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CANADA

# **MANDATE OF THE CANADIAN OMBUDSPERSON FOR RESPONSIBLE ENTERPRISE**

**Report of the Standing Committee on Foreign Affairs  
and International Development**

**Sven Spengemann, Chair**

**Subcommittee on International Human Rights**

**Peter Fonseca, Chair**

**JUNE 2021  
43<sup>rd</sup> PARLIAMENT, 2<sup>nd</sup> SESSION**

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### **Reports from committees presented to the House of Commons**

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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# **THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT**

has the honour to present its

## **EIGHTH REPORT**

Pursuant to its mandate under Standing Order 108(2), the committee has studied the Role of the Canadian Ombudsperson for Responsible Enterprise and has agreed to report the following:



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## SUMMARY

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In January 2018, the Government of Canada announced the creation of a Canadian Ombudsperson for Responsible Enterprise (CORE), which, among other things, was mandated to investigate human rights abuses by Canadian companies operating abroad in the oil and gas, mining and garment sectors. The announcement was welcomed by civil society groups and academics who had been reporting the involvement of Canadian companies in human rights abuses abroad for decades. Three years later, however, the office is still in its infancy, with some of the organizations and individuals that initially supported its creation deeply worried that it is not equipped to fulfil its mandate.

As such, the Subcommittee on International Human Rights of the House of Commons Standing Committee on Foreign Affairs and International Development (the Subcommittee) undertook a study on the CORE between 23 February and 27 April 2021. During this time, the Subcommittee heard from 17 witnesses from various backgrounds, including the CORE, the Minister of International Trade, government officials, members of civil society, academics and industry representatives.

The Subcommittee learned that the Government of Canada undertakes a number of initiatives to promote responsible business conduct (RBC) in foreign operations. These efforts range from providing advice on the development of RBC policies, to withdrawing services or financial assistance when companies are found to be operating irresponsibly. Despite these mechanisms, some Canadian companies continue to be accused of human rights abuses abroad, and victims have few remedial mechanisms available to them to address their grievances.

It is for this reason that witnesses agreed on the importance of an independent body with the ability to investigate human rights abuses by Canadian companies operating abroad. Some witnesses, however, were adamant that to fulfil this function, the CORE needs the power to compel witnesses and documents – a power that was initially promised by the Government of Canada, but subsequently left out of the CORE's mandate. The Subcommittee also learned that Canada's RBC framework could be strengthened to prevent Canadian corporations operating abroad from abusing human rights in the first place.

It is with these conclusions in mind that the Subcommittee considered whether the CORE should be provided with the ability to compel witnesses and documents. Ultimately, the Subcommittee recommends that the Government of Canada enact due diligence legislation requiring Canadian companies operating abroad to conduct a

thorough evaluation prior to beginning operations to ensure that their work will not adversely impact human rights.

# LIST OF RECOMMENDATIONS

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*As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. One recommendation related to this study is listed below:*

## **Recommendation 1**

**That the Government of Canada introduce legislation requiring Canadian corporations to conduct human rights due diligence to identify, prevent, mitigate and account for any potential adverse human rights, environmental and gendered impacts they may cause throughout their supply chains and operations..... 38**

*In addition, as a result of their deliberations (see page 36), the subcommittee also wants to offer two considerations to the House of Commons or the Government, as listed see below:*

## **Consideration 1**

**That the Governor in Council appoint the Canadian Ombudsperson for Responsible Enterprise as a commissioner pursuant to Part I of the *Inquiries Act*. The Subcommittee recommends this appointment remain in place until legislation establishing the Canadian Ombudsperson for Responsible Enterprise with the power to compel witnesses and documents has been adopted by the Parliament of Canada. .... 36**

## **Consideration 2**

**That the Government of Canada table legislation in the Parliament of Canada establishing the Canadian Ombudsperson for Responsible Enterprise and vesting it with the power to compel witnesses and documents. .... 36**







# MANDATE OF THE CANADIAN OMBUDSPERSON FOR RESPONSIBLE ENTERPRISE

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## INTRODUCTION

Canada is a global leader in the mining and oil and gas industries, with a large proportion of companies from these sectors with domestic and foreign operations. For instance, Canada is home to 650 mining companies that operate in almost 100 countries, representing more than half the world’s companies in this sector.<sup>1</sup> In 2019, the Canadian mining industry’s total assets amounted to \$178 billion—collectively accounting for 30% of global spending on mining exploration.<sup>2</sup>

Though headquartered in Canada, many mining and oil and gas companies undertake extractive operations in developing countries, either directly or through their subsidiaries. In some of these countries, governments are unable or unwilling to provide the necessary human rights protections and enforcement mechanisms to prevent and prosecute human rights abuses.<sup>3</sup> While countries have obligations under international human rights law to protect their citizens against human rights abuses within their territory and/or jurisdiction, including abuses committed by corporations, countries do not have obligations to protect the human rights of citizens of another country. As such, corporations that are headquartered in one country and have subsidiaries in another country with weak human rights protections effectively operate in a human rights vacuum.<sup>4</sup> Some of these companies are neither held responsible for abusing human rights by the countries in which they are headquartered, nor by the countries where

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1 Subcommittee on International Human Rights to the House of Commons Standing Committee on Foreign Affairs and International Development (SDIR), *Evidence*, 20 April 2021, Pierre Gratton (President and Chief Executive Officer, Mining Association of Canada); Canadian Network on Corporate Accountability (CNCA), Brief, *Canadian Leadership in Business and Human Rights*.

2 SDIR, *Evidence*, 20 April 2021, Lisa McDonald (Executive Director, Prospectors and Developers Association of Canada).

3 The extent to which non-state actors have human rights obligations is a matter of debate in international law. Therefore, in this report, the term human rights “abuses” is intended to ensure that the House of Commons Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development’s (SDIR) findings, conclusions and recommendations encompass problematic actions by states and by non-state actors.

4 SDIR, *Evidence*, 23 February 2021, Emily Dwyer (Coordinator, CNCA); SDIR, *Evidence*, 20 April 2021, Aymara León Céspedes (Sociologist and Human Rights Coordinator, Peru—Subgroup of oil spills, Platform of Amazonian Indigenous Peoples United in Defense of their Territory); SDIR, *Evidence*, 20 April 2021, Clemente Bautista (International Network Coordinator, Kalikasan People’s Network for the Environment).



their subsidiaries are located. In these instances, human rights abuses frequently go undetected, ignored, or unresolved, allowing multinational corporations to operate with impunity.

To strengthen the existing framework that strives to prevent Canadian companies operating abroad from contributing to human rights abuses, and to provide a remedy for victims of human rights abuses, the Government of Canada announced the creation of a Canadian Ombudsperson for Responsible Enterprise (the CORE) in January 2018. The CORE was given a mandate to promote responsible business conduct (RBC), mediate disputes and conduct investigations of human rights abuses relating to Canadian business operations abroad. After a lengthy period of consultations and preparations, the CORE became operational in 2021.

On 27 October 2020, the Subcommittee on International Human Rights of the House of Commons Standing Committee on Foreign Affairs and International Development (the Subcommittee) agreed to study the role and powers of the CORE. It subsequently held five meetings and heard from 17 witnesses including the Minister of International Trade, the Canadian Ombudsperson for Responsible Enterprise, government officials, industry representatives, civil society members and academics.

The Subcommittee learned that the CORE functions within Canada's broader RBC framework, which is influenced by various policies and practices within Global Affairs Canada as well as international initiatives such as the Organization for Economic Co-Operation and Development's (OECD) Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights. The Subcommittee was informed that Canada's RBC framework aims to help Canadian companies operate abroad more responsibly and sustainably. However, much of this framework is voluntary, meaning that Canadian companies can decide to what extent, if any, they want to implement international RBC standards in their policies, supply chains and operations. While many Canadian companies are making tremendous efforts on this front, others are lagging, accused of abusing human rights in other countries.<sup>5</sup> These companies serve to damage Canada's domestic and international reputation as a defender of human rights, making it more difficult for other Canadian companies to operate abroad.

This report is divided into three chapters. The first chapter presents the context within which the CORE has been created, foregrounding the abuses committed by Canadian companies and the impacts that those have had on communities. It also describes

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5 SDIR, *Evidence*, 20 April 2021 (McDonald); SDIR, *Evidence*, 20 April 2021 (Gratton); CNCA Brief, *Canadian Leadership in Business and Human Rights*, 2 November 2016; SDIR, *Evidence*, 23 February 2021 (Dwyer); SDIR, *Evidence*, 20 April 2021 (Cépeda); SDIR, *Evidence*, 20 April 2021 (Bautista).

industry-led measures that have been put in place to prevent human rights abuses by Canadian multinationals. The second chapter lays out Canada's RBC framework that preceded the CORE, which draws from international guidelines set by organizations like the United Nations as well as the OECD. The final chapter provides a detailed look at the CORE's mandate, an analysis of its effectiveness, the Subcommittee's consideration of enhancing the office's mandate and recommends a solution for preventing human rights abuses by Canadian companies operating abroad.



