MiningWatch Canada submission for the Government of Canada's consultation on due diligence and civil liability measures to eliminate forced labour in supply chains

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MiningWatch Canada: MiningWatch Canada works in solidarity with Indigenous peoples, communities, and workers who act to prevent environmental and human rights violations related to industrial mining operations across Canada, and by Canadian companies operating internationally. We advocate for policies and legislation in Canada to ensure that mining companies carry out due diligence to prevent harm that may be caused or contributed to by their operations and we seek effective access to remedy in Canada through both non-judicial mechanisms and judicial means. Given our organizational mandate, the ongoing use of forced labour in the operations of Canadian mining companies, their subsidiaries or contractors, is of serious concern for MiningWatch Canada.[1]

Contemporary Forms of Slavery and the Canadian Mining Industry

The use of slave labour in the overseas operations of Canadian mining companies, their subsidiaries, or business partners, has been documented most recently in cases filed before Canadian courts and brought to the Canadian Ombudsperson for Responsible Enterprise (CORE).

Nevsun Resources Ltd. (Nevsun): A case brought by three workers against then-Canadian mining company Nevsun (*Nevsun Resources Ltd. v. Araya)* alleged that they had been forced to work in Nevsun's Bisha mine in Eritrea. The mine was operated as a joint venture with an Eritrean state-owned enterprise. State-compelled forced labour while citizens are conscripted for military service is common in Eritrea. The workers maintained that Nevsun was responsible for

[1] MiningWatch has previously raised its concern over the association of Canadian mining companies with forced labour in a brief (24 August 2023) prepared for the UN Special Rapporteur on Contemporary Forms of Slavery. https://miningwatch.ca/sites/default/files/afn_mwc_workshop_report.pdf.

slavery, forced labour, cruel, unusual, or degrading treatment, and crimes against humanity.[2] Nevsun appealed to the Supreme Court of Canada (Supreme Court) to strike proceedings started in a lower court. In February 2020, a majority decision by the Supreme Court ruled that the case could proceed in Canada as prohibitions against forced labour and crimes against humanity fall under customary international law, which is incorporated into Canadian common law, and that corporations can be held directly liable for breaching these prohibitions. Nevsun subsequently settled with the plaintiffs out of court.

Dynasty Gold (Dynasty): In June 2022, a coalition of 28 Canadian organizations filed multiple complaints with the Canadian Ombudsperson for Responsible Enterprise (CORE) regarding allegations of the use of slave labour by Canadian companies. One of these complaints was regarding Dynasty's majority-held Hatu Qi-2 gold mine located in the Uyghur district of Xinjiang, in China. Systemic and state-sponsored forced labour of Uyghurs has been widely documented. The complainants alleged that the mine used Uyghur forced labour, based in part on public statements made by Dynasty that Uyghurs made up part of the workforce at the mine. The CORE commissioned an independent investigation of the allegations and concluded, in its first and only final report, that Dynasty had indeed violated the human right to be free from forced labour at its Hatu Qi-2 mine.[3] Based on its findings, the CORE recommended that the Department of Foreign Affairs, Trade and Development withdraw current and deny future trade advocacy support to Dynasty. The CORE further recommended that Export Development Canada refuse future requests for financial support until Dynasty complied with the recommendations set out in the final report.

Note: Shortly after the CORE issued this milestone report, the Ombudsperson's first term ended and was not renewed. Over the following two years, the office was left without a full-term Ombudsperson – and with no Ombudsperson at all in its final year. The office was permanently closed in June 2026,[4] at which time at least 24 cases had failed to progress while the mechanism lacked an Ombudsperson. Given the lack of transparency around this point, it is possible there were as many as 36 cases with the office when it was closed.[5] These abandoned cases included six concerning allegations of the use of slave labour by Canadian companies in the Uyghur District of China.[6] All information regarding the Dynasty Gold case has been removed from public view by the Government of Canada. There is no information as to whether, or how, the recommendations made by the CORE regarding this case will be followed up – including recommendations that Canada withhold financial and political support to Dynasty Gold.

[2] For a summary of the case see: "Nevsun Resources Ltd. v. Araya" https://www.scc-csc.ca/judgments-jugements/cb/2020/37919/.

[3] Canadian Ombudsperson for Responsible Enterprise, *Final Report: Investigation for a Complaint Filed by a Coalition of 28 Organizations about the Activities of Dynasty Gold Corporation* (Ottawa: CORE, 18 March 2024), https://miningwatch.ca/sites/default/files/2024-03-18-dynasty-gold-en.pdf.

