



Media Briefing Paper

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

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.

“What happened to Canadian compassion, to the Canada that accepted so many refugees in the 80s?”

Nelly Rivera asked a delegation from KAIROS Canada and the United Church of Canada this question after telling them about the potential impacts of a Canadian mine on the border of Guatemala and El Salvador. Rivera was representing the Emmanuel Baptist Church and CEICOM (Center of Investigation on Investments and Business) in El Salvador.

Her question to the delegation members, who travelled to Guatemala in November 2013 to witness the effects of Canadian mining operations in that country, is not unusual. Approximately 60 percent of all mining companies are headquartered in Canada. These days, Canadian mining companies are often the face of Canada in Latin America and worldwide, and people from these countries have been asking Canadians some tough questions.

Judicial No-Man’s Land

Those wishing to pursue legal action for mining abuses by Canadian companies are caught in a judicial no-man’s land. Often, the legal systems in their own countries are corrupt or inaccessible, and Canadian courts turn them away, claiming that their cases lack jurisdiction in this country.

KAIROS Canada and our global partners want this situation to change.

KAIROS Canada is a member of the Canadian Network on Corporate Accountability (CNCA), which launched the *Open for Justice* campaign in Ottawa on October 22, 2013. The CNCA and its



KAIROS and United Church of Canada delegates with Nelly Rivera (middle, second from left) of CEICOM during a recent visit to Guatemala.

members 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 create a mandatory extractive-sector Ombudsman and to legislate access to courts for people who are harmed by the international operations of Canadian oil, mining and gas companies.

An extractive sector Ombudsman 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. The position is now vacant after the CSR Counsellor, Marketa Evans, resigned in October.

Canada's Office of the Extractive Sector CSR relies on voluntary guidelines and codes of corporate conduct. In the four years since the Office was created, no complaint was fully reviewed. In half of the cases, the corporations under review simply walked away. Even if a complaint were to go through a full review, the Counsellor is not mandated to determine whether harm has been caused or standards have been breached, or to undertake independent investigations or make recommendations.

"We brought the first case to the CSR Counsellor's Office in 2011 when Mexican workers were harassed and intimidated because they tried to unionize at a Canadian mine," said Valeria Scorza of the Mexican human rights group ProDESC. "Even though the Counsellor found that our complaint was made in good faith and met all the criteria, she couldn't do anything because the company wasn't willing to participate."

The federal government is currently conducting a five-year review of its 2009 corporate social responsibility strategy and is expected to announce its findings shortly.

CNCA members also want to see federal legislation that will allow people from other countries who are harmed by Canadian extractive companies to have their day in court.

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 10th 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.

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 not to exercise jurisdiction.

“The legislation we are seeking would simply clarify that Canadian 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 extractive companies to have their day in a Canadian court,” says Ian Thomson, Resources & Rights Partnerships Coordinator for KAIROS Canada.

Proposed Legislation

An Act to amend the Federal Courts Act (international promotion and protection of human rights), [Bill C 323](#).
Introduced by MP Peter Julian.

An Act respecting the promotion of financial transparency, improved accountability and long-term economic sustainability through the public reporting of payments made by mining, oil and gas corporations to foreign governments, [Bill C 474](#).
Introduced by MP John McKay.

An Act respecting corporate practices relating to the extraction, processing, purchase, trade and use of conflict minerals from the Great Lakes Region of Africa, [Bill C 486](#). Introduced by MP Paul Dewar.

In addition, in June 2013, the [Government of Canada announced](#) that Canada would develop mandatory reporting requirements on revenue transparency for the extractive sector. When developed and implemented, such rules would require Canadian companies to report publicly all taxes, royalties and other payments made to governments, both in Canada and internationally.

In what could be a landmark case, a civil lawsuit against Toronto-based HudBay Minerals for human rights abuses committed in Guatemala will proceed to trial by jury in Ontario.

Weak Regulatory Environment

Some countries enter into mining contracts with large foreign multinationals with little or no experience with the industry. In some cases, laws and regulations are too dated to allow them to effectively manage foreign extractives projects in the best interests of their citizens.

Structural adjustment programmes in the 1990s forced many countries to relax regulations or make other deep changes to their economies, usually to the benefit of foreign investors and the detriment of their own people.

Where regulations exist, there is often a lack of enforcement. [Canada has played a role](#) in weakening mining codes in several countries. Legal barriers, cost and corruption also make it difficult for those who suffer corporate abuse to seek justice in host countries.

Impacts to Canada

The Canadian government provides considerable political and financial support to Canadian extractive companies abroad. The lack of accountability and oversight in the extractive sector abroad affects the reputation of Canada and its extractive sector.

Canada’s international human rights commitments require it to take action. On more than one occasion, the United Nations Committee on the Elimination of All Forms of

Racial Discrimination has recommended that Canada adopt new measures to hold transnational corporations registered in Canada accountable for negative impacts they cause overseas.

Canada's responsibility to ensure that its companies respect human rights are further reinforced by the [Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights](#) and the [United Nations Guiding Principles on Business and Human Rights](#).

Canadian churches take action

Anglican Church of Canada/Evangelical Lutheran Church in Canada

- [Joint Resolution on Resource Extraction](#)
- [Assembly on Demand video on resource extraction](#)

Development and Peace

- [A Voice for Justice: Campaign for an Extractive Sector Ombudsman](#).

Mennonite Central Committee Canada

- [Mennonite Central Committee Canada's Mining Justice Page](#)
- [MCC Letter to the Federal Government re: Revenue Transparency, 27 June 2013](#)
- [MCC Letter to the Federal Government re: Extractive Sector Reporting, 29 Aug 2013](#)

The Presbyterian Church in Canada

- [General Assembly International Affairs Committee on Canadian mining companies and their activities overseas, 2012](#)
- [Report on Corporate Responsibility dialogue with Goldcorp](#)

The United Church of Canada

- [Petition Campaign to Regulate Canadian Mining](#).
- [General Council 41 Resolution](#) concerning the Beaconsfield Initiative.

Improving environmental and human rights performances will improve Canada's reputation, and provide a credible and independent way to distinguish between those corporations that respect human rights norms and the environment, and those that do not.

Additional Resources

[KAIROS Open for Justice page](#)

Media release: "[KAIROS presses Canada to be Open for Justice](#)"

[CNCA Backgrounder – Open for Justice](#)

[CNCA Briefing Note - Open for Justice](#)

[Lawsuits against HudBay Minerals to proceed to trial by Ontario jury](#)