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Presentation before the
Standing Committee on Foreign Affairs and International Development

The Role of the Private Sector in Achieving Canada's International Development Interests

May 30, 2012

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Thank you for the opportunity to speak before this committee.

The Halifax Initiative is a coalition of development, environmental, faith-based, human rights and labour organizations that works to democratize the international financial system. The coalition, which was created in 1994, seeks to make public financial institutions more transparent, democratic and accountable.

My comments today will address the extractive sector, which is the focus of Canadian programming to promote the private sector in developing countries.

As a lawyer, I've worked on Canadian policy and law regarding the overseas extractive sector for over fifteen years. While living in Peru, I worked directly with indigenous communities affected by the operations of transnational mining companies. Later, as a consultant to Amnesty International, I examined the impacts of a gas pipeline on indigenous communities in Peru. I was a member of the Advisory Group to the Canadian National Roundtable process in 2006 that examined Canadian extractive operations in developing countries.

Others have testified before this committee regarding the relationship between private sector investment and development. They reminded committee members that private sector investment *per se* does not lead to sustainable development. In fact, such investment can and often does undermine development. A complex set of political, legal, institutional and social conditions must exist in order for the wealth that is generated by the private sector to contribute in a meaningful way to the sustainable development of a country and its people, and to ensure that the oftentimes devastating costs associated with private enterprise are both minimized and internalized.

We know that in most places in the developing world, those conditions do not exist. This poses a dilemma for any thoughtful government considering the promotion of its companies as a mechanism to enhance development in the global South.

I'd like to spend a few minutes exploring these issues by focusing on the example of Peru, which is the country that features most prominently in CIDA's new programming in support of the private sector and is a country that I know well.

The extractive sector plays a central role in the Peruvian economy. Like many other resource rich countries, Peru was subject to a structural reform program imposed by the World Bank and the International Monetary Fund. The program began in Peru in the early '90s, after Alberto Fujimori came to power. Fujimori is currently serving time for embezzlement, bribery and extrajudicial killings. The structural reform program in Peru sought to facilitate private investment through a radical liberalization of the country's trade and investment framework, including privatization; lower taxes and royalties, such as the elimination of all royalties on mineral production; the introduction of 'stability' agreements; and the elimination of important social and environmental protections, among other measures. Foreign investment in the mining, oil and gas sectors has grown significantly since then.

By the late 1990s, Peru had one of the lowest levels of tax revenue in Latin America. Despite impressive economic growth, high levels of poverty persist, particularly in areas rich in mineral, oil and gas deposits. In a recent report concerning violence and social conflict, the Peruvian National Ombudsman explained:

[A]fter 10 years of continuous economic growth, with an average annual increase in real GDP of 7.15% and 20 years of free market economics, and despite the fact that poverty has ostensibly decreased, there still exists a large sector of the population that lives in a situation of poverty or extreme poverty that has not seen any substantial improvement in the quality of their lives.

Peruvians are marginalized from public decision-making processes, often receive little to no benefit from extractive investments, bear the burden of the often devastating environmental and social costs associated with these activities, and are beaten, incarcerated and killed when they stand in defence of their rights.

Given this context, it comes as no surprise that the Peruvian extractive boom has been accompanied by an explosion in conflict. According to the Peruvian Ombudsman, extractive investments constitute the single most important source of social conflict in the country. In a recent report, the Ombudsman reveals an increase in social conflict of over 300% in the past five years. The office reports an increase in the number, intensity and geographical extension of social / environmental conflicts.

A few examples:

In 2009, 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 resulted in the

deaths of 33 people. The Prime Minister was forced to resign over the government's handling of the incident and Congress repealed a number of the contested decrees.

More recent conflict in late 2011, concerning Newmont's proposed Conga mine, triggered the resignation of the Prime Minister and the entire Peruvian cabinet, less than five months after President Humala was sworn into office.

Last month I accompanied a delegation of indigenous Achuar leaders from the Peruvian Amazon here in the House of Commons. Their traditional territory has been included in an oil concession held by Canadian company, Talisman Energy. The Achuar have seen the neighbouring river shed devastated by an American oil company. Their neighbours can no longer eat local fish or animals. The Achuar came to Canada to demand that Talisman leave their territory.

Finally, this week, two indigenous people were killed and a state of emergency declared in Cusco, at Xstrata's Tintaya mine.

The conditions required to ensure that extractive investment supports sustainable development are clearly lacking in Peru. Yet Peru is the single most important destination for new CIDA-sponsored projects promoting the extractive sector.

How is the government of Canada addressing this issue?

One approach would be to support the development of robust governance capacity in Peru and other developing countries. A complementary option would be to ensure that the overseas operations of Canadian corporations that benefit from government support are effectively regulated in Canada.

How does Canada fare on these fronts?

First, it's important to note that Canada finances the World Bank and the International Monetary Fund and that it holds a seat on the boards of directors of both institutions. This means that Canada shares responsibility for the structural reform program that undermined the Peruvian government's capacity to both regulate the extractive sector and to exact a fair proportion of the wealth generated by extractive companies for the benefit of its people.

Canada further weakened Peru's hand when it signed a free trade agreement with that country in 2008. The agreement includes investor state provisions that will make it difficult for Peru to strengthen its regulatory framework in favour of local communities without running the risk of being sued by affected Canadian companies. This has been the experience of the government of El Salvador, which was sued by Canadian mining company Pacific Rim under a Central American free trade agreement when it declined to grant the company a mining licence.

For over ten years, CIDA funded a project that sought to enhance the Peruvian government's governance capacity regarding the mining sector. As researchers at the University of Quebec at Montreal have reported, the PERCAN project was limited in scope, focused on conflict resolution and did not address issues of legitimacy, responsibility and accountability that

underlie mining-related conflict in Peru. The project included an inherent bias in favour of mining, seeking to make the activity more socially acceptable. It did not contemplate the promotion of processes and institutional capacity to address the extreme power imbalances that exist between multinational companies, communities and local governments, or to create conditions for truly participatory processes of decision-making and oversight concerning mining operations. In fact, the number and intensity of mining-related conflicts in Peru grew significantly during the tenure of the PERCAN project.

Not only has Canada undermined Peru's capacity to effectively govern multinational companies, it has also refused to regulate the overseas operations of Canadian extractive companies, relying instead on ineffectual voluntary initiatives. The Conservatives defeated a modest bill that was introduced in the House of Commons in 2009 that would have ensured that any extractive company receiving financial or political support from the Canadian government satisfy international standards.

Until conditions in Peru and other developing countries address the enormous power differential between companies and local actors; are protective of communities' political, economic, social and cultural rights; and ensure that companies make meaningful contributions to state coffers, extractive investment is unlikely to promote sustainable development. And any government programming that promotes extractive investment in the absence of such conditions cannot credibly claim to contribute to sustainable development.