[4] Darren Major, "Carney says feds are eliminating watchdog that oversees companies operating abroad", CBC News (11 June 2026), https://www.cbc.ca/news/politics/carney-eliminating-canadian-ombudperson-for-responsible-enterprise-9.7232539.

[5] Tavia Grant, "Future of Canadian corporate watchdog uncertain as top position remains vacant", Globe and Mail, 2 July 2025. https://www.theglobeandmail.com/canada/article-future-of-canadian-corporate-watchdog-uncertain-as-top-position/.

[6] Sarah Teich, David Matas, & John Packer, "Canada still needs an ombudsperson for responsible enterprise: for Inside Policy", *McDonald-Laurier Institute* (17 August 2026). https://macdonaldlaurier.ca/canada-still-needs-an-ombudsperson-for-responsible-enterprise-sarah-teich-david-matas-and-john-packer-for-inside-policy/.

Eritrea and China are not the only countries where slave labour in industrial mining is known to occur. Other countries with a high risk for slave labour in industrial mining include: the **Democratic Republic of the Congo; Afghanistan; Myanmar; North Korea; Mauritania; India; Pakistan; Bangladesh**. Some of these countries are currently hosting Canadian mining companies.

Canadian Government is Complicit in the Use of Slave Labour by Canadian Companies

Failure to prevent rights violations – Canadian governments have been complicit in the ongoing use of slave labour by Canadian companies operating globally because Canadian governments have consistently chosen not to *require* that Canadian multinationals prevent violations of human rights, including forced labour, in their overseas operations.

Canada's current Responsible Business Conduct (RBC) strategy,[7] and the many iterations of RBC and Corporate Social Responsibility (CSR) strategies before it dating back to 2009, have consistently stated that "the Government of Canada *expects* Canadian companies operating abroad to ... respect human rights in their operations".[8] Note, Canada "expects" but quite intentionally does not "*require*" that Canadian companies operating overseas respect human rights, including by preventing the use of slave labour in their operations.

Canadian governments have long ignored calls by parliamentarians,[9] civil society,[10] academics,[11] and directly impacted peoples[12] to pass legislation that would *require* Canadian companies to prevent causing or contributing to violations of human rights in their operations overseas.

Most recently, the Canadian government failed to advance private member's Bill C-262,[13] known as the *Corporate Responsibility to Protect Human Rights Act* (2022). If passed, the bill would have required Canadian companies to carry out human rights and environmental due diligence regarding their operations – and those of their subsidiaries and business partners – and

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[7] "Responsible business conduct abroad: Canada's strategy for the future", 2026. https://www.international.gc.ca/trade-commerce/rbc-cre/strategy-2022-strategie.aspx?lang=eng.

[8] *Ibid*. [emphasis added]

[9] House of Commons, Standing Committee on Foreign Affairs and International Trade, *Fourteenth Report*, 38th Parl, 1st Sess (June 2005), online: www.ourcommons.ca/DocumentViewer/en/38-1/FAAE/report-14.

[10] Canadian Network for Corporate Accountability, "Pass a Due Diligence Law", (2026). https://cnca-rcrce.ca/campaign-pass-a-due-diligence-law/.

[11] See for example, Penelope Simons, "Developments in Canada on business and human rights: One step forward two steps back" *Leiden Journal of International Law*. 2023; 36(2):363-388. doi:10.1017/S0922156522000784; "Letter from academics and legal professionals: Make human rights and environmental due diligence mandatory" (21 November 2022) https://aboveground.ngo/academics-legal-professionals-call-for-canadian-corporate-accountability-law/.

[12] See for example, Canadian Network for Corporate Accountability, "Case Studies" (2026). https://cnca-rcrce.ca/resources/case-studies/.

[13] Bill C-300, *An Act to accountability regarding international human rights standards and environmental protection for Canadian extractive activities*, 3rd Sess, 40th Parl, 2010 (first reading 25 May 2009), https://www.parl.ca/DocumentViewer/en/40-3/bill/C-300/first-reading.

to take measures to prevent rights violations. This legislation was based on model legislation develop by the Canadian Network for Corporate Accountability with the support of MiningWatch Canada. That model legislation remains publicly available and should be used by the current Government of Canada to advance due diligence legislation covering all human rights.[14]

The UN Human Rights Committee recently released its "Concluding observations" on Canada's 7th periodic review regarding Canada's compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR).[15] The report echoes numerous previous findings by UN treaty bodies and special procedure mandate holders regarding Canada's failure to adequately address ongoing allegations of rights violations by Canadian companies operating overseas.

