



**Centre for Excellence in Corporate Social Responsibility Workshop:**

**Implications of the Guiding Principles for the Implementation of the United Nations Framework for CSR in the Canadian Extractive Sector**

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**Comments on behalf of the Canadian Network on Corporate Accountability (CNCA)**

**Karyn Keenan**

I'd like to begin by identifying several elements in the Guiding Principles that are useful to assess the current legal and policy framework in Canada regarding human rights and the overseas operations of Canadian extractive companies.

The Guiding Principles:

- stipulate that states must enforce legislation that requires business to respect human rights;
- call for states to protect against human rights abuse by business enterprises that receive support and services from state agencies such as export credit agencies;
- identify state based judicial and non-judicial grievance mechanisms as the foundation of a wider system of remedy; and identify state based non-judicial mechanisms as complementary and supplementary to judicial mechanisms – in other words, the judiciary is identified as the centerpiece of an effective system for remedying human rights abuse.

I'd now like to examine the regulatory context in Canada through the lens of the UN Protect, Respect and Remedy Framework:

a. State duty to protect

With very few exceptions, there are no regulatory provisions in Canada that require Canadian companies to respect human rights overseas.

- Those regulatory provisions that do exist are rarely enforced.
- There are no human rights reporting requirements in Canada.
- And no regulatory provisions that require state actors that provide financial and other forms of support to the private sector, such as embassies, the Canadian Pension Plan and Export Development Canada, to undertake human rights due diligence themselves or to require it of their clients.

Canadian policy in this area is also weak.

- The Government of Canada lacks an explicit policy articulating its expectation that Canadian companies respect human rights in their overseas operations.
- Canada lacks a policy to include provisions designed to protect human rights in its bilateral investment treaties and free trade agreements.
- And Canada does not proactively seek to ensure that international financial institutions and their clients operate in a manner that is protective and respectful of human rights.

#### b. Access to remedy

- Enormous barriers exist for non-nationals who seek legal redress in Canada. Thus far, those who have sought justice before Canadian courts have failed.
- The non-judicial complaint mechanisms in this country are either ineffectual or extremely limited in scope.

#### c. Corporate responsibility to respect

Not surprisingly, given the weak policy and legal context I've just described, Canadian companies aren't satisfying their responsibility to respect human rights.

Extremely serious human rights violations continue to be associated with Canadian operations overseas. Community leaders and local residents are killed. Other cases involve credible accusations of sexual abuse, intimidation, corruption, forced relocation and the destruction of resources that support local livelihoods.

A recent study commissioned by the Prospectors and Developers Association of Canada reveals that Canadian companies are implicated in four times as many violations of CSR as companies from other countries. The study included cases of human rights abuse, community conflict, and unlawful or unethical practices.

Does the Government of Canada's 2009 CSR strategy respond to these problems? Does it bring us into alignment with the elements of the Guiding Principles that I identified at the beginning of my comments?

In considering this question, it's important to recall that the CSR strategy was the government's response to a consensus report developed by civil society and industry that called for:

- the adoption of a policy to link government support for companies with respect for human rights; and
- the creation of an independent and credible non-judicial grievance mechanism with the power to undertake fact-finding, to make determinations regarding corporate compliance and to issue recommendations.

What is the government's CSR strategy?

#### 1. The government's CSR policy promotes performance guidelines

These guidelines include the International Finance Corporation's Performance Standards, which are widely criticized for their deficiencies in the area of human rights. Participants in the National Roundtable process, including industry representatives, acknowledged those deficiencies and recommended that the Performance Standards be complemented with human rights provisions.

Apart from this weakness in the content of the standards, the government provides no incentive for industry to comply with the guidelines, and in particular, fails to link compliance with the provision of government support.

#### 2. Office of the Extractive Sector CSR Counsellor

While the office may prove successful in supporting dialogue in relatively straight forward, non-contentious cases involving Canadian extractive companies, it's a far cry from the ombudsman recommended in the Roundtable report and the complaint mechanism established in Bill C-300.

The office does not undertake fact-finding, does not assess wrong-doing and does not apply sanctions. It's constrained by limited resources and the discretionary nature of its process – that is, the inability of the office to compel corporations to participate in its procedure.

And unfortunately, the office supplemented existing complaints mechanisms that have proven ineffectual in resolving conflicts and providing remedy.

#### 3. The CSR policy also includes new CIDA programming in communities that neighbour mine sites. Thus far there is little transparency about this initiative but it raises concerns about

instrumentalizing development assistance to facilitate or legitimize commercial objectives. This is of particular concern as it involves the mining industry, a sector associated with significant adverse impacts to human rights.

I think it's clear that the CSR strategy does not address the challenges I identified earlier, nor does it respond to the elements of the Guiding Principles with which I began my comments. Canada still lacks legal provisions that require companies to satisfy their responsibility to respect human rights; it still lacks effective instruments to protect against human rights abuse by business enterprises that receive support and services from state agencies such as Export Development Canada; and barriers to justice for the victims of human rights abuse remain significant in this country.

What should be done?

A few places to start:

1. Legal requirements for government agencies and their private sector clients to undertake human rights due diligence.
2. Legal restrictions prohibiting the commission of serious human rights violations by Canadian companies overseas and the application of effective sanctions.
3. Binding human rights reporting obligations.
4. The inclusion of human rights obligations in bilateral investment treaties and free trade agreements.
5. Regulatory provisions that afford access for non-nationals to Canadian courts.
6. The creation of an independent, effective extractives ombudsman.
7. Leadership on the part of the Canadian government in the development of an international legal instrument regarding business and human rights.