House of Commons
CANADA

Standing Committee on Foreign Affairs and International Development

FAAE • NUMBER 019 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, May 25, 2010

Chair

Mr. Dean Allison

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● (1100)

[*English*]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): Welcome to meeting number 19. Pursuant to the order of reference of Wednesday, March 3, 2010, we're going to continue our work on Bill C-300, an act respecting corporate accountability for the activities of mining, oil, or gas in developing countries.

I want to start off by welcoming those who are appearing via video conference.

I'm going to start with Karin Lissakers, who is with Revenue Watch Institute. She's coming to us from New York. Karin, thank you very much for joining us today. We're then going to move to my next teleconference. I have Shanta Martin, from Amnesty International. Sitting next to Shanta is Robert Anthony Hodge, who is with the International Council on Mining and Metals. We'll finish off with Shirley-Ann George, who is from the Canadian Chamber of Commerce.

If you can try to keep your remarks under ten minutes—I believe that's what the clerk probably asked you to do—we can get your opening statements in, and then we'll be able to go around the room and have some questions and answers. We'll take as long as we need. If we need the full two hours, that's great. If we go for an hour and a half, that will determine the number of questions that are available here.

Karin, thank you very much for being here from New York. I turn the floor over to you to give your opening comments for ten minutes.

Ms. Karin Lissakers (Director, Revenue Watch Institute): Thank you very much, Mr. Chairman and honourable members of the committee.

I'm very pleased to be provided time today to address the committee. I believe that Bill C-300....

[*Technical difficulties*]

There are many voluntary codes for multinational corporations, including the UN's voluntary principles on security and human rights; the Global Reporting Initiative; the Equator Principles; the sustainable development framework of the International Council on Mining and Metals—and we have Tony Hodge from ICMM here; and the Kimberley Process for diamonds—to name just a few. Of course many companies unilaterally adopt corporate guidelines but strive to meet international best practice standards throughout their global operations.

The extractive industries transparency initiative—EITI—has attracted the participation of more than 30 countries and the support of many more. Canada indeed became an EITI-supporting government last year, seven years after the EITI was launched. Forty-nine major petroleum and mining companies actively participate in the disclosure process under EITI, and the initiative has the backing of investors who manage more than $16 trillion of funds.

There are many reasons for this global movement toward new standards for extractive companies. First of all, the people in resource-rich countries no longer remain silent in the face of abuses of their rights. You have seen the protests against abusive labour practices or environmental damage, from Sudan to Peru to Ecuador. Because the people are more aware and more engaged, politicians are more sensitive. In the recent presidential election in Ghana, the strongest theme was perhaps the need for Ghana to set strict environmental and social and transparency standards for the management of its new oil sector.

Large institutional investors such as public pension funds—you can take the sovereign wealth fund of Norway, the California pension fund, and so on—increasingly discriminate against companies with a reputation for social or environmental abuse. The governments of capital-providing countries do not want to appear to or actually condone or support abusive practices, because doing so damages the long-term national economic and political interest.

Thus, OECD countries develop common standards that are then applied statutorily in each member country, for example, outlawing bribery of foreign government officials by their own multinationals that are trying to advance business. A similar process takes place through the EU in setting standards. For example, its raw materials initiative seeks both to secure access to raw materials for Europe and to apply high standards to those investments.

Of course many large multinational corporations recognize that reputation risk is high. Following best practice is in fact better for the bottom line over the long term. It is clear that it's not just American, Canadian, European, or Australian companies that have come to that realization. We see now that Chinese extraction companies are seeking partnerships with top-tier western mining and oil companies. It is not because they need access to capital, but because they certainly want to learn the technology skills of those companies. We have also been told by a number of people that because they seek to enhance their own reputation in the international markets they want to be seen as first-class investors in extractive companies.

● (1105)

One of my legal team members at Revenue Watch just returned this week from an event hosted by the Chinese Academy of Social Sciences in Beijing, where the focus was on corporate social responsibility practices, particularly in extractive industries, and the EITI secretariat was invited to participate in the discussion.

Two weeks ago we were approached by a group of consultants who work in Russia who said that they had been approached by a number of large Russian mineral corporations that wanted to find out how they could do better on the corporate social responsibility front. They asked if we could help with some advice and with perhaps organizing some events.

So these ideas are taking hold, and the recognition that these good practices are essential to successful business is taking hold. Globalization means that the old model of a double standard for business maintaining one set of practices at home and another lower set of standards abroad is no longer viable. As the editor of the *Oil & Gas Journal* put it in an April 19 speech:

> Here's a bedrock reality. For international oil and gas companies and service firms not owned by governments, the licence to operate isn't what it used to be. That condition changed and business as usual won't change it.

