Amnesty International’s Brief
in support of Bill C-300,
An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries

Presented to the House of Commons Standing Committee on Foreign Affairs and International Development

6 November 2009

1. Background

Amnesty International Canada (“Amnesty”) has long been concerned about the impact that some companies and other economic actors have on human rights. Of course, many businesses have a positive impact on human rights, for example through the provision of jobs and support for local communities. Unfortunately however, other companies are often implicated in the violation of human rights. In their desire to fuel their own economic growth, many states are failing to protect their populations from the negative human rights impacts of multinational business ventures. In particular, instances where Canadian mining, oil and gas companies become directly or indirectly involved in human rights violations around the world are causing many Canadians deep concern and reflect poorly on Canada’s international reputation.

While Canadian corporations are obliged to comply with human rights standards in Canada, there is a lack of accountability under Canadian law for human rights violations that may occur in the overseas operations of Canadian corporations.\(^1\) Canadian corporations with overseas operations must comply with the laws of the host country; however many developing countries have laws that are weak, non-existent, or inadequately enforced. As a result, Canadian companies may sometimes fail to respect human rights in their overseas operations and may not be held accountable.

Canada is not the only country to be dealing with such challenges. As explained by the Special Representative of the U.N. Secretary-General on the issue of Human Rights and Transnational Corporations, such governance gaps result from the process of economic globalization:

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\(^1\) An exception to this is Canada’s Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, which can be used to hold Canadian transnational companies accountable for complicity in war crimes, genocide and crimes against humanity.
The root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.\(^2\)

Recognising these concerns, the House of Commons Standing Committee on Foreign Affairs and International Trade adopted a report in June 2005 that recommended measures for ensuring that Canadian mining companies conducted their activities in a socially and environmentally responsible manner and in conformity with international human rights standards. One of these recommendations called for the adoption of mechanisms, in Canada, by which Canadian companies could be held accountable for the violation of human, indigenous or environmental rights in developing countries.\(^3\)

In 2006, the Canadian government organised a set of public roundtables to examine what could be done to improve corporate social responsibility (CSR) among Canadian oil, gas and mining companies operating in developing countries. In March 2007, the National Roundtable’s Advisory Group, consisting of representatives from the extractive industry, civil society, academics, and labour groups, released a report on CSR and the Canadian extractive sector in developing countries.\(^4\) The report most notably recommended the creation of a Government of Canada CSR framework for all Canadian extractive-sector companies, the establishment of an ombudsman office as a way to ensure industry compliance with these standards, and the provision of a mechanism for sanctions in cases of serious non-compliance with the CSR standards, such as a withdrawal of financial and other forms of support by the Government of Canada.

In March 2009, the Canadian government released its own CSR strategy for the Canadian international extractive sector.\(^5\) Unfortunately, as described below, this strategy does not reflect the consensus reflected in the National Roundtable’s Advisory Group as to how best to ensure that the overseas operations of Canadian


Amnesty believes that Bill C-300 responds to many of the needs recognized in the June 2005 parliamentary report of the Standing Committee on Foreign Affairs and International Trade and incorporates a number of the elements of the March 2007 Canadian CSR Framework recommended by the National Roundtable’s Advisory Group. Amnesty believes that building on the consensus reached in the roundtable consultation process, Bill C-300 would go a long way to addressing the lack of Canadian legislation for holding Canadian transnational companies accountable for human rights violations that may occur in their overseas operations.

First, Bill C-300 requires the highest CSR standards for human rights, drawing on Canada’s international human rights obligations. S. 5 of Bill C-300 would direct the Minister of Foreign Affairs and the Minister of International Trade to issue guidelines that articulate corporate accountability standards for mining, oil and gas companies. The guidelines would incorporate: the International Finance Corporation’s Policy on Social & Environmental Sustainability, Performance Standards on Social & Environmental Sustainability, Guidance Notes to those standards, and Environmental, Health and Safety General Guidelines; human rights provisions that ensure corporations operate in a manner that is consistent with international human rights standards; and any other standard consistent with international human rights standards. By referring to widely recognised standards in international human rights law, Bill C-300 would create clear expectations for all players involved in or affected by the operations of Canadian transnational extractive-sector companies.