## CHAPTER 1—CANADIAN COMPANIES AND THEIR FOREIGN OPERATIONS

The CORE has a mandate to respond to allegations of human rights abuses by Canadian companies operating abroad in the oil and gas, mining and garment industries. These sectors represent a significant portion of the Canadian economy, with much of their revenue generated by operations overseas. Not only are these industries important for the Canadian economy, but with their scientific and financial expertise, Canadian companies in the oil, gas and mining sectors are global leaders in their fields.<sup>6</sup>

The Subcommittee understands that the relationship between Canadian companies operating abroad and their foreign host countries and communities can often be symbiotic, with benefits accruing on both sides.<sup>7</sup> Indeed, Clemente Bautista, a human rights defender in the Philippines, stated that his organization is “pro development” and that it is “not against foreign investments.”<sup>8</sup> He further explained that the country’s laws recognize that foreign investment is “critical” for development.<sup>9</sup> One industry representative pointed out the capacity that Canadian companies operating abroad have for aiding in the international recovery from the COVID-19 pandemic, due to their global reach, significant current economic activity and potential for further growth.<sup>10</sup>

The Subcommittee was also told that Canadian corporations can advocate for and advance Canada’s commitment to human rights, the environment and feminism.<sup>11</sup> In speaking about Canadian corporations and their impacts on Canada’s overall reputation, Mary Ng, Minister of International Trade, told the Subcommittee that “our impact on the global stage has to do with our commitment to a feminist international policy. I would say our impact is on negotiating and carrying through with our inclusive trade practices that have at their core inclusivity for women, for small and medium-sized businesses, a respect for climate change.”<sup>12</sup> Mark Agnew, Vice-President of Policy and International at the Canadian Chamber of Commerce, supported this idea, telling the Subcommittee that the “Canadian business community supports and values protecting human rights

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6 CNCA, Brief, *Canadian Leadership in Business and Human Rights*, 2 November 2016; SDIR, [Evidence](#), 20 April 2021 (McDonald).

7 SDIR, [Evidence](#), 20 April 2021 (Bautista).

8 Ibid.

9 Ibid.

10 SDIR, [Evidence](#), 20 April 2021 (McDonald).

11 SDIR, [Evidence](#), 23 March 2021, Hon. Mary Ng (Minister of International Trade, Global Affairs Canada).

12 Ibid.

abroad.”<sup>13</sup> Other witnesses referred to Canada’s global leadership in sustainable and responsible practices, with one assuring the Subcommittee that Canada’s “responsible business practices continues to grow.”<sup>14</sup> For example, Margareta Dovgal, of the Task Force For Real Jobs, Real Recovery, told the Subcommittee that “Canada’s reputation as a sustainable producer gives us a competitive advantage,” adding that “high labour standards are a leading reason that Canadians are welcomed by host countries.”<sup>15</sup> Likewise, Agnew suggested that RBC standards give Canadian companies an advantage abroad, telling the Subcommittee that he and his colleagues “see an opportunity to make RBC measures a brand differentiator for Canada.”<sup>16</sup>

However, Ken Neumann, National Director for Canada of the United Steelworkers, cautioned that while “mining can make an enormous contribution toward the equitable social and economic development of communities in Canada and globally ... for the potential to be realized, the mining industry must respect human rights. That is not often the case, giving Canadian mining a bad name in many parts of the world.”<sup>17</sup>

## Canadian Multinationals and Human Rights

Many Canadian multinationals operate in developing countries. While this presents an opportunity to make positive contributions in communities with fewer growth opportunities, conditions are also such that those countries may either be unable or unwilling to provide the necessary human rights protections, enabling some Canadian companies to take advantage of this situation to maximize profits. Clemente Bautista, International Network Coordinator of the Kalikasan People’s Network for the Environment, explained that the Government of the Philippines has even softened regulations to incentivize foreign investment:

[T]he mining laws in the Philippines very much favour the foreign investors. It’s stated in our law that foreign investment is critical in our development, so they give a lot of

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13 SDIR, [Evidence](#), 20 April 2021, Mark Agnew (Vice-President, Policy and International, Canadian Chamber of Commerce).

14 SDIR, [Evidence](#), 20 April 2021 (Gratton); SDIR, [Evidence](#), 20 April 2021 (McDonald).

15 SDIR, [Evidence](#), 20 April 2021, Margareta Dovgal (Task Force for Real Jobs, Real Recovery).

16 SDIR, [Evidence](#), 20 April 2021 (Agnew).

17 SDIR, [Evidence](#), 20 April 2021, Ken Neumann (National Director for Canada, National Office, United Steelworkers).



privileges. As for scrutiny, or looking at their operations, there's a lack of transparency...<sup>18</sup>

In some instances, governments may also repress environmental and human rights defenders opposing large-scale mining projects on behalf of companies. Bautista, for example, explained that in 2019, his organization made a submission to the United Nations (UN) Office of the High Commissioner on Human Rights (OHCHR), which documented at least 225 environmental defenders killed in the Philippines from 2001 to 2018. He added that the “majority of the victims came from rural sectors; 36% were indigenous peoples; and 58% were involved in campaigns against large-scale mining projects.”<sup>19</sup> He told the Subcommittee how the Philippines government intimidates human rights and environmental defenders by “red tagging” them, which is “the practice of state forces classifying individuals as members of rebel groups... leading to trumped-up charges, warrantless arrests, illegal detention and extrajudicial killings.”<sup>20</sup>

Bautista told the Subcommittee that he himself had become a target because his organization was red-tagged, and relayed how, “[d]uring meetings at the Canadian embassy in Manila, we and our partner organizations who are opposing OceanaGold and whose lives were in danger were asked if our local organizations are a front of the rebel groups.”<sup>21</sup>

Emily Dwyer, Coordinator of the Canadian Network on Corporate Accountability (CNCA), stated that some Canadian companies are accused of being involved in serious human rights abuses.<sup>22</sup> She described a range of the more serious abuses as including “threats, killings, bodily harm, gang rape, unsafe and exploited working conditions, forced labour, failure to respect the rights of indigenous peoples and women and serious environmental damage.”<sup>23</sup>

To illustrate the damage that Canadian multinationals can have on communities, Penelope Simons, a law professor at the University of Ottawa, related the case of Talisman Energy. In 1999, Simons was part of a team investigating grave allegations of abuses of human rights in Sudan, which she described to the Subcommittee:

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18 SDIR, [Evidence](#), 20 April 2021 (Bautista).

19 Ibid.

20 Ibid.

21 Ibid.

22 SDIR, [Evidence](#), 23 February 2021 (Dwyer).

23 Ibid.



We found, in fact, that public security forces that were protecting the assets of the consortium, the Greater Nile Petroleum Operating Company, of which Talisman was a 25% shareholder, were perpetrating terrible violations of human rights. They engaged in a scorched-earth policy. They were forcibly displacing people. They were murdering people. They were raping women. They were abducting women and children, and they were burning villages and looting. They were also committing violations of humanitarian law and international crimes.<sup>24</sup>

As a major shareholder in a company responsible for such grave abuses, the Subcommittee agrees that Talisman Energy shares responsibility for these abuses.

In a more recent example, Doug Olthuis, Department Leader of Global Affairs and Workplace Issues with the United Steelworkers, told the Subcommittee how a Canadian company operating in Mexico was contributing to an important labour rights dispute in that country. He explained that last year, the company suspended its operations after the workers “voted to join a truly democratic independent union, Los Mineros.” Though “the Mexican regulatory authority gave representation rights to Los Mineros and despite the fact that the President of Mexico insisted publicly that the company comply with the law,”<sup>25</sup> the Canadian company has refused to recognize the election’s results and has continued to pause its operations there.

### **Impact of Canadian Multinationals on Women and Girls**

The Subcommittee was informed that the negative impacts of human rights abuses by Canadian multinationals are felt more acutely by women. Simons noted the high risk of sexual violence against women and girls that follows large-scale resource extraction operations.<sup>26</sup> Neumann also informed the Subcommittee of the labour abuses of garment sector workers in Bangladesh that are linked with Canadian companies through their supply chains. He highlighted that it is mostly women who work in this sector, and who are paid well below living wages.<sup>27</sup>

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24 SDIR, [Evidence](#), 13 April 2021, Penelope Simons (Associate Professor, Faculty of Law, University of Ottawa).

25 SDIR, [Evidence](#), 20 April 2021, Doug Olthuis (Department Leader, Global Affairs and Workplace Issues, United Steelworkers).

26 SDIR, [Evidence](#), 13 April 2021 (Simons).

27 SDIR, [Evidence](#), 20 April 2021 (Neumann).



A few weeks ago, the Steelworkers Humanity Fund released a report entitled, “Not Even the Bare Minimum” that linked poverty wages to the supply chains of Canadian brands and retailers in Bangladesh. That report amplified the voices of women and men in Bangladesh, where the women sewing our clothes earn between \$6 or \$7 per day. That’s per day, not per hour. To earn living wages, the garment workers’ wages would have to be more than tripled. The right to a decent life, to a living wage is a basic human right.<sup>28</sup>

## Environmental Degradation and Human Rights

Given the nature of the mining and oil and gas industries, witnesses also stressed that the operations of some Canadian multinationals are causing serious environmental degradation in some communities. Aymara León Cépeda, Sociologist and Human Rights Coordinator, Peru—Subgroup of oil spills, Platform of Amazonian Indigenous Peoples United in Defense of their Territory, brought the case of Frontera Energy, a Canadian oil company operating in Peru’s Amazon region, to the Subcommittee’s attention. Between September 2015 and February 2020, an OXFAM-funded investigation revealed that the company had 90 oil spills in the five years it operated. By comparison, another oil company, Pluspetrol, that operated on the same lot for 15 years had 116 spills. Cépeda also mentioned that local labourers have been left unpaid during the COVID-19 pandemic.<sup>29</sup>

In another case, Bautista told the Subcommittee about a 2009 report by the Philippines Human Rights Commission that concluded that the jointly held Canadian and Australian mining company OceanaGold Corporation had committed an array of abuses. These include causing environmental devastation like water pollution and forest denudation and committing human rights abuses through community displacement of indigenous peoples.