Many companies will argue that we should stick with voluntary principles. I believe that's one of the arguments that's been raised against Bill C-300. But that is not where the world is going. Voluntary principles are useful as a stage for developing consensus around what the good practices and standards should be. But once a majority recognizes the value of a public good—and that is what good practices are—a voluntary approach is impractical and inefficient. Moreover, I would argue that governments have both a right and an obligation to set rules for the use of public funds that reflect the norms and principles of their own taxpayers.

Even if you look at existing so-called voluntary initiatives, you will see that they have binding elements. The EITI, for example, is voluntary for countries but mandatory for companies operating in the implementing countries. The EITI has strict rules even for the implementing governments, backed up by a compliance review mechanism and penalities for non-compliance.

Voluntary standards that have been worked out among stakeholders in various fora become the benchmark for mandatory behaviour. The ICMM—International Council on Mining and Metals—sustainability framework is binding on each of its 17 member companies, with reporting and assurance procedures based on the Global Reporting Initiative's G3 sustainability guidelines, for example. This prevents free riding by companies that want the prestige of the ICMM brand but do not want to meet its standards.

The World Bank's investment arm, the IFC—International Finance Corporation—requires that companies with which it co-invests in extractive projects publish their payments to the government according to the EITI model, as well as following the bank's own environmental and social standards, of course. The U.S. government political risk insurance is available only to extractive projects in countries that have adopted EITI-like transparency standards for extractive industries.

The Initiating Foreign Assistance Reform Act of 2009 also requires that OPIC, which has many of the functions of Export Development Canada, adopt a comprehensive set of environmental transparency and internationally recognized work rights and human rights requirements that will be binding on OPIC and on the companies it supports. These standards may be no less rigorous than those of the World Bank, although it is a different standard.

On the transparency front, last week the U.S. Senate considered an amendment to the financial regulatory reform bill that would require all extractive companies listed in the U.S. to publish what they pay to governments, country by country and by type of payment. The amendment had the support of the administration and according to its sponsors had the support of well over half of the members of the U.S. Senate. The amendment was not moved on a technicality, but I expect it to be taken up by the U.S. Congress later this session.

The International Accounting Standards Board is developing a new financial reporting standard for extractive companies. The international financial reporting standards will be binding on companies operating in 110 countries, including China and, indeed, Canada.

Finally, the most recent development on this front: the Hong Kong Stock Exchange has just issued new rules for minerals companies. The new rules require that as part of their listing minerals companies disclose, among other things, project risks arising from environmental, social, and health and safety issues; compliance with host country laws, regulations, and permits; and disclosure of payments made to host country governments in respect of tax, royalties, and other significant payments, on a country by country basis. They have to report that they have sufficient funding plans for remediation, rehabilitation, enclosure, and removal of facilities in a sustainable manner. They have to report on the environmental liabilities of their projects or properties; their historical periods of dealing with the concerns of local governments and communities on the sites of mines, exploration properties, and relevant management arrangements; and any claims that may exist over the land on which exploration or mining activity is being carried out, including any ancestral or native claims. These new rules for the Hong Kong Stock Exchange will take effect on June 3.

● (1110)

I believe that Bill C-300 is fully consistent with this global movement toward setting minimum standards for responsible extraction of non-renewable minerals. I would say that it falls short in only one area, and that has to do with transparency. I'm quite surprised and disappointed, frankly, that Bill C-300 does not address the transparency of payments to government. That is a central feature of many of the initiatives I've mentioned, and is widely recognized as a way to reduce social and political instability and corruption in resource-rich countries. Your government's money is supporting investment with Bill C-300, and its future readings will be amended to address this shortfall.

Overall, I would say that Canada, as the leading provider of capital to extractive industries and home regulator of a large section of the international mining industry, has a responsibility and an opportunity to lead rather than to lag the global movement toward establishing sound standards for extractive industries.

Thank you very much.

● (1115)

The Chair: Thank you, Ms. Lissakers.

Now we're going to move to Ms. Martin from Amnesty International for ten minutes.

Ms. Shanta Martin (Head of Business and Human Rights, International Secretariat, Amnesty International): Thank you, Mr. Chair and committee members.

We're actually getting quite a lot of feedback, and I'm hoping that you will be able to hear my comments fairly clearly.

The Chair: Yes, we can.

Ms. Shanta Martin: I understand that my colleague Alex Neve, who's the director of Amnesty International Canada, has already presented to the committee, so I don't want to go over old ground in terms of information he's already provided. What I would like to do is ground the discussion I would like to have with the committee around the international perspective in terms of, in particular, the position Canada finds itself in within this international context. Lastly, I'll just briefly comment on the benefits that would derive from the fact of inquiries being made by a Canadian government authority.

Turning to the first point, there's no doubt that Canada can and should introduce legislation that withholds public support to companies that fail to respect human rights abroad, and that doing so would be consistent with Canada's international legal duties. That includes the framework enunciated by the United Nations special representative to the Secretary General on business and human rights issues. According to the special representative, and I'm quoting here,

> The root cause of the business and human rights predicament today lies in governance gaps created by globalization.... These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning and reparation.

