

# CANADA NEEDS TO BE OPEN FOR JUSTICE

---

- Canadian mining, oil and gas companies implicated in growing number of abuses (see the “Canada Brand” re Latin America)
- International accountability gap + existing mechanisms are woefully inadequate

Two related asks:

- Create an independent ombudsperson for the extractive sector and
- Facilitate access to Canadian courts

# THE MOMENT – CAUTIOUS OPTIMISM

---

## 1. Implementable and reasoned proposal

- Model legislation

## 2. Canadian political party commitments

- to create ombudsperson (almost all)
- remove barriers to access to courts (some)

## 3. Canadians motivated to take action

- 100,000 + through *Open for Justice*
- 500,000 (ombudsperson)
- 51 Canadian organizations signed on to the Corporate Accountability CSO statement

## 4. Global attention to access to justice

- UNGP and UNDRIP in Canadian policy
- UN treaty process
- SDGs + international assistance review
- Developments in Europe

## 5. Global focus on Canadian mining sector

- Reports of CEDAW (2016); ICESCR (2016); UNHRC (2015), ICERD (2012 and 2007)
- Inter-American Commission on Human Rights sessions; Trudeau letter - 200 + orgs

# CAUTIOUS OPTIMISM?

---

- No public commitment yet
- No formal reiteration of electoral promises
- No response to letter to Trudeau
- CSR Strategy within Global Affairs Canada, led by International Trade – responses in HofC
- CSR Counsellor – rebranding
- International context shifting

“Canada & Argentina pursue mining partnership in wake of cyanide disaster” – National Observer

# GLOBAL LEADERSHIP IN BUSINESS AND HUMAN RIGHTS ACT – NOV 2 2016

---





# WHAT IS THE OMBUDSPERSON?

---

## Core elements

- Legal mandate to **investigate** – with corresponding legal powers and procedural protections;
- **Public** and transparent process and outcome;
- **Report** on **findings, recommendations, remedy** and problem-solving;
- **Follow-up and monitoring**;
- Power to mediate, attempt dispute resolution in the right cases;
  - **Orientation** to protect human rights and correct power imbalance;
- **Independent** Institution and Office.

# INVESTIGATION – POWERS AND MANDATE

---

- Investigates complaints of harm and significant risk of harm. Harm is defined as infringements of international human rights
- Screens out vexatious, frivolous complaints
- Has legal mandate and legal powers to undertake effective investigations, and investigates all complaints (with listed exceptions)
- Includes robust protections for companies, individuals and communities

# PUBLIC REPORTING AND PROCESSES

---

- Regular public updates on progress
- Information posted in a timely manner throughout the complaint process, including requests for information, notice of investigation and final recommendations
- Report on findings, recommendations, remedy and problem-solving
- Public and transparent process and outcome

# FOLLOW UP AND MONITORING

- To be effective, recommendations must be monitored – note re settlements
- Company must report back on implementation of any recommendations made to them, ombudsperson then seeks community response to company report
- Recommendations to companies are non-binding, but failure to meaningfully implement recommendations may result in recommendation to withdraw/terminate government support





# ORIENTATION TO PROTECT HUMAN RIGHTS AND CORRECT POWER IMBALANCE

---

- Mediation may resolve issues under investigation, in certain circumstances
- Can be requested by any party at any time
  - Informed consent of all parties
  - Directly-affected complainant, who can represent others affected
  - Matter appropriate to mediation (ombudsperson opinion)
  - Investigation = relevant facts revealed
- Parties can be represented, fund for complainants
- Settlement approved by ombudsperson (role to protect human rights) and binding on parties

# INDEPENDENCE AND INTEGRITY



*"So, I'm the only one who sees a conflict of interest here?"*

- Arms-length from government
- Avoids undue influence by big business
- Measures to correct power imbalance
- Appointment is transparent and merit-based
- Confidence in office and office holder is key

# CNCA MEETINGS, RESPONSE AND ASKS

---

- Minister Freeland's Office
  - Prime Minister's Office
  - Global Affairs Canada
  - Parliamentary committees (Trade, Foreign Affairs, Human Rights)
  - NRCAN
  - Industry associations
- ✓ Keep your promise!
  - ✓ This needs to be a government bill
  - ✓ Raise this with Minister Freeland
  - ✓ Study / hearings on Canadian mining companies overseas
  - ✓ Questions in the House

# KEY MATERIALS AND RESOURCES

---

## Materials

- Executive summary of the legislation <http://bit.ly/2g2dwjF>
- Talk is not enough - comparison of CSR Counsellor, NCP and ombudsperson <http://bit.ly/2fNea6R>
- Take action → <http://cnca-rcrce.ca/campaigns-justice/take-action/>
- CNCA submission to International assistance review <http://bit.ly/2flhdKd>
- Business and Human Rights Resource Centre: <https://www.business-humanrights.org/>

## Contacts:

- CNCA coordinator: [coordinator@cnca-rcrce.ca](mailto:coordinator@cnca-rcrce.ca)
  - Email listserv
- Facebook: @cnca-rcrce
- Twitter: @open4justice