Both Cépeda and Bautista also drew the Subcommittee’s attention to the negative ripple effects that Canadian corporate activities have had in their communities. In Peru, Frontera Energy’s inconsistent approaches to negotiations and relations with local indigenous organizations led to an increase in social conflict between them. Bautista noted that the same increases in the community disputes occurred in the Philippines as a result of the activity in the area by OceanaGold, as well as more serious escalations

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28 Ibid.

29 SDIR, [Evidence](#), 20 April 2021 (Cépeda).

such as militarization and land-grabbing, as well as the targeting of activists by the government and armed groups.<sup>30</sup>

## Canada's International Reputation

When Canadian companies operate abroad, they do so under Canada's banner. As such, their actions can be both beneficial and detrimental to Canada's international image. Mary Ng, the Minister of International Trade, for instance, explained that

Canada's reputation abroad is important. When our businesses are expanding globally, they represent Canada. Canadians and citizens around the world expect our businesses to uphold high standards for human rights, to operate with integrity and to demonstrate our strong values. Our country's international reputation is a competitive advantage. This is something Canadians take pride in and something they expect from Canadian leaders, from our institutions and from companies in all sectors.<sup>31</sup>

The effects of poor corporate behaviour, however, have the potential to outweigh the good. Domestically, it has an impact on their reputation with investors and thus their ability to generate revenue more broadly. Agnew shared with the Subcommittee that "investors are demanding accountability and we are seeing that under the proliferation of ESG [environment, social and corporate governance] and CSR [corporate social responsibility] frameworks more generally."<sup>32</sup>

## Industry-Led Initiatives

In response to domestic and shareholder pressures, some industry associations, such as the Canadian Mining Association (CMA) and the Prospectors and Developers Association of Canada (PDAC), have developed industry-wide responsible business conduct policies. Lisa McDonald, the Executive Director of PDAC, described her association's *e3 Plus: A framework for responsible exploration*, as "a resource to help exploration companies improve their social, environmental and health and safety performance," noting that it was "the first comprehensive guidance on responsible exploration ever produced."<sup>33</sup> Similarly, Pierre Gratton, the President and Chief Executive Officer of the Mining Association of Canada, told the Subcommittee that the CMA's *Towards Sustainable Mining* initiative has experienced success in encouraging responsible behaviour in the

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30 SDIR, [Evidence](#), 20 April 2021 (Bautista).

31 SDIR, [Evidence](#), 23 March 2021 (Ng).

32 SDIR, [Evidence](#), 20 April 2021 (Agnew).

33 SDIR, [Evidence](#), 20 April 2021 (McDonald).



sector and has been used as a model for similar policies in other countries around the world.<sup>34</sup>

While these initiatives are noteworthy and have been successfully implemented by many association members, they do not apply to non-members and are not mandatory. As such, non-compliance cannot be enforced. The Subcommittee was also told that some Canadian companies and industries resist any effort to regulate their behaviour overseas. For example, Neumann reported that Canadian companies in the garment sector have complex supply chain systems, are subject to less oversight than either mining or oil and gas, and have lower standards for reporting. He told the Subcommittee that “many Canadian retailers appear intent on refusing to take the simple step of publicly disclosing their list of supplier factories ... Privately owned Canadian retailers do not publicly release financial data and have no inclination or incentive for transparency.”<sup>35</sup>

The Subcommittee was informed that the Government of Canada has taken a number of measures to ensure all Canadian multinational corporations respect human rights when conducting business abroad. The following chapter provides an overview of these measures.

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34 SDIR, [Evidence](#), 20 April 2021 (Gratton).

35 SDIR, [Evidence](#), 20 April 2021 (Neumann).

## CHAPTER 2—RESPONSIBLE BUSINESS CONDUCT: CANADA'S FRAMEWORK

As human rights abuses committed by multinational organizations garner more negative attention from the international community, many countries, including Canada, have committed to improving how those domiciled in their states conduct business abroad. These pledges have mostly been channelled through various multilateral initiatives, such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises (MNE Guidelines). While these efforts have strong international support, they have not created new obligations for states, which have a great deal of discretion as to how to express their commitments.

This chapter provides an overview of the UNGPs, the federal government's support of Canadian businesses and its efforts to ensure all Canadian multinational corporations respect human rights when conducting business abroad, including its commitment to the MNE Guidelines. It also discusses Export Development Canada's (EDC) due diligence process and considers the effectiveness of Canada's RBC framework. The chapter concludes with a discussion of the right to an effective remedy.

### United Nations Guiding Principles on Business and Human Rights

The UNGPs are an internationally accepted framework for "enhancing standards and practices with regard to business and human rights."<sup>36</sup> They were unanimously endorsed by the UN Human Rights Council on 16 June 2011.<sup>37</sup> The UNGPs consist of 31 principles grouped under three themes: State Duty to Protect Human Rights, the Corporate Responsibility to Respect Human Rights and Access to Remedy.

The UNGPs do not impose new obligations on states. Instead, they draw from international human rights law and international customary law, which impose obligations on states to respect and protect human rights within its own territory or jurisdiction. While obligations to protect human rights at home exist, the UNGPs explicitly recognize that there is a gap when it comes to multinational corporations that

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36 Office of the United Nations High Commissioner for Human Rights (OHCHR), *OHCHR and business and human rights*; OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, 2011.

37 United Nations, General Assembly, Human Rights Council, "[Human rights and transnational corporations and other business enterprises](#)," 6 July 2011.



are domiciled in one country but that have operations in another.<sup>38</sup> As explained by Dwyer:

There is a global and international accountability gap when it comes to business and human rights, when it comes to holding companies accountable. Our international framework is based on the obligations of nation-states and doesn't easily apply to corporations. Around the world, host countries where companies are operating sometimes don't have laws that protect human rights or the environment, or those laws aren't enforced vis-à-vis multinational companies.<sup>39</sup>

Nonetheless, Surya Deva, Vice-Chairperson of the United Nations Human Rights Working Group on business and human rights, told the Subcommittee that "the UN guiding principles expect all states to lay down expectations of their businesses, operating inside or outside."<sup>40</sup> Indeed, Principle 2 of the UNGPs states that countries "should set out clearly the expectations that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations."<sup>41</sup>

## Federal Government Support for Businesses and Canadian Foreign Policy

The Minister of International Trade told the Subcommittee that the Government of Canada expects Canadian companies to respect and uphold human rights when operating abroad. The government helps Canadian companies operate abroad by providing access to a host of resources including advice, trade advocacy and diplomatic assistance.<sup>42</sup> Industry representatives informed the Subcommittee that these services are "incredibly valuable" and widely used by Canadian companies.<sup>43</sup> The Minister stated that, with respect to Canadian companies operating globally, the Government of Canada is taking a "very, very serious approach around human rights,"<sup>44</sup> explaining that the federal government wants

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38 OHCHR, *Guiding Principles on Business and Human Rights*, 2011, pp. 3-4.

39 SDIR, *Evidence*, 23 February 2021 (Dwyer).

40 SDIR, *Evidence*, 23 March 2021, Surya Deva (Vice-Chairperson, Working Group on Business and Human Rights, United Nations Human Rights Council).

41 OHCHR, "Principle 2," *Guiding Principles on Business and Human Rights*, 2011, p. 3.

42 SDIR, *Evidence*, 23 March 2021 (Ng).

43 SDIR, *Evidence*, 20 April 2021 (Gratton); SDIR, *Evidence*, 20 April 2021 (Agnew).

44 SDIR, *Evidence*, 23 March 2021 (Ng).

Canadian companies to be good actors on the international stage. We want them to respect high values and high standards for human rights. We want them to operate with integrity. We want them to operate with ethical standards, and we want them to have codified policies and procedures in their organization that include responsible business conduct. We want companies that will respect local law, companies that have good governance, good accountability, and at the very heart, companies that create lasting benefits for their employees, their customers and the society in which they operate.<sup>45</sup>

The Subcommittee was informed that the Government of Canada is committed to ensuring that Canadian businesses are incorporating human right standards in their practices and policies. To help achieve these objectives, the Minister told the Subcommittee that the government can work directly with Canadian companies to “provide them with the guidance and the tools needed to make responsible business conduct a cornerstone of their business practices.”<sup>46</sup>

Additionally, when international trade agreements are being negotiated, Global Affairs Canada (GAC) sets objectives that shape the way in which business is conducted with foreign partners.<sup>47</sup> These include “a feminist foreign policy, ambitious climate action targets, and an inclusive international trade agenda” as well as policies that ensure that companies “respect environmental protection and sustainability good governance, and they must ensure that there is an adherence to strong labour rights.”<sup>48</sup>

## OECD Guidelines for Multinational Enterprises

The OECD’s Guidelines for Multinational Enterprises (MNE Guidelines), adopted by the OECD in 1976, are a code for RBC that focus on a broad range of areas including human rights. They have been periodically updated with the latest round of revisions occurring in 2011. To date, 48 countries, including Canada, have endorsed the MNE Guidelines. They are the only multilateral code of conduct that governments have committed to promote. Though the MNE Guidelines are endorsed by adhering governments, they are voluntary and are not designed to override local laws and legislation.<sup>49</sup> In line with the

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45 Ibid.

