

# Accountability not Voluntarism

## CIVIL SOCIETY STATEMENT

### REGARDING THE GOVERNMENT RESPONSE TO THE FINAL REPORT ON THE NATIONAL ROUNDTABLES ON CSR AND THE CANADIAN EXTRACTIVE INDUSTRY IN DEVELOPING COUNTRIES

**NOVEMBER 23, 2007** The Canadian Network on Corporate Accountability (CNCA) and the undersigned members of the Government's Advisory Group to the CSR Roundtables wish to express concern regarding the government's continued silence on the urgent issue of corporate accountability in the extractive sector. The government has yet to respond to the Final Report of the Advisory Group to the CSR Roundtables, which was released on March 29 of this year.

Civil society also wishes to express concern regarding communications made to the government by industry organizations that advise against the adoption of key recommendations in the Final Report. These recommendations were developed by consensus through a lengthy, highly-participatory process involving the industry, civil society, academic and responsible investment representatives of the Advisory Group.

#### I. The Canadian CSR Framework

Both the Canadian Chamber of Commerce<sup>1</sup> and the Prospectors and Developers Association of Canada (PDAC)<sup>2</sup> have cautioned the federal government against the adoption of any policy that moves beyond voluntarism: "voluntary must mean voluntary."<sup>3</sup> The Chamber of Commerce insists that "[a]ttaching explicit sanctions to what is determined to represent non-compliance with the Canadian CSR Framework makes the framework mandatory for all intents and purposes. This must be avoided." These communications expressly contradict the recommendations of the Government's Advisory Group.

We remind the government that:

1. The **Canadian CSR Framework** that is set out in the Final Report<sup>4</sup> responds to the unanimous June 2005 report of the Standing Committee on Foreign Affairs and International Trade. The SCFAIT report called for the adoption of mechanisms, in Canada, by which Canadian companies could be **held to account** for breaches of human, indigenous or environmental rights in developing countries. To this effect the SCFAIT report called for:

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<sup>1</sup> [www.chamber.ca/cmslib/general/070726ResponseAdvisoryGroup.pdf](http://www.chamber.ca/cmslib/general/070726ResponseAdvisoryGroup.pdf)

<sup>2</sup> [www.pdac.ca/pdac/publications/na/070725.htm](http://www.pdac.ca/pdac/publications/na/070725.htm)

<http://www.pdac.ca/pdac/publications/na/pdf/070725-csr-response-summary.pdf>

<sup>3</sup> Chamber of Commerce, emphasis in original.

<sup>4</sup> Recommendations 2.1.2.1, 2.2.2.1, 2.3.2.1 and 2.4.2.1

- “...clear **legal norms** in Canada to ensure that Canadian companies and residents are held accountable....”
- “...**rules** for companies operating in conflict zones...”
- “...making Canadian **government support** such as export and project financing and services offered by Canadian missions abroad – **conditional** on companies meeting clearly defined corporate social responsibility and human rights standards....”

2. The Roundtable Advisory Group agreed that voluntarism, which characterizes the status quo, is no longer acceptable. The limits of a purely voluntary approach to corporate accountability have also been noted by United Nations Special Representative John Ruggie.<sup>5</sup>

3. The Canadian CSR Framework is a carefully crafted consensus-based “package.” While it does not call for the adoption of legislative provisions, it is compelling on companies for two reasons:

- It is based on an explicit Government of Canada policy that all extractive-sector companies comply with identified standards. The model chosen is one in which the Government of Canada states “that **all** Canadian Extractive-sector companies operating abroad are **expected** to comply with a set of CSR standards.”<sup>6</sup>
- It entails a “**compliance mechanism**”<sup>7</sup> in the form of an independent **Ombudsman and tripartite Compliance Review Committee** that **reports** publicly on the results of its fact-finding and can, in the worst cases, recommend as a **sanction**, the “withdrawal of financial and/or non-financial services by the Government of Canada.”<sup>8</sup>

## Accountability not Voluntarism

As the government considers its response to the Advisory Group report, the CNCA and members of the Advisory Group wish to express the following:

- **Compliance** - We urge the Government of Canada to clearly state its expectation that all extractive companies comply with all components of the Canadian CSR Framework, which includes possible sanctions for “serious non-compliance.” Anything less is merely an endorsement of the status quo, which has proven to be wholly inadequate. **Voluntary adherence to best practice standards was an option for extractive companies before the SCFAIT and Advisory Group Reports were released and was clearly ineffective in curtailing serious environmental and human rights abuses.** The Canadian CSR Framework will not be an imposition on companies that already comply with high standards on a voluntary basis. The Framework is designed to compel those companies that do not voluntarily comply with high standards of practice. If the end result of the CSR roundtable process is more “voluntarism,” the government will have squandered public funds, public trust and public good will.

<sup>5</sup> See for example John Ruggie’s presentation to the 12th International Business Forum of the World Bank, Washington, DC8-10 October 2007 “Business and the rules of the game: From rule-takers to rule-makers?”

<sup>6</sup> Final Report p.8, emphasis added.

<sup>7</sup> Recommendation 2.1.2.1, emphasis added.

<sup>8</sup> Recommendation 2.4.2.1.

