



# Media Briefing Paper

KAIROS Media Briefing Papers are written to help inform public discourse on key domestic and foreign issues.

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## The world wants Canada to be open for justice

**Canadian and international organizations press for law reform to hold Canadian mining companies accountable for human rights abuses overseas.**

“We are no strangers to fear. Nothing, though, prepared us for the level of fear expressed by those we visited in the villages and communities of the Zamboanga del Sur region in the Philippines. The fear is ever-present, consuming and at times overwhelming.”



*KAIROS delegation in the Philippines in 2014*

Desmond Jagger-Parsons, Board Chair of KAIROS

Canada, delivered this statement during a visit to regions in the Philippines impacted by Canadian mining operations, part of a 10-person learning tour of the country in August 2014.

Jagger-Parsons and other delegates visited mining-affected sites on the island of Mindanao and met with community members, including victims and their families, church leaders, local government officials and mining company representatives. The delegates reviewed evidence of numerous human rights violations allegedly associated with Canadian mining operations on the island. Documented violations include kidnapping, arrest, illegal detention, torture, displacement, loss of livelihood, intimidation, threats and harassment.

Approximately 60 percent of all the world’s mining companies are registered in Canada. These companies are often the “face” of Canada in the Philippines and many other countries in the global South. So, how should Canada respond when these companies are complicit in human rights and environmental violations abroad?

## Judicial Catch-22

Those wishing to pursue legal action for alleged mining abuses by Canadian companies are caught in a judicial Catch-22. Often, the domestic legal system is corrupt or inaccessible, while the courts in Canada will turn them away claiming that the cases lack jurisdiction in this country.

KAIROS Canada and its global partners want this to change.

KAIROS Canada is a member of the Canadian Network on Corporate Accountability (CNCA), which launched the *Open for Justice* campaign in Ottawa in October 2013. The CNCA, its members and their constituencies are pressing for federal legislation to hold Canadian companies accountable when they are complicit in human rights or environmental violations overseas.

Specifically the CNCA is calling on Canada to be a global leader in corporate accountability through the appointment of an independent human rights Ombudsperson for Canada's international extractive sector, and by facilitating access to Canadian courts for those who have been seriously harmed by those operations.

An extractive sector Ombudsperson would have the power to independently investigate complaints and make recommendations to corporations and the Government of Canada. It would replace the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor, which has been largely ineffective since it was established by the federal government in 2009.

Minister of International Trade Minister, the Hon. François-Philippe Champagne, oversees the CSR Strategy for the International Extractive Sector, which was designed and championed by the previous federal government. In 2014, when in opposition, Ms. Freeland, the former trade minister, voted in favour of a private member's bill to establish an extractive-sector Ombudsperson (Bill C-584).

An effective and credible Ombudsperson office will provide important long-term benefits to Canadian extractive companies. Extractive projects frequently create conflict and result in

## Quotable

“My point simply is that you cannot have a functioning global economy with a dysfunctional global legal system, there has to be somewhere, somehow, that people who feel that their rights have been trampled on can attempt redress.” – Former Supreme Court Justice Ian Binnie (Lawyers Weekly, August 29 2008.)

“What is your government doing to ensure that Canadian companies are not involved in human rights violations? And what are you doing to hold Canadian companies accountable?” - Luis Solano, Guatemalan journalist.

“While at the World Council of Churches 10<sup>th</sup> Global Assembly, many participants reminded me about the impact of Canadian mining companies worldwide. The extractive industry is the face of Canada, and our colleagues in churches from around the world want to know how we will work with them to hold these companies to account.” – Jennifer Henry, Executive Director, KAIROS Canada.

community grievances. When the underlying issues are not addressed fairly and quickly, conflict escalates and companies risk significant operating delays and interruptions with serious financial repercussions.

## Model Legislation

In 2016, CNCA commissioned the drafting of model legislation to create an extractive-sector Ombudsperson based on established legal principles and procedures. The model bill, drafted by Toronto-based law firm Goldblatt Partners on a *pro bono* basis, would create a non-judicial grievance mechanism to investigate allegations of harm associated with Canadian mining, oil and gas projects overseas and of failure to respect international human rights and environmental standards.

Conflicts that create negative images and publicity for companies become significant liabilities not only for the companies involved but for the entire industry as it seeks to negotiate with rights holders for access to new raw material deposits. The absence of a credible, impartial and independent oversight mechanism exacerbates the problem.

A robust system of corporate accountability, with a Canadian human rights Ombudsperson as its cornerstone, would contribute to a more stable and predictable operating environment where the responsible business practices of Canadian companies are recognized and rewarded.

CNCA members also want to see federal leadership to facilitate access to justice in Canada for people from other countries who have been harmed by the actions of Canadian companies.

There have been very few court cases in Canada concerning harms caused by the international operations of Canadian companies, despite a growing number of allegations. In most of these cases, Canadian courts have decided that Canada is not the most suitable forum, invoking a legal principle called *forum non conveniens*. However, in recent years, Supreme Courts in Ontario and B.C. have allowed cases made by overseas plaintiffs to proceed. This includes the landmark [Choc v. HudBay Minerals Inc.](#) in Ontario, and the [Nevsun Resources case](#) and [Tahoe Resources Inc. case](#) in B.C.

“Governments in Canada should simply clarify that our courts are an appropriate place to hear this kind of case and allow plaintiffs who have faced serious harms related to the international operations of Canadian companies to have their day in a Canadian court,” says Jim Davis, Ecological Justice and Africa Partnerships Coordinator for KAIROS Canada.

### Additional Resources

[KAIROS – Open for Justice](#)

[CNCA – Open for Justice](#)

[CNCA – Draft Model Legislation](#)

[CNCA – Canadian Leadership in Business and Human Rights: An Executive Summary of the Draft Model Legislation](#)

[Global Affairs Canada: Canada’s Enhanced Corporate Social Responsibility Strategy to Strengthen Canada’s Extractive Sector Abroad](#)

[The rock hard truth: Philippine Learning Tour raises concerns about mining related human rights violations in the Zamboanga peninsula](#)