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Submission to the Government of Canada's Review of Corporate Social Responsibility Strategy for the Canadian Extractive Sector

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Background

MiningWatch Canada (MiningWatch) is a pan-Canadian initiative supported by environmental, social justice, Aboriginal and labour organisations from across the country.¹ It was created in 1999 to address the need for a co-ordinated public interest response to threats to public health, water and air quality, fish and wildlife habitat and community interests posed by irresponsible mineral policies and practices in Canada and by Canadian companies operating around the world. With technical and strategic expertise from across Canada, MiningWatch Canada carries out and/or supports the monitoring, analysis and advocacy necessary to improve corporate behaviour, as well as policy and regulatory development by public decision-makers.

MiningWatch participated on the Advisory Group of the Government of Canada's *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries* (2006). Subsequently, MiningWatch participated on the Steering Committee of the Centre for

¹ The current members of MiningWatch Canada are: Bathurst Sustainable Development; Bedford Mining Alert; Unifor; Canadian Environmental Law Association; Centre for Long-term Environmental Action in Newfoundland/Labrador; Canadian Parks and Wilderness Society; Canadian Union of Public Employees; Canadian Catholic Organization for Development and Peace (CCODP); Friends of the Earth Canada; Friends of the Stikine Society; Innu Nation; Inter Pares; International Institute of Concern for Public Health; Canadian

Excellence in Corporate Social Responsibility (2009-2013). MiningWatch has also provided ongoing critical analysis, including in a peer-reviewed journal, on the role of the CSR Counsellor for the Extractive Sector.² Additionally, MiningWatch has contributed analysis in, among others, a peer-reviewed book chapter and a brief to Parliament, regarding the role of mining in development.³

On December 12, 2013, MiningWatch participated in a roundtable consultation hosted by the Department of Foreign Affairs, Trade and Development Canada (DFATD) as part of the Government of Canada's review of its CSR Strategy for the Extractive Sector. On December 16, 2013, MiningWatch participated in an in depth interview with the Office of Audit, Evaluation and Inspection of DFATD on the same topic. This brief expands on feedback provided by MiningWatch Canada in these forums.

CSR Strategy for the Extractive Sector Fails to Meet Stated Objectives

The Government of Canada's CSR Strategy for the Extractive Sector, launched in 2009 as *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector*, purports to address three key areas: (1) increasing development benefits associated with mining (primarily Pillar One)⁴; (2) providing remedy to those who have been harmed by the activities of Canadian extractive companies operating overseas (Pillar Three)⁵; and (3) promoting voluntary corporate social responsibility guidelines and tools (Pillars Two, Three and Four)⁶.

Failures of the CSR Strategy for the Extractive Sector (CSR Strategy) to meet its purported goals result from the fact that the CSR Strategy's stated goals are subservient to prevailing economic objectives of the current government that prioritize the promotion and protection of the interests of Canadian extractive companies operating overseas. This focus on promoting corporate interests is responsible for

² See for example: Coumans, Catherine. *Ottawa Citizen*. October 31, 2013. Op-Ed: Canada needs effective mining oversight. <http://www.ottawacitizen.com/opinion/op-ed/Canada+needs+effective+mining+oversight/9109205/story.html>; Coumans, Catherine. October, 2012. Mining and Access to Justice: From Sanction and Remedy to Weak Non-Judicial Grievance Mechanisms in *The University of British Columbia Law Review*. 45 U.B.C. L. Rev. 651; MiningWatch Canada. March, 2011. *Concerns with regard to the mandate and review procedure of the Office of the Corporate Social Responsibility Counsellor for the Government of Canada*.

http://www.miningwatch.ca/sites/www.miningwatch.ca/files/MiningWatch_Brief_on_CSR_Counsellor.pdf

³ See for example: Coumans, Catherine. December 2013. Mining and development – how much will it cost us to clothe the naked emperor? In *MiningWatch Canada Newsletter* Fall/Winter 2013.

