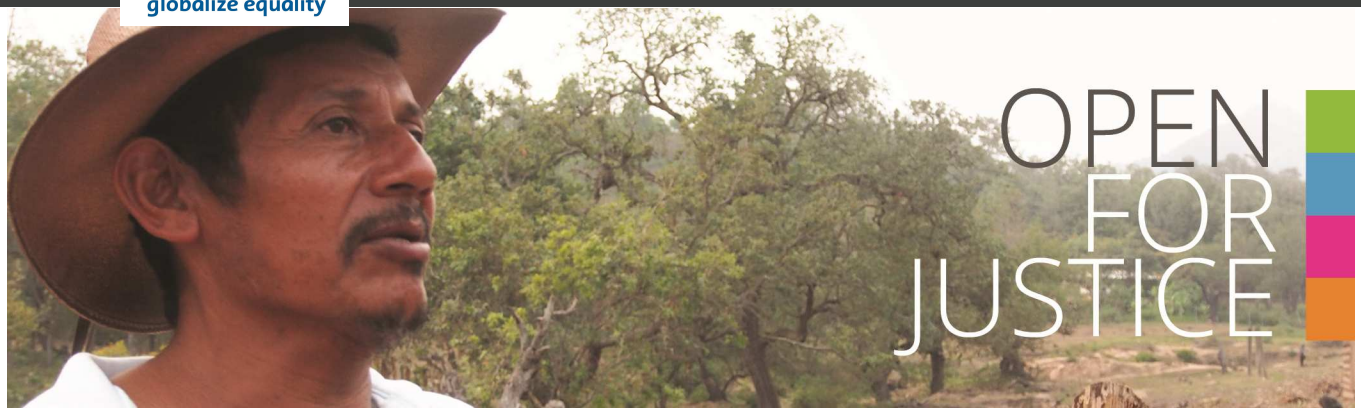



**THOSE WHO HAVE BEEN HARMED BY CANADIAN MINING OPERATIONS OVERSEAS NEED TO BE ABLE TO SEEK JUSTICE IN CANADA.**

***IT'S TIME FOR CANADA TO BE OPEN FOR JUSTICE.***

**Call, write, or visit your MP today and demand immediate action to create:**

1. An extractive-sector Ombudsman with the power to independently investigate complaints and make recommendations to corporations and the Government of Canada

   –and–

2. Legislated access to Canadian courts for people who have been seriously harmed by the international operations of Canadian companies

*If your family member was injured, your child got sick, you were kicked off your land or your water was poisoned, wouldn't you expect that there would be somewhere you could go to seek redress against the company who you believed was responsible? Wouldn't you expect that an independent, impartial figure would hear you out and help to make things right?*

Unfortunately, many people who have suffered this kind of harm have discovered that when it comes to a Canadian mining company operating overseas, there is nowhere to go to seek justice: not in one's own country, not in international arenas, and not in Canada.

For example, in 2011 ***workers at Excellon Resources' La Platosa mine in Mexico*** brought a complaint to Canada's CSR Counsellor's Office because they had been unable to get the company to listen to their concerns about training, unsafe working conditions, long-term community benefits from mining, incidents of violence and intimidation inside the mine, and retaliation against workers wanting to establish a democratic union. The Counsellor determined that their request "was a good faith, bona fide request … to discuss a wide range of concerns and issues… [and]… met all of the criteria for consideration under the Office's mandate."[1] However, when the Federal Government created the CSR Counsellor's Office in 2009, it didn't give the office any real powers. No matter how credible a claim is, the CSR Counsellor's Office will not undertake a review unless the company agrees to it. Excellon Resources refused to participate and that simply ended the process.

