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Chair

Mr. Kevin Sorenson

Standing Committee on Foreign Affairs and International Development

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● (0900)

[*English*]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good morning, colleagues.

This is meeting number 35 of the Standing Committee on Foreign Affairs and International Development, Tuesday October 27, 2009.

I'm just going to remind our colleagues that we're going to break a little early today to hold a brief steering committee meeting that will answer some of the questions we had in our last meeting, and that'll be just across the hallway. That's not for the entire committee, but it is for the steering committee. But the committee then will be adjourned early today.

Our orders of the day include a return to our committee study of Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries. Witnesses are in attendance this morning from 9 o'clock to 9:45.

We welcome back Alex Neve, secretary general of Amnesty International. Welcome to our committee again. And sharing the panel we have, from the Canadian Catholic Organization for Development and Peace, Michael Casey, the executive director, and Ryan Worms, the education and research officer.

We'll proceed right into your comments and then we'll go into our rounds of questioning. We look forward to what you have to say.

Mr. Casey.

Mr. Michael Casey (Executive Director, Canadian Catholic Organization for Development and Peace): Thank you very much, Mr. Chairman.

I'm just taking advantage here of a computer failure on the part of my colleague, who graciously offered us the opening slot to speak while he prepares his notes by hand from memory.

Development and Peace is the official international development agency of the Catholic church in Canada. We were founded in 1967 by the Catholic bishops, and we have two mandates. One is to support projects to fight poverty in countries of the south. The other is to promote awareness of development issues among the Canadian population. We're a membership-based organization, and we have approximately 13,000 members from coast to coast across Canada. We are currently active in 33 countries abroad, with approximately 200 partnerships in all the major continental regions: Latin America, Africa, Asia, and the Middle East.

I want to speak today about our education and public engagement campaign that focused on extractive industries, and particularly in support of Bill C-300.

Every year we conduct a thematic campaign related to particular development issues. We follow several key principles that are part of the values of the organization, looking to guide the awareness of the public in this campaign on resource extraction and management. The principles behind this campaign include a recognition of the sacredness of the earth, the need to share resources in a peaceful and sustainable manner that benefits the common good and respects the human rights of all, and the right of people to have control over decisions that affect their lives and communities.

We've intervened on this concern on a number of previous occasions. Over the past several years we've maintained a focus on the actions of Canadian mining companies in the global south and the need for mining companies to carry out their operations in a socially and environmentally responsible manner. In order to ensure that Canadian mining companies respect Canada's commitment to international standards for human rights and environmental law, we strongly believe that Bill C-300 should be adopted. Although this bill does not contain all the measures that were recommended by the final report of the national round tables in March 2007, it is the strongest answer to date that has been proposed to solve the problems that the process was attempting to address. We feel that this is a good and necessary step in the right direction.

As you are all aware from previous testimony, Canada is a major player in the international extractive industry, with significant investments abroad. The Toronto Stock Exchange is the most active mining exchange in the world. In 2008, 60% of the world's mining and exploration companies were listed in Canada.

Most of the Canadian mining companies behave responsibly. Those companies not only drive prosperity here at home; they also provide jobs, opportunities, and other benefits in local communities abroad. Unfortunately, some other companies give little or no importance to the impact of their operations on the living conditions of people in the south. There are documented cases of egregious disregard by Canadian companies operating in many countries, and these have been presented in previous testimony to this committee, notably on May 25 by the Honourable John McKay, and on October 8 by Mining Watch Canada.

Development and Peace is not against mining or the extractive industries, but we are calling for these industries to be held to account. There should be some avenue of recourse—an open, democratic, and just means—for those companies that do not meet a certain and necessary standard of behaviour, having been given ample opportunity to do so, to accept certain consequences. We believe that the inherently higher risk, danger, and pollution of this industry must be accompanied by a higher standard of care, responsibility, accountability, and a necessary presence in the legislative framework of this country.

I'm here today to speak for our members and represent the voices of many of our partners in developing countries who would be in favour of this bill. It is not just Canadians who are calling for more legislation and legal mechanisms that ensure mining companies are held accountable for their actions in the global south. The issue of responsibility of Canadian companies in extractive operations is something that is consistently raised by our partners in the countries where we work. I'll give you a couple of examples.

● (0905)

In 2008, in Cerro de Pasco, a mining centre in the Peruvian highlands, where Development and Peace has been working for almost 25 years, a local group downloaded our materials for our action campaign, translated them into Spanish, printed them, and received more than 3,500 signatures on the action cards, as well as organizing street theatre, public seminars, and advocacy activities on the mining activities in their community.

The same year, 4,400 residents of Canatuan, a community in the southern Philippines affected by the activities of the Canadian mining company TVI, signed our postcards and urged us to continue to lobby our government to appoint an ombudsperson to monitor the activities of Canadian mining companies operating abroad.

In Honduras, the Entre Mares mine, a subsidiary of Goldcorp, has been using cyanide to extract gold from the mine. This process is less expensive for the company, but the local population pays the real price. This process has caused 14 streams and rivers to dry up, contaminating surrounding lands, and has led to increased disease among the inhabitants and their livestock.

Our partner, Caritas Tegucigalpa, has provided us with testimony regarding the state of the local environment and the health of the people in the communities surrounding the mine. The mine uses 80 million tonnes of water per year, enough to meet the needs of 20,000 inhabitants, or over half the local population. After having rung up significant profits when the price of gold was at its height in 2008, Entre Mares is now preparing to shut down the mine. Caritas Tegucigalpa is asking Entre Mares to decontaminate the water, reforest the land. It must pay the fines, taxes, and other money due to national and local governments that have accumulated over the years. The company will also have to ensure that people who were displaced have titles proving they own their new land.

Caritas Tegucigalpa and Development and Peace are convinced the company has the means to close the mine responsibly, but will it be willing to do so? If a Canadian legal framework on the social responsibility of mining companies had been in place, it would have been possible to protect the rights of the people of the Siria Valley and to prevent these human and environmental tragedies from being repeated.

I have a quotation here from His Eminence Cardinal Oscar Andrés Rodríguez Maradiaga, who is the archbishop of the archdiocese of Tegucigalpa, in Honduras, and president of Caritas Internationalis. His quote:

> The increasingly frequent conflicts in different parts of the world between mining companies and affected communities, as well as the growing efforts of civil society organizations to demand stricter regulation, more rigorous monitoring, more responsible and transparent practices, are a sign that we can no longer continue to adhere solely to the logic of the business market that operates on the principle of the less invested, the greater the profits.
>
> We must move towards a vision of Corporate Social Responsibility, which cannot be reduced to corporate voluntarism alone but must be complemented by a social responsibility regulated by the state and international organizations. Such a redefinition is urgent, as the depletion of natural resources has been substantially accelerated partly because of the growing demand for precious minerals.

The passage of Bill C-300 into law would be a step in this necessary direction.

I want to speak for a minute about our campaign. Many of you members have likely received our cards or perhaps a visit by members of Development and Peace on this issue of corporate social responsibility. Over 500,000 Canadian citizens have demonstrated support for this bill by signing our action cards and letters as part of our public engagement campaign. These cards have all been delivered to the government. Over 120 meetings with MPs in their local ridings have been organized by members of Development and Peace across the country to discuss this issue. Citizens in all your ridings are concerned about this issue and would like to see the government respond adequately to the recommendations on the round table process on corporate social responsibility. This bill is the response they are looking for.

Our presentation today is the culmination of years of work and support from members of Development and Peace and those who have signed these cards. On May 12 of this year, Development and Peace delivered 38 boxes with action postcards addressed to Prime Minister Harper and signed through our recent campaign in 2008-09. Our supporters called on the Prime Minister to implement legal mechanisms to hold Canadian mining companies accountable for their actions in developing countries.

● (0910)

This last delivery of cards brings the total number of cards and letters delivered by us to the Government of Canada to more than half a million over the course of our three-year campaign. We began in 2006 and continued through 2009, each year accumulating between 150,000 and 200,000 cards.

With the last submission of cards, we asked that the Prime Minister create an independent ombudsperson office, appointed by Parliament, that can receive complaints about the activities of Canadian mining companies, investigate complaints, make recommendations in an effective manner, and operate in a transparent manner.

However, the hope that the round tables generated turned to disappointment as a result of the lack of response on the part of government to this collaborative, consensus-based report. Development and Peace decided to extend its education campaign on mining for one additional year to push that these recommendations be put into place. While we now have a response from the government, a corporate social responsibility strategy, we feel that it is not sufficient to adequately balance the opinions of all the parties involved. The passage of Bill C-300 would be a necessary step in the follow-up to this process.

