

Standing Committee on Foreign Affairs and International Development

Presentation regarding Bill C-300 - An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries

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Thank you very much, Mr. Chair and members of this committee, for this opportunity to speak to you.

Introduction:

In 2008, John Ruggie, United Nations Special Representative on the issue of human rights and transnational corporations, concluded his first two year mandate by stating:

*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. [emphasis added] (Ruggie 2008:3)*

The much-quoted conclusions reached by Ruggie in 2008, were in fact preceded by the groundbreaking, and unanimously endorsed, Fourteenth Report of this committee:

These hearings have underlined the fact that mining activities in some developing countries have had adverse effects on local host communities, especially where regulations governing the mining sector and its impact on the economic and social wellbeing of employees and local residents, as well as on the environment, are weak or non-existent, or where they are not enforced. (SCFAIT report 2005)

I had the privilege of testifying before the sub-committee on Human Rights and Democratic Development in 2005 and am encouraged to see a familiar face of a Members of Parliament from that committee, Mr. Goldring, around this table.

I would like to start my presentation by putting a human face on the problem Ruggie identifies and then to explain why MiningWatch Canada believes Bill C-300 is an appropriate response.

Marinduque, Philippines:

I was first confronted with the environmental devastation and human rights and health consequences that can result from irresponsible mining practices when I arrived on the small Philippine island of Marinduque in 1988 to start my Ph.D. fieldwork in Religious Anthropology.

I had never seen a mine, nor spent a day of my life thinking about the potential consequences of mining. It was sheer coincidence that a huge copper mine in the central hills of this small island province was a Canadian owned and operated mine. I became a witness to the struggle that was going on, on this island, to protect a critical marine environment, the food security of 12 fishing villages that relied on a bay's

coral reefs for their food, and the health of local children who were exposed to metals in the mine waste being dumped into Calancan Bay. I lived in one of those fishing villages for over a year and came to understand the devastating impact the mine was having on the lives of the people of Calancan Bay, even as I carried on with my research project. It wasn't until years later that a health study conducted by the Philippine Department of Health confirmed that the children I had been surrounded by during my fieldwork had unacceptable levels of lead and cadmium in their blood. The Philippine government declared a state of emergency in three Calancan Bay villages for health reasons.

In 1993, the same year I completed my Ph.D. in Canada, an earthen dam burst up at the mine site and tonnes of highly acidic and metal-rich mine waste flooded down the Mogpog River. Villages were inundated with mine waste; houses and livestock were swept away. And two young children of Marites Tagle died when they were buried under the waste. The Canadian managers of the mine said the mine bore no legal responsibility, as the disaster was "Act of God" brought on by a typhoon. Mrs. Tagle reportedly received about 1000 pesos from the mine, for compassionate reasons, for each of her two dead daughters (about CAD 23 each). The Mogpog River has never recovered. It is heavily silted by mine waste that flows through the deficient dam and independent studies have shown that the river's waters are acidic and laden with toxic metals. This past April I was back in Marinduque and helped villagers fill rice bags with waste from the river in an attempt to lower the level of the river and stop regular flooding of nearby villages with contaminated water.

In 1996, I was at Cornell University doing postdoctoral research when another mine waste impoundment in the hills of Marinduque burst and another river, the Boac River, filled with mine tailings from the mountains to the sea. This disaster finally closed the mine down. But now, more than ten years later, the tailings are still piled in sandbags along the banks of the Boac river and Canadian engineers Klohn Crippen have warned that further disasters are likely as the dams and structures at the deserted and un-rehabilitated mine site crumble away.

I have told you this story because it contains elements of many of the stories regarding Canadian mining companies operating overseas that we deal with daily at MiningWatch Canada - irresponsible mining practices, environmental degradation, human rights abuses, health impacts and complicity of corrupt, inept, or even dictatorial governments. (The Philippine dictator Ferdinand Marcos had been a secret partner in the Marinduque mine.)

The other aspect of this story that is common to others to which we respond at MiningWatch Canada is the lack of recourse, in their own countries, for the people who have been damaged by Canadian mining companies. The lack of, as Ruggie put it "sanctioning or reparation." In 2005, a lawsuit was launched by the Province of Marinduque against Placer Dome, now Barrick Gold. This precedent setting suit is making its way through the courts in the United States. Just last week a US judge ruled in favour of the province's suit and sent it to Nevada state court to proceed.

