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A Question of Integrity: Regulating the Canadian Resource Extraction Industry Abroad

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Introduction:

When Canadian Friends Service Committee (CFSC) began supporting the peace-building efforts of Central African Quakers in the late 1990s, we learned of the role of unregulated mining in the perpetuation of the conflict. Since that time, we have monitored the role of Canadian extractive industries in developing countries through partnerships with KAIROS and the Canadian Network on Corporate Accountability. CFSC has participated in conferences and strategy sessions and remained informed through e-mail lists. When an opportunity has arisen to participate in campaigns for positive change, we have promoted it within our own network. From time to time, we have prepared background resources such as this one to summarize developments for people who are concerned.

This paper is an update of one prepared in 2009, entitled “*The Need for Courage: Regulating Extractive Industries*”. We encourage readers to review that six-page paper before reading this one ([contact gianne \[at\] quakerservice.ca for a copy](mailto:contact_gianne@quakerservice.ca)). In that paper, the concrete experience of CFSC partners in D. R. Congo illustrated the issues raised. In this one, the example of the Marlin Mine in Guatemala is used. Hannah Ivanoff, co-author of this paper, has visited the mine (CFSC has former project partners in Guatemala). It is a case where many different avenues have been tested as a means of redressing injustices and finding a constructive way to operate the mine so that the rights of local people are respected and it no longer escalates conflict. Despite many different rulings by various bodies the mine continues to operate and to violate local rights.

This paper gives an update on civil society and governmental initiatives described in the 2009 paper, and touches on some forms of citizen action available. What happens in Canada on this issue has significant influence globally. Over 60% of resource extraction companies are Canadian owned¹ and they operate in

¹ Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor Annual Report to Parliament October 2009 – October 2010, " According to the Prospectors and Developers Association of Canada, of the 1,970 mining companies recently tabulated, 1,116 of them – roughly 57% – have a headquarters in Canada.",

many countries in remote areas. They often operate in unstable regions, on land where marginalized people live, near indigenous communities and in undemocratic or weak states where rule of law is ineffective. According to research done for the *Globe and Mail*, Canadian companies have over \$3.34 billion invested in the Democratic Republic of Congo, \$2.2 billion in Libya and \$3.3 billion in China. All of these countries are listed as ‘not free’ on the latest reports by Freedom House².

There are not many legal or regulatory ways for those who are experiencing negative social and environmental effects to address harmful mining practices, especially in unstable environments. Resource extraction, whether it is mineral, oil or gas, almost always entails large environmental impacts. Though these impacts can be mitigated if proper standards are followed, they are often not implemented, especially in unstable regions. Many governments and investors promote resource extraction in developing countries as a way to boost economic development. However, put in perspective, according to an OXFAM report, even if Guatemala exported all of its minerals, remittances would exceed the foreign exchange from mining by 30 times³.

Resource extraction is complex and has the potential for benefit, but the negative social and environmental impacts are not always considered when looking at the issue. Lack of functioning legal systems and regulations make these negative impacts hard to mediate when they occur. Despite the struggle of scholars, activists and government officials to attempt to remedy the situation and make international mining companies accountable, the reality is that a state of impunity still exists.

Guatemala: the Marlin Mine



Figure 1: Tailings pond at the Marlin Mine.

vast expanses of land when open pit mining process is used, as in this case. A large amount of water is by the mine per hour, which would otherwise be used for the local communities and agriculture. Toxic metals such as cyanide are used in the processing of the minerals and dumped into tailing ponds, from

The Marlin Mine case exemplifies the inadequacies of the current regulatory mechanisms and recourses available to those who are struggling to address problems created in areas through mining operations. The mine is located in the northwestern part of San Marcos, Guatemala and is currently owned by Montana Exploradora de Guatemala, a subsidiary of Goldcorp Inc., a Canadian company based in Vancouver, BC⁴. Since construction began in 2004, complaints of environmental and social problems associated with the mine have been brought forward, including water contamination, assassination of community leaders, and improper consultation with the communities. The environmental impacts of gold mining often include the destruction of

² <http://www.theglobeandmail.com/news/national/time-to-lead/undemocratic-regimes-where-canadian-companies-have-invested-millions-billions-of-dollars/article1949361/?from=1952557>

³ <http://www.oxfamamerica.org/files/metals-mining-and-sustainable-development-in-central-america.pdf>

⁴ <http://www.goldcorp.com/>

whence they may escape into the neighbouring environment.