<http://www.miningwatch.ca/publications/miningwatch-canada-newsletter-35-fallwinter-2013>; MiningWatch Canada. 2012. *Brief prepared for the Committee on Foreign Affairs and International Development's Study on the Role of the Private Sector in Achieving Canada's International Development Interests*. Questioning CIDA's Partnerships with Mining Companies given the Role of Mining in the Creation of Development Deficits.

http://www.miningwatch.ca/sites/www.miningwatch.ca/files/Mining_and_Development_FAAE_2012.pdf; Coumans, Catherine, 2011. *Whose Development? Mining, Local Resistance and Development Agendas in Governance Ecosystems: CSR in the Latin American Mining Sector*. Julia Sagebien and Nicole Marie Lindsay (eds.) Palgrave Macmillan. U.K.

⁴ Pillar One: Support for host country capacity-building initiatives related to resource governance and for host countries to benefit from these resources to reduce poverty. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-rse.aspx?lang=eng>

⁵ Pillar Three: The [Office of the Extractive Sector CSR Counsellor](#)

⁶ Pillar Two: Promote the following widely-recognized voluntary international CSR performance guidelines: the [OECD Guidelines for Multinational Enterprises](#); the [International Finance Corporation Performance Standards on Social and Environmental Sustainability](#); The [Voluntary Principles on Security and Human Rights](#); and the [Global Reporting Initiative](#)

Pillar Four: The development of the [Centre for Excellence in CSR](#).

key flaws of the CSR Strategy, such as its entirely voluntary nature; the unacceptably weak mandate of the CSR Counsellor (meant to provide remedy for those who have been harmed by the activities of Canadian extractive companies operating abroad); and the use of Official Development Assistance (ODA) as a corporate subsidy and to fund programs aimed at facilitating resource extraction by Canadian companies.

The government has been quite transparent in its economic and foreign policy intentions, goals and priorities. In responding to criticism about using ODA to serve the interests of Canadian mining companies, then International Co-operation Minister Julian Fantino said “We are a part of Canadian foreign policy (...) We have a duty and a responsibility to ensure that Canadian interests are promoted. (...) I find it very strange that people would not expect Canadian investments to also promote Canadian values, Canadian business, the Canadian economy...”⁷ In addressing the Mining Association of Canada about the new, ODA financed (\$25 million), Canadian International Institute for Extractive Industries and Development, Fantino enthusiastically told the mining executives that the institute “will be your biggest and best ambassador.”⁸ More recently the government announced its Global Markets Action Plan based on “economic diplomacy.” In this document the government bluntly announces that: “All diplomatic assets of the Government of Canada will be marshaled on behalf of the private sector.”

There can be no doubt that both the government’s CSR Strategy and the economic and foreign policy initiatives of the government meet with the enthusiastic approval of the mining industry as press releases and opinion pieces by the Mining Association of Canada⁹ express overt support for the government’s CSR Strategy, the new use of ODA to support mining, the much-critiqued CSR Counsellor, and the new Global Markets Action Plan, which promises a new Extractive Sector Strategy.¹⁰ ***However, the CSR Strategy’s failure to address and remedy the harmful economic, environmental and human rights impacts of mining in developing countries will ensure increased local level opposition to Canadian mining companies and increased conflict at mine sites – the very issues the Strategy was designed to address.***

Recommendations

MiningWatch Canada is a founding member, and sits on the steering committee, of the Canadian Network on Corporate Accountability (CNCA). We support the recommendations submitted on the CSR Strategy by the CNCA and provide the following brief additional comments.

Pillar One – Mining and Development

Official Development Assistance should not be supporting mining-related CSR projects and partnerships between mining companies and development NGOs that have traditionally been fully funded by mining companies themselves. This amounts to a subsidy to the mining industry and is not an acceptable use of public funds, or an appropriate use of development assistance.

⁷ Fantino defends CIDA’s corporate shift. Kim Mackrael. *Globe and Mail*. December 3, 2012.

⁸ Huge opportunities’ for Canadian mining industry to work in developing countries. Kim Mackrael. *Globe and Mail*. June 19, 2013.