We acknowledge that the CSR strategy constitutes the first steps in the implementation of the round table recommendations. It means that the government acknowledges the need for improvement in the behaviour of some extractive companies working abroad in developing companies. This is a good thing, but it is not enough. Bill C-300 would fill an important gap between what was recommended by the round table report and the government's response.

The Canadian government's response lacks teeth because it proposes voluntary action. It displaces the responsibility for irresponsible behaviour from mining companies to the governments of developing countries. In addition, the government's CSR strategy does not include strong sanctions for companies with damaging practices. Most importantly, there is no ombudsperson in the government's CSR strategy, as was recommended by the round tables; rather, there is a corporate social responsibility counsellor with limited functions, including hearing disputes and suggesting mediation if there is consent from all the parties. The position would be appointed by the Prime Minister's Office instead of by the Parliament of Canada.

There is no provision for an ombudsperson in Bill C-300, as private member's bills are not enabled to propose budgetary changes such as the creation of new positions. Development and Peace strongly urges the passage of this bill and strongly recommends that the government create a position of ombudsperson subsequent to the passage of the law, as was suggested by the round table report.

● (0915)

The Chair: Mr. Casey, we're at 13 minutes now. Can you conclude?

Mr. Michael Casey: I have one last comment.

The passage of Bill C-300 is a necessary step to ensure that Canadian companies respect environmental and human rights. This bill, as law, would make Canada a leader in corporate social responsibility in an era where the status quo is not sustainable. Its adoption would reflect not only the concerns of hundreds of thousands of Canadian citizens and the voices of those in developing countries affected by the operations of Canadian companies, but also the opinion and direction of the highest representatives of the Catholic Church in these countries. It would send a strong and timely message of leadership to the other leaders of the G8 and G20 in the months prior to Canada hosting this important meeting: that Canada has the means and the will to positively influence and lead behaviour in the industry.

Thank you.

The Chair: Thank you, Mr. Casey.

Mr. Neve, we'll see how good your memory is.

Mr. Alex Neve (Secretary General, Amnesty International): Thank you very much.

Yes, it's been a happy morning, having my computer fail me, but I'm very pleased to be here with you. I welcome the opportunity to share Amnesty International's views and recommendations with respect to Bill C-300.

Certainly for many decades the crucial global struggle to better safeguard and protect the human rights of women, men, and young people around the world has been very much focused on governments, both in the sense of governments being the ones who violate human rights and in the sense of governments being the ones who have to take action to protect human rights. However, in the past 10 to 15 years, there has been a multitude of ways in which the international system has recognized that it's vital to move beyond that sole focus on governments and to look at the various ways in which a range of non-state actors, certainly including companies, impact in very significant ways on human rights.

That's certainly very true when it comes to companies. On both sides of the coin, if they act responsibly, companies can in many important ways help promote and safeguard human rights and can strengthen human rights culture in the countries in which they operate; but when companies act in an irresponsible manner, we know only too well that their activities can and do, both directly and indirectly, cause or, at the very least, very significantly contribute to grave human rights violations.

Over the past decade, therefore, much has been done, a great deal of it in the broader context of trying to advance notions of corporate social responsibility. This takes us also into the realms of environmental protection and labour rights, for instance. To look at this issue of how to better ensure that we're getting the former company activities that will help promote human rights and avoiding the latter company activities that will cause or contribute to human rights violations, companies themselves have taken individual action, governments have launched some initiatives, and at the international level, initiatives like the UN Secretary General's Global Compact, work being done within the UN Human Rights Council, at the International Finance Corporation and other settings, things are being done as well.

What virtually all of those initiatives have in common are two significant shortcomings.

The first is that the human rights aspect of the various standards and principles that are being developed and adopted are, at best, vague, certainly almost always very general, and frequently even non-existent. For instance, the International Finance Corporation's performance standards, which are central to the government's new CSR strategy, are silent when it comes to human rights.

The second is that there is virtually nothing mandatory or obligatory about the expectation that companies will conform to these standards. The approach taken, rather, is to hope that companies will voluntarily choose to do so. As such, monitoring and enforcement mechanisms, where they exist, are generally weak and have no power to order or require companies to comply, but rather have power to suggest or advise.

In the broader human rights system, we've long learned that hopeful promises and voluntary commitments are not enough. It doesn't deliver the goods when it comes to protecting human rights. We, of course, want people, governments, to volunteer, but that doesn't get us to that end point of strong human rights protection. We know that only too well by looking at the international system. It's no different, and there's no reason it would be any different, when it comes to companies.

Much is at stake here. Company security forces, if not held to careful standards, can and do operate in ways—for instance, to dispel protests by indigenous communities in and around their operations—that lead to injuries and even the killing of protesters—the right to life at stake. Any irresponsible approach taken to how mining companies deal with their tailings and industrial waste may contaminate the local area and lead to serious violations of the right to health. Inappropriate use of company infrastructure by local security forces or failure to carefully monitor how company royalties are used by a government may simply exacerbate terrible wars and conflicts in regions where companies operate, again leading to civilian casualties.

● (0920)

So much is at stake, and clearly more is needed. That is why Amnesty International has so actively participated in all recent efforts to review and strengthen Canadian law, policy, and practice going back to 2005 when your subcommittee conducted its study. Certainly in 2006 we were an active participant in all cities that the round table process visited. We welcomed and endorsed the report prepared by the advisory group to that process and then, like many, waited anxiously for two years to see what the government's response would be.

While we do recognize and acknowledge that the government's new CSR strategy is a step forward, we are fundamentally disappointed with it with respect to the two key challenges I just mentioned earlier.

The first is the issue of standards. The new CSR strategy essentially takes up existing standards, the International Finance Corporation's standards, for instance, that I referred to earlier and a number of others that, combined, really give no more than scant or selective attention to human rights. The round table recommendation had called for new standards, very explicitly incorporating Canada's international human rights obligations.

The other concern is on the level of enforcement. The CSR strategy, of course, doesn't take up the call for strong, meaningful oversight and enforcement; gone is the idea of an ombudsman; gone is the idea of a tripartite compliance review committee. Instead, we have a CSR counsellor whose powers are really to advise and guide, and only to investigate if all are in agreement and with no real powers to sanction.

Bill C-300 offers Parliament an opportunity to move ahead on the human rights front, and as I say, it's very much needed. As such, Amnesty International certainly welcomes this initiative and calls on Parliament ultimately to pass it. There are ways in which we might have urged for it to be stronger, but we think it is the right step forward.

It's the right step forward when it comes to standards. It is so important that Bill C-300 calls for the development of international human rights standards, for instance, based on treaties that have been ratified by Canada, based on customary law. This is a crucial dimension that we think absolutely has to be key to any initiative in this area. We think that Bill C-300 moves us forward in a meaningful way when it comes to enforcement as well. The power and responsibility given to ministers to launch investigations when there are concerns about a company possibly falling short of these new standards and the associated possibility of that having implications for eligibility for EDC financing, for assistance from government diplomats and trade officers, and even of being a possible target for CPP investing, is all crucial.

So why not? What are the possible objections to a new approach that puts Canada's human rights obligations front and centre and endeavours to ensure there will be compliance with those standards? Most often what we hear is a fear that requiring Canadian companies to live up to what are sometimes described as cumbersome human rights obligations puts Canadian companies at a competitive disadvantage. Companies from other countries, goes the argument, don't have to live up to those obligations; forcing Canadian companies to do so costs money and means they can't compete.

In Amnesty's view, that is both overstated and shortsighted and it is ultimately irrelevant. It is overstated in that it is hard to imagine how putting in place measures to ensure that company personnel don't mistreat or even summarily kill protesters, or safeguards to avoid the possibility of company infrastructure being misused by government security forces to mount sorties in the region that would lead to civilian casualties is somehow so onerous and costly as to tip the balance between profit and loss.

Further, it overlooks and ignores the many ways that regard for human rights actually boosts a company's position, improves its reputation, ensures that there's a good relationship with the local population, and helps ensure stronger rule of law, all of which is beneficial in many ways to company operations and means that it is less likely that company will ultimately be a target, for instance, for boycotts or protests.

● (0925)

This argument is shortsighted in that it assumes that CSR improvements would somehow begin and end with Canada, that no other country is doing similar things or is likely to follow suit. Canada shouldn't shirk leadership but rather rise to it. We also should not assume that leadership is lonely at this point. Many countries are moving forward on this front. Canada can't be, shouldn't be, at the end of the line. We must be among the leaders and work persistently, bilaterally and multilaterally, to press others to adopt stronger laws and policies.

