

Canadian government does little to curb problems with Canadian mining companies in Latin America

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[April, 2015 *Aportes Magazine*, Due Process of Law Foundation, forthcoming]

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Canada is the most important centre in the world for financing of the mining industry. From 2008-2009, for example, the stock exchanges in Canada handled over 70 percent of the global equity financing for the industry.¹ Canadian extractive companies have extensive presence in Latin America, but the industry is plagued with allegations of abuses associated with their projects including concerns related to the impacts on environmental conditions, the displacement of communities, and social unrest. These concerns were raised with the Inter-American

¹ Natural Resources Canada, Backgrounder, “Extractive Industries: The Canadian Advantage at Home and Abroad” (18 November 2014) online: Government of Canada <http://news.gc.ca/web/article-en.do?nid=905749&_ga=1.69454356.520528376.1413821670> [Extractive Industries Backgrounder].

Commission on Human Rights (IACHR) in October, 2013 by the Working Group on Mining and Human Rights in Latin America, a group that included a number of civil society organizations from Latin America as well as the Due Process of Law Foundation in Washington. The Working Group profiled 22 case studies involving conflicts between communities and Canadian mining companies.²

A year later, in October, 2014, twenty-nine Canadian civil society organizations under the umbrella of the Canadian Network on Corporate Accountability (CNCA) appeared at the Commission to follow up on the issue. The CNCA urged the Government of Canada to develop and implement a binding corporate accountability framework to ensure Canadian companies and Canadian state actors – including embassies and the government controlled corporations that provide financial support to mining companies – remain accountable and respectful of human rights abroad.³

The hearing was opened with Jen Moore of MiningWatch Canada describing the relationship of the Canadian embassy to Blackfire Resources, a Canadian company that ran a barite mine in Chiapas, Mexico. The case illustrates much of what is wrong with Canada's approach to Canadian companies abroad: failure to take steps to ensure corporate accountability while pursuing aggressive support for companies abroad irrespective of their human rights record. This case is described in greater detail in another article in this volume. Ms Moore was followed by Shin Imai of the Justice and Corporate Accountability Project, who critiqued Canada's reliance on voluntary corporate standards to guide Canadian company conduct abroad. The third speaker was Matt Eisenbrandt of the Canadian Centre for International Justice, one of the lawyers who is suing Tahoe Resources in Canada on behalf of six Guatemalan campesinos shot by Tahoe security guards.

The overarching context for action

² Working Group on Mining and Human Rights in Latin America, *El impacto de la minería canadiense en América Latina y la responsabilidad de Canadá*.(2014) Online: http://www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf [Working Group Report]

³ Canadian Network on Corporate Accountability, *Human Rights, Indigenous Rights and Canada's Extra-territorial Responsibility* (2014) Online: http://www.miningwatch.ca/sites/www.miningwatch.ca/files/canada_mining_cidh_oct_28_2014_final.pdf

There a number of concerns that plague the extractive resource sector. As noted in the report produced by the Working Group on Mining and Human Rights in Latin America, the activities of Canadian mining companies engaged in large-scale extractive projects foster grave concerns related to issues of environmental degradation, adverse health implications, forced displacement of communities, economic impacts on local communities, and improper acquisition and expropriation of lands.⁴ These adverse impacts have led to significant community disturbances and social unrest, reactions which are met with increased police and security presence in the community and threats of force or violence against individuals who protest the mining operations.⁵ For example, at the El Dorado mining site of Vancouver-based company Pacific Rim Mining in El Salvador – now owned by Canadian-Australian company OceanaGold – eight members of the *Asociación Amigos de San Isidro Cabañas* who opposed the mining activities on the grounds of human rights violations were killed, while two other protestors were injured.⁶

Despite these concerns, the Canadian government has upheld policies that contribute to – and effectively exacerbate – the adverse impacts of the mining activities on communities abroad. The government of Canada uses a policy of “economic diplomacy” to engage diplomatic staff and Trade Commissioners in advocacy and lobbying efforts for Canadian companies abroad. As in the case of Blackfire Resources where the Canadian government provided unwavering support for the mining operations despite local resistance, the government provided Excellon Resources – a Toronto-based company operating the La Platosa mine in Ejido La Sierrita, Mexico – considerable support as the company actively sought to avoid remedying human rights complaints launched against it regarding land use violations and labour rights violations in 2012.⁷ Despite having knowledge of these abuses, the Canadian embassy and Trade Commissioners still provided strategic information to Excellon regarding conflicts in the local community and successfully lobbied the Mexican government to evict peaceful protesters from the mining site.

Canada’s response and the concerns of the Commissioners

⁴ Working Group Report

⁵ *Ibid.*

⁶ *Ibid.*

⁷ United Steel Workers and MiningWatch Canada, News Release, “Government Documents Reveal Canadian Embassy Backed Mining Abuses in Mexico” (25 February 2015).

At the October hearing of the Inter-American Commission, Canada responded to the submissions of the Canadian petitioners by reiterating that voluntary corporate social responsibility (CSR) standards were sufficient, but admitting that these standards were unenforceable and carried no legal weight.

It remains Canada's position that the voluntary international CSR guidelines, standards and principles that we officially endorse do not establish a legal basis for punitive measures.⁸

Following the presentations, Commissioners expressed concerns with the government's stance on its regulatory responsibilities for Canadian mining companies operating abroad.⁹ Below, I set out three of the questions posed. While Canada declined to respond to the Commissioners at the hearing, we are able to provide the answers to the questions.

