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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

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1. Background

Amnesty International ("Amnesty") has long been concerned about the impact that some companies and other economic actors have on human rights. 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. This is as true of companies headquartered in countries around in the world, including Canada. In particular, instances where Canadian mining, oil and gas companies become directly or indirectly implicated in instances involving serious human rights violations around the world are causing many Canadians deep concern and reflect poorly on Canada's international reputation. The following recent cases of concern illustrate what is at stake.

A gold mine in Porgera, Papua New Guinea owned and operated by Canadian-based Barrick Gold has been associated with forced evictions, several violent deaths and has also been heavily criticised for the impacts of its environmental practices. In May 2009, more than 1,000 people were left homeless after police officials in Papua New Guinea had forcibly evicted them by burning down their homes in the mine area. The police alleged that people living in these homes were squatters responsible for illegal mining and other criminal activities. The Porgera Landowners Association has called for a fair relocation process for the residents and has claimed that residents practiced alluvial gold mining before the mine operation began, that it was a legal and important source of income, and that they continue to mine due to poverty and lack of land for subsistence farming. The locals' gold mining is considered illegal by Barrick, as it occurs within the company's mining concession area. This tension has been the source of conflict at the mine site since operations began in 1990. In January 2009, the Norwegian Government Pension Fund excluded Barrick from its investment portfolio for "causing severe environmental damages as a direct result of its operations". In May 2009,

Amnesty called on Barrick Gold to prioritise the needs of villagers in the mining area and ensure a fair process for relocation with appropriate compensation.[1]

Anvil Mining is an Australian-Canadian company with mining activities in the Democratic Republic of Congo. It has been accused of providing vehicles and other assistance to soldiers of the Congolese Armed Forces, which killed at least 73 civilians during an uprising in Kilwa in October 2004. Anvil claimed that its equipment had been requisitioned against its will and denied any responsibility in the killings. In June 2007, after U.N. and other international investigations, the accused, including three Anvil employees, were tried and acquitted in a Congolese military court. The proceedings were however criticized by international observers, most notably by the U.N. High Commissioner for Human Rights.[2]

Hudbay, a Canadian-based mining company which has the Canada Pension Plan as one of its most prominent shareholders, has been criticized for its activities in the Fenix mining project in Eastern Guatemela. The mine is operated by Compania Guatemalteca de Niquel (CGN). HudBay's wholly owned subsidiary, HMI Nickel, owns 98.2% of CGN and the Guatemalan state owns the other 1.8%. The site of the Fenix project has been controversial since the license to mine for nickel was first granted to INCO in the 1960s. Maya Q'eqchi communities were forcibly evicted from the land and several people were killed during land conflicts in the region. The 1998 UN-backed Truth Commission linked the killings to employees of INCO. In 2006, Skye Resources took over the concession from CRVD-INCO. Violent land evictions later took place in 2006 and 2007 when the company requested the state to move in to clear the lands. In mid-2008, Skye amalgamated with HudBay. In October 2009, further evictions were attempted, resulting in the involvement of CGN employees in the shootings of several people and the death of a local school teacher. The company has said that their employees were acting in self-defence and that they will cooperate with the authorities in their investigation. Amnesty issued a public statement on the killings in October 2009 and is engaged in follow up with the company.[3]

Canadian-based Goldcorp has also been criticized for the human rights abuses associated with its mining activities in Guatemala. The company's wholly-owned subsidiary, Montana Exploradora, owns and operates the Marlin Mine in the western highlands of Guatemala, which lies within Indigenous territory of the department of Huehuetenango. The mine has been the source of tension in the region and has given rise to several violent and deadly conflicts between security guards working at the mine

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[1] "Forced Evictions in Porgera Mining Area," 11 May 2009, AI Index: ASA 34/001/2009, on-line: http://www.amnesty.ca/resource_centre/news/view.php?load=arcview&article=4725&c=Resource+Centre+News.

[2] Irene Khan, *The Unheard Truth. Poverty and Human Rights* (New York: W.W. Norton, 2009) pp. 184-185.

[3] "Guatemala: Killings must not go unpunished," 13 October 2009, AI Index AMR 34/013/2009, on-line: http://www.amnesty.org/en/library/asset/AMR34/013/2009/en/a59ee6b3-9c19-4292-b6cd-a0051c058f64/amr340132009en.html.

and local protesters and politicians. Goldcorp's Marlin Mine has also generated controversy and drawn fire over allegations of serious human rights violations. Allegations of illegal land purchasing, intimidating landowners into selling their land, breaking communal land titles, threats against mining opponents, structural damage to housing closest to the mine, water contamination from mine wastes, failure to respect the communities' rights to free, prior and informed consent, and injuries and killings of mining opponents have been documented by non-governmental human rights and environmental organisations, universities, and the Catholic Church. In 2008, Jantzi Research issued a Client Alert recommending that socially responsible investors in Canada no longer consider Goldcorp eligible for socially responsible investment portfolios. The reasons cited were the company's disregard for indigenous rights and growing opposition to the mine, the company's refusal to deal with the health impacts of its operations in Honduras, and its poor environmental record[4].