Lastly, as I said, this argument is irrelevant, as Parliament must ultimately recognize that Canada's international human rights obligations are on the line here. Human rights obligations do not only mean that government officials and agencies themselves must refrain from human rights violations. More is at stake. Governments are obliged to ensure that individuals, including individuals abroad, are protected from abuses at the hands of those over whom the government has some jurisdiction and authority. That is certainly the case with companies, which, after all, are incorporated under and regulated by federal and provincial laws and regularly benefit from various forms of government assistance and support. The government is obliged to act here.

Amnesty therefore very much believes Bill C-300 should be supported. It conveys the very important message that business can be good for human rights, but also that human rights can be good for business.

Thank you.

The Chair: Thank you, Mr. Neve.

Mr. McKay, seven minutes.

Hon. John McKay (Scarborough—Guildwood, Lib.): Thank you, Chair.

Before I ask the witnesses a question, I have to register an objection to this format, Chair.

We have EDC representatives sitting in the room here. For some bizarre reason—this was last week and now this week—you choose to not put the two together. There should be a conversation between those who are in favour of Bill C-300 and those who are against it.

I'm a guest to this committee, but I do want to lodge that objection. There should be a reasonable debate. Otherwise, we just end up talking—

The Chair: Actually, when our committee met, that suggestion was brought forward—

Hon. John McKay: I don't sit on this committee. It's just—

The Chair: —and the suggestion was turned down.

Anyway, go ahead, Mr. McKay.

Hon. John McKay: Thank you.

First of all, I want to express my sincere thanks to both Amnesty and Development and Peace for their enormous support in moving Bill C-300 to this stage and hopefully beyond.

Sometimes we sit here inside of some kind of objectivity bubble and talk about human rights. We talk about all kinds of initiatives at the UN and various other places. We don't actually get a feeling for what this is like on the ground.

Last week I talked to a man from Guatemala who had seven bullet holes in him, apparently courtesy of—I won't get into the facts—a Canadian mining company.

Again last week I talked to the former environment minister for Argentina, who talked about the ugly face of Canadians in Argentina and how it's actually destroying our reputation with that country.

I'd like you, Mr. Casey, but also Mr. Neve, to give Canadians examples of where mining operations in particular have gone wrong, whether it's Guatemala, Honduras, Papua New Guinea, Argentina, or Chile, where it is your personal experience, or the experience of your organizations, to give witness to those things.

The second question, if you can answer it, is to make the linkage between those particular companies, those particular issues, and Canadian financial support of those companies.

I wonder if you could possibly start, Mr. Casey.

● (0930)

Mr. Michael Casey: In terms of examples, I had mentioned a couple in our presentation. We have done extensive work in Honduras in particular, working with our partner there in documenting the effects of the activities of the Entre Mares mine. We had research done to demonstrate the level of toxicity that was in the water and the displacement of the people. We have prepared a document on that.

We worked with our colleagues from the United Kingdom, CAFOD, an organization similar to Development and Peace, who were using at the time, a year ago, the same theme. We developed a case study presentation on the effects of the San Martin mine in the Siria Valley. If you want some documentation, that is available.

Ryan can speak to that, if you'd like a few more details on that specific example.

Hon. John McKay: Let Mr. Neve go first, and then I'll have a follow-up question.

Mr. Alex Neve: It's sad that the global tour, in answer to your question, is getting larger and larger. As the world becomes smaller, as we become more and more aware of these issues, as organizations like our two organizations and others start to look more closely at these cases, we are starting to see more and more instances where companies, domestic and foreign, large and small, are very much in the midst of situations in which armed conflict and human rights abuses are taking a heavy civilian toll.

Amnesty's work in this area has ranged far and wide. I remember when Talisman Energy was present in Sudan. I remember our concerns about the operations of Ivanhoe Mines in Burma, and Anvil Mining in the Democratic Republic of Congo. Recently, we have been looking at a number of situations in Central and South America. There is a possibility that security forces employed by HudBay Minerals might have been associated with civilian killings Guatemala, and there are questions about Goldcorp's Guatemala operations.

In a lot of these instances the allegations remain unclarified. It has not been possible to get clear about where the responsibility lies. But there is no question that in these operations we hear of contested claims to land, concerns that indigenous peoples aren't being adequately consulted, and other things. This foments unrest in the area. Companies that don't have a solid human rights approach to these situations can find themselves confronting serious human rights challenges.

Hon. John McKay: Do you know whether any one of these companies about which you are concerned receives support from either EDC or CPP?

Mr. Alex Neve: I don't remember all of the specifics. I am aware that some have. We could probably formulate some of that more specifically. Maybe my friend has some of that information.

Mr. Worms.

[*Translation*]

Mr. Ryan Worms (Education and Research Officer, Canadian Catholic Organization for Development and Peace): Thank you.

We don't know whether the businesses that we monitored or that our partners have talked to us about have received funding. It seems to me that, in previous testimony, you were given more concrete information, particularly on Barrick Gold Corporation and its mining operations in Argentina or Papua New Guinea.

The studies and testimonials we receive come in almost every day. As soon as we meet with partners, whether it be in Central America, Africa or Asia, who work on human rights, the rights of peasants and aboriginal communities, the Canadian mining companies are always denounced as a major problem.

We conducted a more in-depth study with our partner Caritas Tegucigalpa on a case in Honduras, and the findings made with the support of scientists from Great Britain and our partner CAFOD are really distressing: 14 water sources were completely dried up by the operation of that mine. We found levels of arsenic and cyanide in people's blood, which necessarily condemns them to a future of malformations and various types of cancer. The evidence is well substantiated.

All our partners in the south tell us that this is the problem they're facing. That's why Development and Peace has conducted a three-year campaign for a Canadian legal framework to control the activities of these businesses.

● (0935)

The Chair: Thank you very much.

Ms. Lalonde, you have seven minutes.

Ms. Francine Lalonde (La Pointe-de-l'Île, BQ): I'll give the floor to Ms. Deschamps.

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): Thank you. We'll probably be sharing our time, Mr. Chairman.

Good morning and welcome. Thanks as well for sharing your vast experience in the field with us.

We know that the government isn't too keen on the idea of passing Bill C-300. It will probably oppose it. The government often raises the same arguments in opposing this bill. They say the principles of the bill go beyond the report's recommendations and that it could harm the Canadian economy. Lastly, the argument most often heard is that the bill could undermine the activities of EDC, when the businesses could be or would be facing non-compliance allegations.

I'd like to know your opinion on those three points, please.

Mr. Michael Casey: Thank you. We heard the same objections in other testimony given in committee. As Mr. Neve said in his presentation, the impact of our requests to reinforce government oversight of mining companies is negligible. The important thing for us is to have an ombudsman to lend the bill more weight and to reinforce the regulations on the mines.

Ryan has done a lot of work on this issue, and he may have some comments.

Mr. Ryan Worms: When the roundtable process took place and the recommendations were made, there was very great hope in civil society and certain mining companies that this file would move forward. I would like to read you a quotation from Prime Minister Harper from the 2007 G8:

> Implementation of the recommendations from this process will place Canada among the most active G8 countries in advancing international guidelines and principles on corporate social responsibility in this sector.

We really thought the government was going to follow the recommendations. We continued our campaign for two years, emphasizing that there should be an ombudsman, which we thought was the first step to take in order to receive and process complaints. The response we got was the appointment of an advisor who, as we've already explained, had very little or no decision-making or investigative power.

In view of this lack of response and application of the report's recommendations, we think that Bill C-300 at least provides a fair and transparent complaints mechanism because all the parties would be heard by the minister. You say this bill may perhaps go further than the standards recommended in the roundtable report. However, that's not what I think. The roundtable report already emphasized the deficiencies in international human rights standards; my colleague from Amnesty International moreover mentioned that. If we could include existing international rights standards in the social responsibility standards, that would be a major step forward.

● (0940)

Ms. Johanne Deschamps: Do you think this bill could harm the Canadian economy?

[*English*]

Mr. Alex Neve: No, I don't think it would at all.

I cannot think, off the top of my head, and I've heard no one point to an example of a company in Canada or anywhere around the world that has gone out of business because it has done the right thing when it comes to human rights. I think companies and those who raise this concern are, as I said in my remarks, being shortsighted in how they view this. Ultimately, a strong human rights record for any company, be it a mining company, a manufacturing company, or an information technology company, is only going to boost that company's record, reputation, and, ultimately, profitability in the end.