The following cases serve to highlight the range of concerns raised with regard to Canadian mining companies, the global reach of these problems, and the fact that these concerns are current and ongoing.

Ecuador – In March of this year Toronto-based law firm Klippensteins filed a potentially precedent-setting suit against Canadian junior Copper Mesa Mining Corporation and the Toronto Stock Exchange on behalf of Ecuadorian villagers who allege the company's paramilitary agents have resorted to physical assaults, death threats and other human rights abuses to break opposition to the company's operations. This committee has heard about these allegations from Carlos Zorilla from the Ecuadorian community of Intag. For more information on this case see: www.ramirezversuscoppermesa.com

Tanzania – A new scientific report published by the Norwegian University of Life Sciences and the University of Dar es Salaam finds potentially life-threatening levels of arsenic around Barrick Gold's North Mara gold mine in Tanzania. This report supports allegations MiningWatch has been receiving regarding serious human health impacts and even deaths related to acid mine drainage and heavy metal leaching from the mine into the surrounding environment and surface waters. Two areas were investigated: the area around the tailing dam and the site of an accidental spill that occurred on May 9, 2009. Despite that fact that these areas were tested four to seven months after the spill, this study shows that the water remains toxic for human consumption and grazing use.¹

Papua New Guinea – This year Norway's Government Pension Fund announced it has dropped its shares in Canada's Barrick Gold as a result of the Porgera Joint Venture Mine's waste disposal into the 800 km long Strickland River System. Based on an in-depth assessment of Barrick's operations in Porgera, the pension fund's Council of Ethics concluded that investment in Barrick amounted to "an unacceptable risk of the Fund contributing to serious environmental damage." The Council added that "the company's assertions that its operations do not cause long-term and irreversible environmental damage carry little credibility. This is reinforced by the lack of openness and transparency in the company's environmental reporting." The Government Pension Fund had owned more than \$229 million (Canadian) in Barrick shares.² In April 2009, the mine was in the news as a result of a PNG government "call out" that has seen over 200 troops dispatched to the mine site with as a result the burning of houses in villages in the Special Mine Lease area. MiningWatch contacted United Nations Special Rapporteurs over this issue.³ Allegations of killings of civilians by the Porgera mine's security guards became the subject of a Papua New Guinea government inquiry in 2005-2006 but the final report was never released. Placer Dome admitted to eight deaths at the hands of its security guards at the Porgera Joint Venture Mine. The International Human Rights Program at Harvard Law School is conducting an investigation at the mine.

Honduras - Over the past five years, numerous tests carried out by the U.K.-Based Catholic Agency for Overseas Development (CAFOD), Canada's Development & Peace partner Caritas Tegucigalpa and the Honduran government show evidence of dangerous levels of arsenic, cyanide and other heavy metals in water sources flowing close to or from within the mine boundaries. In 2007, the Honduran Secretariat of Natural Resources and Environment (SERNA) fined Goldcorp one million lempiras, equivalent in value to about CAD 26,000 at the time, for pollution and damage to the environment. The company has consistently disputed these tests and has appealed the fine. In 2007, the Latin America Water Tribunal ruled on a complaint filed by members of the Siria Valley communities, finding Goldcorp accountable for damage to the environment and unreasonable use of water in the Siria Valley. The tribunal recommends that a thorough investigation into the health of local communities is carried out and that all mining activity is suspended and the communities are compensation for the damage caused. During a visit to Honduras in November 2008, Professor of Hydro-Geochemical Engineering at Newcastle University Paul Younger - a world expert on mine water management - noted signs of Acid Mine Drainage and metal leaching close to the mine site.⁴

¹ IPM-report 2009 - Investigations of Trace Metal Concentrations in Soil, Sediments and Waters in the vicinity of "Geita Gold Mine" and "North Mara Gold Mine" in North West Tanzania. Åsgeir R. Almås, Charles Kweyunga and Mkwabwa LK Manoko. the complete study can be found at:

