



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# **Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development**

---

SDIR • NUMBER 074 • 1st SESSION • 42nd PARLIAMENT

---

**EVIDENCE**

**Tuesday, October 3, 2017**

—  
**Chair**

**Mr. Michael Levitt**



## Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development

Tuesday, October 3, 2017

•(1305)

[English]

**The Chair (Mr. Michael Levitt (York Centre, Lib.)):** Good afternoon everyone. I'm going to call to order this meeting on the subcommittee on international human rights.

We are continuing our study on human rights surrounding natural resource extraction in Latin America. We're joined today by teleconference with guests from the Organisation for Economic Co-operation and Development, in particular Kathryn Dovey, manager, national contact point coordination, responsible business conduct unit; and also Tyler Gillard, manager, sector projects, responsible business conduct unit. Also, we have with us from the United Nations High Commissioner for Human Rights, Dante Pesce, member, working group on the issue of human rights and transnational corporations and other business enterprises.

From France and Chile, we have guests with us today who are here to testify. I won't delay any longer. We'll maybe give you each seven minutes or so. Then we can move to questions from the members of the subcommittee. Perhaps we could have the OECD contingent lead off, followed by Mr. Pesce.

Thank you very much. Please proceed.

**Mr. Tyler Gillard (Manager, Sector Projects, Responsible Business Conduct Unit, DAF, Organisation for Economic Co-operation and Development):** Thank you very much, Mr. Chair. It's an honour to be addressing your subcommittee today.

My name is Tyler Gillard. I'm joined by my colleague Kathryn Dovey. We work in the responsible business conduct unit that serves 48 governments of the working party on responsible business conduct.

Today we're going to focus our brief presentation on the work of our national contact points for the guidelines, which is a global grievance mechanism on responsible business conduct, as well as our work on responsible mineral supply chains particularly in the context of materials from Colombia.

Just by way of background, the OECD guidelines for multinational enterprises are a broad set of recommendations covering all areas of business ethics, including human rights. They are aligned with the UN's guiding principles on businesses and human rights, but also include recommendations covering corruption, environment and labour practices, amongst others. We have 48 governments that

have adhered to this legal instrument, covering roughly 85% of global foreign direct investment and a huge share of global trade, so it's an impactful legal instrument.

Our work to implement that standard focuses on the grievance mechanism. It focuses on our sectoral work. We have sector-specific instruments, including in the extractive industry, as well as outreach to non-OECD countries.

I'm going to first give it over to my colleague Kathryn to run through the national contact point mechanism and its relevance for Latin America.

Thank you.

**Ms. Kathryn Dovey (Manager, National Contact Point Coordination, Responsible Business Conduct Unit, DAF, Organisation for Economic Co-operation and Development):** Good afternoon, everybody, and thank you, Mr. Chair.

First, I'll do three things just briefly. I'll provide a little bit of background on what national contact points are, provide some information on the cases that have been handled by these entities globally, and focus in on the cases we've seen related to Latin America in particular.

National contact points, or NCPs, as they're known, are basically government offices that have a dual function. On the one hand, they promote the guidelines in our guidance documents. On the other hand, they hear cases, what we call "specific instances", which are brought to them by non-governmental organizations, trade unions, individuals, and so on. In fact, anyone can bring a case to an NCP. Each case will relate to certain chapters of our guidelines, whether that be human rights, labour, environment, and so on. Governments are free to choose the location, structure, and composition of their NCPs, but they all have to be visible, accessible, transparent, and accountable. In Latin America there are seven national contact points. All of them, apart from one, have received cases to date.

Moving on to cases globally, we've seen that since 2000, when this mechanism was first launched, 400 cases have been handled in total by national contact points. They've related to issues or problems that have arisen in over 100 countries and territories. Some NCPs have received a large number of cases. In fact, six national contact points have received over 50% of all cases to date.

I'll say a quick word on procedure just to make sure it's clear. When NCPs receive a submission, they decide whether it merits further examination based on our criteria. If it does, they will offer what we call a "forum for discussion". This can be professional mediation or a dialogue process, but it's very much a non-judicial exercise. At the end of the process, the NCP will report publicly on the case. In terms of the chapters that have been cited to date, since 2011, when a new chapter on human rights was added to our guidelines, we found that cases citing human rights have actually accounted for over 50% of all cases received since 2011.

Turning now specifically to Latin America, what we've seen, again since 2000, is that NCPs have reported 76 cases involving issues occurring in Latin American countries, and 17 of those 76 have actually involved extractive industry companies. That's where I've focused today, given the nature of your discussion.