With respect to the specific point about EDC financing and whether this would somehow make it harder for EDC to provide support or assistance to some companies, ultimately our view would be that if those are companies that are causing or contributing to human rights violations, so be it. We don't want EDC or any other kind of government assistance or support going to companies of that sort. That shouldn't be viewed as a concern. That should actually be viewed as a strength and benefit of this new approach.

[*Translation*]

The Chair: Ms. Lalonde, you have two minutes.

Ms. Francine Lalonde: Thank you for being here and thank you for your testimony and for everything you're doing to help turn this dramatic situation around. From what we've heard and read, because they need to earn money, workers are often forced to work in conditions that are extremely difficult, distressing and harmful for them.

You said in various ways that you had hoped the proposed ombudsman would be the best way to take serious action. However, there's no ombudsman, for the reasons of which we're aware. What do you see in the bill that could help turn these dramatic situations around?

[*English*]

The Chair: You have one minute.

Mr. Alex Neve: I'll take 30 seconds.

I think the requirement that there be new Canadian standards that explicitly incorporate Canada's international human rights obligations is absolutely key. It's missing in the current strategy. Yes, of course Bill C-300 doesn't propose the creation of the ombudsman or the tripartite compliance committee, which the round table process had. But the powers given in Bill C-300 to ministers to ensure that there will be proper investigation of allegations of a failure to conform to those standards, leading to public findings, are absolutely essential, as are repercussions and implications with respect to eligibility for various forms of government assistance.

The Chair: I'm going to have to leave it at that. We're out of time here by a minute.

We'll go to Mr. Abbott.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Okay. I'm going to take the first minute of my seven minutes to comment on a statement made by my friend Mr. McKay. He said that this person he was speaking with got bullet holes in him courtesy of a Canadian mining company. That was exceptionally inflammatory, totally unnecessary, and irresponsible, in my judgment. We don't have any idea what occurred. We have no idea who shot the bullets or what the background was. I would have expected a higher standard from a member of the Privy Council.

With regard to the testimony, I'm really interested in Mr. Neve's characterization of this bill and the criticism of the bill as irrelevant. I wonder, Mr. Neve, if you could tell us how you think the Sudanese have made out now that there has been a switch from a Canadian company to a Chinese company. Do you think they're actually better off ?

Mr. Alex Neve: I'll be honest with you. Amnesty International had not called on Talisman to leave Sudan. We didn't say that they should stay; we didn't call on them to leave. We certainly were pressing them to adopt stronger human rights policies in the way they were operating in Sudan and to use the opportunity of being in the country to better promote human rights reform within the Sudanese government.

We agree with you, therefore, that in many respects it's a setback. It has been difficult to maintain and exert pressure on the Sudanese government with respect to the operations in the oil fields. But I don't think that means that Bill C-300 is a flawed approach. Bill C-300 isn't calling for Canadian companies to leave countries; Bill C-300 is calling on companies, requiring companies, to live up to human rights obligations. I think that if Talisman Energy had had those at the centre of their operations back in the mid- to late 1990s as they were moving into Sudan, they would have moved in a very different way. They would have had different policies and programs in place and would have been able to make a much more positive impact early on. Probably a lot of the controversy that later erupted, including problems they ultimately had with their own share prices because of that controversy, would have been, if not avoided, at least minimized. And they may not have been required to leave in the end.

● (0945)

Hon. Jim Abbott: You would agree that the petroleum extraction is ongoing, whether it's by a Canadian company or a Chinese company.

I'll go to Mr. Casey, who mentioned the amount of investment that is currently on the Toronto Stock Exchange. It represents a very significant part of our Canadian economy. Would you be able to give us a best guess of the percentage that are irresponsible companies. What percentage represents the wealth of the irresponsible companies—50%, 60%, 40%? Or are we talking about a very, very few on the Toronto Stock Exchange?

Mr. Michael Casey: I'm not able to give you a precise figure. What our information is based on is an alarming number of cases in different countries in which we work. A number of our partners in communities affected by mines have brought to our attention that this is a concern in their communities. We have examples in every major region in which we work. The fact that Canada has a major presence in this sector—I mean, we're the biggest player on the street—naturally reflects badly on Canada and on Canadian companies.

We are working primarily from presentations by our partners who are involved in the communities affected by this. They have brought their concerns about the activities of Canadian mining companies in these communities to our attention as something they feel the Canadian public should be made aware of.

I can't give you a precise global figure on that or on what the amount of investment is. But we do have numerous documented cases of this from our partners.

Hon. Jim Abbott: Don't you think that's rather important? I mean, let's take as an example.... I was very pleased to see recently, as I'm sure most of us were, that there had finally been an agreement between a Canadian mining company in Mongolia and the Government of Mongolia respecting issues regarding royalties and that kind of thing so that the company should go ahead. One of the few other companies in the world that would be big enough to be able to handle that particular extraction in Mongolia would be, say, a firm like Rio Tinto out of Australia, who will not have to comply with Bill C-300.

Going to Mr. Neve's point, if this were to proceed, there would likely be a substantial difference in the availability of financing to a Canadian company, as well as other restrictions that a firm like Rio Tinto, because of their jurisdiction, would not have. Therefore, I postulate that a Canadian company would not have been able to enter into this kind of gigantic mining project that they're talking about in Mongolia, and for Mr. Neve to turn around and say that's irrelevant I find really quite cavalier.

The Chair: Very quickly. Again, we're at that one-minute mark. I think we'd better start with Mr. Casey first.

● (0950)

Mr. Michael Casey: With respect, I don't fully agree with that position because I don't necessarily see that this would be a competitive disadvantage for Canadian companies to have a higher standard of compliance. We tend to be in agreement with what Mr. Neve was saying earlier, that this would probably be an advantage because, if you've noticed, over the past several years almost all of the major mining companies, Canadian and others, have become very interested in this whole idea of corporate social responsibility. Many of them have created departments of corporate social responsibility that weren't there before. There's a higher level of awareness of environmental standards, and we have to admit that it's perhaps because of the increased scrutiny that has come on these companies to behave in that manner. This is good. It hasn't damaged Canada's competitive position or Canadian mining's competitive position.

Hon. Jim Abbott: You don't know—

The Chair: Mr. Abbott, you're out of time.

Mr. Dewar, please.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair.

Thank you to our guests for their presentation today and for lending a voice to human rights, both here in Canada and abroad. I applaud the work they've both done, not only in their interventions here but in connecting with Canadians about the importance that we as a country demonstrate in walking the walk. We are the country of Mr. Humphrey's UN Declaration of Human Rights, which everyone around this table is proud of and, as Canadians, we should all be proud of. But it matters little if we don't actually get behind those words and do something.

One of the things that have disturbed me is the lack of coherence when it comes to human rights protection. I say “coherence” because I'm not going to get into the invectives and the cleavages that might be attractive in this debate. I'll give you the example of the Congo, from last spring.

We have 75% of the population living on a dollar a day. We have Canada's reach, through its mining intervention, responsible for about $300 billion in assets. We have people making money off this, in other words, and that's what companies do. No one's going to challenge that thesis. So when you look at these equations, a dollar a day—and by the way, the amount of money that the Congolese government receives from mining is about 60% or 70% of their budget. Yet when you look at the revenues they derive, it's about 5% of what comes out of the mining industry, so 95% goes, I guess, for operations, but probably a little bit to profit.

I think what people are looking for is some coherence. What is our responsibility? I see Bill C-300, as many of us would like to see, doing a little more. The tripartite approach is something that we would like to see, but Mr. McKay can't do that because it's a private member's bill.

So I hear from those who say, well, the voluntary approach is what we're doing and that's okay—and we're probably going to hear that from the EDC. Then I see the results of what I just laid out, a disproportionate redistribution of wealth but also the outcomes. And I won't get into that. People can read it for themselves, and I just hope that they get into it.

I'm not giving a speech; I'm laying some facts out, Mr. Goldring. I think it's a matter of people understanding that we do have a responsibility here.

I'll start with Mr. Neve. Do you see whether there is any other way, other than legislation, to ensure that human rights are actually going to happen? Do you know of any other jurisdiction or any attempt through voluntary methods to ensure that human rights are protected, and if so, where?

The Chair: Thank you. We have about three minutes left.

Go ahead.

Mr. Alex Neve: There's nothing wrong with voluntary approaches in and of themselves. What we say is that voluntary approaches are never enough, and that's with respect to any human rights front, be it the human rights responsibilities of governments, of individuals, or of companies. We do—and this is from fifty years of human rights research—always come to the conclusion that ultimately you need some sense of obligation and enforcement.

Certainly all sorts of ways in which to encourage voluntary efforts to go further and do more are welcome. Education, training—all of those things are a vital part of it as well, but there's always a necessary role for legislation.