⁹ See Mining Association of Canada. <http://www.mining.ca>

¹⁰ The Canadian mining industry supports federal government’s new trade strategy: *Strategy will help Canada compete for investment and will support Canadian mining abroad*. Mining Association of Canada. http://www.mining.ca/www/media_lib/Press_Release/2013/NR_GlobalMarketsActionPlan.pdf

Furthermore, the very serious development deficits created by mining, both at the national level through economic impacts, and at the local level through harmful economic, environmental and human rights impacts, must be acknowledged and addressed. National level harmful economic impacts of mining (the “resource curse” phenomena) can be offset to some extent by assuring that mining companies pay fair taxes and royalties. One way mining companies are actively avoiding taxes and siphoning revenues out of poor and developing countries into tax free havens is through illegal accounting practices, such as transfer mispricing. It is estimated that the illicit capital flows that result from these practices are significantly higher than the development assistance many of these countries receive.¹¹ As first steps, Canada should support the creation of a public database that will show who the beneficial (real) owners are of Canadian extractive companies and request banks in tax havens to publish the names of the beneficial owners of their secret accounts. Additionally, Canada needs to follow up on its commitment to support Automatic Tax Information Exchange.

With respect to local level harmful impacts, Canada should not be providing tax-payer funded financial or political support to mining companies that do not respect human rights. In order to determine whether a company is harming local communities, workers, or environments, Canada needs effective and transparent accountability mechanisms. These can include an effective state-level non-judicial grievance mechanism such as an Ombudsman (see Pillar Three below).

Pillars Two and Four – Promoting Voluntary CSR Guidelines and Tools

The voluntary guidelines the Government of Canada supports¹² are rooted in internationally-recognized human rights, which are not voluntary. The Government of Canada should mandate that Canadian companies respect human rights, wherever they operate, particularly as the Government of Canada provides financial and political support to these companies. In order to ensure compliance, Canada needs an effective Ombudsman (See Pillar Three below).

Pillar Four, the Centre for Excellence in CSR (the Centre) has been a major disappointment. MiningWatch Canada participated for four years on the Executive Committee in order to establish the Centre. The Centre provided a useful multi-stakeholder space for important dialogue on critical issues related to resource extraction. However, when the Government of Canada failed to continue its arms-length financial support to the Centre, it became clear that the Centre would either be funded by industry or, through project funding, by one or another government department. In either case the Centre loses its independence. We have serious concern that the Centre, in line with government policy objectives, will become yet another vehicle for the advancement of government policy and/or corporate interests, rather than an institute that reflects and advances the interests of all stakeholders and rights holders.

Pillar Three – Remedy – The CSR Counsellor

The Office of the CSR Counsellor (the Office) is a state-sponsored non-judicial grievance mechanism. We have detailed extensively the fundamental flaws in this office’s mandate.¹³ In practice, the Office

¹¹ “It is estimated that Africa loses over \$50 billion a year in illicit financial flows, far exceeding the amount of official development assistance the continent receives.”

<http://www.un.org/apps/news/story.asp?NewsID=47097&Cr=africa&Cr1=#.UvQbGLRpqRM>

¹² The [OECD Guidelines for Multinational Enterprises](#); the [International Finance Corporation Performance Standards on Social and Environmental Sustainability](#); the [Voluntary Principles on Security and Human Rights](#); and the [Global Reporting Initiative](#)

¹³ MiningWatch Canada. 2012. *Brief prepared for the Committee on Foreign Affairs and International Development’s Study on the Role of the Private Sector in Achieving Canada’s International Development Interests*. Questioning CIDA’s Partnerships with Mining Companies given the Role of Mining in the Creation of

further harmed the rights of those who brought complaints as a result of its ineffectiveness. Not one of the six complaints brought made it to mediation. In three cases, the companies in question refused to participate. This office should be closed.

Canada needs an effective ombudsman who can receive complaints, independently investigate complaints with or without compliance of the company in question, make a public determination of fact about the validity of the complaints, and make a recommendation to the company and to the Canadian Government regarding remedy if it is determined that harm that has been done. If necessary, the ombudsman also should be able to recommend the suspension or cessation of political, financial and diplomatic support by the Government of Canada.

The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) are clear that access to remedy, judicial and non-judicial, is a human right. The effectiveness of non-judicial remedy is weakened if victims do not also have the option to seek judicial remedy, in case the non-judicial effort fails. The UN Guiding Principles recognize that many victims of human rights abuses by corporations live in jurisdictions where access to effective courts is not possible. Canada should legislate access to Canadian courts for civil suits brought by non-Canadian alleged victims of human rights abuses perpetrated by Canadian companies operating abroad.