Second, Bill C-300 provides for an effective and independent reporting and fact-finding mechanism. S. 4 of Bill C-300 would direct the Minister of Foreign Affairs and the Minister of International Trade to receive complaints regarding Canadian companies engaged in mining, oil or gas activities from any Canadian citizen or permanent resident, or any resident or citizen of a developing country in which such activities have occurred or are occurring. The Minister receiving the complaint would examine the complaint and determine whether the company that is the focus of the complaint complied with the corporate accountability guidelines.

Third, Bill C-300 introduces a strong accountability mechanism in Canadian law for Canadian mining, oil and gas companies in their overseas operations. Ss. 8, 9,

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6 These policies and standards are all available at: http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards.
7 The principles are available at: http://www.voluntaryprinciples.org/files/voluntary_principles.pdf
10 and 11 of Bill C-300 would lead to a number of consequences for companies who breach the corporate accountability guidelines. Most notably, such companies would be ineligible for financing and insurance through the Export Development Corporation, for trade support from the Department of Foreign Affairs and International Trade and for investments by the Canada Pension Plan. In addition to ensuring that non-compliance with human rights standards would be sanctioned, Bill C-300 would also make certain that public funds would not be used to support companies that fail to comply with public values considered important by Canadians, such as respect for human rights.

In sum, Bill C-300 would lead to increased levels of accountability and oversight, in Canada, for the operations of Canadian extractive companies operating abroad. It would also make Canada a global leader in CSR practices, and serve as model legislation for other countries. Bill C-300 would serve as a stepping stone towards corporate accountability for Canadian companies from any sector, operating anywhere in the world.

2. Amnesty’s Responses to Concerns about Bill C-300

This section responds to a number of concerns that have been raised about possible implications of Bill C-300.

*Concern no 1: Bill C-300 is unnecessary given the Canadian government’s current CSR strategy.*

Amnesty believes that the Canadian government’s current CSR strategy, introduced in March 2009, fails to effectively respond to concerns about the lack of accountability of Canadian extractive-sector corporations for human rights violations abroad. The CSR strategy is insufficient in three principal respects. First, it does not establish new standards for corporate accountability, but refers instead to existing international CSR performance guidelines, which give scant or selective attention to human rights. Second, it does not establish an independent review and fact-finding process, but rather makes the initiation of any review by an Office of the Extractive-Sector CSR Counsellor contingent on the consent of the parties involved, including the corporation. Third, it does not provide any mechanisms for reporting on and enforcing the CSR standards. In essence, the Canadian’s government current CSR strategy fails to recognise that voluntary adherence to CSR standards are not sufficient for ensuring that corporations comply with their human rights obligations abroad.

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8 These include the International Finance Corporation’s Performance Standards on Social & Environmental Sustainability, the Voluntary Principles on Security and Human Rights; and the sustainability reporting guidelines of Global Reporting Initiative.

9 See “Moving Beyond Voluntarism: A Civil Society Analysis of the Government Response to the Standing Committee on Foreign Affairs and International Trade (SCFAIT) 14th report, “Mining in Developing
Concern no 2: Bill C-300 implements mandatory human rights standards, but CSR standards should be voluntary.

Amnesty believes that mandatory, not voluntary, rules are required to ensure that Canadian companies operating in developing countries meet the highest human rights and environmental standards and benchmarks everywhere. Indeed, voluntary mechanisms have not proven to be enough to protect all human rights everywhere. As explained by the Special Representative of the U.N. Secretary-General on the issue of Human Rights and Transnational Corporations, “[i]n the absence of an effective grievance mechanism, the credibility of such initiatives and institutions may be questioned.”\(^\text{10}\) For example, while over 5,000 companies have signed up with the U.N. Global Compact, committing their adherence to ten important principles concerning human rights, labour standards and the environment, in its January 2009 review concerning 130 listed companies which were signatories, the U.N. Global Compact noted that only 25 of them had produced high quality annual corporate responsibility reports. More than 100 were identified as “laggards” for having failed to submit these required reports.\(^\text{11}\) Amnesty believes that compliance with human rights principles is so important that it is not sufficient to rely on good intentions and that there has to be a mandatory regime such as the one provided for in Bill C-300.