● (0955)

Mr. Paul Dewar: In other words, at the end of the day you need to have some form of administrative approach—in other words, sanctions—if need be, to ensure that those human rights are protected.

Mr. Alex Neve: I think standards are necessary for two reasons. Number one, they create a consistent set of expectations for all players. Whether it's a small mom-and-pop mining company that's moving in or a large multi-billion-dollar company, they all have the same expectations as to the minimal human rights obligations they must live up to. The second one is that having clear standards sets the ground for meaningful enforcement. Without clear standards, it's impossible to enforce.

Mr. Paul Dewar: Mr. Casey.

The Chair: I think you have about a minute.

Mr. Michael Casey: I'll be very brief.

We fully support the comments of Mr. Neve on this. There has been a disappointing lack of evidence that voluntary compliance works. We feel it is necessary that there be more teeth put into compliance mechanisms and enforcement, which we feel is the necessity for Bill C-300 to go beyond the recommendations that were in the round table's report.

Mr. Paul Dewar: Thank you.

The Chair: Thank you very much, Mr. Casey.

Mr. Neve, thank you for your testimony and for answering the questions we've had today.

We are going to call on our next witness to come to the table, so we'll suspend for a moment. Thank you again for your testimony.

● _____ (Pause) _____ ●

The Chair: Thank you, committee.

In the second portion of our meeting today, we're going to continue in our study of Bill C-300.

We have appearing, from Export Development Canada, Jim McArdle, the senior vice-president, legal services and secretary. Again, you were here for the opening hour. We'll give you an opportunity for opening comments, and then we'll move into the first round of questioning.

Welcome, Mr. McArdle. We look forward to what you have to say.

[*Translation*]

Mr. Jim McArdle (Senior Vice-President, Legal Services and Secretary, Export Development Canada): Thank you, Mr. Chairman, and thank you to the members of the committee for inviting me to speak to you today about Bill C-300 and the impact it would have on the Canadian companies EDC serves if we were to be included in it.

I am here today both as Senior Vice-President for Legal Services and as the executive responsible for CSR. As such, I have worked on CSR issues both on the policy level as well as in the context of the transactions I have worked on as a lawyer.

● (1000)

[*English*]

As I'm sure you already know, EDC provides financing, insurance, and risk management solutions to help Canadian exporters and investors succeed in the global marketplace. Our mandate is to support and develop Canada's export trade and Canadian capacity to engage in that trade, and to respond to international business opportunities. In this way, we work to ensure that Canadians have a level playing field when competing against exporters from other countries.

In our opinion, including EDC in Bill C-300 would put Canadian companies at a significant disadvantage to exporters from other countries and severely inhibit EDC's ability to support Canadian companies and apply our CSR procedures and processes. Let me state clearly, however, that EDC supports the intent of Bill C-300 and shares the belief that Canadian companies should conduct their business in a socially responsible manner, no matter where in the world they operate. However, we believe that the best way to both promote human rights and ethical conduct and to improve environmental conditions related to projects around the world is by working with companies to proactively help them build their capacity in a responsible manner. Where there are established and clear international standards, we hold companies to these standards often in challenging environments.

I think it is important to note, though, that our experience confirms that the international community is struggling with how companies can integrate human rights issues into their daily global business practices, and currently there is no consensus on internationally recognized human rights standards for financial institutions to apply. However, I'm pleased to say that EDC is a very active participant in the international dialogue in this area. For example, EDC is a main sponsor of—and I will be a participant in—an expert meeting next week with John Ruggie, the special representative of the UN Secretary General on business and human rights, entitled "Opportunities and Challenges of Using Corporate Law to Encourage Corporations to Respect Human Rights".

At EDC, leading-edge corporate social responsibility policies and procedures guide our activities every day. Over the past decade, we have worked hard to develop one of the world's most comprehensive CSR programs among export credit agencies. EDC has been evolving its CSR standards consistent with international best practices. Our corporation actively supports a number of international commitments, including the Equator Principles, which only two other export credit agencies have signed on to. Being an EDC customer means that your transaction will be seen as having met some of the highest standards applied by any export credit agency.

For our corporation, CSR isn't about checking boxes; it is an integral part of how we operate and is an ongoing process with our customers. EDC conducts CSR assessments when our support is in relation to sensitive markets or projects in order to ensure that the project and company in question meet our CSR requirements. If there are areas in which we believe a company is not up to those requirements, EDC gives direction and advice to the company on how they should improve. If a company does not meet our strong requirements after this, they will not receive EDC support.

By engaging with companies in this way, EDC is able to provide a balanced approach to CSR: to help build the CSR capacity of Canadian companies as well as ensure that they meet the internationally recognized standards we apply, while still providing the financing and insurance solutions they need to succeed on the international stage. We believe Bill C-300 would severely jeopardize our opportunities to engage with Canadians this way.

Including EDC in this bill and imposing compliance standards, several of which standards are, as noted earlier, still in the process of being defined and agreed upon by the international community, would require EDC to exit a relationship with any Canadian company the moment a CSR violation has been determined. This approach has at least two direct negative impacts. First, it restricts us from working with the Canadian company to remedy the issue and improve their standards; and second, we believe it will mean they won't access capital from EDC in the first place.

We believe that the uncertainty caused by the application of this bill and the standards would also impact other lenders' willingness to provide financial intermediation to Canadian companies. If this happens, the void left by the Canadian companies will be filled, more than likely, by other international players with less regard for CSR.

Let me explain how this would occur. According to the wording of this bill, if a determination is made that a company has breached the guidelines during the period of a loan or an insurance policy with EDC, EDC would be required by the bill to terminate that loan or policy whether or not EDC has the right to do so under the contract. Therefore, we would have no ability to work with the company to have them remedy the situation in question.

● (1005)

Secondly, EDC cannot allow itself to be in the position of being required by the bill to terminate our support without having the right to do so under the contract. Our experience tells us, however, that Canadian companies, as well as other lenders, would be unwilling to accept such an EDC right in the contract, as its application would be out of their control and in the hands of a third party. That means that if Bill C-300 becomes law, EDC's ability to provide lending and insurance as well as to apply our rigorous CSR standards to projects and companies in the extractive sector will be seriously compromised. And given that the bill captures all business activity with a connection to the extractive sector regardless of size or product, all Canadian businesses along the supply chain would be negatively impacted by EDC's forced departure from the market.

The significance of this departure would be deeply felt here in Canada. In 2008, for example, EDC facilitated $27.4 billion of exports and investments in the extractive sector. EDC's support in this sector helped generate $21.4 billion in Canadian GDP and sustain 139,000 Canadian jobs in communities across the country.

EDC enables Canada to be a leader on CSR without tilting the playing field against Canadian companies. What we do at EDC is reviewed and regularly benchmarked, including by the OAG. To impose standards out of step with the rest of the world would not, in our view, improve CSR. It would only hurt Canadian companies and take them out of the game.

We believe there is a big difference between being a leader and a cheerleader. A leader is on the playing field, working with the team and using their skills and resources to reach the goal. A cheerleader is on the sidelines, hoping for the best. Today EDC is on the playing field, working with Canadian companies, influencing them, and building their CSR capacity. If this bill becomes law, we believe that our opportunities to be on the field would be severely limited. Instead, we as Canadian companies and EDC would be on the sidelines hoping that the other companies who remain in the market do the right thing from a CSR perspective.

Thank you very much. I'd be happy to take questions.

The Chair: Thank you, Mr. McArdle.

We'll move to the first round.

Mr. Rae.

Hon. Bob Rae (Toronto Centre, Lib.): Mr. McArdle, thank you for your presentation.

You say:

> If there are areas in which we believe a company is not up to our requirements, EDC gives direction and advice to the company on how they should improve. If a company does not meet our strong requirements, they will not receive EDC support.

Does this mean there are major companies in Canada with projects you have in fact refused to finance?

Mr. Jim McArdle: Yes. And we end up refusing in many ways, as well as working with companies to improve the projects.

Right at the early stages of the situation when a company comes to us with an idea or a project they need support for, we do an assessment with the officers who first touched the company to try to determine how the situation looks, whether or not the company would have the capacity to do what would be necessary where they're putting the project in place, what the country's record is, and just how difficult it would be to do something in that country and with that project. In some situations we conclude that it's not possible, that we do not believe the company would actually be able to do that. So we turn them away, usually fairly early, because we don't want the company to be wasting its time. So we try to make an assessment up front.