Many people from the surrounding Mayan communities are concerned about the water supply, the leaching of toxic metals as well as the damaging of houses caused by the shaking of the earth from explosions at the mine. Those who speak out against the mine have been subjected to harassment, beatings, and shootings as well as falsely accused of crimes. In March 2011 people protesting the mine were taken, robbed and beaten, and thirteen people were badly injured.⁵ On July 7th 2010 Ms. Diodora Antonia Hernández Cinto, a member of a group that opposes the rights violations committed at the mine, was shot in the head by two men who came to her house⁶. There are many other reports of violence against leaders of human rights groups in the area. With the support from civil society organizations (CSOs), community members have been pursuing different avenues of recourse for their concerns. However, despite numerous studies by both CSOs and international institutions, and widespread support for suspension of the mine, it continues to operate. The following are a few of the reports on the human rights conditions.

In 2010 the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) called for the Guatemalan Government to ensure that the Marlin Mine would temporarily suspend operations while the state investigated rights abuses⁷. In May 2010, the Physicians for Human Rights and the Department of Environmental Health at the University of Michigan reported on their extensive testing for toxic metals in the area around the mine. The recommendations included the need for a rigorous human epidemiological study to further understand the level of exposure to toxic metals.⁸ In 2008, a group of Goldcorp's shareholders called for an independent human rights impact assessment to be carried out. The report, published in 2010 and prepared by On Common Ground Consultants Inc., "sets out how the Marlin Mine's presence and operations have affected human rights, and the extent to which company policies, procedures and practices comply with international human rights standards" (available in English, Spanish and two indigenous languages).⁹ The consultation process did not live up to the standards of the International Labour Organization's (ILO) convention 169 and further consultation and dialogue between communities, government and the company was needed. The report also highlighted where better environmental standards and testing needed to be carried out as well as establishing a more comprehensive closure plan and improved complaint mechanisms.¹⁰

In June 2010 the Government of Guatemala stated they would order the suspension of the mine, yet no action has yet been taken.¹¹ The CEO of Goldcorp said they are working to implement the recommendations of their report and that they were committed to the highest human rights standards. As Francois Guindon of the Network of Solidarity with the People of Guatemala said, "What is your human rights policy worth if you disregard the findings of international human rights bodies?" Despite all of this, the Marlin Mine continues to be operational and is expected to produce 400 000 oz of gold in 2011¹².

⁵ <http://cnca-rcrce.ca/guatemala-mine-activists-beaten-and-threatened/>

⁶ <http://www.miningwatch.ca/urgent-action-shooting-community-leader-opposing-goldcorp-incs-marlin-mine-guatemala-threats-against>

⁷ <http://www.cidh.oas.org/medidas/2010.eng.htm+>

⁸ Toxic Metals and Indigenous Peoples Near the Marlin Mine in Western Guatemala: Potential Exposures and Impacts on Health. An expert Scientific Report by Niladri Basu, Howard Hu and Physicians for Human Rights, May 2010.

⁹ Human Rights Assessment (HRA) of Goldcorp's Marlin Mine, 2010.

¹⁰ Human Rights Assessment of Goldcorp's Marlin Mine, On Common Ground, 2010

¹¹ http://www.guatemala.gob.gt/noticia_busqueda.php?codigo=8421&titulo2=Nacionales

¹² <http://www.goldcorp.com/operations/marlin/>

Working Towards Adequate Regulation

“No right without a remedy.”

Several regulatory initiatives are underway, and we evaluate them below. Some were described in the 2009 paper, and are updated here. Specifically:



Figure 2: View of tailings pond from a nearby settlement.