46 Ibid.

47 Ibid.

48 Ibid.

49 SDIR, *Evidence*, 27 April 2021, Chris Moran (Director General, Trade Portfolio Strategy and Coordination, Global Affairs Canada); Global Affairs Canada, [\*Canada’s National Contact Point for the Organisation for Economic Co-operation and Development Guidelines for Multination Enterprises\*](#).





MNE Guidelines, Canada has been encouraging, rather than forcing, companies to include international human rights standards within their business operations abroad.<sup>50</sup>

## National Contact Point

The MNE Guidelines are supported by the “implementation mechanism of National Contact Points (NCPs), agencies established by adhering governments to promote and implement” the MNE Guidelines.<sup>51</sup> All members of the OECD who support the MNE Guidelines have committed to establishing a local NCP office, and they meet regularly to “share best practices, collaborate on cases and to develop forward-looking policies.”<sup>52</sup>

The Canadian NCP consists of a seven-member committee of federal government departments. It is chaired by GAC and vice-chaired by Natural Resources Canada.<sup>53</sup> Chris Moran, Director General of Trade Portfolio Strategy and Coordination at GAC, informed the Subcommittee that Canada’s NCP is housed at GAC, and thus able to leverage the department’s resources and knowledge of those working in development, foreign policy and trade promotion. The NCP also works with “Canadian diplomats prior to their posting abroad to emphasize to them the importance of these issues to Canada, and also to make them aware of the expectations, the mechanisms and the various tools that are at their disposal.”<sup>54</sup>

In addition to promoting and facilitating the MNE Guidelines, NCPs provide “voluntary, non-judicial mediation and conflict resolution to address issues that arise between ... groups.”<sup>55</sup> Accordingly, “the Canadian NCP can offer a forum for constructive dialogue between parties, aimed at helping them discuss concerns and work towards reaching a mutual agreement for the resolution of the specific issues that have been brought forward.”<sup>56</sup> It should be noted, however, that “the NCP does not render rulings on guilt or determine damages,” but rather “provides an avenue to arrive at mutually agreeable

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50 SDIR, *Evidence*, 23 February 2021 (Dwyer); SDIR, *Evidence*, 20 April 2021 (Olthuis).

51 Organization for Economic Co-operation and Development (OECD), *OECD Guidelines for Multinational Enterprises*, 2011, p. 3.

52 SDIR, *Evidence*, 27 April 2021 (Moran).

53 Global Affairs Canada, *Canada’s National Contact Point for the Organisation for Economic Co-operation and Development Guidelines for Multination Enterprises*.

54 SDIR, *Evidence*, 27 April 2021 (Moran).

55 Ibid.

56 Global Affairs Canada, *Canada’s National Contact Point for the Organisation for Economic Co-operation and Development Guidelines for Multination Enterprises*.

solutions.”<sup>57</sup> According to Moran, the idea behind this approach is to “bring about longer-term policy changes, to find mutually agreeable solutions and to ensure that the parties are collaborating.”<sup>58</sup>

The Subcommittee was informed that since 2000, when the NCP was established, it has reviewed 20 complaints (seven of which were received in the last three years). According to Moran:

The majority of these cases, 85% of them, were in the extractive sector and two-thirds were filed by NGOs. We are currently reviewing four cases, of which only one is related to extractives. Canada has also supported other NCPs in 10 cases involving Canadian companies.<sup>59</sup>

When companies do not engage with the NCP’s process “in good faith,” the NCP can impose “trade measures,” which include “the ability and the willingness to withdraw government trade advocacy support and to recommend that EDC deny future financial support.”<sup>60</sup> Moran told the Subcommittee that this has been used sparingly:

[T]he use of the trade measure is intended to incentivize good behaviour, and we use it sometimes during the course of a request for a review. In conversation, we are very clear with companies this is a consequence should they not engage in good faith.<sup>61</sup>

While the Minister stressed that the “NCP is a very important tool” within Canada’s responsible business framework, both she and Sheri Meyerhoffer, the Canadian Ombudsperson for Responsible Enterprise, described Canada’s NCP as being somewhat constrained, lacking the power to launch investigations or “make public the findings of the matters to which they undertake.”<sup>62</sup>

## Export Development Canada

Export Development Canada is a Canadian Crown corporation that helps Canadian companies to operate abroad by providing government-backed loans, guarantees,

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57 SDIR, *Evidence*, 27 April 2021 (Moran).

58 Ibid.

59 Ibid.

60 Ibid.

61 Ibid.

62 SDIR, *Evidence*, 23 March 2021 (Ng); SDIR, *Evidence*, 23 February 2021, Sheri Meyerhoffer (Ombudsperson, Office of Canadian Ombudsperson for Responsible Enterprise).



insurance and other services such as trade knowledge, equity and connections.<sup>63</sup> Mairead Lavery, the President and Chief Executive Officer of EDC, reported that in 2020, the organization facilitated \$102 billion in business involving more than 24,000 companies. The Subcommittee was informed that EDC has been aligning its practices with the “highest international standards,” including the MNE Guidelines and UNGPs.<sup>64</sup>

Lavery informed the Subcommittee that EDC has implemented an internal human rights due diligence process when partnering with Canadian companies operating abroad. Lavery described the process as “risk-based”—in that EDC identifies certain regions and sectors that are at higher risk of human rights abuses. When EDC enters discussions with clients who are seeking help to operate within a sector or region identified as potentially problematic, it moves the file “into an enhanced due diligence situation,” the goal of which is to better understand the company’s “management system for identifying any risks that they might have in their supply chain.”<sup>65</sup> Lavery told the Subcommittee that if EDC finds that the company’s supply chains are dubious, it may decide not to proceed with the transaction. However, if it goes ahead knowing that certain risks are present, it will “very often ... arrive with an environmental and social action plan.”<sup>66</sup> The plan then becomes part of the company’s commitments to EDC. To ensure the company is respecting its commitments, EDC will “continue with enhanced monitoring throughout the term of the loan.”<sup>67</sup>

If a company that has business ties with EDC is accused of human rights abuses, its first step is an attempt to remedy the situation. Lavery explained that EDC will

reach out to the company and start a dialogue with them. We’re immediately going to understand if we can use leverage if there is a severe human rights impact to ensure that the company is addressing it. It’s not an immediate withdrawal of support because that may not help the impacted parties the most. It is an assessment at that as to whether EDC has enough leverage to make a difference to remedy the situation.<sup>68</sup>

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63 Export Development Canada, [About us](#).

64 SDIR, [Evidence](#), 23 March 2021, Mairead Lavery (President and Chief Executive Officer, Export and Development Canada).

65 Ibid.

66 Ibid.

67 Ibid.

68 Ibid.

Lavery was adamant that EDC’s “due diligence process is working as planned.”<sup>69</sup> She told the Subcommittee that the corporation has been able to identify the “potential for severe risks,”<sup>70</sup> which is leading it to have conversations with customers before lending support to ensure they are able to mitigate risks or provide appropriate remedies thereafter.

## Effectiveness of Canada’s Accountability Framework

Nevertheless, many witnesses criticized the efficacy of Canada’s RBC framework. They pointed to the fact that, despite the Government of Canada’s approach, Canadian companies continue to be accused of human rights abuses abroad, such as those mentioned in Chapter 1. Dwyer told the Subcommittee that the failure is due to Canada’s reliance on voluntary mechanisms to prevent and end human rights abuses by Canadian multinationals:

Instead of implementing effective mechanisms, Canada has relied on voluntary approaches providing advice to companies about the expectation that they respect human rights, and sometimes offering mediation and mediation approaches, like joint fact finding.

The experience with Canada’s toothless mechanisms ... demonstrates that this approach has not worked.<sup>71</sup>

Both Dwyer and Simons were critical of the NCP, which, until the CORE, was Canada’s only non-judicial remedy for human rights complaints against Canadian companies operating abroad. Dwyer bluntly stated that the NCP “has also failed to investigate, prevent or remedy harm by Canadian companies operating overseas.”<sup>72</sup> Simons explained that Canada’s NCP is limited by design:

A lot of Western countries, or members of the OECD, have national contact points. Some of them are much more effective than the Canadian one, because they actually investigate allegations ... even though there is a lot of leeway for NCPs in terms of deciding how to conduct themselves ... The Canadian NCP has always said, “No, we’re just about mediation. We’re only going to resolve the dispute. We’re not actually going

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69 Ibid.