The result: **Communities and workers have been shown that they cannot access justice and remedy in Canada. We need a mandatory extractive-sector Ombudsman in Canada with the power to independently investigate complaints and make recommendations to both companies and the Government of Canada.**

Another powerful example is the struggle for justice by **villagers from Kilwa, Democratic Republic of Congo who believe the harm they suffered was related to the international operations of Anvil Mining**. In October 2004, approximately 73 civilians were massacred by Congolese armed forces during an attack on their village. The company admitted to providing logistical support to the Armed Forces prior to and during these attacks.[2] A highly criticized Congolese military court trial did not bring justice for the victims.[3] In 2010, the Canadian Association against Impunity launched a class action lawsuit in Quebec against Anvil Mining for these abuses. The Quebec Court of Appeal determined that Quebec lacked jurisdiction to hear the case.[4]

**Canada currently is not a place where justice will be done. We need legislation giving access to Canadian courts for people who have been seriously harmed by the international operations of Canadian companies.**

Photo credit: Development and Peace

[1] CSR Counsellor's report available at: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Closing_report_MEX.pdf

[2] For more on this see: http://raid-uk.org/docs/Kilwa_Trial/MONUC_report_oct05_eng_translated_by_RAID.pdf

[3] Louise Arbour, then HR Commissioner, was one commentator who questioned the legitimacy of the proceedings. http://www.unhchr.ch/huricane/huricane.nsf/view01/9828B052BBC32B08C125730E004019C4?opendocument

[4] In November 2012, the Supreme Court of Canada dismissed an application for leave to appeal that decision

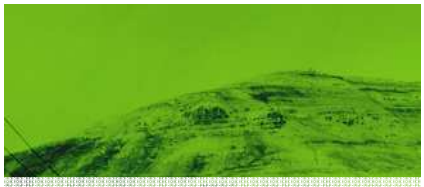
# GENERAL BACKGROUNDER: CNCA ACCESS TO JUSTICE CAMPAIGN

## A CANADIAN PROBLEM REQUIRING ACTION IN CANADA

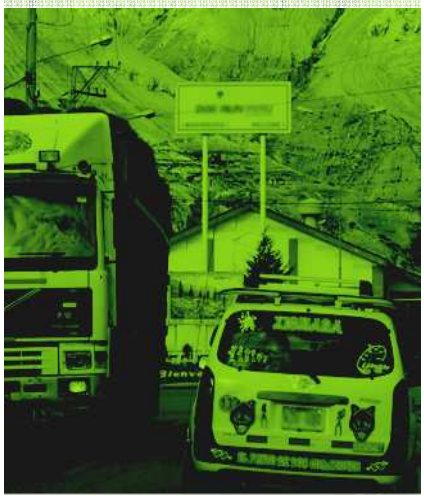
We are a network of environmentalists, human rights activists, union members and people of faith from across Canada who are advocating for federal legislation to establish mandatory corporate accountability standards for Canadian extractive companies operating abroad, especially in developing countries. Formed in 2005, our network seeks to ensure that the fundamental rights of all peoples are respected by Canadian mining and oil and gas corporations, no matter where they operate. Many of our member organizations have been working on the issue of corporate accountability for decades and have longstanding relationships with communities, workers, indigenous peoples, environmental and human rights defenders from around the world.

## WHO WE ARE AND WHY WE ARE CALLING ON CANADIANS TO TAKE ACTION

The fact is, most mining companies in the world are, at least in some way, Canadian: they're registered here, they're listed on our stock exchanges, they have headquarters here, many receive considerable support from the Canadian government. Close to 60% of the world's mining and mineral exploration companies are headquartered in Canada. 40% of the world's mineral exploration capital is raised on Canadian stock exchanges. Canada has a huge stake in this issue and a corresponding responsibility to ensure that Canadian companies act in a way that respects human rights and the environment.



## WHAT IS CAUSING THIS PROBLEM?



The international system that currently governs resource extraction is not working to protect human rights, labour rights or the environment. It is based entirely on voluntary guidelines and codes of corporate conduct. In other words, it does not provide any clear consequences if a company fails to respect international standards. It is a system that allows companies to choose what, if any, guidelines they will follow. It is a system that history has shown us does not work.