First, while Canada stated that it "resolutely" promoted voluntary CSR, Commissioner Rose-Marie Belle Antoine was troubled by the lack of information, and asked, "Do you have a monitoring mechanism ... or is it just a nice policy that you have laid out?"

The answer to this question is quite simple. Neither the industry nor government has any data on the extent of conflicts between Canadian companies and local communities. To fill this void, the McGill Research Group Investigating Canadian Mining in Latin America (MICLA) began a list which shows 85 conflicts involving Canadian mining companies in Latin America and the Caribbean alone.¹⁰ Students at Osgoode Hall Law School have begun to do a count and so far have identified approximately 50 deaths and over 300 injuries associated with Canadian projects in Latin America and the Caribbean.

Second, Commission Secretary Emilio Álvarez Icaza pointed out that Canada's presentation focused on Canadian companies, but did not mention guidelines for Canada's own involvement in promoting mining. Embassies were part of the government, he pointed out, and he wondered whether there were any guidelines when faced with allegations of human rights abuses.

⁸ Submissions of Canada, to the Thematic Hearing for 153rd Period of Sessions Inter-American Commission on Human Rights, October 28, 2014, Comisión Interamericana de Derechos Humanos, *Canadá: Impacto de empresas mineras canadienses en A. Latina*, video available online: <<https://www.youtube.com/watch?v=OWYue8FP9ZY>> .

⁹ *Ibid*

¹⁰ See <http://micla.ca/>

The answer to this question is found in our recounting of the Blackfire case: there is no discernable policy on what embassies are supposed to do when they are made aware of human rights abuses, and in fact, there does not seem to be any line that delineates when embassy support is supposed to stop. By way of contrast, officials of the United States embassies are guided by an explicit policy for supporting human rights defenders.¹¹

Third, Commissioners wondered what Canada could do to ensure adherence to the CSR standards. The response to this question can be found in two announcements made by the Government of Canada about a month after the hearings. The announcements, taken together, show that Canada has not changed its reliance on voluntary mechanisms, while it has re-emphasized its policies supporting Canadian business interests in Latin America.

The Government of Canada's "Enhanced" CSR Policy

On November 14th 2014, shortly following the IACHR presentation, the Government of Canada released its newly "enhanced" CSR policy entitled *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad*.¹² This strategy, a revision of the government's initial CSR policy launched in 2009, outlines the government's commitment to encouraging Canadian mining companies to integrate CSR into core company policies and the government's expectation that companies will respect human rights and abide by all applicable laws abroad. Canada's self-proclaimed "comprehensive approach to CSR" aims to achieve these objectives by promoting CSR guidance for companies, fostering partnerships between companies and communities, and by encouraging dispute resolution processes.¹³ The strategy continues to be enforced on a voluntary basis, but purports to

¹¹ The U.S. policy states:

Because human rights defenders seek to hold their governments accountable to protect universally recognized human rights, defenders are often harassed, detained, interrogated, imprisoned, tortured, and even killed for doing their work. The Department's objective is to enable human rights defenders to promote and defend human rights without hindrance or undue restriction, and free from fear of retribution against them or their families. The work of these brave individuals and groups is an integral part of a vibrant civil society, and our investment in and support of them is likewise an investment in and support of the rule of law and democracy.

U.S. Support for Human Rights Defenders, <http://www.humanrights.gov/wp-content/uploads/2013/03/support-for-human-rights-defenders.pdf>

¹² *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad*, online: Government of Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng>> .

¹³ *Ibid* at 4.

strengthen the process by saying that companies that ignore CSR best practices and that fail to participate in a voluntary resolution process may lose the support of the Canadian embassy and funding from Export Development Canada. While this announcement at least acknowledges existing problems with corporate accountability, it fell well short of meaningful change.¹⁴

On the other hand, the government reaffirmed its aggressive promotion of Canadian mining interests in a press release on the *Canadian Extractive Sector Strategy*. The government promised to further the interests of Canadian companies abroad by “eliminating red tape” and conducting greater “economic diplomacy”.¹⁵ Forms of economic diplomacy delineated in the strategy include: providing Canadian mining companies with strategic local knowledge; providing companies with direct channels to government officials abroad; issuing letters of support for companies; providing advocacy for companies; and lobbying for reforms to regulatory frameworks in foreign countries to create a more favourable environment for companies in the extractive sector.

The paired announcements show that the Canadian government has not addressed issues that need to be addressed about corporate accountability. A number of United Nations treaty bodies have already said directly to Canada that it needs to take “legislative or administrative measures to prevent acts of transnational corporations registered in Canada” which negatively impact on the rights of people outside of Canada.¹⁶ The Canadian Network on Corporate Accountability urged the Inter-American Commission on Human Rights to issue a similarly clear statement to Canada.

¹⁴ For critiques of the government announcement, see Canadian Network on Corporate Accountability, “Government fails to create an extractive sector ombudsman” online: <http://www.newswire.ca/en/story/1446859/government-fails-to-create-an-extractive-sector-ombudsman-despite-broad-public-support>; and Mining Watch, “Government acknowledges power to act, declines to do so”, online: <http://www.miningwatch.ca/news/canada-s-csr-strategy-extractives-20-government-acknowledges-power-act-declines-do-so>.

¹⁵ Extractive Industries Backgrounder, *supra* n 1.

¹⁶ Canada has been criticized by the Special Rapporteur on Toxic Waste (2002), the Committee on the Elimination of Racial Discrimination (2007 and 2012) and the Committee on the Rights of the Child (2012). See Canadian Network on Corporate Accountability, *Human Rights, Indigenous Rights and Canada’s Extra-territorial Responsibility* (2014), *supra* n 3, p 11.