There are other situations too, and we have an example that's ongoing now—though I can't give you the name, obviously. But in a sub-Saharan African country, we were approached by a company, and when we first looked at it, we thought, oh, this company may not have the capacity to do it; there are some problems in the country. But the project had tremendous value for the country and we believed there was the potential for that company to actually improve its standards and approaches. So we've been working with them for almost two years now, and they have done many, many things. They've engaged a well-recognized local NGO. They've implemented internal procedures and policies that are related to the voluntary principles on security and safety. They've hired external consultants to help them. They've beefed up their internal staff. We're not there yet, but we think we may actually be able to support them in a situation that's very difficult.

So the situations range from our pushing them away right at the beginning to working with them; but if at the end they can't make it, we'd still say to them, "You don't meet our standards, and we cannot support you."

Hon. Bob Rae: I think you've certainly whacked away at the bill. But if there were a change to the wording of the bill, for example, if we were to suggest that the ombudsman or minister, or whoever's making the determination, would have to find a serious breach of the guidelines, I wonder whether that would not be out of line with what you're in fact already doing. It's just that you have your own standards and your own internal operations. You make your own decisions, which are not reviewable. We can't decide, as we don't know which companies are applying or not applying—and that's entirely appropriate—but we don't have any external mechanism to know what those standards are and how they're applied. I'm not being critical of EDC; I have a very high regard for EDC from my own professional work.

But I'm just wondering, do you not see the concern that we need some sort of process? It sounds to me like the process that's being suggested in Bill C-300 is not completely different. It's not as if you're rejecting the importance of CSR or saying that you don't actually turn down companies you don't think meet your standards or that you're not prepared to do that.

I don't know why we feel we have this huge chasm between what's being proposed in Bill C-300 and what is already under way. I regard Bill C-300 as a modest extension of what's already in place. I think with a little bit of work that's how it could in fact operate.

● (1010)

Mr. Jim McArdle: Thank you for that. I'll try to answer the several pieces to it.

As I mentioned, we've been engaged in the dialogue. In connection with environmental standards, there was clarity. The IFC and World Bank have worked on it, and the OECD's common approaches have identified various standards, and those are clear enough for companies to actually be able to deal with and sign up to in terms of covenants and the management practices they have to follow. But we believe that other than the three parts of the IFC performance standards that deal tangentially with human rights, the human rights standards are not clear enough yet, including who should be responsible for various aspects of human rights, as well as, for example, human rights, including a general right to water. A company can't deal with that as well as a local government can. So we think the standards the bill is trying to apply are not defined well enough yet.

I think they will be as CSR evolves. I think that John Ruggie or an institution such as the IFC will eventually be able to reach a position where they can say that a consensus has been reached on a standard, or standards, that should be applied to human rights. We think Canada is trying to do that ahead of the rest of the world and that it will jeopardize our Canadian companies with a standard that's not clear enough and with which no one will be able to get comfortable and apply.

EDC standards are very clear, and that's how we've been able to implement them and put them in loan agreements and make them covenants and why we've been able to say to somebody, "We cannot support you", and to make a decision that's clear enough for everyone to understand.

But another big piece of it is the ability to work with a company. This bill requires us to exit if a determination is made, even if we might come to a different decision, or even if other lenders or independent engineers, or anyone else, comes to a different decision. We don't think the international marketplace can live with that.

So if EDC is in a deal and has $100 million on the table as part of a $500 million facility, and we're required to exit, the lenders would then be in a situation where the company would not be fully funded. They would never let that happen: they would make that decision right at the very beginning, so EDC would not be able to get to the table because of the fact that we would have to add the requirement that we could get out if the government made a determination. So that's why we believe our ability to actually play a role will be severely compromised. Companies will just not come to us and ask for help, because their other lenders won't let them and their company won't let them. There will just be too much uncertainty.

But we do support the evolution in this area. As I say, we're going to a meeting next week and we have been a participant in the dialogue. As I mentioned, I think it is going to evolve. When it does, we will be one of the leaders in applying the new standards that have been reached on a consensus basis, just as we have in many, many other areas, including the environment, anti-corruption, and anti-terrorism.

Hon. Bob Rae: Thank you.

The Chair: Mr. Patry, I'll give you 20 seconds, and that's it.

Mr. Bernard Patry (Pierrefonds—Dollard, Lib.): That's great.

Mr. McArdle, you mentioned in one of your answers to Mr. Rae that you're looking at a file on a country's record. I just want to know if you can elaborate a little bit more on a country's record. Does the mean you have a blacklist of countries in EDC?

Mr. Jim McArdle: We don't have a blacklist. The Government of Canada gives us guidance on the sort of human rights approach that Canada will take. We obviously follow that. However, also we believe we have a social licence and we have to operate in a manner that lives up to all of our stakeholders' expectations. So we also do our own assessments on a project basis and on a country basis. Sometimes in advance of projects we'll actually take steps to try to understand the country more.

For example, three years ago we had our first round table in connection with the Democratic Republic of Congo, where we brought in NGOs, local government, companies, people from all spheres, and had a discussion as to whether it is possible—and if so, how is it possible—to actually do business in that country and live up to a social licence. We recognized it was a very difficult country, post-conflict, etc. We concluded at the end of it and started to coalesce around a set of criteria that we would look for. In addition, the country was going through a World Bank review of all concessions, so we decided at that point we would not do anything in the DRC until that was clarified.

We will probably hold another round table—next year possibly—to discuss the country again, because we think it has progressed to a point where we now could identify projects that could be done in a manner that is sustainable and would not harm the people and would live up to the obligations people would expect.

● (1015)

The Chair: Thank you, Mr. McArdle.

Madame Lalonde.

[*Translation*]

Ms. Francine Lalonde: Thank you, Mr. Chairman; I have something to tell our witness.

At the end of the French version of your text, there's an expression which, I would point out, is insulting to women. In English, you say —

[*English*]

The Chair: In the report it notes, "We believe there is a big difference between being a leader and a cheerleader".

Ms. Francine Lalonde: "A leader is on the playing field, working with the team and using their skills and resources to reach their goal."

[*Translation*]

In French, it's translated by "le capitaine".

[*English*]

"A cheerleader is on the sidelines, hoping for the best."

[*Translation*]

In French, it's: "une meneuse de claque", a woman who leads a claque. I can't accept that.

[*English*]

The Chair: Thank you, Madam Lalonde. You're a great grammar teacher.

[*Translation*]

Ms. Francine Lalonde: That wasn't my question, so you'll allow me my time.

Mr. McArdle, you said you study a company's capacity before determining whether you are going to help it. When you determine a company's capacity to be helped, what is that capacity based on? Of course, there are management capacities, but can that be linked to the processes it uses? We're mainly talking about mining companies. Are these dangerous processes? Are the health and integrity of workers jeopardized? Is that because of the excessive use of chemicals, without regard for safety or fatigue, physical dangers? Do you take into account all those conditions and, of course, the way workers are treated? Does that have something to do with the capacity of a business to be helped by your agency?

Mr. Jim McArdle: Thank you for your question. I would like to answer it in French, but I'm going to speak in English.

Ms. Francine Lalonde: If you answer in English and don't demean women, that's fine.

[*English*]

Mr. Jim McArdle: We look at quite a lot of different things, and each situation is somewhat different. One of the things we look at is the track record of the company. Some companies have a well-developed track record and a well-developed CSR program, and they're a lot easier to work with, obviously, because they understand it all. But in some situations we're dealing with companies that are newer. This might be their first venture.

We're obviously trying to develop exports. So we'll look at many things specific to the project, specific to the country. There's the environmental situation in terms of their usage of water, placement of a tailing stem, whether or not it's affecting biodiversity. Those are all tested against the IFC performance standards. Those are not perfect, but they're clear enough that a consensus has been reached that you can make a determination as to whether or not the project can meet those standards. If they do, then we would proceed on the environmental basis.

If the project is located in a country where there are also human rights issues, they can range from all kinds of things. They can range from the government using the property of the mine for security forces to launch things that would be bad. But it could also be things like artisanal mining and how to deal with locals who have been picking away at the side of a cliff and making a tiny living out of it. Some countries encourage it and some companies see it as a way to resettle everybody. We would have to look at that and ask if that's the best method, is there compensation, or are there other ways of dealing with the artisanal mining.

For example, there's one situation where the company has actually provided some more tools and training to the local miners, who will then continue to pick away at it, but under much safer conditions. They then sell their ore to the mine itself instead of having to sneak it off the property and across a border or to some other place where they can sell it.

Each situation is very different, and we have a team that deals with the environmental side; we have a team that deals with the human rights side. Unfortunately with the human rights side, there aren't yet standards that we can say have to be met. So each case is on its own, and we have to see what the issues are and how they will be dealt with.