Those who have been harmed by the operations of Canadian extractive operations overseas need to be able to defend their rights, and protect their livelihoods and ecosystems. When their rights are not respected, they need to have somewhere to go to seek recourse. Currently, given the international accountability gap that exists with respect to multinational mining companies, many people who are harmed simply have nowhere to go.

While offering considerable support to Canadian extractive companies, the Canadian government has been inactive in instituting measures to ensure corporations respect human rights. Over the past decade, the government has repeatedly been offered expert testimony about the negative impacts of unregulated Canadian mining overseas.[5] On more than one occasion, the United Nations Committee on the Elimination of All Forms of Racial Discrimination has informed Canada that its inaction amounts to a violation of Canada's international human rights commitments.[6] The international community, in supporting the United Nations Guiding Principles on Business and Human Rights, has made it clear that corporations must respect all human rights and that home states have an important role to play.[7]

## THE ACCOUNTABILITY GAP IS CAUSED BY THREE MAIN FACTORS:

1. **Barriers to justice in "host countries"**

In many cases, in the country where the mining company is operating (so-called "host country") there is very weak regulation of mining activities. Where regulations exist, there is often a lack of enforcement. Canada has played a role in weakening mining codes in several countries.[8] Legal barriers, cost and corruption also make it difficult for those who suffer corporate abuse to seek justice in host countries.

2. **Barriers to justice in international arenas**

With few exceptions, those who suffer corporate abuse are unable to access recourse in international courts or tribunals. Mechanisms that exist at the international level, for example through the United Nations, are primarily voluntary or primarily aimed at nation states, not corporations – in other words there are not real, enforceable consequences for a company's failure to comply with standards.

3. **Barriers to justice in "home countries" like Canada**

Existing mechanisms in Canada to address overseas extractive-sector corporate abuse don't work because they are either inaccessible or ineffective.

## RECOMMENDATIONS

*Those harmed by the activities of Canadian mining companies should have recourse to justice here in Canada. We need both:*

1. Legislated access to Canadian courts for people who have been seriously harmed by the international operations of Canadian companies. There have been very few court cases in Canada concerning Canadian companies and overseas human rights abuse, despite a growing number of allegations. Canadian courts have been reluctant to hear cases brought forward by foreign plaintiffs, effectively denying them access to justice in Canada. Federal legislation should be adopted in Canada that allows non-Canadians who are affected by the overseas operations of extractive companies to bring civil lawsuits before Canadian courts. The statute should clarify that Canadian courts are an appropriate forum to hear claims against extractive companies that are registered in Canada.

2. The creation of an extractive-sector Ombudsman in Canada. This mechanism needs to have the power to receive complaints, undertake independent investigations to determine if a company has acted inappropriately and, if so, to make recommendations to the company and to the Canadian government in order to remedy the situation. The Ombudsman should make its findings public and should be able to recommend the suspension or cessation of political, financial and diplomatic support by the Government of Canada. Unlike the CSR Counsellor's Office, the Ombudsman needs to be mandated to perform these functions irrespective of a company's willingness to participate.

Photo credit: Development and Peace

[5] For example, the Standing Committee on Foreign Affairs and International Development's 2005 hearings on *Mining in Developing Countries* and 2011 hearings on the role of the private sector in development, as well as the *2006 National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries*.

[6] See, for example, the Concluding Observations of the United Nations Committee on the Elimination of all forms of Racial Discrimination of May 25, 2007, CERD/C/CAN/CO/18, at para 17 and of March 9, 2012 CERD/C/CAN/CO/19-20, at para 14.

[7] For more on this see the Business and Human Rights Resource Centre at http://www.business-humanrights.org/SpecialRepPortal/Home

[8] For more on this, see Elizabeth, Veronika Stewart (2012) "CIDA and the Mining Sector: Extractive Industries as an Overseas Development Strategy" in Struggling for Effectiveness: CIDA and Canadian Foreign Aid, (Ed.) McGill-Queen's University Press, 217-245.

