



Submission by Human Rights Watch to the UN Working Group on Business and Human Rights on the Overseas Operations of Canadian Extractive Companies

June 1, 2017

Human Rights Watch welcomes this opportunity to address the UN Working Group on Business and Human Rights in relation to the human rights impact of Canadian extractive companies operating abroad.

Human Rights Watch is actively engaged in promoting the safeguarding of human rights in the global extractives industry. We are a founding member of the Voluntary Principles on Security and Human Rights and engage with the Principles through our research, our advocacy with governments and multilateral organizations, and our ongoing dialogue with companies. In 2011, we published a [report](#) on the Porgera gold mine in Papua New Guinea, which at the time was majority owned and solely operated by the Canadian corporation, Barrick Gold, the world's largest gold mining company. It highlighted a longstanding pattern of violent abuse, including acts of gang rape carried out by members of the mine's private security force, as well as concerns about the mine's discharge of millions of tons of mine waste into the nearby Porgera River. Subsequently, in 2013 we [reported](#) on the Canadian firm Nevsun Resources' Bisha mine in Eritrea, documenting the apparent use of forced conscript labor in connection with the project and highlighting abusive conditions endured by those forced laborers. These reports serve as a strong example of why Canada—arguably the global mining industry's most important hub—needs to develop mechanisms that pay close attention to the human rights records of Canadian companies when they operate abroad. Even well-intentioned mining companies often fail in their efforts to address the complex human rights challenges they face around the world without government oversight and regulation to guide them. Most worryingly, many companies seem never to learn of serious abuses linked to their own operations unless independent groups like Human Rights Watch bring problems to their attention.

Over the last decade, the international community has made major strides in recognizing that companies should respect human rights and avoid complicity in human rights violations wherever they operate. It is also understood that governments have a responsibility to concern themselves with the extraterritorial human rights impact of companies domiciled on their soil. Nowhere is the need for a stronger government role more urgent than in the mining sector. Mining firms frequently confront complex human rights challenges in countries whose governments lack meaningful oversight and regulatory capacity.

The [UN Guiding Principles on Business and Human Rights](#) have moved the world closer to consensus around the minimum core human rights responsibilities of businesses. The Voluntary Principles on Security and Human Rights establish a solid framework for how extractives companies should seek to grapple with complex security issues. But this growing landscape of voluntary standards remains, quite deliberately, an accountability-free zone. Companies take up their human rights responsibilities with varying degrees of seriousness and competence, and those that choose to ignore them altogether face few, if any, consequences. Navigating complex and unfamiliar human rights contexts would be made easier for companies with meaningful government oversight and guidance.

No country is better poised than Canada to take this issue up. Canada's status as home to more than half of the world's mining companies and its dominant position in mining investment abroad create a key opportunity for the government to exercise global leadership on the human rights challenges that arise in the extractives context. The UN Guiding Principles on Business and Human Rights confirm that "States should: Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps".¹ However, no Canadian law provides a mechanism to allow Canadian authorities to exercise meaningful scrutiny and oversight of the human rights impact and compliance of Canadian extractive companies operating overseas. On these issues, Canadian companies operating overseas generally only must comply with the laws and regulations of the countries in which they work. This often means the bar is set far too low. Canada arguably has more experience than any other nation in developing policies that both regulate and nurture a competitive mining industry. The example of Canadian leadership on this issue would show other governments that responsible human rights policy is compatible with the legitimate needs of a robust and healthy mining industry.

The Need for an Ombudsperson to Regulate Canadian Extractives Companies

In January 2016, we sent a letter to Stéphane Dion, former Minister of Foreign Affairs, identifying abuses in the Canadian mining industry and calling on the Canadian government to take a leadership role in addressing them. In April 2016, we provided Minister Dion a first set of recommendations regarding the establishment of an independent ombudsperson's office for the regulation of Canadian extractives companies, and last month we [wrote](#) further in support of this proposal to Prime Minister Trudeau.

We have actively urged the government of Canada to establish an ombudsperson's office with a mandate to independently investigate and publicly report on human rights problems involving Canadian extractive companies. This office would help strengthen the mining industry's human rights practices consistent with the UN Human Rights Committee's recommendation of 13 August 2015 that

¹ OHCHR, "Guiding Principles on Business and Human Rights," 2011, Principle 3 section a, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed April 12, 2017).

Canada establish an independent mechanism to investigate extractives companies operating abroad and a legal framework of remedy for abuses suffered by affected communities.² An independent ombudsperson was also a consensus recommendation from the 2007 report of the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries that included the Canadian government, civil society, the industry, and other experts.³ The [Canadian Network on Corporate Accountability \(CNCA\)](#) has also been spearheading a campaign to establish an ombudsperson to handle the grievances of people affected by Canadian oil, gas and mining companies abroad. Like the CNCA, Human Rights Watch was disappointed and concerned to learn that Canada's 2017 federal budget does not include any reference to funding for a human rights ombudsperson.⁴

The core components that Human Rights Watch believes are essential for an independent ombudsperson's office to be effective are:

- A credible and accessible complaint process, without undue obstacles or burdens;⁵
- Transparency, with public reporting to successfully confidence-build throughout the process;⁶
- Independent investigating power, free from external interference in decision-making, including the ability to trigger investigations, rather than simply respond to complaints;⁷ and
- The ability to make recommendations for meaningful remedies to hold perpetrators accountable.
- The meaningful participation of affected individuals and communities, including assessing and addressing security risks associated with participation.