In terms of the issues or the problems at root in each of those 17 cases, they've really covered a wide remit across our guidelines and chapters. To give you a bit of a flavour, on environmental cases, for instance, we've seen problems with regard to air, water, or noise pollution, or the overuse of water. We've seen damage to property, etc. On human rights, there have been various references to stakeholder engagement, and whether that's efficient or not. Engagement with indigenous populations has come up in cases, as has free, prior, and informed consent. We've seen issues concerning forced displacement, and issues regarding protests at mine sites and company responses. Under employment and industrial relations, there have been cases involving freedom of association and collective bargaining problems, and cases involving unfair dismissal and health and safety issues in the workplace.

To finish up this part of the presentation, I will provide one example of a case just by way of illustration. This is a recent case closed last year by the Brazilian national contact point. It involved a Brazilian subsidiary of Kinross Gold Corporation. It was a case brought by Paracatu neighbouring associations. The crux of the case involved, on the one hand, allegations involving the use of explosives and cracks appearing in people's houses near to the mine site. On the other hand, there were problems regarding dams that were hindering people's access to the city.

The Brazilian NCP accepted the case and informed the Canadian NCP, as is standard practice. Three mediation meetings took place over the course of the year. In the end, they reached a resolution between the company and the party, where it was agreed that with the local authorities the company would finance the renovation of damaged houses or resettlement, where necessary. The Brazilian NCP also went on to make some recommendations to the company to ensure good due diligence going forward.

● (1310)

I'll leave it there for now and hand it over to Tyler for the rest of the presentation.

Thank you.

**Mr. Tyler Gillard:** I know we don't have a lot of time, so I will try to keep this very brief.

I'm going to focus on our work on responsible mineral supply chains. We have a specific instrument outlining due diligence expectations for companies throughout the entire mineral supply chain, from the mine all the way to the consumer end product—for example, jewellers or electronics industries—on the steps they need to take to ensure that those supply chains are not financing conflict or severe human rights abuses.

We've been implementing that work for over six years. The original focus was on materials from central Africa, particularly the Democratic Republic of Congo, but we have increasingly turned our attention to Latin America.

In Latin America, there's a unique convergence between criminal organizations, human rights abuses, and illegal mining, as well as some legal mining. In the context of Colombia, we have evidence to suggest that rents and benefits and revenues are earned up to three times more by criminal organizations than from the narcotics drug trade. The Colombian government estimates that they're losing around \$400 million per year in revenues through criminal mining, and that likely illegal armed groups and mining are generating upwards of \$5 billion per year in revenues for armed groups.

Of course, these are armed groups and criminal organizations that are perpetrators of serious human rights abuses. We have a number of reports that show these groups are involved in massacres and forced displacements as well as pressuring human rights defenders, and other issues around forced displacements. Virtually all types of human rights are implicated, as well as evidence of child labour and forced labour happening at artisanal, informal mine sites.

This is affecting gold mines, particularly and largely informal artisanal gold mining, but not exclusively. We also have reports of large-scale mining companies paying illegal rents or taxes to these groups that are also engaged in this type of criminal behaviour. These materials are entering global supply chains, mostly first via the United States and Switzerland in the bullion form, but then through jewellery and electronics as well, into Canada.

I'm not going to go into a lot of the detail about what our work is, but this standard that we have has been embedded into a number of national laws, including recently in the EU. It requires importers of metals to undertake and go through certification against our standard, as well as in the context of section 1502 of the Dodd Frank Act in the United States, for materials from central Africa.

I would be happy to talk a little more about our findings in Latin America. I know I'm short on time.

Thank you for listening to us, Mr. Chair.

**The Chair:** Thank you very much.

We shall now move on to Mr. Pesce.

**Mr. Dante Pesce (Member, Working Group on the issue of human rights and transnational corporations and other business enterprises, United Nations High Commissioner for Human Rights):** Thank you, Mr. Chair, for the invitation. It's a pleasure to address your committee from Santiago, Chile, and from your embassy, in fact. They have quite good facilities here. I appreciate that.

I'm part of the UN working group on business and human rights. We have the mandate to push the implementation of the UN guiding principles on business and human rights, unanimously endorsed by the Human Rights Council in 2011. We are five independent experts from different regions of the world. I am the Latin American and Caribbean person, let's say, in this group.

Part of the work we do is to make sure that the GPs, the guiding principles, are embedded in the global governance. One of the very good success stories that we have is the embedment of the guiding principles and their rationale into all OECD streams of work, including responsible business conduct in general in the OECD guidelines for multinational corporations, and including, in 2011, an updated version including human rights, fully aligned with the guiding principles.

From there on, we have been working very much hand in hand and actually co-chairing the annual round table on policy coherence that takes place in Paris, but we're also working in different regions of the world collaboratively and very actively. That's one good thing I can say.

The other thing we try to do is to get the guiding principles into practice at the national level, through national action plans on business and human rights. There's a policy framework that can look quite different from one country to another, but it's basically going into principle number two, which is that governments should set expectations for companies operating in their territory or for their own companies operating abroad. This is something we're pushing. We're trying to make it happen in reality.