<http://www.miningwatch.ca/sites/miningwatch.ca/files/FinalTanzania.pdf>

² For a copy of the Council of Ethics Report on Barrick Gold see:

www.regjeringen.no/upload/FIN/etikk/recommendation_barrick.pdf

³ For more information see: <http://www.business-humanrights.org/Documents/BarrickresponsePorgera>

⁴ CAFOD and Canada's Development & Peace demand action from mining giant Goldcorp as villagers fear gold mine is poisoning people and the environment in Honduras

<http://www.alertnet.org/thenews/fromthefield/217426/124119013674.htm>

Argentina – This committee has received a letter from the United Steelworkers about the dismissal of Joes Vicente Leiva, a labour leader in Argentina at the Canadian Veladero Mine. United Steelworkers allege that Leiva and his fellow workers are employed by the mine at an altitude of 4600 meters with temperatures that can reach 20 below zero. They live in tents with inadequate cold weather gear. Landslides produced by the excavations are reported to be frequent. Two members were killed at the end of 2006. The work on the mine face also releases silica dust particles, well-known in the mining world as the cause of the incurable disease called silicosis. Before being laid off, Leiva traveled down 4600 meters to meet with Barrick management and lay before the company the demands of the workers for safer working conditions, adequate housing, winter gear and reduction of exposure to silica dust.

Guatemala – Serious and long-standing allegations of human and indigenous rights abuses at Goldcorp’s Marlin Mine in Guatemala led to a fact-finding mission by a delegation of Canadian socially responsible investment organizations and a union in 2007. Following this mission Jantzi Research (now Jantzi-Sustainalytics) – a company that provides investment research and support for institutional and professional social investors – advised its clients that Goldcorp could not be considered in a socially responsible investment portfolio.

Burma – In July of this year the Canadian Friends of Burma (CFOB) expressed deep concern that Canadian firm Ivanhoe Mines continues to hold a 50% stake in the Myanmar Ivanhoe Copper Company Limited (MICCL). MICCL is Ivanhoe's 50-50 joint venture with the Burmese military regime which operates Burma's largest mine.⁵

Tibet – In June of this year, the Canada Tibet Committee (CTC) released a report regarding the operations of Canadian mining company Continental Minerals in Tibet. The report supports CTC’s claims that mining companies cannot carry out free and open community consultations prior to mining, as required by best practice, in the Tibetan context.⁶

I will turn now to a brief review of MiningWatch’s position in support of Bill C-300. MiningWatch has provided this committee with a Position Statement that sets out the following points in more detail.

Let me first highlight that I believe that we have come to an important consensus with industry that, as PDAC notes, “many countries lack the governance and institutional capacity to enforce legislation and to ensure a stable regulatory regime.” However, industry’s response to this “governance gap” is to focus on voluntary CSR measures to be taken by corporations – supported by host country capacity building to be undertaken by “northern hemisphere countries.” Remarkably, this line of argument appears to support a position 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.

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

⁵ For more information contact: Kevin McLeod at 613-746-4963, or Tin Maung Htoo at 613-297-6835. Canadian Friends of Burma (CFOB) is federally incorporated, national non-governmental organization working for democracy and human rights in Burma since 1991. Contact: Suite 206, 145 Spruce St., Ottawa, K1R 6P1; Tel: 613.237.8056; Email: cfob@cfob.org; Web: www.cfob.org

⁶ For more information and a copy of the report see: http://www.tibet.ca/en/newsroom/news_releases/171

uniformly across all operations. Another key problem with existing CSR codes and instruments is that they are all weak on human rights, referencing only a sub-set of human rights, if any at all. 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.

If we can agree that there is a governance gap in many host countries in which our corporations operate, **and** that voluntary CSR measures, while **necessary** are not **sufficient**. And if we recognize that 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. Then we **must** come to the conclusion that it is only the **home** states of multinationals that can address the “governance gap” identified by Ruggie.

Importantly, 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. (Ruggie 2008:7)

I would argue that the **necessity** of home states, such as Canada, to step up to the plate and accept the challenge of regulating the activities of Canadian extractive companies operating overseas was **recognized** by the members of this standing committee 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. We hope that this standing committee will again come to unanimous decision to support Bill C-300.

Thank you.