70 Ibid.

71 SDIR, [Evidence](#), 23 February 2021 (Dwyer).

72 Ibid.



to investigate allegations as to whether a company complied with the OECD guidelines.<sup>73</sup>

Dwyer also cautioned that making a complaint with an NCP can come with considerable risk for human rights defenders, reporting that:

Whenever impacted communities or human rights defenders launch an international complaint or speak out against corporate abuse, they face the possibility of risks and retaliation. In an examination of 250 specific instances filed at the national contact points around the world in a study looking at complaints since 2006, it was documented that in 25% of those cases, those bringing complaints faced retaliation for doing so, and over half of those retaliations cases were linked to mining, oil and ... sector cases.<sup>74</sup>

Some witnesses argued that allegations of human rights abuses against Canadian multinational corporations continue to surface because Canada lacks an effective remedy, which is an internationally protected right.<sup>75</sup>

## The Right to an Effective Remedy

The right to an effective remedy refers to a state's obligation to bring to justice perpetrators of human rights abuses and to provide appropriate reparation to victims. It is commonly understood that "rights without effective remedies do not mean much in practice."<sup>76</sup> Simons told the Subcommittee that "[t]he right to an effective remedy is widely recognized as a fundamental human right. It's been enshrined in a range of core human rights treaties that Canada has ratified."<sup>77</sup>

Article 2(3) of the *International Covenant on Civil and Political Rights*, which Canada acceded to in 1976, states that:

Each State Party to the present Covenant undertakes:

- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding

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73 SDIR, *Evidence*, 13 April 2021 (Simons).

74 SDIR, *Evidence*, 23 February 2021 (Dwyer).

75 Ibid.; SDIR, *Evidence*, 13 April 2021 (Simons); SDIR, *Evidence*, 23 March 2021 (Deva).

76 OHCHR, *Statement at the end of visit to Canada by the United Nations Working Group on Business and Human Rights*, 1 June 2017.

77 SDIR, *Evidence*, 13 April 2021 (Simons).

that the violation has been committed by persons acting in an official capacity;

- b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- c) To ensure that the competent authorities shall enforce such remedies when granted.

Access to an effective remedy for human rights complaints is also an important aspect of upholding human rights more generally and forms an important component of the UNGPs. Deva explained, however, that simply having access to a remedy is not sufficient. He stated that an effective remedy results in “tangible outcomes, not merely access to a remedial mechanism.”<sup>78</sup> He pointed to the effectiveness criteria described in Principle 31 of the UNGPs, which states that effective remedial mechanisms—both state and non-state-based—are legitimate, accessible, predictable, equitable, transparent, rights compatible, a source of continuous learning and based on engagement and dialogue.<sup>79</sup>

Deva reminded the Subcommittee about the OHCHR Working Group on business and human rights’ 2017 visit to Canada and the recommendations that it made to the Government of Canada on addressing human rights abuses by Canadian corporation operating abroad.<sup>80</sup> Though plans for an ombudsperson for responsible enterprise were in their infancy at the time, the Working Group focused several of its recommendations on the nature of the future office. Deva relayed to the Subcommittee that the recommendations were that the CORE:

[I]s well resourced ... so that it can provide effective and timely remedies for and recommendations about complaints ... have total independence from government, undertake meaningful investigations and have investigatory powers to summon witnesses and compel stakeholders to produce documents ... to fully address human rights abuses.<sup>81</sup>

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78 SDIR, *Evidence*, 23 March 2021 (Deva).

79 Ibid.; OHCHR, “Principle 31,” *Guiding Principles on Business and Human Rights*, 2011, pp. 33–34.

80 OHCHR, *Statement at the end of visit to Canada by the United Nations Working Group on Business and Human Rights*, 1 June 2017.

81 SDIR, *Evidence*, 23 March 2021 (Deva).



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The following year, in 2018, the Government of Canada announced the creation of the CORE. The following chapter provides an overview of the CORE's mandate, its roles and responsibilities and underscores some of the challenges that witnesses foresee the CORE experiencing in implementing its mandate.



## CHAPTER 3—THE CANADIAN OMBUDSPERSON FOR RESPONSIBLE ENTERPRISE

On 17 January 2018, the Government of Canada announced the creation of the CORE. The office was officially launched over a year later, on 8 April 2019, through an Order in Council, but only became operational in 2021. Sheri Meyerhoffer was appointed as the first Ombudsperson. The Order in Council established the CORE's mandate as follows:

- a) promote the implementation of the UN Guiding Principles and the OECD Guidelines;
- b) advise Canadian companies on their practices and policies with regard to responsible business conduct;
- c) review a complaint that is submitted by or on behalf of an individual, organization or community concerning an alleged human rights abuse where the abuse allegedly occurred after the day on which the first Ombudsperson is appointed or, if it allegedly occurred before that day, is ongoing at the time of the complaint;
- d) review, on the Ombudsperson's own initiative, an alleged human rights abuse where the abuse allegedly occurred after the day on which the first Ombudsperson is appointed or, if it allegedly occurred before that day, is ongoing at the time of the review;
- e) offer informal mediation services; and
- f) provide advice to the Minister on any matter relating to their mandate, including issues related to the responsible business conduct of Canadian companies operating abroad.<sup>82</sup>

Accordingly, the CORE was structured to reduce human rights abuses by Canadian corporations operating abroad by preventing, resolving disputes and conducting investigations.

### Prevention

The first two parts of the CORE's mandate establish its role in preventing human rights abuses by Canadian corporations operating abroad. The Subcommittee was informed

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82 [\*Order in Council\*](#), PC Number: 2019-1323, 6 September 2019.



that the CORE can fulfill this function by providing companies with targeted advice on human rights issues as well as educating companies on general human rights best practices, the UNGPs and the MNE Guidelines. The Minister of International Trade told the Subcommittee that the Government of Canada wants to provide Canadian companies “with the tools that are necessary to help them with prevention of dysfunction.”<sup>83</sup> As such, Meyerhoffer explained that the CORE “can be very proactive to prevent the occurrence of human rights abuses by letting companies know what they ought to be doing,” and that the CORE can strive to “to prevent things before they happen and intervene early” by doing “a lot of know and show.”<sup>84</sup> It was not clear from her testimony, however, the factors that may prompt the CORE to take these preventative measures or engage in early resolution, unless a complaint against a company has been filed.

As an example of its more general outreach role, the Ombudsperson told the Subcommittee that the CORE had recently been sharing information with companies regarding COVID-19, explaining to them “the new strains on business that would end up resulting in human rights abuses, and pointing those out to companies and indicating they should be aware of these pitfalls and what they can do to take action against it.”<sup>85</sup> She indicated that this kind of outreach could similarly be done for corporations operating in conflict areas.

## Mediation

The Subcommittee was informed that the CORE can also engage in mediation “to help them [parties to a dispute] if something is bubbling up... Then there is helping the members resolve an issue once it has started.”<sup>86</sup> The CORE’s Operating Procedures (OPs) define mediation as “an informal, voluntary process in which a neutral third party assists participants in resolving a dispute.”<sup>87</sup> The CORE can offer mediation, with the agreement of all participants, anytime during the complaint process.<sup>88</sup>

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83 SDIR, [Evidence](#), 23 March 2021 (Ng).

84 SDIR, [Evidence](#), 23 February 2021 (Meyerhoffer).

85 Ibid.

86 Ibid.

87 Canadian Ombudsperson for Responsible Enterprise (CORE), [Operating Procedures for the Human Rights Responsibility Mechanism of the Canadian Ombudsperson for Responsible Enterprise \(CORE\)](#), para. 2 (Definitions).

88 Ibid., para. 9.2.

According to its OPs, the CORE may directly engage in mediation or assist the parties in identifying a mutually agreed upon mediator.<sup>89</sup> Meyerhoffer told the Subcommittee that the findings of the mediation may subsequently be published, as per the CORE’s OPs, which specify that the CORE “may make public the agreement or the substance of the agreement including through a report,” with the consent of all parties.<sup>90</sup> Additionally, if the parties to the mediation reach an agreement, the CORE will monitor the implementation of any of the terms, assist the parties with the implementation as required and publicly issue follow-up reports on their implementation.<sup>91</sup>

## Investigations/Reviews

The CORE’s mandate specifies two types of reviews: complaint-initiated reviews and Ombud-initiated reviews. The Core’s OPs define a review as a process that “includes information gathering and fact-finding for the purposes of determining whether a human rights abuse occurred or is occurring.”<sup>92</sup> The two types of reviews do not differ in substance, but only in their reasons for being instigated. Both types of reviews require all parties to act in good faith, meaning that participants must respect the confidentiality of the process as well as personal and business information, and must refrain from providing false information.<sup>93</sup> Moreover, the CORE may consider a party to not be acting in good faith if the party “does not actively participate in the review without reasonable explanation, including providing relevant information and documents, making witnesses available on reasonable notice, and responding within the time lines established by the Ombud.”<sup>94</sup>

Following a review, the CORE may publicly report the results of its findings and make recommendations to the Minister of International Trade.<sup>95</sup> These may include recommendations for impositions of trade measures to be taken against the company in question, which include:

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89 Ibid., para. 9.