We have advised the Canadian government that in addition to an independent investigative capacity and coordination with civil society, government, and industry, the ombudsperson's mandate should include making recommendations to government on how to best go about identifying and mitigating

² Comments on Canada's sixth periodic ICCPR report, UN Human Rights Committee, CCPR/C/CAN/CO/6, August 13, 2015, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhskswUHe1nBHtSwwEsgdxQHJBoKwgsS0jmHCTV%2FfSa7OKzz9yna94OOqLeAavwpMzCD5oTanJ2C2rbU%2F0kxdos%2BXCyn4OFm3xDYg3CouE4uXS> (accessed March 15, 2017).

³ Further concrete steps towards accountability and transparency in the sector were delayed due to the shifting political climates in Canada. Prospectors & Developers Association of Canada, "National Roundtables On CSR," March 29, 2007, <http://www.pdac.ca/policy/corporate-social-responsibility/policy/2012/01/04/national-roundtables-on-csr> (accessed May 18, 2017).

⁴ See Canadian Network on Corporate Accountability, "PRESS RELEASE: Canadian Network expresses concern that Federal Budget does not mention Human Rights Ombudsperson," March 22, 2017, <http://cnca-rcrce.ca/recent-works/press-release-canadian-network-expresses-concern-that-federal-budget-does-not-mention-human-rights-ombudsperson/> (accessed April 25, 2017).

⁵ "Guiding Principles on Business and Human Rights," Principle 31 section b.

⁶ "Guiding Principles on Business and Human Rights," Principle 31 section e.

⁷ A useful mechanism to examine is the Compliance Advisory Ombudsman (CAO), or the accountability mechanism for the World Bank Group's International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), particularly in its compliance function. The CAO Vice President can trigger compliance appraisals on IFC or MIGA investments, which has served to boost the mechanism's legitimacy, especially with communities lacking the resources or security to submit their own complaints.

future human rights violations in the extractive sector. This mechanism should proactively identify issues and develop the best method of response. Much as the World Bank Group's Compliance Advisory Ombudsman's (CAO) advisory capacity allows it to make general recommendations that are not case-specific, the ombudsperson's office should provide the government with a broader set of lessons learned and recommendations for the systematic improvement of the environmental and/or social performance of the extractives industry.

In June 2016, Minister Dion responded to Human Rights Watch, explaining that Canada's Extractive Sector CSR Counsellor is at "arm's length status from the government" and already has the "mandate to engage directly with impacted communities, seek and receive information from advocacy groups and report publicly". Yet by merely facilitating a dialogue between complainants and extractives companies, the role of CSR Counsellor does not provide the level of oversight necessary for such an industry and indeed few companies have agreed to make use of its services. This mechanism lacks investigatory powers, is not mandated to recommend remedy or engage in follow-up and monitoring activities, and has not proven effective in resolving cases. It also fails to meet the standard of the UN Guiding Principles that "States should: Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts".⁸ The CSR Counsellor plays a valuable role in promoting good business practice in the extractive sector, but this is no substitute for real independent monitoring of company human rights practices.

We maintain that an effective ombudsperson's office committed to independent investigation, accessibility, transparency, and effective remedy would send a strong signal that Canada is committed to corporate responsibility and human rights by assuming global leadership on this issue.

Human Rights Watch recommends the Working Group asks the Canadian government to:

- Explain the reasons for the delay in implementing the UN Human Rights Committee's recommendations by establishing an independent mechanism to investigate Canadian extractives companies operating abroad.
- Explain the reasons for not establishing an ombudsperson's office to date and outline whether there are plans to allocate such funding in the future.
- Provide a response to the blueprint created by the Canadian Network on Corporate Accountability outlining its own proposal for the office of human rights ombudsperson in the extractives sector.
- Confirm whether and when an independent ombudsperson's office, as recommended by the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries, will be established.

⁸ "Guiding Principles on Business and Human Rights," Principle 3.

Human Rights Watch asks the Working Group to call upon the Canadian government to:

- Introduce legislation to introduce a regulatory framework sufficient to give the Canadian government power to sanction and publicly report on Canadian companies that fail to meet minimum human rights standards in their overseas operations.
- Implement legal frameworks, including the establishment of an independent ombudsperson, that allow government institutions to monitor the human rights performance of domestic companies when they operate abroad in areas where there are serious or systematic human rights issues.
- Take steps to regulate the human rights conduct of domestic companies operating abroad in complex environments, such as requiring companies to carry out human rights due diligence activity.