Right now, there are 17 national action plans published, mostly in the north—mostly European, plus the U.S.—but there is some pickup and there are some good developments taking place in Asia, in Latin America a little bit, and in Africa in Kenya, Mozambique, and a few others, for the time being.

Then, in terms of getting into the real companies, we try to work with business associations. In the mining sector and the extractive sector, IPIECA and ICMM are good partners with us. We try to

make sure that we are speaking the same language, pushing or developing the same narrative, and setting expectations that are compatible, and hopefully, fully aligned with international norms of behaviour.

One of the problems when we don't speak the same language or we don't use the same principles is that things get confusing on the operational side, and that is the perfect excuse for inaction. In order to push implementation of the international norms of behaviour regarding responsible business conduct in general or in particular in terms of business and human rights, we need to speak the same language. We need to harmonize and to develop public policy that is coherent and therefore implementable, not only at the headquarters level of a company, let's say, such as Canadian companies in Canada, but also where Canadians operate abroad. We need to have consistency there in order to concentrate all our efforts on implementation and not on the philosophical discussion or the "why do we need to do this?", etc., which is, as I said before, the perfect excuse for inaction.

One means of our work is to carry out country visits. I am from Chile. I have been working in this area of responsible business conduct for the last 17 years, so I know my region, and in particular, 14 countries have done quite well. In the last two years, we have conducted three country visits—three missions that were quite intense—to Brazil, Peru, and Mexico, plus a visit to Canada that ended on June 1. There is a preliminary report that is available for you on our website in three languages so far—English and French, but also in Spanish right now, I believe.

You can look at that. It has a very strong component on the extractive industry. Some of the findings are that, despite the guiding principles of business and human rights becoming part of the language and the conversation that my colleagues, my group, have had with the stock exchange, the extractive industry associations, and regulators of the CSR agenda of Canada and the NCP, so far, the guiding principles are referenced but there is not a clear indication of implementation.

● (1315)

When we ask about evidence of progress in terms of implementation, it is rather weak but much better than in other countries we have engaged with, because then there is not even a reference. In this case, there is a growing understanding of human rights impacts and risks, but it's still far from being good enough, including inside Canada. That was one of the findings—that there are differences in implementation inside Canada, much less outside Canada.

We see there great room and opportunity for improvement, because you already have good platforms at the industry level, at the stock exchange level, at the NCP level, and in the Global Affairs actions you have and the monitoring of CSR. All of that exists as platforms, but what we found was that there is room for much better policy coherence, clearer reference in terms of expectations, and much better monitoring at the international level, including using your leverage.

Being the number one investor in mining in my Latin American region, and having a region with a lot of difficulties and problems of all kinds, of course we also saw room for you collectively, as Canada—private sector, stock exchange, government, and your different agencies—to work more collaboratively with the host countries of your investments to improve the environment for mining investment and the extractive industry in general.

What we found from the three country visits, plus my personal experience.... Those country visits are also reported. They are public. Two of them are final reports. One is preliminary, on Peru. What we saw was a lot of illegal mining, corruption, and criminalization of human rights defenders, including union leaders, and weak engagement on intercultural factors. I am talking about the extractive industry in general, not only Canadian investors but the industry overall.

We saw, sadly, significant capture of the state by private sector and big investment. At the national level, we saw a fierce competition between the economic side of government, which seems to be quite short term, expressing urgency for attracting investments, collecting some taxes, and creating jobs, putting in a very secondary position social and environmental impacts and safeguards regarding those elements.

One thing that also popped up was the disconnection between human rights and economic development. It's almost like a mindset disconnection. We know, as the SDGs have pointed out, that there is no sustainable development without responsible business conduct, and responsible business conduct embeds respect for human rights, but that narrative is very clearly disconnected, so far, from the economic side of government vis-à-vis the social and environmental side of government. In fact, they act like two separate entities, the first one being the most powerful one, and the second, the weaker one. Therefore, there is a disbalance at the national level.

To end, we see room for significant and better collaboration. We are building platforms in different regions of the world, including the Americas. We are using the economic commissions of the UN in the case of Latin America and the Caribbean, but Canada and the U.S. have been invited to that. It's a race-to-the-top approach, peer learning, and an exercise of multi-stakeholder accountability, to look at what we can do in order to improve the cycle of investments and the rationale of investment, and make it more balanced with safeguards regarding human rights.

Finally, we have also set expectations of the role of industry associations and governments to set expectations very clearly to their members, to monitor implementation, to learn from practice, to improve the implementation, and to use their leverage at the Latin American level to partner with a local membership or peer organization, but also with the government, basically to strengthen the capacity of the authorities and the different stakeholders to play a positive role regarding investments, and not what we have today, which is disconnection in many aspects, and on top of that, what I already mentioned about corruption, corporate capture, and significant incapacity by the government to deliver on the most basic commitments and obligations.

