



March 7, 2017
Washington D.C.

The Right Honourable
Justin Trudeau, P.C., M.P.
Prime Minister of Canada
Ottawa, Canada

Re: Letter in support of the creation of a
Canadian Extractive Sector Human Rights Ombudsperson

Dear Prime Minister,

As a human rights organization with extensive expertise regarding the impact of extractive industries in Latin America, where a significant portion of mining activity involves Canadian companies, the Due Process of Law Foundation (DPLF) is honoured to address Your Excellency to express our **support for the creation of an Extractive Sector Human Rights Ombudsperson**. We understand that you are taking steps to establish this office within your government. We applaud this decision, while urging you to **ensure that the Ombudsperson's office is independent** and able to effectively investigate complaints of violations by Canadian companies operating overseas.

To be consistent with Canada's duties according to international human rights law, the Ombudsperson's office should have a mandate to advance **Canada's extraterritorial obligations (ETOs)** to respect, protect, and fulfill human rights in the context of extractive activity abroad. The Maastricht Principles,¹ an expert restatement of the international law basis for ETOs, make clear that States must adopt and enforce measures to protect economic, social, and cultural rights with respect to a corporation's conduct abroad, where that corporation, "or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned." Furthermore, the Inter-American Commission on Human Rights has recognized that the state duty to investigate human rights violations by private parties arises from both the American Convention on Human Rights and the American Declaration

¹ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, adopted on September 28, 2011, available at https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf

on the Rights and Duties of Man.² Accordingly, **home states may be held accountable for their failure to regulate corporate activity overseas** and for lacking grievance mechanisms in the event of violations connected to such corporate activity.³

Therefore, in light of the **large-scale extraterritorial impact of Canadian oil, gas, and mining companies**, an effective Ombudsperson is needed to investigate allegations of human rights abuses and environmental damage abroad, and to form an opinion on whether Canadian companies are causing or contributing to such harm. To ensure the impartiality, credibility, and transparency of this mechanism, the Ombudsperson must be **granted independent fact-finding powers**, in order to address what is often an acute power imbalance between affected communities and extractive companies.

As discussed in the report *[The Impact of Canadian Mining in Latin America and Canada's Responsibility](#)*,⁴ Canadian extractive operations abroad have been implicated in violations of environmental, economic, and cultural rights in the region. Moreover, the report explains that numerous mining projects have engaged in forced displacement or fraudulent land acquisition, breaking down the social fabric of affected communities and dividing their members through agreements that fail to recognize collective-representation authorities. The report covers in detail many other examples of the **power imbalance between local communities in several Latin American countries and the Canadian extractive industry**. For instance, it shows that the licensee company of the Entre Mares mine in Honduras has displaced the neighboring communities by forcing them to sell their land. In Chile, the report underscores that Barrick Gold stipulated a payment of US\$60 million over 20 years with the irrigators of Valle de Huasco as compensation for the harm to their agricultural products caused by the gold deposits of the Pascua Lama project. In time, the payments divided the local communities due to complaints of corruption in the management of funds and by means of advertising campaigns. In Mexico, the town of Chicomuselo, Chiapas State, had opposed Blackfire's Payback mine since its inception in 2008. In November 2009, after participating in peaceful protests against the project, Mariano Abarca Robledo was threatened, arrested, and murdered. Although employees and contractors of the Blackfire Exploration company were accused of participating in these crimes, the Canadian Embassy failed to adequately address these complaints.

These examples illustrate the **need for the Ombudsperson to have independent fact-finding authority, rather than following a joint fact-finding model akin to mediation**. Indeed, calls for a joint fact-finding model are inappropriate in the context of power imbalances and could serve to further exacerbate this dynamic, as the more powerful and

² I/A Court H.R. Case of Velásquez Rodríguez v. Honduras, July 26, 1988, para. 176; I/A Court H.R. Case of Blake v. Guatemala, July 2, 1996; I/A Court H.R. Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, September 17, 2003, paras. 140, 147 and 150.

³ Corporate Accountability Working Group of the International Network for Economic, Social and Cultural Rights (ESCR-Net), *Global Economy, Global Rights: UN Treaty Monitoring Bodies Increasingly Interpret Extraterritorial Obligations in Response to Global Business Activities*, Aportes, Vol. No. 20, Due Process of Law Foundation (DPLF) 2015, at 14–16.

⁴ Working Group on Mining and Human Rights in Latin America, *The Impact of Canadian Mining in Latin America and Canada's Responsibility, Executive Summary of the Report Submitted to the Inter-American Commission on Human Rights*, available at http://www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf (2014).

well-funded extractive companies would likely dominate a joint fact-finding process at the expense of the victims.

The above-mentioned report also identifies **policies and practices of the Canadian government that encourage, rather than prevent, human right violations, which should be addressed by the Ombudsperson.** Some of these include Canada's financial and political support for the transnational corporations domiciled in its territory, without requiring them to comply with international human rights standards; undue influence by Canadian government officials in the domestic legislative process of host states; and shielding Canadian companies from accountability through free trade agreements.

Our overarching conclusion is that **Canada does not currently have an adequate legal framework to prevent and punish human rights violations caused by transnational corporations abroad.** This point was made clear by the UN Human Rights Committee in its Concluding Observations on the Sixth Periodic Report of Canada, which regretted the absence of an effective independent mechanism with powers to investigate complaints against Canadian companies operating abroad—in particular, mining companies—that adversely affect the enjoyment of human rights.⁵ The Inter-American Commission on Human Rights has also made specific reference to Canada when stressing that home countries of transnational companies must take special measures to prevent human rights abuses from their operations abroad.⁶

Therefore, **to remedy the aforementioned legal shortcomings and meet its extraterritorial human rights obligations, Canada should promptly establish an independent Ombudsperson** with faculties to hold companies accountable for the harm caused by their actions abroad, as well as to issue recommendations to the government of Canada and to individual companies on how to prevent violations from occurring in the future. **Companies that do not comply with recommendations should no longer be eligible for governmental, especially diplomatic, support.**

We are certain that an effective and independent Ombudsperson would help counterbalance the conditions described above and the **lack of effective judicial remedies in many host states.** Although the Ombudsperson's office should not be the only grievance mechanism available to address human right violations perpetrated by Canadian extractive companies abroad, the development of this authority would clearly demonstrate the commitment of your administration to furthering human rights. However, the Ombudsperson will only accomplish its purpose so long as it has **independent powers** to investigate human rights abuses by corporations abroad.

Respectfully,

⁵ UN Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Canada*, CCPR/C/CAN/CO/6, August 13, 2015, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhskswUHe1nBHTSwwEsgdxQHJBoKwgsS0jmHCTV%2FFsa7OKzz9yna94OOqLeAavwpMzCD5oTanJ2C2rbU%2F0kxdos%2BXCyn4OFm3xDYg3CouE4uXS>.

⁶ http://www.oas.org/en/iachr/media_center/preleases/2014/131.asp



Katya Salazar
Executive Director
Due Process of Law Foundation

CC: The Honourable
François-Philippe Champagne
Minister of Trade
Ottawa, Canada