90 Ibid., para. 9.9; SDIR, [Evidence](#), 23 February 2021 (Meyerhoffer).

91 CORE, [Operating Procedures for the Human Rights Responsibility Mechanism of the Canadian Ombudsperson for Responsible Enterprise \(CORE\)](#), para. 9.10; SDIR, [Evidence](#), 23 February 2021 (Meyerhoffer).

92 CORE, [Operating Procedures for the Human Rights Responsibility Mechanism of the Canadian Ombudsperson for Responsible Enterprise \(CORE\)](#), para. 2.

93 Ibid., para. 12.2.

94 Ibid., para. 12.4.

95 SDIR, [Evidence](#), 23 February 2021 (Meyerhoffer); SDIR, [Evidence](#), 23 March 2021 (Ng).



- a) the withdrawal of trade advocacy support provided to the Canadian company by the Department of Foreign Affairs, Trade and Development;
- b) the refusal by the Department of Foreign Affairs, Trade and Development to provide future trade advocacy support to the Canadian company;
- c) the refusal by Export Development Canada to provide future financial support to the Canadian company.<sup>96</sup>

The Minister underscored that for many companies, “these are services that are incredibly valuable to businesses that are operating abroad.”<sup>97</sup> She explained that:

The companies I have talked to find those services to be tremendously useful when you’re operating globally. You’re looking for the services of our trade commissioner in our missions abroad. In many instances you are also looking for the export insurance that is underwritten by a Crown corporation like Export Development Canada.<sup>98</sup>

This perspective was shared by Agnew, who stated:

Canadian businesses greatly value the work of Global Affairs Canada and the trade commissioner service. Certainly losing that support due to a CORE recommendation to the minister would cause problems for the companies that rely on those services to support their market activities. This should not be underestimated in terms of the value that it provides to companies.<sup>99</sup>

The Subcommittee was also informed that public reports can cause a company reputation issues, incentivizing their cooperation and collaboration with the process.<sup>100</sup> Meyerhoffer referred to this aspect of the CORE’s role as “naming and shaming,” stating that it is “part of publishing and we are required to publish.” She clarified this further, however, saying:

If we receive a complaint, we have to publish it. The amount of information we publish with respect to a complaint will depend on the situation. It will depend on whether the situation was mediated between the company and the complainant and whether the

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96 CORE, *Operating Procedures for the Human Rights Responsibility Mechanism of the Canadian Ombudsperson for Responsible Enterprise (CORE)*, para. 12.7.

97 SDIR, *Evidence*, 23 March 2021 (Ng).

98 Ibid.

99 SDIR, *Evidence*, 20 April 2021 (Agnew).

100 SDIR, *Evidence*, 23 March 2021 (Ng).

complainant and the company requested that certain information not be published. That's possible, but we will definitely publish that we received 10 complaints, that we reviewed eight—that kind of information will be there.<sup>101</sup>

## The CORE: An Effective Remedial Mechanism for Canada's Multinationals?

When the Subcommittee was conducting its study, the CORE had only been operational for several weeks and had yet to receive a complaint or conduct an investigation. Nonetheless, both the Minister and Meyerhoffer were confident that the CORE has the necessary tools and resources required to pursue its mandate successfully and fulfill its main objective, that of finding “solutions that help advance Canada’s commitments to responsible business conduct and human rights.”<sup>102</sup> Meyerhoffer stated:

I believe our office can make a real and positive difference now. We can respond to complaints and initiate reviews. We can engage in mediation and publish our findings. We can make recommendations for action and publicly issue follow-up reports on their implementation. In other words, we can help Canada promote and protect human rights, full stop.<sup>103</sup>

This view was echoed by the Minister:

I would say that the ombudsperson does have the tools that she needs to operate.... If a company does not act in good faith during her process, the CORE can recommend trade measures to me. She can also report publicly at various stages, at any stage, of her review. That provides a reputational issue for the company. We can decline future financial support to the company, and we can absolutely withdraw trade advocacy. For the many companies that the international trade team and I work with, these are services that are incredibly valuable to businesses that are operating abroad.<sup>104</sup>

The industry representatives that appeared before the Subcommittee, many of whom had been consulted in shaping the CORE’s mandate, shared this view as well.<sup>105</sup> McDonald, for example, reported that

PDAC and the mineral industry have been a continuous constructive partner in the development of the CORE since the initiative was first announced in 2018. Through

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101 SDIR, [Evidence](#), 23 February 2021 (Meyerhoffer).

102 SDIR, [Evidence](#), 23 March 2021 (Ng).

103 SDIR, [Evidence](#), 23 February 2021 (Meyerhoffer).

104 SDIR, [Evidence](#), 23 March 2021 (Ng).

105 SDIR, [Evidence](#), 20 April 2021 (Agnew); SDIR, [Evidence](#), 20 April 2021 (McDonald); SDIR, [Evidence](#), 20 April 2021 (Dovgal); SDIR, [Evidence](#), 20 April 2021 (Gratton).



numerous submissions and engagements PDAC has remained confident that the CORE can play a vital role in promoting safe and responsible business practices and provide a transparent process for Canadian companies that operate abroad.<sup>106</sup>

As mentioned in Chapter 2, in addition to industry-led initiatives, Canada has a number of tools designed to promote respect for human rights among Canadian multinationals and mitigate human rights abuses by these organizations. Some witnesses stressed the fact that the CORE is only “a tool among a suite of policy tools” intended to complement others such as the NCP as well as policies and legislation encouraging greater RBC by Canadian companies.

While some witnesses were not persuaded that the CORE will be able to fulfill its objectives under its current mandate others stated otherwise. The witnesses that were not persuaded underscored several concerns with the CORE’s current composition, including: a potential conflict of interest, overlap with the NCP, and an inability to compel testimony or evidence.

### Conflict of Interest

Deva informed the Subcommittee that the CORE’s dual roles of preventing and remediating raises the potential for a conflict of interest. He explained that if “the CORE advises, let us say company X, to do A, B, C, and then the CORE receives a complaint against the same company, then this may raise a potential conflict of interest.”<sup>107</sup> As such, he stated that “the CORE should not have the mandate to advise Canadian companies, because this may create a potential conflict of interest if it were to deal with complaints against these very same companies.”<sup>108</sup> He clarified, however, that providing generic guidance was completely different than advising companies on specific matters, and that this outreach role does not raise any potential conflict of interest issues.

### Overlapping Mandates with the National Contact Point

Several witnesses drew parallels between the CORE and the NCP, expressing concern that the former, as it is currently structured, would face the same issues of ineffectiveness as the latter.<sup>109</sup> Dwyer stated that “Canada’s NCP, which is still in operation today, has also failed to investigate, prevent or remedy harm by Canadian

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106 SDIR, [Evidence](#), 20 April 2021 (McDonald).

107 SDIR, [Evidence](#), 23 March 2021 (Deva).

108 Ibid.

109 Ibid.; SDIR, [Evidence](#), 23 February 2021 (Dwyer).

companies operating overseas... When it comes to effectiveness, the version of the CORE that we see today is not materially different from these failed offices.”<sup>110</sup> Dwyer also stressed that an office mandated to prevent and remedy human rights abuses that is not substantively different from the NCP could be detrimental for complainants and result in fewer grievances. She explained:

[T]he assessment they [impacted communities] will need to be making in bringing a complaint to any office is, given the risk of retaliation, is there a possibility of reward? Is there a possibility of remedy? Is it worth the risk in bringing a complaint? Based on the experience we have with very similar offices in the past—the CSR counsellor’s office, the national contact point—that didn’t have the power to investigate, that didn’t have the power to compel documents and testimony, that relied on companies voluntarily participating, the result there for impacted communities was no remedy, a waste of time and resources, and often a situation where they were put in more of a risk after bringing a complaint than before they came. Our analysis is that exactly the same will happen with this office, the way it is currently structured.<sup>111</sup>

Nonetheless, some witnesses, including the Minister, Meyerhoffer and Moran were confident that the differences between the two offices were substantial. They underscored the CORE’s specific focus on human rights and its ability to initiate investigations. In this context, some witnesses also reiterated the point that the CORE is part of Canada’s broader RBC framework and that there will be coordination between various government partners. Moran, for example, explained how this collaboration may unfold between the CORE and the NCP:

The CORE has been established to advise the minister directly, which is different from the NCP, yet we have been asked to complement one another, so to work with complementarity. We would like to be able to refer cases to the CORE where they are falling within her mandate, and I believe that the CORE may receive cases that would fall outside her mandate, but could be referred to the NCP. We’re working on how we can ensure that those procedures are complementary and that they are not creating additional burdens for a complainant.<sup>112</sup>

Despite reassurances, however, the Subcommittee is concerned that in performing its central role as a mediator, the CORE too closely resembles the NCP, and that this office has only dealt with 20 complaints in the last 21 years. Setting the CORE apart by granting it the power to compel witnesses and documents is therefore a central question for some members of the Subcommittee, which will be addressed at greater length below.

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110 SDIR, [Evidence](#), 23 February 2021 (Dwyer).

111 Ibid.

112 SDIR, [Evidence](#), 27 April 2021 (Moran).



## Should the CORE Have the Power to Compel Witnesses and Documents?

The Subcommittee heard opposing views surrounding the question of whether the CORE should have the power to compel witnesses and documents. In general, advocates for granting the CORE these powers argued for strengthening it as a remedial mechanism. Others argued that the CORE was a tool for supporting corporate efforts towards greater RBC and as such, did not require those powers. The following sections will set out these arguments in greater detail, drawing conclusions about how the CORE may be improved in order to better attain its objectives.