It's in many respects in response to that predicament that the special representative has outlined a framework—the protect, respect, and remedy framework—which articulates the state duty to protect against human rights abuses from third parties, including by business; the corporate responsibility to respect all human rights; and the need for greater access to effective remedies for the victims of any human rights abuses.

Under international law, there's no doubt that states are the primary duty-bearers, and given that this discussion is with parliamentarians, I'd like to focus my comments specifically on the pillar enunciated by the special representative, being the state duty to protect.

As I've just said, states clearly have a duty to protect against human rights abuses by non-state actors, and that includes business. There are a number of means by which states can actually undertake this activity, and there are a number of documents that already exist that provide guidance to states to pursue this duty or to fulfill this duty. In many respects, to help states interpret how to fulfill that duty, the UN treaty-monitoring bodies have recommended that states take all necessary steps to protect against such abuse, including to prevent, investigate, and punish the abuse, and to provide access to redress.

Clearly, and certainly as articulated by the special representative, the state duty to protect has both a policy but also a legal dimension. While policies that encourage corporate responsibility for human rights do have a role, so too does legislation. In elaborating the state duty to protect, the special representative has noted—and here I'm quoting from the special representative's 2008 report to the Human Rights Council:

> There is increasing encouragement at the international level, including from the treaty bodies, for home States to take regulatory action to prevent abuse by their companies overseas.

In the advance copy of his most recent report, which will be delivered to the Human Rights Council in the next week or so, the special representative further notes that all states have the duty to protect against corporate-related human rights abuses within their territory and/or jurisdiction. It is not limited alone to territory.

He explains that there is a critical distinction between jurisdiction exercised directly in relation to actors or activities overseas and domestic measures, such as Bill C-300, that have extraterritorial implications. The special representative also emphasizes that states should make greater efforts to ensure that companies based in or conducting transactions through their jurisdictions do not commit or contribute to human rights abuses abroad, and help remedy them when they do occur.

● (1120)

What does this mean in the context of Canada? Well, certainly Canada has positioned itself as an extremely influential player in the global mining sector, and it should ensure that this role is fulfilled consistent with Canada's international human rights obligations, including promoting respect for human rights by Canadian companies and holding them accountable if they do not.

If I might, I would very briefly quote from the Canadian government's own corporate social responsibility strategy:

> Canada is a particularly strong player in the global mining sector. Canadian financial markets in Toronto and Vancouver are the world's largest source of equity capital for mining companies undertaking exploration and development. Mining and exploration companies based in Canada account for 43 percent of global exploration expenditures. In 2008, over 75 percent of the world's exploration and mining companies were headquartered in Canada. These 1293 companies had an interest in some 7809 properties in Canada and in over 100 countries around the world.

There's no doubt that the extractive industries are well known for having extensive potential and actual impacts on human rights. These include the impacts on the rights to health and water and the rights of indigenous peoples to free, prior, and informed consent. It's very frequent that the rights of women are disproportionately affected within these contexts. Given that situation and in light of the comments of the special representative, it is entirely appropriate that Canada should introduce legislation that would lead to repercussions for Canadian extractive industry companies that fail to respect human rights in their operations abroad.

Given the level of Canadian-listed or Canadian-based extractive industry companies, it may not surprise the committee to hear that the proportion of cases received by Amnesty International regarding alleged human rights abuses associated with projects involving Canadian companies is very high.

I have already provided the committee with a number of reports, urgent actions, and other publications wherein Amnesty International has raised concerns regarding such human rights abuses. In the order of the list I've provided to the committee, the cases relate to mining operations involving the following Canadian companies, usually through—

[*Technical difficulty—Editor*]

● (1125)

The Chair: Okay, I think we have audio and video now.

If you could continue your comments, we'll add your time back on. You have about three minutes left. Can you hear us?

Ms. Shanta Martin: Can I just ask, what was the last thing that was heard?

The Chair: You were just starting page 5 of your remarks.

Ms. Shanta Martin: Okay.

I articulated the names of the companies involved in the cases that have been provided to the committee.

The Chair: You started on that. That's correct, yes.

Ms. Shanta Martin: Would you like me to repeat those?

The Chair: Sure. You have three minutes, so however you want to finish that off.

Ms. Shanta Martin: I might move on because I do believe you have a copy of the comments that I have made. In that is the articulation of the companies I just mentioned. I was just about to—

The Chair: Ms. Martin, just to let you know that we haven't distributed those copies yet because they haven't been translated. I do have a copy because I was following along with your presentation. When they're interpreted in both languages then they will be distributed at some point. Just to let you know they don't have them.