> *The Committee remains concerned about continued allegations of human rights abuses and environmental degradation by companies domiciled in the territory of the State Party and/or subject to its jurisdiction, in particular mining corporations, in the context of their operations, including those abroad...*[16]

The Human Rights Committee recommends that Canada *"[c]onsider adopting binding legislation requiring business enterprises to conduct human rights due diligence*".[17]

Failure to provide remedy – Canada's failure to *require* that its companies do not violate human rights has been paired with Canada's failure to provide remedy when rights have been violated. Access to effective non-judicial mechanisms and to judicial remedy for rights violations by Canadian companies operating overseas has been sorely lacking in Canada for decades.

Ensuring remedy for victims of human rights violations, including forced labour, is an obligation Canada took on when it acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1976. In particular, under Article 2 of Part 2, ICCPR sets out Canada's obligation to provide any person whose rights or freedoms – as recognized under the Covenant – are violated an effective remedy. During Canada's 7th periodic review, MiningWatch Canada[18] and others informed the UN Human Rights Committee of Canada's failure to provide remedy in cases of

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[14] Canadian Network for Corporate Accountability, "The Corporate Respect for Human Rights and the Environment Abroad Act: Model legislation for mandatory human rights and environmental due diligence" (2026). https://cnca-rcrce.ca/model-legislation-due-diligence/.

[15] United Nations Human Rights Committee, *Concluding observations on the seventh periodic report of Canada*, UN Doc CCPR/C/CAN/CO/7 (2 April 2026), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F7&Lang=en.

[16] *Ibid* at para 9.

[17] *Ibid* at para 10.

[18] Catherine Coumans, "MiningWatch Canada submission in advance of consideration of the seventh Periodic Review of Canada by the UN Human Rights Committee, 145th session, March 2026: Canada fails to protect human rights abused by Canadian mining companies operating overseas and fails to provide effective remedy in Canada for those whose rights have been violated by Canadian mining companies operating abroad" (1 February 2026). https://miningwatch.ca/sites/default/files/MiningWatch%20Canada%20UN%20Submission%20Feb%202026%20final.pdf.

allegations of rights violations caused or contributed to by Canadian companies operating overseas.

The Human Rights Committee expressed concern about Canada's compliance with its obligations under the ICCPR, particularly with respect to rights violations by corporations operating overseas: *"The Committee remains concerned about ... the lack of access for victims, particularly those outside the State Party, to effective remedies (art. 2)*."[19]

The Committee recommended that Canada:

> *a) Strengthen existing mechanisms to ensure that all business enterprises subject to its jurisdiction respect human rights standards, including when operating abroad; b) Ensure effective access to judicial and non-judicial remedies for victims of human rights abuses resulting from the activities of business enterprises subject to its jurisdiction, including those operating abroad*[20]

Canadian Ombudsperson for Responsible Enterprise – In regard to access to non-judicial remedy, the Committee particularly praised the creation of the Canadian Ombudsperson for Responsible Enterprise (CORE) in 2019[21] and expressed regret that the CORE:

> *continues to lack the authority to compel witness testimony and the production of documentary evidence. The Committee is also concerned that the position of Ombudsperson has remained vacant since May 2025, which has hindered the processing of cases received by the office.*[22]

Contrary to the recommendation of the Human Rights Committee to strengthen the CORE, the Government of Canada dissolved the office just two months after the final statement from the Committee.

This is particularly troubling considering Canada's stated interest in addressing forced labour in the operations of Canadian companies. **A large number of the cases the CORE was handling involved allegations of forced labour by Canadian companies in regard to the Uyghur district of China:**

> *In June 2022, a coalition of 28 civil society organizations, among them Uyghur Rights Advocacy Project, Canadians in Support of Refugees in Dire Need, and the Raoul Wallenberg Centre for Human Rights, brought 14 complaints to the CORE. The complaints presented evidence that major apparel brands and mining companies*

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[19] United Nations Human Rights Committee, *Concluding observations on the seventh periodic report of Canada*, UN Doc CCPR/C/CAN/CO/7 (2 April 2026), at para 9. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F7&Lang=en.
[20] *Ibid* at para 10.
[21] *Ibid* at para 9.
[22] *Ibid*.

operating in Canada had operations or supply chains in China that used or benefited from Uyghur forced labour.[23]

In fact, the CORE's first, and only, final report was regarding a case alleging use or benefit of forced labour by the mining company Dynasty Gold.