● (1020)

[*Translation*]

Ms. Francine Lalonde: In that case, wouldn't it be an advantage to have an act or standards—even if it's not through Bill C-300—with which you could comply? You say you're already using this practice for certain other situations. If this kind of act were adopted, it would be an advantage for you, for human rights and all that entails in terms of health and safety.

[*English*]

Mr. Jim McArdle: The issue we see is that certain standards in this bill are internationally recognized and well established. For example, there are the IFC performance standards, and three of those do deal with some aspects of human rights. If I recall correctly, indigenous people and the right of the people to be living where they are, health and safety, and the behaviour of security forces—those three things we do measure. If those are involved in the project, we do measure against benchmarks and make them meet those standards.

The problem is that there are many international "kind of" obligations that people believe are human rights. The world is still trying to decide if that's a company's responsibility, a financial institution's responsibility, an export credit agency's responsibility, or the government of the host country's responsibility, or for example, Canada's, in saying we're going to extraterritorially require our companies to act in a certain way.

We don't think those standards are clear enough yet. We're working with people to try to develop them. I truly believe they are going to arrive, but there is a reason this bill is unique to Canada. The standards are not clear enough for other countries to have taken the same step as we're trying to take here. We think it's premature for Canada to do that in this way and force us to step back from it in a situation where we won't really be able to tell. We won't be able to be sure up front, or even during the process, whether or not these standards are met, because the standards aren't clear.

[*Translation*]

Ms. Francine Lalonde: I very much hope this bill is passed because it isn't, let's say, demanding. If it is passed, it will encourage other countries to do the same because this is a necessity. The globalization of these senseless situations in a number of mining companies will make it so that countries will have to set rules for themselves. It would be an advantage if Canada already had some.

[*English*]

The Chair: Thank you, Madam Lalonde, for that statement.

We'll move to the government side, Mr. Obhrai.

Mr. Deepak Obhrai (Calgary East, CPC): Thank you very much, Mr. Chair, and thank you very much to EDC for coming.

I would like to raise two points that I would like your expertise on.

The previous speakers who came before us brought along their expertise in development and human rights. Although I was very concerned about Mr. Alex Neve saying "I don't really care whether there is something..." when they said this is the approach Canada takes. Canada takes, as you rightly pointed out...to work together. But their expertise is in this, and your expertise is in business.

I want to go on to what Bob Rae said about the investment process and the business that you've been doing, which is giving money, and the impact, which you rightly pointed out, of the mining industry in Canada. But we seem to have forgotten one serious factor. My colleague from the NDP keeps talking about DRC because he made a trip to DRC. I made a trip to Tanzania and to Zambia, where the copper industry is going on, and to Papua New Guinea and all these places, and as my colleague said about Mongolia, a tremendous investment is being done and impacting the local economy. Papua New Guinea's ambassador to the UN said 12,000 people in Papua New Guinea are not living on dollars a day, which he's talking about, but are actually making a fantastic living out there. So we have this whole economic factor out there.

I have two points on the issue you brought out here. One, what impact, which you're already talking about, will it have on the Canadian companies moving out? For example, we know China is going out to Africa and signing all these deals out there, and there are no standards as far as China or other countries are concerned. They are moving right in there. Now, I'm not saying that Canada should not have standards. That is why we were at this year's round table conference, and we came out with very good suggestions with every stakeholder there. It was very good. The companies, the NGOs, and everybody took part in that. That should be the first stepping stone.

The second factor is the international standards that you're talking about—human rights. As you rightly pointed out, the three environmental ones that came out of the World Bank are applicable to everyone across the world. Why can we not then, at that given time, wait for those international standards to develop through the pressure that the NGOs are talking about, going to their members and going to all these things, using the same pressure to come out so that there is an international standard out there, so that everybody has a level playing field, including China and everyone? Nobody is talking about China. My friend talked about Talisman out there. Let's go to Africa and see what is happening with the investment that China is making out there, in absolute disregard of everything here.

My question here would be about the impact of Bill C-300, the chilling factor on investment, not here but abroad, as well as on the international standards, which are not a level playing field.

● (1025)

The Chair: Thank you, Mr. Obhrai.

Mr. McArdle.

Mr. Jim McArdle: Thank you. I'll answer in reverse order.

We believe that the development of international standards on the human rights side will occur. As I said, we are working with that. We are applying the expertise we've developed the best way we can, but to try to apply a standard that is not clear internationally and not well established, we believe, will put Canadian companies at a significant disadvantage, because a competitor, for example, could lodge a complaint with the ministers and cause a deal to be delayed, could cause a reputational issue, even if it was totally frivolous, all to the advantage of the competitor. We think there are severe disadvantages to Canadian companies being the only ones that would have this applied to them.

We think it will get applied worldwide. I can't speak to China, but I think it will be applied in the developing world through the OECD, and to projects that require international financing probably through the Equator Principles. When these standards become formed and a consensus is reached, we think it will be applied by reputable banks, by export credit agencies, and by countries that care about CSR. But there will probably still always be exceptions.

In regard to the impact on the Canadian companies—and I tried to explain this a bit in my speech—I'll put my hat on as a CEO. I want to borrow money, or I want to have a PRI policy—political risk policy—and I need to know that I have that in place for the entire term of my loan. I need to know that I control whether or not that's the case. The banks that are signing up and providing their money need to know that the large pool of money that's going to be required, both equity and debt, is sufficient to be able to do this project. If EDC comes along and says we have these standards, and nobody else has to apply them, but we do; and they're not really all that clear, but we have to have them; and if they're not met on a decision of somebody external, we need our money back or we're going to yank the PRI policy, the company CEO and the CFO, as well as the other lenders, are going to say, thanks, EDC, that's great, but we're not going to let you be involved in this deal because we can't be sure, no matter how much due diligence we do up front, that something may not happen that will cause a problem.

For example, you could have a mine going and the government changes and decides it wants to take action with its security forces. It comes to the mining company and says, I'm going to take your concession away unless you allow us to use your property to launch strikes. They don't know what to do. They have to work with the country. They look to Canada if we're involved; they look to EDC to help. If we were in that situation, we'd be having to say, we can't help you; we've got to get out.

We really believe there's a strong disadvantage to applying this to Canadians now ahead of the consensus that I believe will be reached and will be applied to many countries and all export credit agencies.

● (1030)

The Chair: Mr. Lunney.

Mr. James Lunney (Nanaimo—Alberni, CPC): I'll make it very brief, but I think you've answered the question to a large extent just now and in your remarks to Madame Lalonde.

Part of the concern we have is this transference of responsibility when the host country itself lacks capacity for appropriately regulating and lacks human rights standards compared to anything Canada and most parts of the world adhere to. One of the first pillars in our strategy in Canada is developing, through CIDA, capacity in those nations. I think at this stage if we jump ahead and start imposing standards that might be appropriate in Canada on nations that lack the human rights capacity in the government itself or the capacity to regulate, we can lose opportunities to have this kind of influence.

I don't know whether you can add to what you said, but I think that's my big concern, that the countries themselves...and Sudan was probably a good example, with Talisman, one of the worst human rights abusers. We're all concerned about Darfur, but by pushing a company right out of the country, have we really advanced the cause of human rights in that nation?

Mr. Jim McArdle: We believe that working with the company to try to remedy a situation and make it as good as it can possibly be is the best method of doing this. There is a huge issue of the transference of responsibility, and companies that go into countries that are less developed have a very difficult time with that. You can think of it as their agreeing to set up a medical clinic or a school, and they become the government. A good company will say, we'll put the infrastructure in place, but we need the local government to pay for the teachers, to pay for the doctors, to get the local government involved to ensure there is an ongoing commitment from the country. There are situations where laws in the country are put in place, and it's clear that they're not going to be able to enforce or monitor them. So there's a natural inclination to say, company, you have to do that.

I think companies that are doing a good job, the types that we support, do that to an extent, but to impose on them an absolute requirement that would mean they'd lose support from us and our ability to work with them and try to remedy situations and make them better, I think, is completely unfair to the companies and puts them in a situation where they will not be able to take chances, they will not be able to go into difficult situations, because they'll never know, no matter how hard they try, whether or not they're going to be accused of doing something and they will jeopardize themselves.

The Chair: Thank you, Mr. McArdle.

Mr. Dewar.

Mr. Paul Dewar: Thank you, Mr. Chair, and thank you to our guests.

I will just comment on the sports analogy, which I always stay away from because they can get confusing. I think our job here is not to be cheerleaders or players, it is to be referees. That's what we do. We are referees, if you will, and that's what legislation is about. I would suggest that is our role around this table.