I will leave it there for now.

Thank you very much.

● (1320)

**The Chair:** Thank you very much, Mr. Pesce.

We'll go straight into questions. The first question goes to MP Sweet, please.

**Mr. David Sweet (Flamborough—Glanbrook, CPC):** Thank you very much, Chair.

Thank you to the witnesses.

I want to go right to the United Nations High Commissioner now and clarify something. Towards the end of your testimony, you mentioned a litany of things you had found. You mentioned things like human rights violations and corruption. You even mentioned, in some cases, union leadership.

Was this a broad swath of companies from various countries, or were you talking specifically about Canadian companies?

**Mr. Dante Pesce:** [*Technical difficulty—Editor*] bridges, and not only in the extractive sector. It was a very extensive fact-finding trip that we made. It was 10 days of listening and hearing about 200 to 250 testimonies in the countries, ranging from governments and various agencies to civil society leaders, business and industry associations, and then human rights defenders overall. We try to clarify information on specific cases that have been presented to us as symbolic, as an example of problems that happen on the ground.

In the case of Peru and Brazil, where we have conducted this research, we didn't find any difference among investments from different countries. All investments from the different origins of capital or headquarters of companies are put in the same basket. Basically, good companies and those that behave properly and diligently are put in the same basket with the ones that don't.

In the case of Mexico, it was different. It was pointed out to us all the time that the Canadian mining companies were the bad companies in the cases that were raised with specific names. That didn't happen in Brazil and Peru.

What people normally say about foreign investors and big-scale investments is that the normal expectation is that they act as if they were at home, not to a lesser standard. The normal expectation is that if you have a standard that your company applies at home, you'll do the same wherever you go. Don't abuse or take advantage of the fact that local conditions in many aspects are desperate or that the capacity of the government to enforce or even have legislation is limited by capacity or corruption or any other factor.

You can read our reports. Of course we have many references in them, and we are very open and eager to engage with you at any time in the future. We made some specific recommendations to Canada when our preliminary report was presented. Our final report should be done by April next year. It is a bit longer.

The recommendations were basically to strengthen what you have already, which is a very good basis but not sufficiently well implemented, especially in some provinces of Canada but more often out of Canada. You have uneven behaviour among your Canadian-listed companies in Latin America but also in other places of the world. We listened basically to the same thing. Our finding is that you should push your standards up so as to put more emphasis on implementation and on monitoring effective implementation.

● (1325)

**Mr. David Sweet:** Just briefly then, in your visit to Canada after your three-country visits, did you find an openness and a willingness among Canadian companies to do just that?

**Mr. Dante Pesce:** We found openness and willingness in general, yes, but the concern that was raised by my two colleagues who did the Canadian visit was that the engagement of high-level government officials was limited. The access afforded by the Canadian government was perfect, and the organization was perfect to reach out to the agencies, but not to the ministerial or vice-ministerial level overall—to the people who actually are on the ground trying to implement the frameworks and policies that you have.

We were a little frustrated, then, by the level of engagement from the government side. The openness from companies was quite significant, but the level of understanding of the challenges—and of course I was briefed by my colleagues—was insufficient.

The general understanding of the international norms of behaviour, then, was good enough, but the understanding of the cultural challenges and practical barriers in rolling out your national commitments into practice in different locations of the world was clearly insufficient.

That's why we recommended to the industry association and the stock exchange and the other Canadian agencies to reinforce your own vision and your own global due diligence and analysis of risks around the world. There are some countries that have done quite a good job of this, for example the Netherlands, with a global fact-finding and risk analysis of its main supply chains. One of our recommendations is to basically start from where you are, which is quite good in comparison with almost anywhere else in the world but insufficient especially when you go abroad.

**Mr. David Sweet:** Thank you.

I have one quick question to the OECD.

You mentioned 17 cases for the extractive industry and you said it's non-judicial, so it sounds to me as though your power is, for lack of better words, to "name and shame" when someone is not participating in good business practices.

Do you do outreach to local populations so that they know there is a specific place where they can report negative practices and that there will be some follow-up and investigation?

● (1330)

**Ms. Kathryn Dovey:** We certainly encourage each of the NCPs across the 48 countries to promote the existence of the mechanism that's a fundamental part of their mandate. At the OECD, we also work very closely with two institutional partners. One is called OECD Watch, which is a network of over a hundred non-governmental organizations around the world, and the Trade Union Advisory Committee to the OECD, which brings together a whole bunch of different trade unions as well. They are the two main sources for complaints, so both of those organizations do a great job in raising awareness.