Copper Mesa (formerly Ascendant Copper), a Canadian mining company, attempted to explore its holdings in Intag, northeastern Ecuador from 2004 to 2008. The company was barred by community members from accessing the mine site in order to begin exploration. The proposed mine was located in the buffer zone of an area considered an important ecological preserve equivalent to protected areas in Canada and protected under Ecuadorian law and the local community had developed an economy in the area based on organic coffee production, small-scale farming and ecotourism. In late 2006, serious conflicts arose in the community when it hired and trained a private security brigade to enter villages in the region of the proposed mine. The private security employees are accused of using tear gas and pepper spray, physical violence, intimidation and death threats against community members. In 2009, a lawsuit was filed against Copper Mesa and the Toronto Stock Exchange on behalf of three community members. The suit alleges that company directors ignored communications from the plaintiffs outlining human rights violations committed by the company and that the directors should take steps to reduce the risk of harm to individuals affected by company operations. The company Copper Mesa Mining Corporation is also named in the suit. Further, the plaintiffs have named the Toronto Stock Exchange as a defendant, claiming, "the TSX was bound by a legal duty under Canadian law to not provide financing assistance to a company such as Copper Mesa when there was a foreseeable and unreasonable risk that funds raised on the Exchange would be used to harm individuals in places such as Ecuador". The case is pending.[5]

[4] Jantzi Research Client Alert, April 30, 2008. "Janzti Research considers Goldcorp as ineligible for SRI Portfolios".

[5] See on-line: www.ramirezversuscoppermessa.com.

2. Bill C-300

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.[6] 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:

> 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.[7]

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.[8]

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

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[6] 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.

[7] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Protect, Respect and Remedy: a Framework for Business and Human Rights, U.N. Doc. A/HRC/8/5, para. 3.

[8] Canada, House of Commons, Standing Committee on Foreign Affairs and International Trade, "Fourteenth Report: Mining in Developing Countries – Corporate Social Responsibility" by B. Patry, in Sessional Papers, No. 8510-381-179 (2005), available at: http://www.amnesty.ca/themes/resources/business/SCFAIT_report.pdf.

Canadian extractive sector in developing countries.[9] 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.[10] 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 extractive companies adhere to international environmental and human rights standards.

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. Section 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;[11] the Voluntary Principles on Security and Human Rights;[12] 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

[9] Advisory Group Report – National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Sector in Developing Countries", (March 2007), available at: http://www.mining.ca/www/media_lib/MAC_Documents/Publications/CSRENG.pdf.

[10] See DFAIT, Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector (March 2009), available at: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-stategie.aspx.

[11] These policies and standards are all available at: http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards.

[12] The principles are available at: http://www.voluntaryprinciples.org/files/voluntary_principles.pdf

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. Sections 8, 9, 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 Export Development Canada, 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.

3. 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.[13] 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 government's 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.[14]

Concern no 2: Bill C-300 introduces an accountability mechanism for non-compliance with human rights standards that is less effective than voluntary monitoring and reporting.

Amnesty believes that accountability mechanisms 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."[15] 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.[16] 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 an accountability mechanism 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.

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[13] 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.

[14] 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 Countries – Corporate Social Responsibility", 38th Parliament, 1st session, November 2005, available at: http://www.amnesty.ca/themes/resources/business/moving_beyond_voluntarism_report.pdf.

[15] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Protect, Respect and Remedy: a Framework for Business and Human Rights, U.N. Doc. A/HRC/8/5, para. 100.

[16] See http://www.unglobalcompact.org/NewsAndEvents/news_archives/2009_01_12.html.

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.

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.[17] 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.[18] 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.

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[17] Advisory Group Report – National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Sector in Developing Countries", (March 2007), available at: http://www.mining.ca/www/media_lib/MAC_Documents/Publications/CSRENG.pdf.

[18] See Michael Kerr, Richard Janda and Chip Pitts, *Corporate Social Responsibility: A Legal Analysis* (Markham: LexisNexis, 2009), Chapter 2.

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 intrude 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.[19] 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.[20] 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 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.

4. 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.

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[19] See Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Protect, Respect and Remedy: a Framework for Business and Human Rights, U.N. Doc. A/HRC/8/5.

[20] 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.