Ms. Shanta Martin: Very quickly, the cases that have been provided by Amnesty International involve the Papua New Guinea case Barrick Gold Corporation and an El Salvador case involving Pacific Rim Mining Corporation; three Mexican cases involving New Gold, Blackfire, and Teck and Goldcorp; two Guatemalan cases involving Hudbay Minerals and Goldcorp; and an Ecuadorean case involving Copper Mesa Mining Corporation.

[*Technical difficulties*]

The Chair: Sorry about that, Ms. Martin.

Let's try that one more time.

Ms. Shanta Martin: Sure. I would beg a little bit of indulgence, then, in terms of the timing and perhaps take a minute over the three minutes that were left.

I was saying that a human rights impact assessment undertaken at Goldcorp's Marlin mine in Guatemala has recently been released and found that Goldcorp had failed to respect the rights of indigenous peoples in Guatemala. We've also recently been given a copy of a letter from the Inter-American Commission on Human Rights that makes clear that the commission has written to the Government of Guatemala calling for the immediate suspension of operations at the Marlin mine.

There is also the most recent Canadian court discussion regarding a case brought against Copper Mesa and the Toronto Stock Exchange, wherein the judge noted that whilst he can understand the concern on the part of citizens of countries in which Canadian companies do business to ensure that the actions of those companies are carried out with the same care and attention as if they were conducted in Canada, this would be a matter for legislatures and not the courts. In other words, Mr. Chair and members of the committee, this really is a matter for you.

Now, I want to make clear that Amnesty International is not alleging that in all of the cases I've highlighted the Canadian company involved is responsible for the perpetration of the abuse. We have also documented human rights abuses associated with state decisions and actions. At times these may appear to be designed to facilitate extractive industry operations, but the role of the company, if any, may be less than clear.

While the authorities of the state in which the abuse occurred should be the authority responsible for identifying those responsible for the human rights abuse, the capacity and willingness of these authorities is often weak, and that is particularly true in developing states that are highly dependent on the investment of foreign mining companies. When the companies operating the mines are reticent to call for an independent investigation, the readiness of the host state to act is further undermined.

This brings me to my final point, which is with regard to the appropriateness of examinations being undertaken by a Canadian authority. In the circumstances I've outlined, where the host state is often unwilling or unable to conduct a full, fair, and impartial investigation that would lead to holding the perpetrators of human rights abuses accountable, examination of the issue by the Canadian government would be of great value. Now, that's not only in the context of where a state might be unable or unwilling, but also that the investigation or examination of the issue by the Canadian authorities could supplement the investigations undertaken by a host state where such investigations occur. That would offer the opportunity to delve into and clarify the situation to the benefit of both the victim of the human rights abuses as well as any companies that may be unjustly accused.

One of the things I would very briefly like to comment upon is some recent testimony provided to the committee. I understand the committee has heard from representatives of the International Human Rights Clinic at Harvard Law School, and also from the New York University School of Law, and that their statements pointed to the failure of any independent investigation to occur or result in accountability of perpetrators of human rights abuses around the Porgera mine.

What I do want to raise is that Amnesty International's recent experience in investigating human rights abuses by police resident at Barrick's Porgera mine in Papua New Guinea reveals a similar pattern. Amnesty International's investigations are documented in the report that has been provided to the committee, which demonstrates that aspects of the police activity in Porgera were carried out in violation of both domestic law and international human rights law.

People's homes were burned, people were forced to flee, and there were no legal safeguards to protect those affected by the police operations or to ensure respect for their human rights. There is significant evidence that the police aimed firearms at residents and threatened them while destroying their property and burning their houses, and on at least one occasion severely beat a man and his son during an interrogation in one of the villages. There are also allegations of rape by police officers, which warrant further investigation.

Whilst Amnesty has raised these concerns and presented our findings to the Government of Papua New Guinea, there has been no independent investigation undertaken by the authorities. We have also urged Barrick and the Porgera Joint Venture to call for a full and independent investigation.

● (1130)

I note that after several months of asserting that there were no human rights impacts as a result of the police activity, in December last year Barrick and Porgera Joint Venture privately accepted to Amnesty International that the police had forcibly evicted people from their homes and burnt down their property. The companies told Amnesty International that an investigation by the authorities was warranted. They even asked Amnesty International to provide them more time prior to launching our report, including time to urge such an investigation.

We took this request on good faith and delayed releasing our findings for over a month. Yet to the best of our knowledge, despite evidence that the activity was unlawful and contrary to the human rights of those impacted, Barrick and its subsidiaries have still not urged an independent and full investigation, and no further information has been provided by them to us. Perhaps the situation would be different if the Canadian government had inquired into the situation. I understand that Barrick has received significant support from Export Development Canada on projects other than the Porgera mine, which might cause the company to be more open to inquiries from the Canadian government.