The CORE represented the first time Canada has had a non-judicial complaints mechanism that was empowered to conduct independent investigations, allowing the CORE to make findings of fact about whether rights had been violated. Based on those findings, the CORE could recommend remedy for those who had been harmed and could recommend sanctions for the company in question. The case that reached a final determination by the CORE, regarding forced labour at Dynasty Gold's majority-held Hatu Qi-2 gold mine located in the Uyghur district of China, led to recommendations from the CORE that:

> *a. the Department of Foreign Affairs, Trade and Development withdraw any trade advocacy support currently provided to Dynasty, should Dynasty be receiving such support; b. that the Department of Foreign Affairs, Trade and Development refuse to provide any future trade advocacy support to Dynasty, if requested, until such time as Dynasty has fulfilled the Ombud's recommendations set out in paragraph 94; and c. that Export Development Canada refuse to provide future financial support to Dynasty, if requested, until such time as Dynasty has fulfilled the Ombud's recommendations set out in paragraph 94.*[24]

As the CORE has been dissolved, it is unclear whether Canada will follow through on these recommendations.

If Canada is serious about addressing the use of forced labour by Canadian companies or their subsidiaries and business partners, then **Canada will need to recreate a complaints mechanism with the mandate that the CORE had to conduct independent investigations and make findings of fact and empower it with independence from political interference and the powers to compel evidence.**

National Contact Point – The Government of Canada has argued in dissolving the CORE that it already has a non-judicial mechanism that can carry out the necessary functions as a complaints mechanism, the National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines). It described the office of the CORE as duplicating the work of the NCP. Nothing could be further from the truth. The NCP is widely viewed as ineffective as a grievance mechanism. The CORE *had* to be created for the very reason that, in its long history, the NCP never took on the critical functions carried out by the CORE. This is not because there are any

[23] Sarah Teich, David Matas, & John Packer, "Canada still needs an ombudsperson for responsible enterprise: for Inside Policy" *McDonald-Laurier Institute* (17 August 2026). https://macdonaldlaurier.ca/canada-still-needs-an-ombudsperson-for-responsible-enterprise-sarah-teich-david-matas-and-john-packer-for-inside-policy/.

[24] Canadian Ombudsperson for Responsible Enterprise, *Final Report: Investigation for a Complaint Filed by a Coalition of 28 Organizations about the Activities of Dynasty Gold Corporation* (Ottawa: CORE, 18 March 2024), para 93. https://miningwatch.ca/sites/default/files/2024-03-18-dynasty-gold-en.pdf.

impediments in the OECD Guidelines for NCPs that may restrict the NCP carrying out these functions. It is our view that, given the NCP's 26-year history, the NCP's shortcomings can no longer be understood as coincidental, but must be recognized as quite deliberate. Through its ineffective and biased handling of cases, and the inherent conflict of interest created by it being housed under the trade department of Global Affairs Canada, the NCP has lost the confidence of labour and civil society groups.

For over two decades, MiningWatch Canada has repeatedly outlined in detail its concerns regarding the NCP. We therefore refer to our most recent brief for more in-depth analysis.[25] Below, we summarize some of the critical ways in which the NCP continues to fall short.

- The NCP is led by the Department of Trade and has proven itself to be not independent from conflict of interest and from political interference;
- The NCP **does not commission independent investigations** of complaints and for this reason:
    - The NCP **does not and cannot make public findings of fact** about whether a company has breached the OECD Guidelines
    - The NCP **does not and cannot recommend remedy**

Access to Canadian Courts – Canada's human rights obligations to provide remedy (ICCPR art. 2), including in cases that involve Canadian companies operating overseas, consist of providing access to effective non-judicial mechanisms, as well as to Canadian courts.