I have a quick question to EDC. Once you've been in agreement with a company, have you ever withdrawn your support because of concerns around corporate social responsibility? If so, which ones?

Mr. Jim McArdle: Unfortunately, I won't be able to provide specific examples. I'm trying to think from my experience whether there were any where that was the situation. We are very careful when we go in at the beginning; we do a tremendous amount of due diligence.

Mr. Paul Dewar: I appreciate that.

Don't get me wrong, I laud what EDC is doing.

Mr. Jim McArdle: I appreciate that.

Mr. Paul Dewar: I was just asking DFAIT and other officials about this, and they sent a note that they weren't aware and thought it would be best to ask you.

Mr. Jim McArdle: There's nothing that leaps to mind, where we've thrown up our hands and walked away.

Mr. Paul Dewar: I'm not saying you walked away; I'm asking whether you have principles that you want to ensure are active.

I'm just asking the simple question of whether there has been a situation in which you were involved with a company and withdrew your support because of its activities. You are saying that as far as you are aware you don't know of any case.

● (1035)

Mr. Jim McArdle: With respect to withdrawal, I think not. But there are many, many cases where we've worked with the company to make a situation better.

Mr. Paul Dewar: Absolutely.

Mr. Jim McArdle: We believe that is the right way to go.

Mr. Paul Dewar: I appreciate that.

I want to comment on your comments that suggest there's a *fait accompli* with regard to the legislation. If we go down this path with Bill C-300, you said that because of some of the clauses in the bill and the intent of the bill—I'm not sure if you would say one or the other—your concern is that there would be a chilling effect of sorts.

I'm wondering why you say that. On the one hand, you're saying you have engaged working on the IFC principles—and I laud the EDC for doing this. The bill refers to those. It says the government has a whole year to establish the guidelines. I just wonder if you want to correct the impression that this is a done deal. You acknowledged that in clause 5 in the bill there's a process to talk to partners, and obviously the people who have a role to play in that would be the EDC.

Mr. Jim McArdle: I acknowledge there is the one-year period.

There are some drafting issues in that the rules apply instantly even though there's a year to develop the rules, but I'm sure that could be fixed.

Mr. Paul Dewar: Easily.

Mr. Jim McArdle: Our concern is that it has taken a long time to get where we are with human rights, and we don't think that clarity could be achieved in the time period. That's why we're working—

Mr. Paul Dewar: So based on the ongoing work that you and others are doing, and that other jurisdictions have worked on—I gave examples of that in previous meetings—like Norway and others, within a year you don't think we could establish appropriate guidelines that you could follow? Is that your evidence today?

Mr. Jim McArdle: That is what I'm saying.

Mr. Jim McArdle: For example, John Ruggie has been working on it for several years. The UN thought he would come up with an answer this year, but when his report came out he said he was getting there but he wasn't there yet.

Mr. Paul Dewar: I'm talking about Canada and our approach on a piece of legislation. You're basically saying we couldn't do this within a year.

Mr. Jim McArdle: I don't think we could do this within a year.

Mr. Paul Dewar: That's interesting.

The other issue I want to touch on are the vexatious types of complaints, the frivolous. You acknowledge there is a clause for that in the bill.

Mr. Jim McArdle: Yes. There is also a clause where the minister has to publicize why he thinks they are vexatious.

We are also concerned that because the standards aren't formalized and they aren't clear enough yet, it would be very difficult for the minister, in a very quick fashion, to say this one is frivolous and vexatious and blow it away. The minister would have to actually think about it for a while, and during that period the reputation of the Canadian company is being damaged and they would probably have to hold off on the deal.

Mr. Jim McArdle: It's a theory, but I think we can analogize to the environmental side that as the IFC performance standards were being developed several years ago, there were situations where companies were being accused of environmental harm and activities—

Mr. Paul Dewar: Right, and I hope we can learn from that.

Mr. Jim McArdle: It turned out they weren't, in many cases, so their reputations were being harmed because the standards were being developed and they couldn't defend themselves.

Mr. Paul Dewar: But I'd go back to the point that we have a year to establish criteria for the bill and that process. I've heard this a couple of times at the committee, and for those who are listening and thinking this bill will be horrible because any time someone put forward a complaint it would be considered fact, that's not the case, is it?

Mr. Jim McArdle: I think at the beginning it would have to be treated as factual, bona fide.

Mr. Paul Dewar: Why? It's not in the bill. It says there's a vexatious, frivolous component to it.

Mr. Jim McArdle: You can only make that decision after you've had a look at the underlying situation. You can't make a decision on the very face of it.

If I were an auditor, if I were looking at it as an investigator or as a lawyer, I could not simply say I didn't think this was a problem, I'd have to look at it some before I could make that decision. The bill requires the minister to justify why they think it's frivolous, so they're going to have to do some.

Mr. Paul Dewar: When they receive it, it's not. The way the bill is constructed, if a minister receives a complaint, it's not automatically public, it's not automatically taken as fact.

Mr. Jim McArdle: I think it's going to be made public by the complainant instantly.

Mr. Paul Dewar: That happens all the time anyway.

Mr. Jim McArdle: If I were the complainant, that's what I would do. I would say I'd sent a letter to the minister and I've complained.

Mr. Paul Dewar: That's right, yes, so what? It happens all the time. It happens now.

Mr. Jim McArdle: The reputation timeline starts right away, and we think the company will not be able to deal with it.

Mr. Paul Dewar: Not in this bill. Maybe we disagree on that, because once you send a letter, that doesn't mean it's fact; that means you've sent a letter of complaint. Would you agree?

● (1040)

Mr. Jim McArdle: I would agree. Then I think the minister has to work with that.

Mr. Paul Dewar: I agree with that.

Mr. Jim McArdle: In the meantime, the public knows that a complaint has been made, and the complainant will be arguing that it is fact.

Mr. Paul Dewar: That happens today, though.

Mr. Jim McArdle: We've seen a lot of facts held out today that, if you really investigate them, are either very minor or a situation where EDC's not involved. We don't support the companies that are being talked about here, so it's frustrating for us to hear all this discussion about how these companies are doing bad things. Some are, I have to admit that, but we don't support them and we would never support them.

Mr. Paul Dewar: Your name was never brought up this morning in terms of those companies' behaviour.

Mr. Jim McArdle: So that's why we believe EDC should not be mentioned, should not be referenced in this bill. We think the intent of this bill can be dealt with in a different way without impacting how EDC can help Canadian companies develop their CSR capacity.

Mr. Paul Dewar: Just to be clear, there was no mention of EDC this morning in the interventions from the witnesses, I believe.

Mr. Jim McArdle: There were no specific mentions.

Mr. Paul Dewar: I think we need to be factual about that, because it's their reputation as well.

Thank you.

The Chair: Thank you, Mr. Dewar.

Mr. Goldring said he had a very short one, so we aren't going into a complete second round, but we do have some time.

Mr. Peter Goldring (Edmonton East, CPC): Thank you very much, Mr. Chairman, for giving me this wonderful opportunity.

The Chair: Hurry up.

Some hon. members: Oh, oh!

Mr. Peter Goldring: You described very well your doubts about how this bill will impact companies coming through for financing or coming through for your organization, Export Development Canada. I'd like to have your opinion on one other issue that might happen: those are the companies that will not come to your organization, will not come to conventional financiers, because ultimately these rights and issues and charter questions come down to a dollar sign that is very visible. In 30 years of tendering on contracts myself and reading specifications on some major projects, I know full well whether I or somebody else should be bidding on it.

Could this potentially drive some of these companies to do what Canada Steamship did and set up in Barbados or some other country and work with partner countries that would remove their tendering process or businesses out of the country completely, without even coming through the conventional financing? This is or could be potentially a large dollar factor that, as you describe it, will be chilling development, but could it remove these companies from Canada in itself?

The Chair: Thank you, Mr. Goldring.

Mr. Jim McArdle: I'll answer very quickly. This one has to be a personal answer, obviously. I believe some companies will choose to locate themselves outside Canada if Canada is the only country that has this type of bill. It's one of the reasons we're looking for a consensus. It's a natural activity.

The TSX has a lot of companies listed on it, but as we know, capital is very easy to flow from one country to another around the world. I think there would be situations where companies would say that the easy route is to set up somewhere else, even if they had decent CSR standards, because then they could apply the standards they know in a way they need to without the chill from this.

The Chair: Thank you, Mr. McArdle, for your testimony and for answering all the questions.

We are going to adjourn, and I'm going to ask the steering committee to move across the hall for an in camera meeting to deal with some of the topics we spoke to last week.

We're adjourned.

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