## CANADA NEEDS TO BE OPEN FOR JUSTICE

- Canadian mining, oil and gas companies implicated in growing number of abuses (see the "Canada Brand" re Latin America)
- International accountability gap + existing mechanisms are woefully inadequate

#### Two related asks:

- Create an independent ombudsperson for the extractive sector and
- Facilitate access to Canadian courts

## THE MOMENT – CAUTIOUS OPTIMISM

- I. Implementable and reasoned proposal
- Model legislation
- 2. Canadian political party commitments
- ☐ to create ombudsperson (almost all)
- remove barriers to access to courts (some)
- 3. Canadians motivated to take action
- □ 100,000 + through Open for Justice
- □ 500,000 (ombudsperson)
- □ 51 Canadian organizations signed on to the Corporate Accountability CSO statement

- 4. Global attention to access to justice
- □ UNGP and UNDRIP in Canadian policy
- ☐ UN treaty process
- □ SDGs + international assistance review
- Developments in Europe
- 5. Global focus on Canadian mining sector
- Reports of CEDAW (2016); ICESCR (2016); UNHRC (2015), ICERD (2012 and 2007)
- ☐ Inter-American Commission on Human Rights sessions; Trudeau letter - 200 + orgs

## **CAUTIOUS OPTIMISM?**

- No public commitment yet
- No formal reiteration of electoral promises
- No response to letter to Trudeau
- CSR Strategy within Global Affairs Canada, led by International Trade – responses in HofC
- CSR Counsellor rebranding
- International context shifting

"Canada & Argentina pursue mining partnership in wake of cyanide disaster" – National Observer

# GLOBAL LEADERSHIP IN BUSINESS AND HUMAN RIGHTS ACT – NOV 2 2016



#### WHAT IS THE OMBUDSPERSON?

#### **Core elements**

- Legal mandate to **investigate** with corresponding legal powers and procedural protections;
- Public and transparent process and outcome;
- Report on findings, recommendations, remedy and problem-solving;
- Follow-up and monitoring;
- Power to mediate, attempt dispute resolution in the right cases;
  - Orientation to protect human rights and correct power imbalance;
- Independent Institution and Office.

#### INVESTIGATION – POWERS AND MANDATE

- Investigates complaints of harm and significant risk of harm. Harm is defined as infringements of international human rights
- Screens out vexatious, frivolous complaints
- Has legal mandate and legal powers to undertake effective investigations, and investigates all complaints (with listed exceptions)
- Includes robust protections for companies, individuals and communities

## PUBLIC REPORTING AND PROCESSES

- Regular public updates on progress
- Information posted in a timely manner throughout the complaint process, including requests for information, notice of investigation and final recommendations
- · Report on findings, recommendations, remedy and problem-solving

Public and transparent process and outcome

## FOLLOW UP AND MONITORING

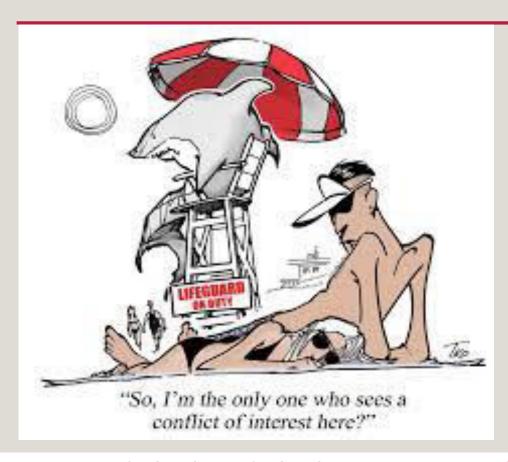
- To be effective, recommendations must be monitored note re settlements
- Company must report back on implementation of any recommendations made to them, ombudsperson then seeks community response to company report
- Recommendations to companies are non-binding, but failure to meaningfully implement recommendations may result in recommendation to withdraw/terminate government support



# ORIENTATION TO PROTECT HUMAN RIGHTS AND CORRECT POWER IMBALANCE

- Mediation may resolve issues under investigation, in certain circumstances
- Can be requested by any party at any time
  - ➤ Informed consent of all parties
  - > Directly-affected complainant, who can represent others affected
  - ➤ Matter appropriate to mediation (ombudsperson opinion)
  - Investigation = relevant facts revealed
- Parties can be represented, fund for complainants
- Settlement approved by ombudsperson (role to protect human rights) and binding on parties

#### INDEPENDENCE AND INTEGRITY



- Arms-length from government
- Avoids undue influence by big business
- Measures to correct power imbalance
- Appointment is transparent and meritbased
- Confidence in office and office holder is key

## CNCA MEETINGS, RESPONSE AND ASKS

- Minister Freeland's Office
- Prime Minister's Office
- Global Affairs Canada
- Parliamentary committees (Trade, Foreign Affairs, Human Rights)
- NRCAN
- Industry associations

- ✓ Keep your promise!
- ✓ This needs to be a government bill
- ✓ Raise this with Minister Freeland
- ✓ Study / hearings on Canadian mining companies overseas
- ✓ Questions in the House

## KEY MATERIALS AND RESOURCES

#### **Materials**

- Executive summary of the legislation <a href="http://bit.ly/2g2dwjF">http://bit.ly/2g2dwjF</a>
- Talk is not enough comparison of CSR Counsellor, NCP and ombudsperson <a href="http://bit.ly/2fNea6R">http://bit.ly/2fNea6R</a>
- Take action → <a href="http://cnca-rcrce.ca/campaigns-justice/take-action/">http://cnca-rcrce.ca/campaigns-justice/take-action/</a>
- CNCA submission to International assistance review http://bit.ly/2flhdKd
- Business and Human Rights Resource Centre: <a href="https://www.business-humanrights.org/">https://www.business-humanrights.org/</a>

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