In closing, I would like to reiterate the importance of Canada taking the steps needed to provide guidance on the state's expectations regarding corporate responsibility for human rights, to put in place an effective and independent fact-finding mechanism and to establish an accountability mechanism. Not only would this send a very clear message to Canadian companies, it would also be a message heard by other states, including other home states, other companies, and most importantly by the people whose human rights might be at risk by the extractive operations of Canadian companies and companies from any state.

Thank you.

● (1135)

The Chair: Thank you, Ms. Martin. And thank you also for putting up with our little glitches there with the video.

I'm now going to turn it over to Mr. Hodge, from the International Council on Mining and Metals. Sir, the floor is yours; ten minutes, please.

Mr. Robert Anthony Hodge (President, International Council on Mining and Metals): Thank you very much, Chair, and honourable members of the committee.

ICMM was created in 2001 as a change agent within the industry. Our charge as a secretariat is to work collaboratively with members to improve environmental and social performance, guided by the principles of sustainability. We are not a lobby organization.

We have 19 corporate members now and serve as an umbrella for some 30 mining associations around the world, through which we have potential reach to another 1,500 companies. Those companies are not bound by the core commitments that bind our 19 core members.

Of particular relevance to this discussion are programs that strengthen the socio-economic contribution of mining activities at local and national levels, our work on human rights and grievance mechanisms, and strengthening relationships with indigenous peoples. The ICMM and its members are also active partners with governments, including Canada's, and civil society in initiatives such as the voluntary principles on security and human rights and the extractive industries transparency initiative. I've given you other notes about ICMM on my submission.

I very much appreciate this opportunity to address you. I believe that this discussion in Canada around corporate social responsibility provides a special opportunity to bring positive change and a special opportunity for Canada to demonstrate leadership in the international arena. I agree that the performance of a small minority of mining companies has been unacceptable. This is not representative of the overwhelming majority of the industry.

At the same time, I am sorry that the response of the federal government to the consensus-achieving CSR round table process was so slow. One result has been a significant increase in the acrimony of relationships in and around the mining industry in Canada, to no one's gain.

I have two overarching messages. One, we strongly endorse the notion of accountability. There is a role for appropriate mechanisms for resolving complaints and delivering remedies. Some of these may well be in the form of rules and binding standards. Two, the design as proposed in Bill C-300, however, will not serve to bring positive change as sought by the stated goal of the legislation.

I wish to put before you three key trends that affect the environment in which we are operating.

First, over the past two decades the world has seen a marked improvement in the way in which social and environmental implications of mining projects are managed, along with an acceptance of the concept of an unwritten social licence to operate based on early and ongoing engagement with affected communities.

Second, a significant and continuing shift has taken place in the global economy towards emerging markets in China, India, Brazil, and South Africa. These are major players, and they are frankly skeptical of initiatives that they perceive as western constructs unless they are part of the design process. They are no different, quite frankly, from anyone else.

Third, over the past four years a major process has been under way to construct a framework within which business impacts on human rights can be managed and accountability can be assigned. This work is led by the UN Secretary-General's special representative, Professor John Ruggie, whose “protect, respect, and remedy” framework has achieved a high degree of consensus in what previously has been a contentious area. His work on operationalizing the framework is due to be completed within the next year.

I have five arguments to make about Bill C-300.

First, our experience is that to be effective, any complaints mechanism needs to be embedded in a carefully and collaboratively designed system of dispute resolution. We are strongly supportive of Ruggie’s “protect, respect, and remedy” framework.

We have also learned that redress to concerns raised by citizens, communities, and others is essential at three levels. The first level is the local community and company level. This is always the first line of action, and the most effective. The second is the national level, and here Peru's ombudsman office, which includes 50 local offices to ensure connection to the community level, is a good example.

● (1140)

Third is at the international level, and I also mention the OECD guidelines for multinational corporations and the OECD national contact points; the compliance advisor and ombudsman of the International Finance Corporation; and the Multilateral Investment Guarantee Agency.

Recognizing the need to have an integrated approach, Ruggie’s work is pulling all of this together. Bill C-300 seems to be proceeding without cognizance of and out of step with this work and the internationally supported insights it embodies.

Bill C-300 risks being duplicative, perhaps undermining the above initiatives. In practice, will a hierarchy prevail if complainants register a complaint with all of these? If so, which will take precedence? If not, how should the Government of Canada or complainants interpret contradictory rulings? Bill C-300 answers none of these questions.

On argument two, the great majority of disputes are best resolved through mechanisms that have local ownership and where the means of investigating conduct are close to the affected community or region. The aggrieved people are more likely to feel properly involved, and the people or institutions involved in resolving the situation are more likely to understand the context and cultural dynamic that may be at work.

This raises the issue of what happens with marginalized groups that may be out of favour with a host government. This is a real issue, but whether or not Canada wishes to assume sole responsibility—as implied in Bill C-300—for protecting these groups and individuals is an issue that should be addressed explicitly.