- National Corporate Social Responsibility Council (Canada), Bill C-300 and opportunities for legal redress;
- OECD¹³ National Contact Point;
- International Finance Corporation (IFC) Complaints Mechanism;
- EITI¹⁴ and Publish What You Pay (PWYP);
- The UNDRIP's¹⁵ Free, Prior and Informed Consent provisions;
- Bilateral Trade Agreements.

National Corporate Social Responsibility Counsellor (CSR) and Bill C-300

In 2009 the Government of Canada responded to the National Roundtable on Corporate Responsibility and the Canadian Extractive Industry in Developing Countries by creating the Office of the Extractive Sector CSR Counsellor¹⁶. The CSR initiative is part of the Department of Foreign Affairs and International Trade (DFAIT)¹⁷ with support from Natural Resources Canada and the Canadian International Development Agency (CIDA). The Office aims to “enhance the CSR performance of Canadian mining, oil, and gas companies in their overseas operations...reduce negative impacts from projects, reduce project risk, build reputation, support the social license to operate, increase community benefits from projects, maximize the potential benefits of resource exploitation, and reduce harm. CSR standards are intended to supplement, never supplant, host country laws and regulations.”¹⁸ The CSR Office will act as, “an impartial advisor and facilitator, an honest broker that brings parties together to help address problems and disputes”. The Office’s Counsellor is appointed by an Order-in-Council; such appointees are “required to perform their duties in the public interest. Their personal and professional conduct must be beyond reproach.”¹⁹

As of July 2011, no complaints have yet been addressed by this office. There is criticism that it does not adequately meet the recommendations of the National Roundtable. Catherine Coumans, a former member of the Advisory Group and the current Program Advisor for Mining Watch Canada, notes some of these concerns in a Mining Watch brief. The main concern with the Counsellor’s review process is that both

¹³ Organization for Economic Cooperation and Development

¹⁴ Extractive Industries Transparency Initiative

¹⁵ International Declaration on the Rights of Indigenous Peoples

¹⁶ http://www.international.gc.ca/csr_counsellor-conseiller_rse/index.aspx?menu_id=1

¹⁷ Department of Foreign Affairs (Canada)

¹⁸ Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor Annual Report to Parliament, 2009-2010, page 3.

¹⁹ http://www.international.gc.ca/csr_counsellor-conseiller_rse/About_us-A_propos_du_bureau.aspx?view=d

parties must agree to participate in the process. As it is a voluntary process and either party can back out at anytime, it has limited the capacity for very difficult conflicts to be resolved. The human rights guidelines used by the Counsellor in her review process are weak, as the counsellor does not rule if there was harm done, nor make binding recommendations. As part of the mediation process the counsellor cannot conduct an investigation into the issue and is not independent of the government even as she is a Governor-in-Council appointee.²⁰ The Counsellor's review process has many of the same deficiencies of other voluntary regulatory mechanisms that already existed, such as the OECD's National Contact Point (NCP). Given these weaknesses, people and communities affected by mining seem to be hesitating to invest their time and resources in the process.

Recognizing this weakness, in February 2009 MP John McKay introduced Bill C-300²¹, a Private Members Bill, into the House of Commons to realize key recommendations from the National Roundtable²². "The purpose of this Act is to ensure that corporations engaged in mining, oil or gas activities and receiving support from the Government of Canada act in a manner consistent with international environmental best practices and with Canada's commitments to international human rights standards".²³ The Bill included mechanisms that would regulate the relationship between the Canadian government agencies, including Export Development Canada, DFAIT, and the Canadian Pension Plan, as well as the Canadian extractive companies with operations in developing countries. It would also set out guidelines for corporate responsibility (CSR) standards that government branches would have to adhere to when providing political and financial support to Canadian extractive companies. The Bill also stated that any guidelines that set out corporate accountability standards required provisions that ensure that corporations act in line with international human rights standards. Importantly, it also would enacted mechanism wherein complainants could bring issues forward against a company to the Minister of Foreign Affairs and International Trade. An investigation would then follow if the complaint was deemed serious and would be reported upon within eight months. If the company were found to be acting in a manner inconsistent with the guidelines they would become ineligible for government support.