I think there's more that can be done. It's certainly a lesser-known mechanism and has a huge amount of potential within it, but they're the main ways that word gets across.

**The Chair:** Thank you.

We're now going to move to MP Khalid, please.

**Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.):** Thank you, Chair, and thank you to our witnesses for your testimony today.

I will start with the OECD. Ms. Dovey, you spoke about national contact points. Just to follow up with Mr. Sweet, how long does it take for a case to be resolved once it's referred to the NCP?

**Ms. Kathryn Dovey:** The indicative timeline for case handling is actually 12 months: three months for the initial decision to decide whether to accept the case or not, around six months for the mediation process itself, and then three months to close the case. Across the board, some cases are completed in that amount of time, others shorter, and several have gone on quite a bit longer as well. That can be down to a whole bunch of different reasons.

This is a voluntary process and once both parties, the company and the submitter, agree to sit down together and enter into mediation, sometimes it can take longer, but the essential part is really getting them to come together around the table. That doesn't always happen either. It's voluntary for the companies to engage, but on the whole, 12 months is the ideal timeline.

**Ms. Iqra Khalid:** Thank you.

You spoke about a wide range of cases that you've seen the OECD deal with. Do you find that women are more impacted in a negative way in the extractive industry, especially in Latin America, and are there any gender-based analyses basically on the possible resolutions that the NCP provides in any case situation?

**Ms. Kathryn Dovey:** I haven't necessarily done a gender analysis of the cases that have come in, but it's an interesting angle. I think with regard to Latin America and the extractive industry, I might ask my colleague, Tyler, to say a quick word on that because I know the guidance does touch on gender components of the impacts.

**Mr. Tyler Gillard:** Thank you very much.

Indeed, in our evidence, but particularly in central Africa, we see that women tend to be impacted more in mining operations and also in supply chains of minerals than men. We have done some research into that. This is particularly prevalent in the artisanal and small-scale mining sector, where women are not only involved in mining but also tend to be the ones who are involved in crushing material and carrying water, etc., but not exclusively. We have seen evidence of that, but I would say that it's largely from our reports in central Africa. I don't see why that would be limited to central Africa, but we only have reports and have done that analysis in the context of central Africa.

Our standard on supply chain due diligence and looking to it does expect companies, when looking into their supply chains, to look at certain outside impacts that might be happening to women, particularly in conflict zones where sexual violence is often used as a form of control and domination.

**Ms. Iqra Khalid:** Thank you.

You've spoken briefly about providing guiding principles. Is there an industry best practice specifically with gender issues that you provide to the partners you work with on the ground that could be mining companies as well as local organizations?

**Mr. Tyler Gillard:** We do not have a specific tool or standard only on gender issues, but I would say there is substantive amounts of information on how to do due diligence through a gender lens on supply chains as well as through community engagement practices.

We have two standards. I'll hold them up here, and I'm sure we can submit it for evidence maybe after the fact. One is on responsible mineral supply chains. The other is on due diligence for stakeholder and community engagement in the extractive industry. In this one on community engagement—the process of which was chaired, by the way, by the Government of Canada—there is a specific module on doing due diligence in your community practices with women and gender issues in mind as the foremost concern. So there's a module in here on gender issues, and as I said, on supply chain issues there's another one.

•(1335)

**Ms. Iqra Khalid:** Thank you.

Mr. Pesce, you mentioned three reports that have been submitted from Peru, Mexico, and Brazil. Did those reports contain a section showing the impact on women in the local areas?

**Mr. Dante Pesce:** All three reports have a reference to, let's say, the gender lens, but also a reference to vulnerable groups overall. We found that the approach followed by companies and their due diligence practice tends to not consider well enough the vulnerable groups. When you identify risks, you scratch the surface. You basically reach out to the less vulnerable groups.

Let's say you engage with your unionized workers but not the subcontractors, who are more likely to be working in some fashion of informal economy. In general, the perspective followed by companies only scratches the surface and misses the engagement. The practice of engagement to identify and to engage with vulnerable groups is quite weak.

As a working group, we just finalized a report to be presented to the General Assembly of the UN in October on access to remedy and

grievances mechanisms with gender lens. Basically it is trying to understand what the additional obstacles are that women face when they try to access justice. That report is already public and provides a general understanding of the gender lens. We're also working right now in preparation for June next year with a report on, in particular, the gender perspective on due diligence and impacts and human rights. That is a work-in-progress.

We have a new mandate that reinforces that we should include more properly the gender lens perspective in the work we do. We are actually doing that.

Also we have just started a process to better understand due diligence in practice, good examples, bad examples, what works, what doesn't, and what the gaps are. That report is going to be led by me. It's going to be presented in October next year in New York. We should have that report ready for about this time of the year or a bit earlier next year.