[*Technical difficulties*]

The Chair: Mr. Hodge, you were just starting on argument three when we lost you.

Mr. Robert Anthony Hodge: Thank you.

Argument three is that on its own, the remote ruling of Bill C-300 focuses on the negative and provides no incentive for ensuring that the interests of the parties involved are addressed—community, host country, indigenous people, or company.

Argument four is that Bill C-300 will alienate a number of developing countries at a time when the kind of leadership Canada has provided over the years is needed more than ever before. This is because its approach is based upon a model of the world where Canada will seek to regulate the behaviour of extractive companies over the heads of host country governments. This will be seen as undermining of national sovereignty and of a "west knows best" mindset. Frankly, we would do better to put funding into strengthening the enforcement capacities of some host countries in areas like environmental and social regulation, rather than substituting our own judgments for theirs.

Argument five is that while standards drive ICMM members' performance, the standards to which companies would be held accountable under Bill C-300 are unclear and subject to development within 12 months of the bill coming into force. This leads to considerable uncertainty regarding the scope of what companies may ultimately be held accountable to. To complicate the issue, the IFC standards and guidelines and the OECD guidelines for multinational corporations are both currently under review. As a matter of principle, it is difficult to support legislation where it is not possible for companies to understand the standards and criteria to which they will be held accountable.

In closing, here are a few suggestions and thoughts about moving forward. Canadian parliamentary process must, of course, run its course. However, regardless of the outcome, Canada should use this as a catalyst for discussion with mining countries from the political north and south, and with partners in business and civil society, in terms of effective encouragement of corporate social responsibility. Corporate responsibility has a number of facets—ethical, legal, and economic. All these need addressing in a systematic approach that encourages positive change.

So my message is not one of inaction. Within Canada the CSR round tables generated an agenda for action and these should be taken forward. Meanwhile, Canada has an opportunity to be a prime mover in the international debates about accountability and providing redress for those whose rights are infringed. But we do not strengthen our voice by acting unilaterally. Rather, with initiatives such as John Ruggie's final report to the UN Human Rights Council and the ongoing revisions to the OECD guidelines and the IFC performance standards, there is an active agenda for progress.

Over the past 20 months,I have been privileged to be able to travel broadly across the world, meeting and interacting with individuals from many countries and cultures. I'm always struck by the special reaction when I identify myself as a Canadian. Canada has a special role in the world arena. There is a remarkable respect out there and an expectation that we work with others, that we do not impose our will on others. I hope the results of this discussion will be consistent with that respect and these expectations.

Thanks again for the opportunity to address you.

● (1145)

The Chair: Thank you, Mr. Hodge, as we work through our technical glitches hopefully for the last time here.

We're going to wrap up with Shirley-Ann George, who's from the Canadian Chamber of Commerce.

Ms. George, welcome back. It's good to see you. We're going to finish off with your comments. You have ten minutes. The floor is yours.

Mrs. Shirley-Ann George (Senior Vice-President, Policy, Canadian Chamber of Commerce): Thank you very much, Chairman Allison.

It's a pleasure to be back in front of this committee. As you know, we represent the broad base of Canadian business, with over 175,000 members.

It is a pleasure to appear before this committee again on Bill C-300. We have resubmitted the presentation that was given by our president and CEO last November. I will not take you through all of that again. Rather, my presentation today will outline the key reasons why our views on this bill have not changed since we last appeared. In fact, we feel more strongly than ever about the harm this bill would cause while at the end of day giving no more protection to people in developing countries where Canadian extractive companies operate.

Bill C-300 would cut off companies from government resources when they are alleged—not proven, but alleged—to have behaved badly and when they most need help. Bill C-300 would leave the situation unresolved. It would leave the alleged parties no better off—and potentially worse off. It would leave the company in no position to take any measures to make things right if that were proven to be necessary. It would leave in tatters the reputation of Canada, the Canadian government, and one of our most important industries and economic contributors.

Also, we cannot ignore the impact of reducing the activities of our large extractive companies on the hundreds of smaller firms that serve them, including some companies that reside in your ridings. With the projects of larger companies curtailed, the spillover impacts on Canada will soon be felt.

Canada is a world leader in the extractive sector, and the Toronto Stock Exchange is the world's largest mining sector capital market. Bill C-300 would change that. It would drive Canadian extractive companies, the vast majority of which do behave responsibly and are considered to be globally responsible leaders, to move their base of operations outside of Canada.

Their motivation would be not to escape the punitive measures of Bill C-300, but to allow themselves to operate on a level playing field with their international competitors. On this, they know they can compete. On an unlevel playing field, they know they cannot. Competitors will not have to be constantly looking over their shoulders to see where the next accusation is coming from.

Mining is similar to building a new highway across the middle of your hometown. No matter how much it's needed, and no matter how diligent you are in your preparations, there will be a group that will remain bitterly unhappy. And there are anti-mining groups who make hearsay accusations without the needed due diligence.