The Bill filled a large gap in the policy governing the Canadian extractive industry. It passed first reading, but was defeated at second reading on October 28th, 2010 (vote: 140 to 136). The main reasons cited by the Bill's opponents were that it would limit the competitiveness of Canadian mining companies and be damaging to one of Canada's most important industries and thus the Canadian economy²⁴. All government MPs present (and one Independent) voted against the Bill, while all opposition party MPs present voted for the Bill. Twenty-nine MPs absented themselves or abstained from voting.

John McKay hopes to continue working on this issue in the current Parliamentary session by building on the momentum of Bill C-300. He hopes that Canada can follow in the steps of other countries and implement disclosure requirements for extractive industries that list on the Canadian Stock Exchange. "This would be a meaningful step towards improving transparency and reducing corruption within the extractive industry," states McKay.

Other countries have addressed the need to regulate companies that operate abroad, including the United Kingdom and the United States. In July 2010 the United States passed the *Dodd-Frank Act* with the purpose to promote financial stability²⁵. The Act also deals with the operation of American companies abroad and requires them to report the money they pay to foreign governments, increases the transparency of deals with foreign companies, and enforces the reporting of the use of minerals from the conflict zone

²⁰http://www.miningwatch.ca/sites/miningwatch.ca/files/MiningWatch_Brief_on_CSR_Counsellor.pdf

²¹<http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=3658424&file=4>)

²²<http://www.halifaxinitiative.org/updir/AdvisoryGroupReport-March2007.pdf>

²³ Bill C-300, paragraph 3

²⁴<http://openparliament.ca/bills/40-3/C-300/>

²⁵ Pub.L. 111-203

of D.R. Congo; this is in direct response to concerns of how to make companies accountable when operating in conflict zones, such as those highlighted in the CFSC's 2009 report. The measure of the *Dodd-Frank Act* put into law some of the ideas of the PWYP and the EITI initiatives (*see below*). Even if laws like this do not address all the issues, they are a step in the right direction.

Pursuing justice through the court system is another method for holding extraction companies accountable to international and national law and standards. The problem that arises is whether or when Canadian courts have the power to hear cases regarding actions that take place outside of Canada. However, recent events have made this a potential avenue for concerns to be brought forward. On April 27, 2011 the Superior Court of Quebec ruled that a case against Anvil Mining Ltd. could be heard in the Quebec courts²⁶. The Canadian corporation is accused of involvement in a 2004 massacre in the D. R. Congo in which 70 people were killed in the town of Kilwa by providing logistical support to the military in their attempts to suppress a group of rebels. The Canadian Association against Impunity brought a class action against the company in November 2010 on behalf of the victims of the massacre.

This is a landmark case because it deals with the extraterritorial jurisdiction of the Canadian law. There is a history of civil liability reaching beyond Canadian borders, however never before in the case of human rights or environmental charges²⁷. Previously the *Forum Non Conveniens* rule (a common law rule, also existing in Quebec, that allows a court to dismiss a case if it thinks it can be heard better in a different country) was used to block such actions. In the ruling Judge Emery stated that,

“It is apparent ...that it is impossible to determine that the authorities of the D. R. Congo or of Australia would clearly be more appropriate for hearing the case. In fact, at this stage in the proceedings, everything indicates that if the court were to refuse to accept the application [for a class action] on the basis of article 3135²⁸ of the Civil Code of Quebec, there would be no other possibility for the victims' civil claim to be heard.²⁹”

The 2009 National Roundtable on CSR and the Canadian Extractive Industry Report questioned whether the legal regime was striking an appropriate balance between access to justice and respect for the jurisdiction of foreign courts, stating that, “more domestic litigation would further develop Canadian jurisprudence on the extraterritorial civil liability of corporations for alleged CSR-related wrongs abroad, and clarify the jurisdiction of Canadian courts in such cases.”³⁰ For this reason, the *ACCI v. Anvil Mining* case is already an important step forward. When companies become linked to human rights violations in countries where there is not a functioning justice system, the case could be heard in Canada, ensuring that companies are not operating without oversight. Legal action does have its drawbacks: it is costly and involves long timelines, making it inaccessible for many. However, the outcomes are legally binding and more concrete than the voluntary mechanisms of the NCP and CSR Counsellor.