We're going to be engaging with companies and industry associations. We want to understand the practical dynamics. Of course, living in a country with a lot of foreign investors and in a region with a lot of companies with operations that don't have a good due diligence process or don't implement due diligence properly, we want to learn from the practice. That is an area we still don't know enough about. We want to know it much better to provide practical guidance, and with the collaboration of industry and the industry associations, identify gaps much better and opportunities for improvement.

**The Chair:** Thank you very much.

MP Hardcastle.

**Ms. Cheryl Hardcastle (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair. I'll get right to it.

I'd like to ask my first question to either Mr. Gillard or Ms. Dovey.

With regard to the work that is done through the NCPs, we understand that these are actually processes that are voluntary. I just want to clarify that. It isn't that companies are not penalized for causing harm but for refusing to engage in the dialogue.

Maybe you could just expand on that a bit because we all recall the one example of a Canadian company that was faced with the prospect of penalty. At the time the NCP declared, in terms of the refusal on the part of the company to partake in dialogue with regard to some allegations asserted about the way the company's practices had attributed to 83 deaths, that it was going to be taken into consideration that they wouldn't partake in the dialogue. It's not really about the harm that's caused; it's the process.

I would like you to talk about that so that on the record we understand this process.

Then my next question will be for you, Mr. Pesce.



● (1340)

**Ms. Kathryn Dovey:** I'm happy to clarify. Engaging in the process that's offered by NCPs is voluntary. A case is brought before a particular NCP in one of the 48 countries by perhaps an NGO or a trade union. Then that NCP will contact the company that's concerned, explain what the case is about, and invite them to engage in the exercise, if the NCP has accepted the case. If all goes well and both sides agree, they sit down, sometimes with professional mediators, etc.

You mentioned sanctions, in terms of not participating. That's actually quite unique to Canada. It's a great example of beginning to see the connections between this mechanism and other areas of what we term "economic diplomacy". That has been used within these cases.

What is also interesting is that we do see some coordination within governments with regard to transferring reports to export credit agencies and other parts of government that might be interested in these cases. However, ultimately, it is a voluntary process for both sides to sit down, and hopefully, reach resolution of the issues involved.

**Mr. Tyler Gillard:** If I may add, in respect to the unique Canadian way, with the national contact point, of attaching some sort of sanction for failure to come to the table, that has actually been used successfully with regard to a Chinese state-owned gold mining company registered on the Toronto Stock Exchange but with operations in the autonomous region of Tibet.

As a result of that company's failure to come to the table, the Canadian government stated unequivocally that they would no longer be providing any type of economic diplomatic support, or in this case, also export credit financing. There are a number of levers governments can take to get companies to the table, and Canada is really at the forefront of developing and using those levers.

**Ms. Cheryl Hardcastle:** Mr. Pesce, you've heard those responses. I would submit to you that one reason that Canada is so unique in this is this process of dialogue facilitation. One of the reasons Canada is so unique is that, as you have pointed out, we have a disconnect, so to speak, in our government involvement, and we have not passed laws. That makes us unique. Other countries, like France and Norway, have moved forward with a structure that is a little different. I think that was some of what you were alluding to in your answer to my colleague's question about your visit to Canada, seeing that there is a bit of a disconnect with government officials.

I would like to hear from you a little more about how we can be moving forward, emulating and using some of the examples some of these other countries set. Also, seeing all of this, what do you think is the government's role? I'm hearing so much onus put on our Canadian mining companies and other aspects of industry. The onus is being put on them and it's no surprise that not only do we have a unique situation but there's a disconnect because each industry, each sector, and each personality has its own synergy. I see that as problematic, so I'd like to hear a little more from you on that.

**Mr. Dante Pesce:** Our standard recommendation for governments is to set clear expectations regarding the behaviour of companies in house, in Canada, and abroad. The opportunity for Canada is to develop a national action plan on business and human rights that you

don't have right now. That action plan gives you the opportunity to conduct a good baseline analysis and to understand where the gaps regarding the role of the state are, where the gaps regarding the role of companies are, and where the gaps regarding access to justice or remedy are.

That is a very good opportunity, because each country will have.... What we recommend is not one-size-fits-all but a smart mix of regulation and incentives that fits the dual purpose of protecting both human rights and investments. If a company doesn't act with due diligence, it will run immediately into problems, and that is going to not only hurt people and cause damage or harm, but also damage the overall reputation of an industry and the reputation and brand of a country. That is the main opportunity that you have right now.

The rationale of inviting our working group to conduct an assessment of your own country and provide recommendations is to create opportunities to take those recommendations and to initiate a process to identify where there are gaps and opportunities to close loopholes, and to provide or develop a more coherent implementation of what you already have in place.