### The CORE's Powers are Sufficient

The government and industry representatives from whom the Subcommittee heard argued that the CORE does not need the power to compel because it already has a host of tools to motivate compliance with human rights norms and that these powers would likely hamper cooperation between the CORE and corporations.

Some witnesses argued that the CORE's ability to publicly report its findings of an investigation and its capacity to recommend the imposition of trade measures are sufficient to motivate companies to participate in the process, without needing the power to compel witnesses and documents.<sup>113</sup> As explained by the Ombudsperson:

It's true that the CORE doesn't currently have the power to compel witnesses or documents, but our review powers are unique and a strength in Canada's responsible business conduct mechanisms. We have, as I said before, a range of tools at our disposal, and we can initiate reviews and conduct investigations...

There are other ways of getting information, and we will be conducting investigations. We will be gathering information from all sources. If they don't co-operate, it's to their detriment, because we will be coming to a finding of fact based on the information that we collect.<sup>114</sup>

The Subcommittee was also told that giving the CORE the ability to compel witnesses and documents is likely to create a combative process that could result in protracted court proceedings, rendering the office less effective. Gratton stated that, while giving the CORE the power to compel may seem advantageous, it "would more likely lead to undesirable outcomes for all parties," because "an ombudsperson with the powers to

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113 SDIR, [Evidence](#), 23 March 2021 (Ng).

114 SDIR, [Evidence](#), 23 February 2021 (Meyerhoffer).



compel would lead all parties to lawyer up, be more protracted and conflictual.”<sup>115</sup> This point was shared by Dovgal, who explained that the “pathway to better social and environmental performance is through collaboration and co-operation with international partners, not extraterritorial measures or an overly prescriptive approach that reduces host states’ autonomy. Our own domestic regulatory experience has actually shown that reducing adversarial processes leads to better outcomes.”<sup>116</sup>

### Increased Powers Are Necessary

Civil society groups and human rights defenders testified that the CORE’s inability to compel testimony and evidence from Canadian companies it is investigating essentially renders the office “unfit for purpose.”<sup>117</sup> These witnesses were adamant that this inability to compel compromises the CORE’s ability to report effectively, because companies that are accused of committing human rights abuses will have few incentives to collaborate with the CORE. In reference to the Canadian mining company operating in Mexico that was mentioned in Chapter 2, Olthuis stated:

[W]hen I look at that, I see a Canadian company that’s willing to stare down the President of Mexico. I can’t imagine a company like that being willing to voluntarily co-operate with the CORE. This is a mining company that plays hardball. A CORE that is in that kind of situation needs to be armed. It needs to be ready to be able to engage with that company from a position of strength. That’s not the CORE we have right now.<sup>118</sup>

These witnesses also stated that the power to compel was critical for the CORE to be able to conduct full and fair investigations. Dwyer explained:

If you look at what an ombudsperson’s office does, it does not issue binding fines; it does not send anyone to jail; it does not make any findings of guilt. What it does is independently investigate the facts and make findings of fact to help determine what happened, who was involved and how to prevent and remedy those harms.

If you can’t get at the basic underlying facts of the situation, then you can’t make public reports that make findings of fact. You can’t make recommendations that are tailored to the facts of the situation to help prevent these things from happening in the future, and you can’t adequately make recommendations for future law and policy reform to help prevent this or to adequately remedy it. Without the power to investigate, the office is entirely dependent on companies under investigation—companies accused of serious

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115 SDIR, [Evidence](#), 20 April 2021 (Gratton).

116 SDIR, [Evidence](#), 20 April 2021 (Dovgal).

117 SDIR, [Evidence](#), 23 February 2021 (Dwyer).

118 SDIR, [Evidence](#), 20 April 2021 (Olthuis).



human rights abuses—voluntarily sharing information that may implicate them in abuses.<sup>119</sup>

Simons echoed this idea that the credibility of any CORE report, and its subsequent value in supporting remediation, rests on the CORE’s power to compel. She told the Subcommittee that “the ability to engage in a credible, independent investigation of a complaint against a Canadian extractive or garment corporation, that is, the ability to ensure that it has all the evidence before it before coming to a conclusion, is crucial to its being effective and to meeting this standard of an effective remedy.”<sup>120</sup>

The Subcommittee heard how the power to compel witnesses and testimony would also provide the CORE with important leverage. Deva summarized this, saying that “[h]aving the power is different from using the powers,”<sup>121</sup> meaning that that the power to compel would both encourage better collaboration from companies as well as deter companies from committing human rights abuses.

Witnesses who have been negatively impacted by the activities of Canadian corporations operating abroad also made clear their belief that investing this power in the CORE would make its remedial efforts effective. Bautista made the point that these powers could help in a situation like the Philippines, where the OHCHR has determined that there is a failure of local mechanisms to protect citizens and communities from harm done by corporations.<sup>122</sup> Cépeda told the Subcommittee that a similar situation exists in Peru, where she does not believe that “the enforcement capacity of our state officials is enough to stop these kinds of human violations. That’s why lately indigenous organizations have tried to seek these international spaces for investigations or for justice, as sometimes their only means to have this justice and reparation.”<sup>123</sup>

## The Means of Granting the Powers to Compel to the CORE

Some questions were also raised about how to give the CORE the power to compel witnesses and documents, given that it cannot be done through its Order in Council. As stated by Agnew, granting “quasi-judicial powers to compel witness and evidence would actually represent, in our view, a quantum leap that would, in effect, require a

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119 SDIR, [Evidence](#), 23 February 2021 (Dwyer).

120 SDIR, [Evidence](#), 13 April 2021 (Simons).

121 SDIR, [Evidence](#), 23 March 2021 (Deva).

122 SDIR, [Evidence](#), 20 April 2021 (Bautista).

123 SDIR, [Evidence](#), 20 April 2021 (Cépeda).

completely new organization.”<sup>124</sup> While the Subcommittee understands that the CORE could not be given the power to compel by amending the Order in Council, some members share the view that an Ombud office without this power has the potential to be ineffective.

The CNCA shared a document with the Subcommittee that was prepared by The Law Offices of Erin Simpson (Simpson). Citing an authoritative source on ombudsperson offices in Canada, Simpson makes the case that a central purpose of an ombudsperson is to conduct effective and efficient investigations. Because ombudspersons are dependent on information to perform this task, “the power to obtain records and to hear people’s understanding of events is critical to the ombudsproject. In turn, the power to compel the production of records and the compel testimony under oath is an important underpinning of ombudswork.”<sup>125</sup>

The source cited in the Simpson brief also states that all “provincial ombudsmen have subpoena and summons power or power analogous to them and can compel testimony under oath.”<sup>126</sup> Citing the same source, however, Simpson noted that an “ombudsman may reasonably expect that the decisions to issue a subpoena may end up in court as parties may question the power of the ombudsman to question them in various circumstances,” though “there have been few such cases reported.”<sup>127</sup>

The Subcommittee was made aware that in 2019, the Minister for International Trade at the time commissioned Barbara Mclsaac<sup>128</sup> to provide advice on how best to equip the CORE “with sufficient tools to engage in credible and effective investigations of alleged human rights abuse and to ensure that she has powers to compel witnesses and documents.”<sup>129</sup> In her report, which was shared with the Subcommittee, Mclsaac concluded that the CORE cannot be invested with the power to compel witnesses and documents unless it was created by way of a statute that delineates its mandate and

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124 SDIR, [Evidence](#), 20 April 2021 (Agnew).

125 CNCA, Simpson Brief citing Gregory J. Levine, “Ombudsman Legislation in Canada: An Annotation and Appraisal,” *Carswell*, Toronto, 2011, p. 72.

126 *Ibid.*, p. 71.

127 *Ibid.*, p. 72.

128 Barbara Mclsaac was a prominent lawyer in Ontario who retired in 2020. See: Law Society of Ontario, [Law Society presents honorary LL.D. to Barbara Mclsaac](#).

129 CNCA, Brief, Mclsaac report, p. 3.



powers, including the power to compel witnesses and documents, or is instead appointed as an ongoing commission of inquiry pursuant to Part I of the *Inquiries Act*.<sup>130</sup>

While McIsaac stated that the “best way” to achieve this objective “would be to enact legislation,” this approach could take some time.<sup>131</sup> The Subcommittee agrees with Dwyer that it is “absolutely urgent for impacted communities and workers around the world to have access to an effective mechanism to help redress and remedy harms that they have suffered.”<sup>132</sup> The Subcommittee is of the view that it is theoretically possible, as a stopgap measure, that the current Ombudsperson could be appointed as a commissioner under Part I of the *Inquiries Act*, which would immediately give her the power to compel witnesses and documents.