OECD National Contact Point

There are several mechanisms at the international level that address mining grievances. The Organization of Economic Cooperation and Development (OECD) Guidelines are a set of voluntary standards that aim to ensure that multinational enterprises adhere to certain business ethics, including areas of human rights

²⁶ 2011 QCCS 1966 (CanLII)

²⁷ National roundtable on CSR and the Canadian Extractive Industry, page 42.

²⁸ Article 3135. Even though a Québec authority has jurisdiction to hear a dispute, it may exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another country are in a better position to decide.

²⁹ 2011 QCCS 1966 (CanLII)

³⁰ National Roundtable on CSR and the Canadian Extractive Industry, page 43.

and the environment. It is the responsibility of the OECD's member governments (including Canada) to promote the Guidelines. OECD countries have National Contact Points (NCP), which are offices that are responsible for ensuring that the Guidelines of the OECD are followed. Anyone can bring a concern forward and "when issues arise concerning implementation of the Guidelines in relation to specific instances of business conduct, the NCP is expected to help resolve them"³¹. In theory, this mechanism can help regulate Canadian extraction companies, however, in reality it has not been effective as a means for settling complaints.

For example, in 2009 a Guatemalan Organization, Frente de Defensa San Miguelense (FREDEMI), with the support of many human rights and environmental organizations focusing on the mining industry, registered a request for a review of the Marlin Mine project with the Canadian NCP. In the final statement (May 3, 2011), the NCP states, "that the communication and dialogue between the company and the notifiers are essential to the resolution of any disputes".³² The notifiers asked the NCP to investigate Goldcorp's activities at the Marlin Mine to ensure that they were complying with the Guidelines. The NCP ruled that dialogue needed to occur between the two parties before they would do anything further and now consider the case closed³³. The request for FREDEMI and Goldcorp to have a dialogue is extremely challenging due to the high level of distrust between the stakeholders. The report by Physicians for Human Rights also recommended the creation of an independent oversight panel to facilitate dialogue. In their report, the NCP stated that "[it] is aware of the existence of these and other studies and proceedings, but they did not influence the decisions of the NCP with respect to the initial assessment and the NCP's performance of its mandate"³⁴. The Canadian NCP's inaction and failure to comment on Goldcorp's compliance with the OECD Guidelines is in contrast to other countries' NCPs, which have carried out investigations and make recommendations. In the UK and Norway, their NCPs' reports have resulted in action: abiding by the guidelines and performing further investigations into reports of human rights abuse. Canada's present policy remains focused on voluntary mechanisms that really rely on the cooperation of the extractive companies themselves. As Catherine Coumans puts it, "This puts effective power in the hands of the alleged violator. From a human rights perspective this is very problematic."³⁵

IFC Complaints Mechanism

The Office of Compliance Advisor/ Ombudsman (CAO) is the independent recourse mechanism of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), both a part of the World Bank Group. These bodies are charged with reviewing complaints brought against the IFC and MIGA by those affected by their projects in a "manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects"³⁶.

In 2004 the IFC loaned \$45 million (USD) to the Marlin Mine project. In 2005 a community near the mine brought forward a complaint to the CAO against the project that included concerns over access to water, contamination, and that "the project was developed without adequate consultation and in violation of the rights of indigenous people and that the mine exacerbates social tensions, violence and

³¹ http://www.oecd.org/document/3/0,3746,en_2649_34889_1933116_1_1_1_1,00.html

³² Canadian NCP final statement, May 2011, page 2 - http://www.goldcorp.com/resources/canadian_ncp_final_statement.pdf

³³ *ibid.*

³⁴ Canadian NCP final statement, page 5.