This bill provides a taxpayer-funded platform for organizations whose existence depends on their ability to make accusations against extractive companies and for those that wish to do mischief to Canadian companies. Our extractive sector companies' international competitors could use the Bill C-300 process to damage the reputation of our companies and tie up their financing arrangements, as well as delay their entry into new projects and the takeover of existing ones.

Also, if Bill C-300 were passed, many Canadian companies would not take the risk of pursuing new ventures in countries with weak governance. This could be devastating to countries that depend heavily upon the economic contribution of Canada's extractive companies.

In Africa, for example, Canadian mining companies had more than $19 billion in assets in 2008. These companies contribute many, many, many times more than the Canadian government does. The impact upon this region of the closing down of projects, or even their curtailment, would be hard and swift for the world's most vulnerable.

Canadian companies would also shy away from taking over operations where companies are behaving inappropriately and then bringing them up to international standards. Why would they do so when the prospect of penalties and reputation damage lies before them? And who would lose most? The very people that the bill means to protect.

Sanctions proposed in this bill could be very serious and potentially devastating for Canadian extractive companies and for their employees, both at home and abroad. It would also harm the projects and the people in the developing countries. To be cut off from EDC financing and political risk insurance, as well as being blacklisted for Canada Pension Plan investment, would mean the cancelling of projects and the cutting of jobs.

It is the view of the Canadian Chamber that Canada shows true leadership by working with companies to give them the tools to prevent getting into difficulties and, even more importantly, to continue working with them to help remedy the situation and preserve Canada's reputation if they do. Cutting and running is not the answer.

● (1150)

Some have alleged that Canadian extractive companies want to cling to the status quo. This is not the case. Canadian extractive companies know the competitive advantage afforded to those with solid reputations for responsible conduct. What this is about is measuring companies internationally by the same existing high performance standards and not putting Canadian companies at a competitive disadvantage.

The standards that were cited by some of the other speakers are good standards. They were developed on an international basis and applied across all companies operating in those countries. They don't target companies from one specific country.

It's also about the reputational and economic harm of the process that invites allegations against Canadian companies without any risk to those who make them.

Bill C-300 is a classic example of a well-intentioned bill that causes massive unintended consequences. Because this bill was written by those who do not understand the extractive sector, it also will not achieve its purpose.

It is our recommendation that you take a step back and look at what should be done. This committee can meaningfully contribute to improving socially responsible behaviour. You can better understand the industry. My understanding is that this committee has not visited even one Canadian mining site in a developing country. You should go to see them. You should find out what's going on.

You could understand and contribute to international CSR guidance tools, such as the updating of the OECD guidelines for multinational enterprises that is under way today. You can review and support more CIDA projects to help build good governance in areas where Canada has mining interests. This would be a significant contribution. You can make sure that the CSR counsellor that was put in place—in part because this bill was tabled and the government responded by putting in place more than what they had originally intended—and the report that's given annually is important, by giving it your priority review each and every year and not forgetting it when you move on to the next thing, and by ensuring that the department provides adequate resources to that office. These measures will make a difference.

As we have said, while it is well-intentioned, Bill C-300 cannot live up to those intentions. It would cause significant harm to Canada's world-leading extractive companies, the broader business community, and Canada's overall reputation and economic competitiveness.

The Canadian Chamber of Commerce asks each of you to vote against this bill.

Thank you.

I would be pleased to answer any of your questions.

● (1155)

The Chair: Thank you, Ms. George.

Let's get right to questions.

We're going to start with Mr. McKay, for seven minutes, sir.

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

Thank you, all four of you, for joining the issue. I thought each of you made some pretty significant points, and I think this is an opportunity to get some dialogue between opposing views.

Let me start with the testimony of Mr. Hodge. I agree with you, as far as the ombudsman is concerned. It's a pity that report wasn't picked up and implemented by the government. But we have what we have, and Bill C-300 seems to be the only thing to be able to move things forward.

I want to address several points that Mr. Hodge made and ask Ms. Shanta Martin to comment on them. The first has to do with his point number four, which is that apparently Canada would alienate developing countries by imposing a regulatory regime. It would be imposing our will—I think that was the point he was making.

His fifth point had to do with the standards in Bill C-300 being unclear, although I'm not quite sure how they could be unclear when they're set out in the guidelines. There's that, and the related point, which is that if Canadian companies withdraw they'll do more harm than good to the indigenous population.

I'd be interested in your comments, Ms. Martin, in light of both your general findings and how you would apply those arguments to Papua New Guineau.

Ms. Shanta Martin: Thank you, Mr. McKay.

With respect to point four, that Bill C-300 would alienate developing countries and would impose the will of Canada on other countries, I don't see anything in the bill that actually specifies that or would result in that.