You have some mechanisms: a human rights commission, tribunals, the national contact point, the CSR counsellor, and access to courts. You have a lot. Your industry has some recommendations regarding CSR but is not clear enough regarding human rights based on due diligence. As I said at the very beginning of the hearing, you have a lot in place already. You're relatively well advanced, and the problem I see is that you're not taking full advantage of the good things that you have already in place. They have not been well enough implemented, due to lack of coherence and of course gaps in terms of understanding of some concepts and approaches.

Listening and learning from peers is something that I will also recommend, because many OECD countries are making quite good progress. Everyone is learning by doing. There is no perfect example. There are some more advanced in one aspect, and others more advanced in other aspects. For example, your NCP mechanism is best in class, so if you combine your best-in-class NCP with alignment with your main industry associations and push them to be best in class, then you will have a really powerful joint initiative of the states or governments, the companies, the private sector, and state-owned enterprises. It's a big push by Canada, which is possible but is not the case right now.

● (1345)

**The Chair:** Thank you, Mr. Pesce.

We're now going to move to Mr. Fragiskatos.

**Mr. Peter Fragiskatos (London North Centre, Lib.):** That's correct. I'm going to be splitting my time with Mr. Tabbara. Thank you all for participating today.

I have a question for Ms. Dovey and Mr. Gillard. Sometimes in Canada, particularly—I have to be frank with you—when we hear from colleagues in the NDP and their arguments around this issue, it's almost as if they want extraction to cease so that the Canadian private sector doesn't partake at all.

I'm looking at an analysis put together by a trade analyst in the OECD, Ms. Jane Korinek, who makes the case that in fact, extraction can help to produce meaningful economic development. The OECD has made this argument before, but I want you to put it on the record that extraction actually has a correlation to meaningful economic development in the countries where it takes place, if carried out responsibly.

**Mr. Tyler Gillard:** Yes, of course, there's no doubt that the extraction and trade of natural resources can be a great source of wealth and development, revenues for government—much-needed revenues in many of these countries—and of course, a source of jobs. The artisanal and small-scale mining sector, for example, is a job provider—just in central Africa alone—to around 15 million people directly. Indirectly, almost 200 million people are relying on the sector.

It's also a big opportunity to transfer skills to developing countries, as well as infrastructure. Much of the infrastructure that has been built in these areas, including energy and roads, is a direct result of the extraction and trade of mineral resources.

• (1350)

**Mr. Peter Fragiskatos:** Thank you, Mr. Gillard. I'm sorry. I don't mean to cut you off. It's just a matter of timing, but thank you very much.

I have a final question before I turn it over to my colleague, and I think you're touching on it already. Can you explore the connection between responsible extraction and profitability? I think there's a sense sometimes that profits will be negatively impacted if there are expectations that governments might have when it comes to responsible extraction. In fact, my hunch is that responsible extraction actually can help increase profitability.

**Mr. Tyler Gillard:** Was that directed to the OECD?

**Mr. Peter Fragiskatos:** It's for whoever wants to take it.

**Mr. Tyler Gillard:** I'm happy to. We have looked into some of this already. I don't have direct evidence to quote to you, but I'm happy to point you in the right direction.

Indeed, doing things responsibly is good for business. That is clearly our finding. It will help to protect the security of mining operations. Lack of effective community stakeholder engagement can jeopardize and create operational risk for companies, and project shutdowns. From a supply chain perspective, issues around criminal organizations could create legal liabilities as well as affect strategic access. Indeed, it is profitable in the long term.

Of course, it is worth saying that in the short term, cutting corners can be good for business. As with cutting labour laws and evading taxes, you will see an impact on the bottom line, but in the long term it is not good for business.

**Mr. Peter Fragiskatos:** Thank you very much.

**The Chair:** Mr. Tabbara.

**Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.):** Thank you. I'll be brief.

My question is directed to Mr. Pesce.

I want to mention that the CSR counsellor has identified the particular difficulty in monitoring some of the compliance of junior mining companies. Can you briefly state to the committee some of the issues surrounding junior mining companies?

**Mr. Dante Pesce:** I have to say that I'm not an expert on junior mining companies. However, in general, when companies approach a country and go into the field, they have to rely on information provided by the government. The information in general is weak. They assume that the data they get and the conditions for exploring are basically factual and real.

In reality, when companies approach any region, in my Latin American region, they're basically on their own. The absence of the state is huge. The capacity of the government to provide support is quite limited, and there is a huge mistrust among the local communities regarding big-scale projects.

Basically, when the junior mining companies show up in a place, they're very much on their own. They are somehow forced to start from scratch, finding out who to engage with and how. Basically, they cannot rely on the local authorities, who are perceived to be highly corrupt. The national authorities are perceived to be not competent enough to provide adequate support. That's what I can say on that particular point.

**The Chair:** Thank you very much.

We're getting tight for time so we're going to move to MP Anderson, please.

**Mr. David Anderson (Cypress Hills—Grasslands, CPC):** Thank you, Mr. Chair, and that you to our guests for being here today.

One of the things we've been concerned about here is trying to find that balance between the rule of law, human rights, and natural resource development. We've been referred a few times to an Osgoode Hall law school report. I don't know if you're familiar with it, and you don't need to be right now. However, it highlights the violence and conflict in Latin America particularly, and it breaks down the way the violence occurs. It's no surprise, I guess, that local activists are the largest group impacted by the violence.

As I was looking through this, I was surprised to see that police and mine worker numbers were very significant in terms of the violent actions against them. Does this conflict typically have one side or two? Can you talk to the two sides of the conflict coin? If you don't mind being short in your answers, I have a couple of other questions as well. It doesn't matter to me who answers.

Go ahead.

**Mr. Dante Pesce:** I have actually engaged with relatives of victims of violence. What happens on the ground is that as you move away from the capital of the given countries, you run into territories where there has been a lot of violence or open war, as in the case of Brazil, or an overall lack of state presence. The state has not been there. Police have not been there. The army has not been there except for repression.

The standard practice is that the police show up when the companies need them to show up, but not when the regular citizens need the state to be there for them.

Basically, the affected communities and the indigenous people consider the police or the army to be subcontractors of the large operations. They don't trust anyone with a uniform to be on their side. It's the same thing with the criminalization of protests. The standard practice is to go very actively after the local human rights leaders and defenders, also union leaders, in a very aggressive way, not all the time, not at all locations, but it happens so often that the general perception is that the judiciary is also co-opted and captured by the commercial or economic interests.

• (1355)

**Mr. David Anderson:** May I have the OECD answer that as well. We have limited time.

**Mr. Tyler Gillard:** Sure.

Again, we haven't carried out any studies on this specifically. All I can say is that obviously there are always two sides to every issue. These are not easy environments to operate in, as Mr. Pesce has alluded to.

Also, community groups are not homogenous by any means and their views will differ radically. Therefore, to achieve any kind of support at a community level doesn't necessarily mean it's going to be possible to get everybody to sign on. Plus I think, of course, that freedom of association and collective bargaining rights always need to be respected.

Nonetheless there is a huge degree of criminality involved in many of these areas. We have seen, for example, in one of our reports, criminal organizations pressuring certain Afro-Colombian and indigenous groups to sign on to certain things or to join certain protests. There are a lot of reasons and it's a very complex situation indeed.

**Mr. David Anderson:** I think I'm running out of time but I want to touch on one thing.

In September 2015, the Liberal Party wrote a letter to the Canadian Network on Corporate Accountability that said, "A Liberal government will set up an independent ombudsman office to advise Canadian companies, consider complaints made against them and investigate those complaints where it is deemed warranted".

Do you think if they were to keep that promise, it would be a useful thing in terms of corporate social responsibility, or have we

gone far enough and that's really not necessary? That's primarily to Mr. Pesce.

**Mr. Dante Pesce:** I think, as you're saying, there's good progress but it has to be implemented. What we found on the ground, not only regarding Canada but many other countries, is that at the operational level companies have weak grievance mechanisms. Very often they are not in the local language and not following principle 31 on the efficiency or the quality of the grievance mechanism.

Then, when you have platforms at the Canadian level or any other country level they remain mostly unknown. Just as an example, yesterday I was conducting training for 75 Latin American union leaders. None of them had ever presented anything in their own company and 50% of them work for subsidiaries of multinationals with different origins. They had really no idea of what the best mechanisms were to get their voices heard, not even in their own company at the headquarter level. Those are unionized workers from strong unions. If you go down the supply chain and you go farther away from the large capitals or the larger cities, that diffuses even more.

Anything that can actually strengthen the capacity of human rights defenders, including union leaders, to basically use the mechanisms that are in place and that exist in their favour...but if they don't know how to use them and they don't even know that they exist, of course, they don't use them and the mechanism fails.

The perception that mechanisms are bad because they don't produce the outcome expected... Well, it's no wonder why they are under scrutiny. If you don't make them accessible and fit for the purpose of accessing a remedy, of course, they remain unused if they are basically unknown.

**The Chair:** Thank you very much.

With that I'm going to thank all three of our witnesses for your testimony before our subcommittee today. This was very useful and we appreciate your teleconferencing in from all points around the world. Thank you very much.

With that we shall go in camera, please.

*[Proceedings continue in camera]*





Published under the authority of the Speaker of  
the House of Commons

---

### SPEAKER'S PERMISSION

---

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

---

Also available on the House of Commons website at the following address: <http://www.ourcommons.ca>

Publié en conformité de l'autorité  
du Président de la Chambre des communes

---

### PERMISSION DU PRÉSIDENT

---

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

---

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : <http://www.noscommunes.ca>