³⁵ http://www.miningwatch.ca/sites/miningwatch.ca/files/Office_of_the_Extractive_Sector_CSR_Counsellor_29-03-2011.pdf

³⁶ <http://www.cao-ombudsman.org/cases/document-links/documents/CAO-Marlin-assessment-English-7Sep05.pdf>

insecurity.”³⁷ The IFC published a report that was highly critical of the Guatemalan government, the IFC and Glamis Gold (the company that owned the mine at the time). The report made several recommendations and also stated that there had been a problem with the consultation process. According to the report “The CAO found a genuine difference in understanding amongst the parties about the purpose of consultation with and disclosures to local people.” The IFC and the project sponsors believed that they only needed to inform the people of the project, while the local leaders felt they had the right to say whether the mine would be allowed to open on their land. While the *Declaration on the Rights of Indigenous Peoples* had yet to be adopted by the United Nations (*see below*), there were international precedents that supported the rights of Indigenous Peoples to control over natural resources, mainly the International Labour Organization’s (ILO) Convention 169³⁸. Not only did they fail to live up to these standards, but the CAO also stated that, “Given the magnitude and broader developmental impacts associated with this development, and the Mayan cultural view of natural resource development, an analysis of Mayan customary perspectives and traditional decision-making norms as they may relate to mining would significantly enhance the consultation process.” Further the report highlighted that conflict arose out of the mine being built and the failure to prevent violence from erupting between those for and those opposed to the mine. Five years later, in a 2010 briefing, the mine’s new owner, Goldcorp, stated,

“Goldcorp and the employees of Marlin have continued to operate the mine to the highest standards, with an abiding commitment to the responsible stewardship of the environment and to the human rights of the people in communities near Marlin. The Company believes that any suspension of mining activities would directly and adversely impact the human rights to work, to earn a living, to personal health, and to education of mine employees and members of the nearby communities.”³⁹

EITI⁴⁰ and Publish What You Pay

The promotion of transparency as the answer to corruption within the extractive sector has become popular within the last ten years and various mechanisms have been developed that aim to solve the problems of weak governance, corruption and conflict. The premise is that if payments by companies to governments are disclosed then citizens can hold both governments and companies accountable. Those favouring a market-based solution to various social problems connected to resource extraction often see transparency as the answer. However, some criticize such endeavours as working within a system that has inherent inequality and thus has severe limitations.⁴¹

Two international initiatives to increase transparency of the extractive industry are Publish What You Pay (PWYP), a civil society organization, and the Extractive Industries Transparency Initiative (EITI), a mixed membership-based organization (countries, industry, civil society). Both initiatives were discussed in CFSC’s 2009 report. The goals of both organizations are similar, however the means of achieving them are different. The EITI uses mainly voluntary measures; PWYP advocates for mandatory disclosure of company payments to governments. Currently there are 10 countries that are compliant with the EITI standards, and 24 candidate countries. The Canadian government supports the EITI, however is not a compliant country. According to a study done by Susan Ariel Aaronson published in *Public Administration and Development* one problem is that the members of EITI have different visions of what

³⁷ [ibid](#) (i)

³⁸ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>

³⁹ Guatemalan Government Responds To Marlin Mine Suspension Request, Vancouver, BC, June 24, 2010: http://www.goldcorp.com/news/goldcorp/index.php?&content_id=787

⁴⁰ Extractive Industries Transparency Initiative – www.eiti.org

⁴¹ Haufler, Virginia, 2009.

EITI is supposed to achieve.⁴² The EITI, as a public-private partnership between governments, industry and civil society, has been successful in achieving things that stakeholders could not easily do on their own, such as improving governance and facilitating dialogue. However the limitations of EITI include the power imbalance between civil society organizations and extractive industry firms. The public are not educated about EITI, which limits the spill over effects of the EITI and its ability to counter corruption.

Indigenous Rights and Free, Prior, and Informed Consent (FPIC)

Several sections of the *UN Declaration on the Rights of Indigenous Peoples*⁴³ outline the established human rights norm of Free, Prior and Informed Consent (FPIC) to assert indigenous peoples' rights to control of their lands and resources. In many countries there are laws that state that community consultation must take place before any project is approved. The reality is that all too often there is little or incomplete consultation before development proceeds.