The two solutions proposed by witnesses to give the CORE the power to compel witnesses and documents were supported by the majority of the members, but did not receive unanimous consent. Thus, in keeping with the Subcommittee’s tradition of consensus, the following two solutions were considered:

#### **Consideration 1**

**That the Governor in Council appoint the Canadian Ombudsperson for Responsible Enterprise as a commissioner pursuant to Part I of the *Inquiries Act*. The Subcommittee recommends this appointment remain in place until legislation establishing the Canadian Ombudsperson for Responsible Enterprise with the power to compel witnesses and documents has been adopted by the Parliament of Canada.**

#### **Consideration 2**

**That the Government of Canada table legislation in the Parliament of Canada establishing the Canadian Ombudsperson for Responsible Enterprise and vesting it with the power to compel witnesses and documents.**

### **Beyond Redress: Preventing Human Rights Abuses from Occurring**

During the course of its study, the Subcommittee learned that the mechanisms that are in place to motivate Canadian companies operating abroad to respect human rights are voluntary. Most include some type of trade measure, such as the withdrawal of services

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130 Ibid., p. 4.

131 Ibid.

132 Ibid., p. 3; SDIR, [Evidence](#), 23 February 2021 (Dwyer).

provided by the federal government and EDC, that can be imposed on non-compliant companies, hampering their ability to successfully operate abroad.

While the Subcommittee notes that the CORE sends a strong signal to Canadian companies and the international community that Canada is committed to RBC and human rights, it is concerned that human rights abuses by Canadian companies operating abroad have persisted in spite of the existing RBC framework. The Subcommittee is equally troubled that that the CORE is not substantively different from the NCP, which has been widely criticized for its ineffectiveness.

The Subcommittee agrees that the CORE's specific focus on human rights and its ability to initiate investigations are important steps in the right direction. As mentioned, the majority of the Subcommittee agrees that its investigatory function could be strengthened by giving the CORE the power to compel, which could provide victims of human rights abuses by Canadian companies a fairer and more effective avenue for restitution.

Together with many witnesses, the Subcommittee expresses its concern that the mechanisms for preventing Canadian companies from abusing human rights abroad could be strengthened.<sup>133</sup> As indicated by several witnesses, some European jurisdictions, including France and Germany, are considering mandatory due diligence legislation. Similar legislation, if enacted in Canada, would require Canadian companies to “prevent human rights abuses throughout their global operations and supply chains.”<sup>134</sup>

The Subcommittee echoes Olthuis' analysis:

If companies were required to do a due diligence process and make sure that the impacts of their business operations don't have negative consequences, then ultimately, the CORE, even an empowered CORE, would have no business because there would be no complaints. Forward-looking legislation that would address the problems before they start would be a very good complement to the CORE. It doesn't replace it, but it would be a good complement.<sup>135</sup>

Deva stated that it “is an obligation of the Canadian government to lay down those expectations through mandatory human rights due diligence legislation and provide

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133 SDIR, [Evidence](#), 13 April 2021 (Simons); SDIR, [Evidence](#), 23 February 2021 (Dwyer); SDIR, [Evidence](#), 23 March 2021 (Deva).

134 SDIR, [Evidence](#), 23 February 2021 (Dwyer).

135 SDIR, [Evidence](#), 20 April 2021 (Olthuis).



access to effective remedy through courts and non-judicial mechanisms like CORE.”<sup>136</sup> Even the Canadian Ombudsperson for Responsible Enterprise signalled her support for mandatory human rights due diligence, stating that “[i]t’s the right thing to do.”<sup>137</sup>

As such, the Subcommittee recommends:

### **Recommendation 1**

**That the Government of Canada introduce legislation requiring Canadian corporations to conduct human rights due diligence to identify, prevent, mitigate and account for any potential adverse human rights, environmental and gendered impacts they may cause throughout their supply chains and operations.**

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136 SDIR, [Evidence](#), 23 March 2021 (Deva).

137 SDIR, [Evidence](#), 23 February 2021 (Meyerhoffer).

## CONCLUSION

With operations across the globe, many Canadian companies in the oil and gas, mining and garment sectors are not only industry leaders, but also set high standards for human rights throughout their supply chains and operations. However, some Canadian companies operating abroad have been accused of human rights abuses, not only tarnishing Canada's reputation as a global human rights defender, but also damaging the notion that Canadian companies uphold high human rights standards.

While the Subcommittee heard that Canada is an industry leader when it comes to ensuring that its companies respect human rights when operating abroad, it is not satisfied that the Government of Canada is doing all that it can to protect human rights where Canadian companies are operating. The Subcommittee is confident that by creating due diligence legislation, human rights abuses by Canadian companies could be prevented. It also believes that by doing so Canada could become a model for countries worldwide as a global human rights leader with respect to multinational corporations.

The Subcommittee shares the view of witnesses that strong RBC policies not only align with Canada's foreign policy objectives, but that they also give Canadians a competitive advantage.

The Subcommittee would like to thank all the witnesses who testified during its hearing and provided valuable evidence.





## APPENDIX A LIST OF WITNESSES

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The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's [webpage for this study](#).

Organizations and Individuals	Date	Meeting
<b>Canadian Network on Corporate Accountability</b> Emily Dwyer, Coordinator	2021/02/23	11
<b>Office of the Canadian Ombudsperson for Responsible Enterprise (CORE)</b> Sheri Meyerhoffer, Ombudsperson	2021/02/23	11
<b>Department of Foreign Affairs, Trade and Development</b> Hon. Mary Ng, P.C., M.P., Minister of International Trade Chris Moran, Director General Trade Portfolio Strategy and Coordination Sara Wilshaw, Chief Trade Commissioner, Assistant Deputy Minister International Business Development, Investment and Innovation	2021/03/23	14
<b>Export Development Canada</b> Mairead Lavery, President and Chief Executive Officer Anne-Elisabeth Piché, Senior Advisor Environmental and Social Risk Management	2021/03/23	14
<b>Office of the United Nations High Commissioner for Human Rights</b> Surya Deva, Vice-Chairperson Working Group on Business and Human Rights	2021/03/23	14
<b>As an individual</b> Penelope Simons, Associate Professor Faculty of Law, Common Law Section, University of Ottawa	2021/04/13	15

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Canadian Chamber of Commerce</b> Mark Agnew, Vice-President Policy and International	2021/04/20	16
<b>Kalikasan People's Network for the Environment</b> Clemente Bautista, International Network Coordinator	2021/04/20	16
<b>Mining Association of Canada</b> Pierre Gratton, President and Chief Executive Officer Ben Chalmers, Senior Vice-President	2021/04/20	16
<b>Platform of Amazonian Indigenous Peoples United in Defense of their Territory (PUINAMUDT)</b> Aymara León Cépeda, Sociologist and Human Rights Coordinator, Peru Subgroup of oil spills	2021/04/20	16
<b>Prospectors and Developers Association of Canada</b> Lisa McDonald, Executive Director Jeff Killeen, Director, Policy and Programs	2021/04/20	16
<b>Task Force For Real Jobs, Real Recovery</b> Margareta Dovgal	2021/04/20	16
<b>United Steelworkers</b> Ken Neumann, National Director for Canada National Office Doug Olthuis, Department Leader Global Affairs and Workplace Issues	2021/04/20	16
<b>Department of Foreign Affairs, Trade and Development</b> Chris Moran, Director General Trade Portfolio Strategy and Coordination	2021/04/27	14

## APPENDIX B LIST OF BRIEFS

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The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [webpage for this study](#).

**Canadian Network on Corporate Accountability**

**Human Rights National Coordinator - Peru**

**Platform of Amazonian Indigenous Peoples United in Defense of their Territory (PUINAMUDT)**



## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meeting No. 41](#)) is tabled.

Respectfully submitted,

Sven Spengemann  
Chair



**Supplement to the Subcommittee on International Human Rights Report on the Canadian  
Ombudsperson for Responsible Enterprise**

**Supplementary Recommendation**

The Minister of International Trade in her testimony to the subcommittee indicated that Canadians and citizens around the world hold Canadian businesses in high regard and to high standards of human rights. The CORE is a new mechanism to assist in maintaining Canada's reputation and standards abroad and has the Minister's full confidence that it has the tools necessary to be an effective office. Additionally, the Minister stated in her testimony that, "*we can always review it once it has had sufficient time to operate and we see the results*".

Further to this, the Canadian Chamber of Commerce witness gave similar testimony to indicate that CORE is in its infancy but expressed concerns with questions of jurisdiction. Extraterritorial concerns at a minimum would require collaboration with foreign communities and their levels of governance. The witness further elaborated the Canadian government's intent to expand CORE's review to all sectors and that this endeavor would require greater industry consultation.

Finally, the witness for the Working Group on Business and Human Rights for the United Nations Human Rights office of the High Commissioner concluded that they strongly advocate for Canada to make improvements in international human rights. The witnesses' testimony expressed doubt of the CORE's effectiveness and raised the additional concern that the CORE's advisory capacity may result in conflicts of interest.

Therefore, following review of testimony delivered to the subcommittee, the Conservative Members of the Standing Committee on Foreign Affairs and International Development are pleased to submit the following recommendation to the Committee's report on the Canadian Ombudsperson for Responsible Enterprise:

*That the Government of Canada conduct a full review of the efficacy of the Canadian Ombudsperson for Responsible Enterprise every 4 years to ensure the office maintains effectiveness and reflects positively on Canada's role as a global human rights leader; that such a review be comprehensive in its nature; and, that such a review be conducted by an independent expert panel.*

