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General questions about the Open for Justice campaign:

Q. Why can't we rely on the Government of Canada's Corporate Social Responsibility (CSR) strategy?
A. Canada's CSR strategy relies on voluntary guidelines and codes of corporate conduct, leaving no recourse for those affected by environmental disasters or human rights abuses. History has shown us that a system based on voluntary standards, with no mandatory rules and accompanying consequences for breaking those rules, does not work. Some companies may comply with voluntary standards, but others do not. Without independent oversight, it is difficult or impossible to determine whether a corporation respects human rights norms and the environment. Yet respect for human rights cannot be optional. Canada needs a way to hold companies to account if they violate human rights. Such accountability mechanisms are not yet included in Canada's CSR strategy.

Q. If the measures that you propose are passed into law, won't it harm the Canadian extractive industry's reputation internationally?
A. The reputational damage to Canada, the Canadian extractive industry and individual companies is already happening because of human rights and environmental issues associated with Canadian companies operating abroad. The reputation of the Canadian extractive industry will improve when certain Canadian mining, oil and gas companies improve their environmental and human rights performance.

Q. If these measures are passed into law, won't it harm the global competitiveness of Canadian companies?
A. Extractive companies with dubious practices are subject to protest, divestment campaigns and lawsuits. Increasingly, governments, communities and workers give preference to foreign investors that are responsible corporate citizens. Investors are beginning to recognize that social and environmental regulations are actually good for investment. Compliance with internationally-recognized human rights, environmental and labour standards will place Canadian extractive companies at a competitive advantage as choice investments.

Q. Are you saying that all Canadian extractive companies are bad and intentionally violating human rights and destroying the environment? Doesn't this ignore all the good that mining, oil and gas companies are doing around the world?
A. Whether it is one company out of 100 or 99 companies out of 100 that are implicated in human rights abuses abroad, the fact is, where there are allegations of harm, there is often nowhere for people to go to seek effective redress. This is unacceptable. We need a functional system to adequately respond to grievances when those occur. The current international system allows corporations to ignore their responsibilities, without formal consequences. It also does not allow any credible and independent way to distinguish between those corporations who respect human rights norms and those who do not. As such, companies that violate human rights often not only get away with it, but also receive financial and political support from the Government of Canada.

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General questions (continued):

Q. Why is this our problem?
A. The Canadian government provides considerable support to Canadian extractives abroad, and most Canadian citizens are invested in extractives (for example, through their contributions to the Canada Pension Plan). Internationally, particularly in many developing countries, mining is seen as the face of Canada. So Canada's reputation is at stake.
Canada's international human rights commitments require it to take action. On more than one occasion, the United Nations Committee on the Elimination of All Forms of Racial Discrimination has informed Canada that it needs to take measures to hold transnational corporations registered in Canada accountable for negative impacts they cause overseas. Canada's responsibility to ensure that its companies respect human rights are further reinforced by the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* and the *United Nations Guiding Principles on Business and Human Rights*.

Q. Are you suggesting that other countries are backwards and we have all the answers here?
A. Individuals, indigenous peoples, and community and union leaders in developing countries are working tirelessly, often in very dangerous conditions, to make changes to their legal systems to ensure better accountability with respect to multinational extractive companies. We need to do our part here.

Q. Aren't mining companies subject to stringent laws and regulations?
A. In many places there are excellent laws, but they're not always enforced; even in Canada. Furthermore, in this era of globalized commerce, many countries adjust their laws to ensure a more investment-friendly environment or enter into bi-lateral trade agreements that attempt to bypass human rights requirements. However, human rights and environmental protections have not kept pace with new global trade rules which are favourable to business. This is referred to as the 'accountability gap'.

Q. Wouldn't these measures open the floodgates to frivolous complaints?
A. It requires considerable time and resources for foreign victims to mount court cases in Canada. The likelihood of success must be weighed against the challenges of finding the right legal team – which usually must be willing to work without pay – to represent them, as well as finding funds to pay for flights to Canada, legal processing fees, and other resources necessary to launch a court case. Further, victims and their communities will need to commit many years of energy and effort to the lawsuit as these cases can take years to have their day in court. This will reduce the likelihood of frivolous complaints. The Ombudsperson mechanism would also be subject to a clause similar to the following: *If the ombudsperson determines that the request is frivolous or vexatious or is made in bad faith, the ombudsperson shall decline to examine the matter.* The Ombudsperson can also determine priority orders for review of cases.

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General questions (continued):

Q. Is the Canadian government doing anything positive in regards to corporate accountability in the extractive sector?
A. Yes. In June 2013, the Government of Canada announced that Canada would develop mandatory reporting requirements on revenue transparency for the extractive sector. When developed and implemented, such rules would require Canadian companies to report publicly all taxes, royalties and other payments made to governments, both in Canada and internationally.

Q. Are Canadian Members of Parliament (MPs) doing anything to ensure greater accountability in Canada for the activities of our extractive companies overseas?
A. Yes. A number of MPs who understand the need to take action in Canada have prepared private member bills to increase accountability in Canada for the activities of our extractive companies overseas. These bills include :

- *An Act to amend the Federal Courts Act (international promotion and protection of human rights)*, Bill C 323, introduced by MP Peter Julian. This enactment amends the *Federal Courts Act* to expressly permit persons who are not Canadian citizens to initiate tort claims based on violations of international law or treaties to which Canada is a party if the acts alleged occur outside Canada. It also sets out the manner in which the Federal Court and the Federal Court of Appeal can exercise their jurisdiction to hear and decide such claims.