Basically, as I understand it, what the bill is intended to do is to make clear to Canadian companies that there are standards that they ought to abide by in relation to what they undertake in their operations overseas and that if they don't abide by those standards, there may be repercussions within the Canadian context. That effectively is outlining what Canada expects of its companies. It doesn't say it expects that the Government of Papua New Guinea will do X, Y, and Z. It basically says that there are international standards, that international human rights law does exist, that it is expected of states to require their companies to respect human rights, and this is one way of doing it. So I'm very unclear as to how that would actually be the case.

If I can just get back to this idea that the standards are not clear, what strikes me as anomalous is that on the one hand companies, including companies that are members of the ICMM, say they respect human rights, yet on the other hand say that the human rights expectations are too unclear to give them guidance. I don't understand how it can be one and not the other.

I think we need to refer to what the special representative has said in relation to human rights standards, that it is clear that companies can impact the full breadth of human rights. The legislation, as I understand it, proposes that the guidance elaborated by the ministers would be based on international human rights conventions to which Canada is a party and on international customary law. As I've mentioned, the special representative basically says there are few, if any, internationally recognized rights that business cannot impact. As such, it is entirely appropriate that any guidelines developed by the ministers would draw from international human rights law, including the international bill of rights.

There is significant guidance provided at the international level in the form of declarations, comments, jurisprudence, and recommendations from the treaty bodies, as well as from other mechanisms. It would also obviously be relevant to apply international labour law.

In response to that—

Hon. John McKay: Ms. Martin, excuse me for a second. Unfortunately I have only seven minutes, and I'm down to three, and there is one other point I want Ms. Lissakers to address.

The issue has to do with Ms. George's assertion that Canada's companies will have reputational damage, that in effect they'll be forced to leave the country and seek a more hospitable jurisdiction for their activities. I'd be interested in your observations, given that you work rather closely with American legislators and you have a fairly broad international perspective as to where you think these Canadian companies that apparently don't want the inquiries that Bill C-300 might generate might go.

● (1200)

Ms. Karin Lissakers: I don't know. Mineral companies usually go, and have to go to stay in business, where the minerals are. The issue is really on what basis will they operate in the resource-rich countries where the mineral deposits are located?

I would find it very surprising that someone would assert that Canadian companies will be put at a competitive disadvantage if they meet internationally recognized human rights and social and environmental standards. That suggests that in some cases they will choose to compete by not meeting those standards, by violating those standards. I have to say, if that's the basis on which some Canadian companies would want to compete, they shouldn't be using Canadian government money to support, fund, and guarantee their investment.

It seems to me that the point of this bill is to say that the Canadian government will not use public funds to support investments that do not meet internationally accepted human rights and social standards.

Hon. John McKay: I have one final point: that is, the companies assert strongly that somehow Bill C-300 will be used to game them, that NGOs will assert claims, frivolous and otherwise, against the good reputations of these companies. Ms. Martin and Ms. Lissakers, has that been your experience with the national contact point with the OECD and various other entities that currently exist?

I suppose the final point, particularly with respect to the Amnesty International assertions, is that, effectively, your report is being dismissed as hearsay.

Could you, within the last 30 seconds, comment on those two questions?

The Chair: We're over time, but I'd like a quick response from both of you.

Ms. Shanta Martin: Very importantly, the bill makes room for vexatious and unfounded claims to be dismissed. I understand that under administrative law in Canada there is a well-established body of law regarding the need for administrative decisions to be consistent with jurisprudential requirements regarding, for example, the role of law, access to justice, and so on. The claims that have no foundation whatsoever ought to actually be able to be dismissed fairly well within the context of Bill C-300.

It hasn't been my experience that the existence of documentation, witness testimony, or information from the ground that has been presented to companies generally has been dismissed as hearsay. In my experience, having done this type of work for several years, the only company that has ever dismissed out of hand the information that we have been able to put forward to them has been Barrick Gold Corporation.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Point of order.

Mr. Chairman, as we know, this meeting is a creature of the opposition parties, who said that they wanted to have a dialogue. This was not agreed to and was unknown until Friday on the part of the government members. The difficulty we have has just been shown to us by Mr. McKay, who I'm sure was behind the opposition move to get this into a so-called dialogue, where one of the proponents of the contrary point of view to what has just been expressed and set up very nicely by Mr. McKay, Ms. George, sitting at the end of the table, has been outside of this dialogue. There is no dialogue here. It is a case of setting up the chamber and other credible witnesses to an onslaught by Mr. McKay and the people who are opposed to her.

The Chair: I guess when you guys have your talking turn, you'll get a chance to ask the members your appropriate questions.

I'm going to move on to Madam Deschamps. The floor is yours. We'll continue the round.

At some point the government will get a chance to ask questions, just like we always do.

● (1205)

[*Translation*]

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): I am going to speak to you in French. I hope you can hear me clearly. