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**INITIATIVE**  
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**Presentation to the  
Standing Committee on  
Foreign Affairs and International Development  
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October 22, 2009**

The Halifax Initiative is a coalition of human rights, environmental, faith-based, development and labour organizations. Our objective is to transform public international financial institutions to achieve poverty eradication, environmental sustainability and the full realization of universal human rights.

My work focuses on the operations of public institutions that provide support to the private sector, in particular the International Finance Corporation of the World Bank Group and Export Development Canada. The latter, a Crown corporation, is Canada's export credit agency and will be the focus of my comments this morning.

The extractive sector is the single greatest recipient of support from Export Development Canada (EDC)<sup>1</sup> and the Crown corporation has plans to expand its assistance to extractive companies.

Export Development Canada does not have a good record in this area. The agency has provided support to a number of mining projects that have generated serious environmental and social impacts, for which affected individuals and communities have been unable to access compensation or other remedies.

Perhaps the most infamous case concerns the massive tailings dam failure that occurred at the Omai gold mine in Guyana in 1995. Three years following the disaster, a lawsuit was initiated in Canada by indigenous people affected by the spill. The Canadian court refused to hear the complaint, arguing that Guyana was the appropriate forum for the action. A subsequent case brought in Guyana was also dismissed, leaving the victims without recourse.<sup>2</sup>

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<sup>1</sup>EDC supported \$27 billion worth of exports and investments in the extractive sector during 2008. See: Managing Risk, Maximizing Opportunities. EDC Annual Report 2008.

<sup>2</sup> See Scott, Craig and Robert Wai, "Transnational Governance of Corporate Conduct through the Migration of Human Rights Norms: The Potential Contribution of Transnational 'Private' Litigation," in C. Joerges, P. Sand and G. Teubner, eds., *Transnational Governance and Constitutionalism* (Oxford: Hart Publishing, 2004) 287-319.

Several other EDC-supported projects merit attention, including the Bulyanhulu mine in Tanzania. Local residents allege that over fifty artisanal miners were killed by Tanzanian troops in order to clear the mining concession to make way for commercial operations. Indigenous people affected by the PT Inco nickel mine and smelter in Indonesia complain that they have lost prime agricultural land, that the local environment has been contaminated and that they suffer threats and intimidation by the police. In 1998, a large cyanide spill took place at the EDC-supported Kumtor mine in Kyrgyzstan. EDC also funded the Marcopper mine on Marinduque Island in the Philippines where environmental contamination destroyed the source of livelihood for local fishing villages.<sup>3</sup>

More recently, the EDC-supported Veladero mine in Argentina was the subject of complaint before that country's National Ombudsman. The office of the National Ombudsman, which is independent of government, is mandated to protect legally-sanctioned rights and freedoms, including human rights. Local actors who lodged the complaint regarding Barrick's mine were concerned about its impacts on the San Guillermo UNESCO Biosphere Reserve. The Ombudsman accepted the complaint and in 2008, reported that the mine concession violates several national laws. He called for an immediate halt to mining activity in the reserve. This year, an Argentinean environmental organization filed a complaint regarding the mine with the Supreme Court. The complainants, who express concern that mining operations are causing irreversible damage to local glaciers, have asked the court to issue an order for an audit that would assess whether the company is in compliance with national laws. Intense debate continues among Argentinean parliamentarians concerning the future of that country's glaciers. Last year President Fernández de Kirchner vetoed legislation designed to protect glacial deposits. The law, which prohibits mining, oil and gas operations in or around glaciers, received the unanimous approval of Congress.<sup>4</sup>

EDC continues to provide support for Canadian extractive companies that invest in countries with weak regulatory frameworks, inadequate institutional capacity and poor law enforcement.

The Crown corporation is currently considering support for a major mining project in the Democratic Republic of Congo, a country with negligible governance capacity, that is plagued by widespread human rights abuse, and where resource extraction has provided the material basis for brutal conflict.<sup>5</sup>

Moreover, EDC recently opened a new office in Peru, from which it plans to expand support for Canadian extractive companies operating in that country. According to the Peruvian National Ombudsman, extractive investments constitute the single most important source of social conflict in the country.<sup>6</sup> Community members that resist the entry of foreign extractive companies on

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<sup>3</sup> For more information on these cases see the Halifax Initiative Mining Map.  
<http://halifaxinitiative.info/content/mining-map-mandatory-not-voluntary>

<sup>4</sup> See the Halifax Initiative Monthly Issue Update.

<http://halifaxinitiative.info/content/monthly-issue-update-january-31-2008>

<http://halifaxinitiative.info/content/monthly-issue-update-april-30-2009>

<sup>5</sup> See Halifax Initiative letter to Eric Siegel, President and CEO of EDC.

<http://halifaxinitiative.info/content/letter-eric-siegel-president-and-ceo-export-development-canada-re-tenke-fungurume-concession>

<sup>6</sup> <http://www.defensoria.gob.pe/conflictos-sociales/home.php>

their lands are intimidated, beaten and in some cases, killed.<sup>7</sup> Earlier this year, indigenous people in Peru mounted a major protest regarding the adoption of new legislative provisions that further facilitate extractive operations in their territories. On June 5 the national police attacked the protestors, triggering a violent confrontation that ended with the deaths of over 30 individuals. The Prime Minister was forced to resign over the government's handling of the incident and Congress repealed a number of the contested decrees.<sup>8</sup>

To avoid complicity in the environmental and human rights abuses that are common in these contexts, Export Development Canada must apply robust and transparent environmental, social and human right standards to its clients.

Currently, EDC relies on the International Finance Corporation's Performance Standards and the Equator Principles. The latter instrument, which was developed by private banks, is largely based on the Performance Standards.

The Performance Standards are widely recognized as the *de facto* standard set for multinational companies that invest in developing and emerging markets. However, they suffer from several important debilities. They are weak on human rights. With the exception of labour rights, the Performance Standards neither reflect nor reference international human rights norms.<sup>9</sup> The multistakeholder Advisory Group to the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries, of which I was a member, recognized this important shortcoming. The Advisory Group used the Performance Standards as the basis of the Canadian CSR Standards that were proposed for adoption by the Canadian government but supplemented those standards with international human rights norms.<sup>10</sup>

The second problem with the Performance Standards and Equator Principles is that they are discretionary. Export Development Canada is under no obligation to apply them, to enforce them or to sanction clients that fail to comply. EDC adopted the Performance Standards through an OECD Recommendation that explicitly permits signatories to derogate, at their discretion, from the standard set.<sup>11</sup> Compliance with the Equator Principles is also optional. Under the Equator Principles, companies are required to comply with the Performance Standards to the satisfaction of the implementing financial institution. Moreover, non-compliance is permitted as long as any deviation from the Standards is "justified." No guidance is provided regarding the acceptable threshold for "satisfactory" levels of compliance or "justified" deviation from the Standards.<sup>12</sup>

Bill C-300 remedies these shortcomings. It ensures that EDC's existing standards are consistently applied and supplements them with international human rights norms to which Canada is a signatory. This will strengthen EDC's due diligence, steering it away from projects that carry a high risk of generating negative human rights impacts. It will provide EDC clients

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<sup>7</sup> See, for example, <http://www.perusupportgroup.org.uk/pdfs/Mining%20and%20Development%20in%20Peru.pdf>

<sup>8</sup> <http://www.hrw.org/en/news/2009/06/10/peru-investigate-violence-bagua>

<sup>9</sup> See: [http://www.ciel.org/Ifi/IFC\\_Framework\\_7Aug08.html](http://www.ciel.org/Ifi/IFC_Framework_7Aug08.html)

<sup>10</sup> <http://halifaxinitiative.info/updir/AdvisoryGroupReport-March2007.pdf>

<sup>11</sup> <http://www.oecd.org/dataoecd/26/33/21684464.pdf>

<sup>12</sup> <http://www.equator-principles.com/principles.shtml>

with valuable guidance regarding their expected standard of operation. Finally, it will ensure that Canada is in compliance with its international human rights obligations in the provision of export credit. As an agency of the Canadian government, Export Development Canada is bound by Canada's international human rights commitments. Currently, there is no mechanism to ensure that its operations are consistent with those commitments.<sup>13</sup>

Bill C-300 will also bring EDC in line with recommendations on export credit agencies made by the UN Secretary-General's Special Representative on business and human rights, John Ruggie. In a report to the Human Rights Council, Mr. Ruggie argues that export credit agencies should require that their clients perform adequate due diligence regarding their potential human rights impacts. According to the Special Representative, such due diligence will allow these agencies to identify investments that require greater oversight and those where the risk is too great for state involvement.<sup>14</sup>

Following the release of the Special Representative's report, EDC published a five paragraph "Statement on Human Rights."<sup>15</sup> EDC describes the Statement as an articulation of principles. The Statement does not provide for the level of due diligence that Mr. Ruggie advocates. It is silent on the issue of whether and how EDC assesses the potential for adverse human rights outcomes from client operations, what it expects of its clients in the area of human rights and how it ensures that clients meet those expectations, over the life of a project.

I'd now like to speak for a moment about the investigation of complaints concerning EDC client operations. EDC is one of few export credit agencies that has a complaints mechanism. However, the office of the Compliance Officer has processed just two complaints since it was created in 2001. Affected communities and some civil society organizations have chosen not to use this mechanism because it lacks independence, transparency and power. The office is maintained and staffed by EDC. Compliance audits, when undertaken, are internal. Scant information is provided to complainants to explain the Officer's findings. Moreover, the Crown corporation is under no obligation to adopt any recommendations that the Officer may make at the conclusion of an audit.

The complaint mechanism established under Bill C-300 remedies these problems. The mechanism is independent of EDC and involves public reporting. Moreover, findings of non-compliance bring consequences. While the complaint mechanism will not provide individuals and communities who are affected by EDC-supported extractive projects with access to legal redress, which is an issue that deserves the attention of this legislature, it will afford them the opportunity to have their case investigated and may result in a shift in corporate behaviour. Moreover, the complaints mechanism under Bill C-300 is consistent with the recommendation of the Advisory Group to the Roundtable process regarding the appointment of an Ombudsman. As with Bill C-300, this office was to receive and investigate complaints regarding the overseas operations of Canadian extractive companies.

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<sup>13</sup> For more information see the Halifax Initiative report, Export Credit Agencies and the International Law of Human Rights.

[http://halifaxinitiative.info/updir/ECAs\\_and\\_HR\\_law.pdf](http://halifaxinitiative.info/updir/ECAs_and_HR_law.pdf)

<sup>14</sup> <http://198.170.85.29/Ruggie-report-7-Apr-2008.pdf>

<sup>15</sup> [http://www.edc.ca/english/social\\_15113.htm](http://www.edc.ca/english/social_15113.htm)

To conclude, Bill C-300 addresses shortcomings in EDC's due diligence policies and practices, and weaknesses with its complaints mechanism. Moreover, the legislation is consistent with consensus recommendations regarding these issues made by the Advisory Group to the Roundtable process. The reforms contained in Bill C-300 will help to ensure that EDC no longer funds extractive projects that result in serious environmental and social harm.