and political support, and is regulatory in nature as envisioned in the unanimously endorsed 2005 SCFAIT report.

Bill C-300 is not only aligned with the understanding of the issues and the will of parliament as expressed in the 2005 SCFAIT report, it is also in line with international findings and developments regarding corporate accountability reflected in individual government positions, the rulings of U.N. treaty bodies, and in the findings of UN Special Representative John Ruggie.

Why voluntary CSR is necessary, but not sufficient

The response to Bill C-300 from individual Canadian extractive companies, the Chamber of Commerce, and from industry associations such as the Prospectors and Developers Association of Canada (PDAC) is well worn, but fundamentally fallacious. It is an argument that **only** voluntary CSR measures, adopted and carried out by corporations themselves, are an acceptable response to the lack of institutional accountability associated with operating in weak governance zones. This argument is supplemented by putting the onus on the Government of Canada to strengthen governance capacity in these weak governance zones. However, any and all non-voluntary forms of enforcing accountability by the Government of Canada are dismissed by PDAC as merely "punitive" and essentially bad for business.

This line of argument both fails to acknowledge fundamental flaws and gaps in existing voluntary CSR mechanisms and also, remarkably, argues that extractive industries should remain exempt from effective legal and regulatory mechanisms – at least until the Government of Canada and other "northern hemisphere countries" have created sufficient capacity to regulate and provide legal accountability in all weak governance and conflict zones around the world where PDAC and its members choose to operate.

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[7] Advisory Group Report. 2007. *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries*. http://www.halifaxinitiative.org/updir/AdvisoryGroupReport-March2007.pdf

[8] Government of Canada. 2009. *Building the Canadian Advantage*: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector. www.international.gc.ca/trade.../csr-strategy-rse-stategie.aspx

[9] Letters to the government from PDAC, the Chamber of Commerce, and particular companies expressed concerns and opposition to the Advisory Group report's recommendations. See also Berthiaume, Lee. 2009. Corporate Social Responsibility Rules for Mining Industry Blasted. *Embassy Magazine*. April 1.

These lines of argument can no longer be considered credible.

The work of UN Special Representative John Ruggie is instructive in this regard.

While voluntary CSR instruments have existed and proliferated over the past ten years, the abuses associated with lack of corporate accountability have not been alleviated. In fact, Ruggie notes specifically with respect to human rights that "escalating charges of corporate-related human rights abuses are the canary in the coal mine, signalling that all is not well." (Ruggie 2008:3).

Voluntary CSR approaches by corporations, while necessary, are not sufficient to assure respect of human rights and environments by corporations. They do not, for example, deal with the problem of "laggards," companies that choose not to apply CSR standards or do not apply them consistently and uniformly across all operations. Another key problem with all existing CSR codes and instruments, with the possible exception of the UN Norms,[10] is that they are weak on human rights, frequently referencing only a sub-set of human rights. Yet another defect of voluntary CSR instruments, identified by Ruggie, is that no CSR instruments have effective accountability mechanisms, particularly with respect to sanction and remedy.

Ruggie notes that:

> The root cause of the business and human rights predicament today lies in the governance gaps created by globalization – between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate *sanctioning or reparation*. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.
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> [emphasis added] (Ruggie 2008:3)

Industry acknowledges that "many countries lack the governance and institutional capacity to enforce legislation and to ensure a stable regulatory regime."[11] When PDAC and the Chamber of Commerce are dismissive of measures by the Government of Canada that may provide for sanction in cases of abuse of human rights by Canadian extractive companies operating in weak governance zones, they are effectively arguing for ongoing impunity. *There is no international regulatory system that can deal with corporate abuses in weak governance zones, nor is there an international legal system to which aggrieved parties can turn. Voluntary CSR instruments do not provide for sanction or remedy. It is only the home states of multinationals that can address the "governance gap" identified by Ruggie.*

This fact was recognized by the Members of Parliament who unanimously endorsed the 2005 SCFAIT report, and it was understood by the 137 Members of Parliament who voted in favour of Bill C-300 in the House of Commons on April 22, 2009.

Government Accountability

Ultimately, Bill C-300 is a Bill about government accountability – the accountability of the Canadian government to Canadian taxpayers and citizens with respect to the financial resources used to provide Canadian multinationals financial and political support when they operate overseas.

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[10] The full title of this instrument is – The United Nations Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (UN Norms).

[11] Prospectors and Developers Association of Canada. Bill C-300 Position Statement. August 2009.

Industry protestations against Bill C-300 raise the spectre of Canada acting "extra-territorially" or possibly breaching the sovereignty of countries that host our corporations. These are red herrings. The Canadian government has the right, in fact the responsibility to Canadians, to make sure the resources at its disposal are not used in support of Canadian companies abusing human rights and environments overseas.

Ruggie has noted that:

> Experts disagree on whether international law requires home States to help prevent human rights abuses abroad by corporations based within their territory. There is greater consensus that those States are not prohibited from doing so (…) Indeed, there is increasing encouragement at the international level, including from the treaty bodies, for home States to take regulatory action to prevent abuse by their companies overseas.
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> (Ruggie 2008:7)

It is clear that other governments are already exercising the decision-making authority that they have over the national resources they administer to assure conformity with national values and human rights commitments. The Norwegian government, for example, regularly evaluates the holdings of its Pension Fund and divests from companies that do not meet its human rights and environmental standards. In 2009 the Norwegian government Pension Fund has dropped its shares in Canada's Barrick Gold as a result of its findings of "serious environmental damage" at Barrick's operations at the Porgera Mine in Papua New Guinea.[12]

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[12] http://www.miningwatch.ca/en/norwegian-pension-fund-excludes-barrick-gold-ethical-grounds