## WHAT MECHANISMS EXIST IN CANADA AND WHY AREN'T THEY ENOUGH?

***Toothless Offices: The CSR Counsellor's Office and NCP***

Two out-of-court mechanisms exist in Canada: the Office of the Extractive-Sector Corporate Social Responsibility Counsellor and the National Contact Point for the OECD Guidelines on Multinational Enterprises (NCP). Both of these mechanisms are so weak that they don't offer an effective avenue to accessing justice.[9]

Review by the CSR Counsellor's Office is voluntary: a company needs to agree to be the subject of a review. You can probably guess what has happened so far: in 2 of the 3 cases[10] brought to the CSR Counsellor's Office, the company has simply walked away and that has ended the process. Even if a complaint were to go through a full review process, the Office's mandate is so weak as to be ineffective: the mandate does not include making determinations of fact, determining if harm has been caused or guidelines breached, the Counsellor cannot make recommendations for remedy or sanction. **We need a real extractive-sector Ombudsman in Canada.**

Canada's NCP is also not a full answer. Central flaws with the Canadian NCP are that it is not mandated to carry out independent fact finding and does not make public determinations about whether the OECD Guidelines have been breached. The guiding principles are voluntary in nature. Its processes are kept secret until the very end of the process. As it is housed within government, its independence is questionable. It does not have the power to recommend sanction or reparation.

***Canadian courts aren't accessible***

When people have attempted to sue Canadian mining companies in Canadian courts for harm they believe to have been caused by these companies overseas, Canadian courts have been unwilling to hear these cases. In fact, in virtually all cases to date, Canadian courts have decided that a Canadian court is not the most appropriate place to hear these claims.[11] In other words, no determination has been made about whether there is merit to the claim being filed, but only a decision that it would be more appropriate for the case to be heard in a court outside of Canada.[12] **It should be possible to sue Canadian companies for grave harm they cause overseas. We need legislated access to Canadian courts.**

In Canada and around the world, Inter Pares is a long-term ally to local organizations and movements. Together with these counterparts, we are not just treating the symptoms of social problems, but attacking the roots of injustice by addressing its underlying causes. By raising funds, offering organizational support, advocating for policy changes, and increasing public awareness, Inter Pares acts in solidarity with people who are looking to create a fairer world – to globalize equality. **To learn more: www.interpares.ca facebook.com/InterParesCanada twitter.com/Inter_Pares**

The CNCA unites environmental and human rights NGOs, faith groups, labour unions, and research and solidarity groups across Canada who are advocating for federal legislation to establish mandatory corporate accountability standards for Canadian extractive companies operating abroad, especially in developing countries. **To learn more: www.cnca-rcrce.ca**

[9] For a more detailed examination of why these offices aren't strong enough, see CNCA Briefing note, available at: http://cnca-rcrce.ca/wp-content/uploads/Access-to-Remedy-Canada-needs-an-ombudsman-CNCA.pdf and Mining Watch Canada's brief *Concerns with regard to the mandate and review procedure of the Office of the Corporate Social Responsibility Counsellor for the Government of Canada (March 2011)* http://www.miningwatch.ca/sites/www.miningwatch.ca/files/MiningWatch_Brief_on_CSR_Counsellor.pdf

[10] Note: at the time of writing we are aware that 3 new cases have been brought to the CSR Counsellor's office. When there are developments in those cases we will update our online materials.

[11] Three precedent-setting cases will be proceeding to trial in Ontario's Superior Court of Justice. In those cases, however, Hudbay Minerals Inc. withdrew its arguments that Ontario was an inappropriate forum in which to hear the claim. This means that while the cases were not prevented from proceeding to trial on the issue of jurisdiction, they do not set a precedent on the issue of jurisdiction and future plaintiffs may face barriers to accessing our courts. For more on this see http://www.chocversushudbay.com

[12] For more on this, see CNCA Briefing Note *Access to justice*, available at http://cnca-rcrce.ca/wp-content/uploads/Access-to-Justice-Allowing-Canadian-courts-to-hear-cases-of-overseas-corporate-wrongdoing-CNCA.pdf