- *An Act respecting the promotion of financial transparency, improved accountability and long-term economic sustainability through the public reporting of payments made by mining, oil and gas corporations to foreign governments*, Bill C 474, introduced by MP John McKay. This enactment requires mining, oil and gas corporations to submit annual transparency reports that disclose all payments provided by them or their subsidiaries to a foreign government for the purpose of furthering mining, oil or gas industry activities. It also makes it an offence to fail to comply with this requirement and establishes a penalty for such contravention.

- *An Act respecting corporate practices relating to the extraction, processing, purchase, trade and use of conflict minerals from the Great Lakes Region of Africa*, Bill C 486, introduced by MP Paul Dewar. This enactment requires Canadian companies to exercise due diligence in respect of the exploitation and trading of designated minerals originating in the Great Lakes Region of Africa in seeking to ensure that no armed rebel organization or criminal entity or public or private security force that is engaged in illegal activities or serious human rights abuses has benefited from any transaction involving such minerals.

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Questions related to access to Canadian courts:

Q. What is "access" to Canadian courts?
A. The legislation we are seeking will allow those harmed by Canadian extractive companies to have their day in court. So far, in most cases in Canada, plaintiffs have not been able to have the merits of their claim determined in court. When corporations have faced lawsuits relating to overseas abuse the corporations have often (and generally successfully) argued that the case would be better heard in another jurisdiction, that Canada should not take jurisdiction and hear the case here. The legislation we are seeking would clarify that Canadian courts are an appropriate place to hear this kind of case and allow plaintiffs who have faced serious harms related to the international operations of Canadian extractive companies to have their day in a Canadian court.

Q. Can't people just sue if they suffer harm to themselves or their property?
A. See the answer above. When plaintiffs have attempted to sue, they have generally been told that Canadian courts are not the most appropriate place to hear their case, and have been directed back to other jurisdictions (often their home countries, even when there is clear evidence they would not have the ability to bring a case forward in that country).

Q. Can't people harmed by Canadian mining overseas already bring cases to court in Canada? What about the HudBay cases going to court in Ontario, does that mean this legislation is no longer necessary?
A. The HudBay case is proceeding in Ontario Superior Court, but other cases might still be blocked. The company HudBay Inc actually withdrew its arguments on the jurisdictional question, which allowed the case to proceed. As a result, the issue of whether an Ontario court is an appropriate forum in which to hear this type of case was never assessed by the court. Because no precedent was set, future plaintiffs are not guaranteed to have their cases heard. Indeed, in other cases, alleged victims of foreign corporate abuse have been denied access to the Canadian justice system. For instance, in the case against Cambior for an environmental disaster in Guyana, the Quebec Superior Court ruled that Guyana was the most appropriate forum in which to hear the case, thus refusing to exercise its jurisdiction. And in the lawsuit against Anvil for human rights abuses in the Democratic Republic of the Congo, the Quebec Court of Appeal decided it did not have jurisdiction to hear the case. The HudBay case shows the need for clear legislation to remove the barriers to accessing the Canadian justice system, so that valid claims are heard regardless of the defendant company's legal strategy.

Q. Is there a similar law somewhere else?
A. There is not an example in other jurisdictions of precisely the law we are seeking for Canada. The legislation we are seeking is largely to respond to barriers to accessing Canadian courts that are the result of common-law rules (case law/ jurisprudence) in Canada, thus it is really a Canadian response to a Canadian problem.

Q. Does granting access to Canadian courts require a change in federal law or provincial law? Why is this campaign focusing on Parliament when most test cases are being brought before provincial courts?
A. Eliminating the barriers to accessing Canadian courts could be achieved through either provincial or federal legislation. The main benefit to enacting a federal law is that, through a single law, victims of alleged corporate abuse by companies registered anywhere in Canada could access Canadian court. On the other hand, moving forward on an individual basis in each of the 10 provinces and 3 territories would not only mean that 13 different pieces of legislation (and 13 different advocacy campaigns!) would be required, but might also mean that there would be unequal access to Canadian courts as a result of the location of registration of an impugned company.

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Questions related to the Ombudsperson:

Q. What kinds of cases can be brought before the Ombudsperson?
A. The ombudsperson shall receive complaints of harm caused by failure of a corporation to respect human rights. As indicated in the UN Guiding Principles on Business and Human Rights, corporations "should avoid infringing on the human rights of others." The ombudsperson should also take into consideration internationally accepted human rights laws and norms including but not limited to the ten core international treaties and their optional protocols, the UN Declaration on the Rights of Indigenous Peoples, and ILO's Declaration on Fundamental Principles and Rights at Work and ILO Convention 169.
The ombudsperson should also take into consideration the norms provided in the OECD Guidelines; IFC Performance Standards on Environmental and Social Sustainability, Guidance Notes to those standards, Environmental, Health and Safety General Guidelines; the Voluntary Principles on Security and Human Rights; the sustainability guidelines of the Global Reporting Initiative; as well as the UN Declaration on the Rights of Indigenous Peoples.

Q. *Is the problem that the CSR Counsellor's Office is not doing its job properly or that it has a flawed mandate to begin with?*
A. The failures and shortcomings of the CSR Counsellor's Office are the result of the mandate and powers provided to the office by Cabinet, not as a result of the competency of the CSR Counsellor. The CSR Counsellor's office was empowered to review cases only if corporations agreed to be the subject of review. In the four years since the office was created, no complaint ever went through a full review process. In half of the cases the corporations simply walked away. Even if a complaint were to have gone through a full review, the Office was not empowered to provide a real service to complainants: findings were not to be made public, the Counsellor was not to determine whether harm had been caused or standards had been breached, and the Counsellor was not mandated to undertake independent investigations nor to make recommendations to corporations or to the Canadian government.

MORE INFORMATION

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