- **Sanctions** - The possible withdrawal of government financial and political support to companies that are found to be in “serious non-compliance” with the Canadian CSR Framework is a critical and consensus-based component of the Advisory Group Report. The SCFAIT report called for both corporate and government accountability. When the Government of Canada lends financial or political support to a company that is associated with human rights abuses, it is arguably complicit in these abuses. The Final Report recommendation that government withdraw financial and political support in cases of a finding of “serious non-compliance” must be taken up.
- **An independent complaints mechanism** - The Advisory Group Report calls for the creation of an independent extractives ombudsman. PDAC reports that it has not yet formed an opinion on whether the government should implement an independent ombudsman or develop an enhanced OECD National Contact Point (NCP). The Chamber of Commerce insists on the creation of an “enhanced NCP.” It was the position of the Advisory Group members that an independent Ombudsman and tripartite Compliance Review Committee should constitute the complaints mechanism of the CSR Framework, not an “enhanced NCP,” even if this function includes “specialist(s) in the extractive sector” as suggested by the Chamber of Commerce. Members of the Advisory Group, including industry representatives, felt strongly that the complaints mechanism must be independent from potential political or trade interests of government departments. This remains the position of the CNCA and the undersigned members of the Advisory Group. Even if the fact-finding function of the compliance mechanism was separated out and dealt with independently, as suggested by the Chamber of Commerce, the development and use of fact-finding reports could be subject to undue political influence.
- **Reporting** - Public reporting is an essential element of the compliance mechanism of the Ombudsman and tripartite Compliance Review Committee. Public reporting of the results of fact-finding activities must occur as soon as reports are complete.
- **Standards** - There was recognition among Advisory Group members that the International Finance Corporation’s Performance Standards (IFC PS) and the Voluntary Principles on Security and Human Rights should be adopted as the basis for a “standards package.” However, there was also consensus regarding the need to strengthen certain provisions of the Performance Standards through the development of Canadian Guidance Notes.<sup>9</sup> Additionally, there was recognition that the IFC Performance Standards are especially weak on human rights, necessitating the development of Human Rights Guidelines “related to the application and interpretation of human rights principles.”<sup>10</sup> **A standards package without the Canadian Guidance Notes and the Human Rights Guidelines is unacceptable.**

## II. Definition of a Developing Country

The Chamber of Commerce calls for a narrow definition of “developing country.” In the Advisory Group report, this term is intentionally left open to allow a broad interpretation. It is clear that many of the problems that have been documented and that have been brought before parliament occur in

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<sup>9</sup> Recommendation 2.2.2.1.

<sup>10</sup> Recommendation 2.2.2.1.

countries (such as Mexico) that may not fit narrow definitions of developing country. **It must be possible to bring forward cases from countries other than those defined as eligible for Official Development Assistance under the OECD Development Assistance Committee.** To narrowly define where the requirements of the Canadian CSR Framework apply would be to create an uneven playing field for companies operating in a broad range of developing countries.

### **III. Socially Responsible Investment/Disclosure**

The Chamber of Commerce advises the government against taking action on a number of recommendations that fall under the broad heading of Socially Responsible Investment/Disclosure,<sup>11</sup> including:

- Enhanced social, environmental and governance disclosure for federally regulated pension funds;
- Clarification on the definition of materiality; and
- The development, by stock exchanges, of disclosure codes of practice regarding the socially responsible performance of publicly-traded companies.

While the Chamber suggests that the federal government undertake broad consultation on these issues, it is important to note that the Advisory Group recommendations are virtually identical to those issued in a recent report of the National Roundtable on the Environment and the Economy (NRTEE) titled *Capital Markets and Sustainability*. This NRTEE report was the product of a multi-year process that included public consultations in five Canadian cities and the participation of a broad range of actors including representatives from the pension industry. We therefore strongly urge the government to respond favourably to the consensus Advisory Group recommendations in this area. These recommendations enjoy the support of the industry and civil society members of the Advisory Group and were developed with the benefit of considerable input from experts on the government steering committee.

At the G8 Summit in June of this year, Prime Minister Harper stressed the importance of the Roundtable process, stating that “[i]mplementation of the recommendations from this process will place Canada among the most active G8 countries in advancing international guidelines and principles on corporate social responsibility (CSR) in this sector.” The CNCA and the undersigned members of the Advisory Group urge Prime Minister Harper to take this step and implement the full suite of recommendations, as they are presented in the Advisory Group Final Report, making Canadian leadership within the G8 a reality.

#### **Signatories:**

Members of the Canadian Network on Corporate Accountability:

Amnesty International Canada  
Africa-Canada Forum  
Asia Pacific Working Group

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<sup>11</sup> Advisory Group Report recommendations 3.2.2.1, 3.2.2.2, 3.2.2.3 and 3.2.2.4.

Americas Policy Group  
Canadian Council for International Co-operation (CCIC)  
Canadian Labour Congress (CLC)  
Canada Tibet Committee  
CAW-Canada  
Development and Peace  
Entraide Missionnaire  
Friends of the Earth (Canada)  
Halifax Initiative Coalition  
Inter Pares  
KAIROS - Canadian Ecumenical Justice Initiatives  
MiningWatch Canada  
North South Institute  
Steelworkers Humanity Fund  
United Church of Canada

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