Inadequate consultation with Indigenous communities was one of the major issues leading to conflict at the Marlin Mine. This is not unique to that mine, or Guatemala – it happens in countries around the world, including Canada. Resource extraction is a contentious issue for indigenous communities that may be affected by the development; as the relationship with land is essential to their identity, having their views and preferences heard and addressed is critical. The main sources of conflict are the lack of free, prior and informed consent, royalties, environmental impacts and employment practices.

In November 2010, the Canadian Government issued a statement supporting the *Declaration*. However, a recent document outlining the federal guidelines to fulfil the duty to consult states that, “Canada has concerns with some of the principles in the *Declaration* and has placed on record its concerns with free, prior and informed consent when interpreted as a veto. As noted in Canada’s Statement of Support, the *Declaration* is a non-legally binding document that does not change Canadian laws. Therefore, it does not alter the legal duty to consult.”⁴⁴

The contradiction of supporting an international human rights document only as far as it is in line with current law and policy contradicts a “raison d’être” of international standards, which is to raise the bar of good practice. Such statements do not alter the validity of the *Declaration* within the Canadian context. Canadian corporations operating within Canada and abroad should ensure that their business practices are compliant with the *Declaration*. The *Declaration* will influence legal interpretation within Canada, and should be considered in the development of legislation and how regulatory bodies make rulings on issues.

Bilateral Trade Agreements

In recent years Canada has been in the process of negotiating new free trade agreements with other governments. These agreements will allow for favourable business between the partner countries. There is fear that the terms that will provide advantage for multinational corporations will also have potential adverse affects on marginalized people. In 2010, the Canada-Colombia Free Trade Agreement (CCFTA) was signed, even as a parliamentary standing committee had requested that a human rights assessment first be undertaken and considered. Colombia’s human rights abuses are a well-known problem and these include forced displacement and violence against indigenous peoples and union leaders.

Currently there is a free trade agreement being negotiated with Honduras. Some groups within Honduras

⁴² Aaronson, S. A., 2011.

⁴³ For more information on the Declaration see www.quakerservice.ca - indigenous rights section.

⁴⁴ Indian and Northern Affairs Canada, Aboriginal Consultation and Accommodation, March 2011.

are concerned that the deal is being made at the expense of human rights.⁴⁵ Honduras experienced a military coup d'état in 2009 and any deal with the new government would be perceived to legitimize it. Pedro Landa, coordinator of the Honduran Centre for the Promotion of Community Development, spoke to a Canadian parliamentary committee that was looking at the agreement. He stated that Canada is often seen as a country “that makes off with natural resources without thinking of the societal impacts.”⁴⁶ Trade agreements that are signed with countries that are unstable or have internal conflict should take careful consideration of how human rights and the environment will be protected.

Recommendations for Citizen Action

Resource extraction is a very complicated issue that involves various stakeholders and often divides people along rigid lines. Understanding the issue is an important first step in helping move it forward. The dialogue between stakeholders that was achieved with the National Roundtables came to consensus and now legislation to create new and improved regulatory and transparency mechanisms are needed to implement their recommendations. CFSC's partners, especially KAIROS, have suggestions for citizen action including increased public education, solidarity and accompaniment, and shareholder engagement with companies.

Public education: Canadian companies are acquiring a reputation internationally for not addressing human rights abuses that happen in relation to their mining interests. By building a grassroots network of educated citizens, people are better equipped to dialogue with their Members of Parliament about their concerns and to press for legislation to regulate extractive industries. Writing letters and signing petitions lets MPs know what their constituents care about. When environmental disasters occur or violence erupts in or near a mining operation that has Canadian involvement, it is important to let our government know we care that Canadian mining companies follow national and international laws and regulations and are being pro-active to addressing issues. Recently, a young community and environmental activist was shot and killed in El Salvador. This is the fourth death that may be linked to the mining interests of the Canadian mining company, Pacific Rim. This company is currently in the process of suing the Salvadorian government for loss of profit because it did not approve an environmental assessment for a project and thus prevented it from obtaining a mining permit.⁴⁷ Mining Watch Canada has organized a campaign in response to this issue.