Concern no 3: Bill C-300 will compel Canadian corporations to comply with vague international human rights standards to which Canada has not subscribed.

Bill C-300 specifies, at s. 5(2), that the corporate accountability standards with which corporations would be obliged to comply incorporate “human rights provisions that ensure corporations operate in a manner that is consistent with international human rights standards” and “any other standard consistent with international human rights standards.” Such international human rights standards would be limited to those which Canada has consented either by treaty or customary international law. Canada has signed and ratified numerous international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. The human rights obligations included in these and other treaties as well as in customary international law establish a clear, operational and widely accepted collection of international human rights standards.

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Concern no 4: Bill C-300 will impose significant costs on Canadian corporations.

Amnesty believes that concerns about the potential costs of compliance with Bill C-300 are overstated, short-sighted and miss the main thrust of the Bill. Such concerns are overstated because there is simply no evidence that Bill C-300 will impose any significant costs on Canadian corporations, nor that it will unfairly disadvantage them in any way. It is important to recall that the report of the National Roundtable’s Advisory Group, which included representatives from the extractive industry, included recommendations that went further than Bill C-300 in providing accountability mechanisms for human rights violations committed by extractive-sector corporations abroad.¹² In fact, greater regard for human rights may increase profits by improving a corporation’s reputation, positively affecting employee morale, strengthening the local rule of law, avoiding boycotts and other forms of public pressure and improving relations with the local population.¹³ Such concerns are also short-sighted because many states are already working on similar initiatives and Canada can play a key role bilaterally and multilaterally for strengthening corporate accountability standards based on human rights. Finally, such concerns ultimately miss the main purpose behind Bill C-300: Canada is obliged to ensure that individuals, including individuals abroad, are protected from human rights abuses by those over whom the Canadian government has jurisdiction, such as Canadian corporations. Amnesty strongly believes that concerns due to economic competitiveness cannot serve as a justification for failing to uphold human rights.

Concern no 5: Bill C-300 impinges on the sovereignty of other states by permitting Canada to police human rights abroad.

Bill C-300 does not impede on the sovereignty of other states. Amnesty believes that responsibility for human rights rests simultaneously with a number of actors and operates at a number of levels.¹⁴ All states have a duty to protect against human rights abuses by third parties, including business. This is equally true of those states where extractive-sector corporations are incorporated as it is of those states where such corporations operate.¹⁵ Each state must discharge this duty to protect against human rights violations within its respective jurisdiction. Bill C-300 enables Canada to comply with its duty to protect within areas of its

¹³ See Michael Kerr, Richard Janda and Chip Pitts, Corporate Social Responsibility: A Legal Analysis (Markham: LexisNexis, 2009), Chapter 2.
¹⁵ See general comment No. 19, E/C.12/GC/19, para. 54 (2008); CERD, concluding observations for Canada, CERD/C/CAN/CO/18, para. 17; concluding observations for the United States, CERD/C/USA/CO/6, para. 30.
jurisdiction, by setting eligibility criteria for access to financial and other support, administered by a number of federal departments and agencies.

Concern no 6: Canada does not have the resources or capacity to implement the mechanisms contemplated in Bill C-300.

Bill C-300 institutes a complaints-driven process for monitoring compliance with corporate accountability standards. It does not require the Canadian government to monitor the activities of all Canadian corporations operating abroad to verify whether they are in compliance with human rights and other standards. Instead, Bill C-300 would enable a Canadian citizen or permanent resident, or a resident or citizen of a developing country in which Canadian extractive-sector corporations operate, to file a complaint before the Minister of Foreign Affairs and the Minister of International Trade regarding non-compliance with the corporate accountability standards.

3. Conclusion

Amnesty strongly supports the important purpose of Bill C-300, as set out in s. 3, of ensuring “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.” Amnesty ultimately believes not only that human rights can be good for business, but also that business can be good for human rights. For these reasons, Amnesty strongly supports Bill C-300 and urges all Members of Parliament to vote in favour of this important legislation.