There are well-documented barriers in regard to obtaining access to Canadian courts for plaintiffs in transnational human rights cases. "Plaintiffs who are seeking relief in these types of cases very often face insurmountable legal, practical, structural and evidentiary obstacles in bringing these claims."[26]

Canadian parent companies have relied on legal arguments that they are legally separate from, and therefore not legally responsible for, the actions of their subsidiaries. "This shield exist in law even if the subsidiary is majority owned by the parent and the parent has management control of the subsidiary."[27] Another common legal argument that has shielded Canadian parent companies is that Canada is not the appropriate venue, or *forum,* to hear the case, even in cases that assert direct parent company liability.[28]

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[25] Catherine Coumans, "Canada's National Contact Point for the OECD Guidelines: An Ineffective Human Rights Mechanism" *MiningWatch Canada* (November 2025). https://miningwatch.ca/sites/default/files/final_MiningWatch%20Canada%20Brief%20on%20the%20NCP%20Nov%202025%20Final.pdf

[26] Penelope Simons & Ratana Ly, "The Right to an Effective Remedy and Forum Non Conveniens" (June 2026) p. 2. DOI: 10.13140/RG.2.2.15004.24965.

[27] Catherine Coumans, "Reflections on Legal Proceedings in Canada against Barrick Gold Regarding the North Mara Gold Mine in Tanzania" *MiningWatch Canada* (May 2025). p. 8. https://www.barrickontrial.ca/wp-content/uploads/2025/05/2025-Reflection-on-Ontario-Court-Arguments.pdf

[28] Penelope Simons & Ratana Ly, "The Right to an Effective Remedy and Forum Non Conveniens" (June 2026) p. 2. DOI: 10.13140/RG.2.2.15004.24965.

In order to ensure access to courts by foreign plaintiffs in the country of the parent company, jurisdictions that have passed due diligence legislation have created a cause of action ensuring civil liability for parent companies by creating a statutory duty to prevent, mitigate, and remediate adverse human rights and environmental impacts caused by their subsidiaries or supply chain partners. If a parent company acts negligently or intentionally fails to perform these duties, victims can sue the parent company in domestic courts for full compensation.

Recommendations

Regarding a Forced Labour Import Ban:

Canada needs to include on a prohibited products list products from companies operating in regions that are well-known for posing a high risk that these products were created through the use of, or benefit from, forced labour – thereby banning products from these regions from entering Canada. These regions would include, among others, the Uyghur district of Xinjiang, in China and Eritrea.

Canada should prohibit Canadian companies from operating in regions that are well-known for posing a high risk of the use of, or benefit from, forced labour.

Regarding due diligence legislation:

MiningWatch Canada's position is that Canada needs to implement due diligence legislation that covers all human rights. However, the essential elements of due diligence legislation are the same, whether such legislation be implemented for all human rights or narrowly in the case of a selection of one or more human rights, such as the human right to be free from forced labour. In case Canada determines it will only enact due diligence legislation regarding labour rights, this legislation should cover all the core labour rights. For details on how the recommendations for due diligence legislation set out below can be operationalized, see the draft due diligence legislation created by the Canadian Network for Corporate Accountability.[29]

1. Canada needs to implement due diligence legislation that will require Canadian companies to:
    - Regularly assess and report publicly on the human rights risks posed by their operations throughout their supply chains – including the operations of their subsidiaries and business partners. This review process must include meaningful consultation with relevant rights holders, particularly those most affected by the operations of the Canadian company, its subsidiaries and business partners;
    - Take active steps to prevent human rights violations, including those of subsidiaries and business partners, and report publicly on these actions;
    - Provide remedy for harm that has been done.

[29] Canadian Network for Corporate Accountability, "The Corporate Respect for Human Rights and the Environment Abroad Act: Model legislation for mandatory human rights and environmental due diligence" (2026). https://cnca-rcrce.ca/model-legislation-due-diligence/

2. Canada needs to implement due diligence legislation that provides a civil cause of action to allow access to Canadian courts for people overseas who allege that their rights have been violated through the operations of a Canadian company, its subsidiaries and business partners.

3. Canada needs to (re)create a credible non-judicial grievance mechanism that:
    - Is independent from the Government of Canada;
    - Will receive complaints regarding violations of all human rights;
    - May commission independent investigations of such complaints;
    - Is empowered to compel witness testimony and documents;
    - Will make findings of fact regarding the veracity of the complainant's allegations based on independent investigations;
    - Will report out to the Canadian public directly on these findings;
    - Will recommend remedy for harm endured by the complainants;
    - May recommend sanctions against the companies in question in case they have violated rights, or in case they have not cooperated in the process set out by the non-judicial mechanism.