For more information on getting active on resource extraction issues, visit the websites of these organizations:

- KAIROS: www.kairoscanada.org
- Mining Watch: www.miningwatch.ca
- Canadian Network on Corporate Accountability: www.cnca-rcrce.ca

Solidarity and accompaniment: Many communities in the Global South who are being affected by the impacts of Canadian mining projects have called for greater solidarity and accompaniment. People being impacted by mining by Canadian companies in the South sometimes wonder how Canadians could do this in their countries if they wouldn't do it in Canada. However, many issues around mining also exist within our own country, including Indigenous peoples' rights being ignored and environmental disasters occurring. One example is the case of the Lubicon Cree, with whom Quakers have been involved with for decades⁴⁸. As Canadians we can let decision-makers know we stand in solidarity with communities at home and abroad by getting involved in accompaniment programs wherein people from outside the

⁴⁵ <http://www.canadians.org/tradeblog/?p=1380>

⁴⁶ *ibid.*

⁴⁷ http://www.fpif.org/articles/el_salvadors_gold_fight

⁴⁸ See CFSC's webpage or <http://www.amnesty.ca/lubicon/>

country are invited to be a witness and presence within affected communities. These issues are often very complex and multifaceted, however, and as outsiders we are experiencing the issue first hand. Participants need to make sure we are not creating more problems or speaking for someone without their consent. Organizations that are engaged in accompaniment include: Christian Peacemaker Teams and Peace Brigades International.

Shareholder engagement: Through responsible investing and shareholder action, Canadians can encourage companies to ascribe to best practices in the sector with regards to human rights and environmental standards. Individuals or organizations that have investments are not always aware of the impact that their investment choices can have. A group of shareholders of Goldcorp requested the human rights assessment report on the Marlin Mine (discussed earlier) and later called for a resolution to suspend operations at the site after increased violence. The group included the Public Servant Alliance of Canada, whose pension funds are invested in Goldcorp⁴⁹.

Conclusion:

The issue of mining regulation is a pressing one because mining affects so many people around the world: industry-affected communities, Canadians (jobs, economy), and the environment on which we all depend. Those who oppose the mandatory regulation of extractive industries argue that Canada's economic interests are at stake. The National Roundtable Report and numerous other experts believe this argument is a false dichotomy and regulation could in fact benefit the industry. Human rights abuses do not have to occur for countries to develop, the environment does not have to be polluted for Canadian companies to be competitive. There has been some progress internationally, such as the more proactive NCPs of Norway and the UK, and the new legislation in the US, however there needs to be more action, particularly by Canada where the majority of mining companies are based.

Violence is occurring in areas where Canadian mining companies are operating, such as Tanzania, Mexico and El Salvador. Conflict between different peoples connected to extractive industries can be mitigated by ensuring that all stakeholders have a voice, that power imbalances are addressed, that rights are protected. Regulation on the Canadian side is important when host countries cannot fulfill their duty to protect their own citizens due to weak governance or existing conflict. Where rights exist, there needs to also exist mechanisms for them to be protected. Where there are holes in the law, new regulations need to be created to ensure that human rights abuses do not continue.

Though Bill C-300 was defeated, citizens need to keep dialoguing with our MPs to raise up the concerns and to explain how legislation like Bill C-300 can strengthen Canada's image and help Canadian companies raise the benchmark of best practice in the sector. Deaths connected to conflict over mining operations, protests against Canadian companies and environmental disasters relating to mining continue to occur. Without increased accountability, impunity will exacerbate these conflicts. As has been demonstrated by the struggle of San Marcos' communities in Guatemala, the existing avenues to pursue justice are not adequate. States' duty to protect their citizens against human rights abuses must be strengthened. The ability of the state to regulate is a key component of the solution. In turn, Corporate Social Responsibility mechanisms that are voluntary put too much discretion for action in the hands of the companies and are not enough to ensure that human rights and environmental abuses do not continue.

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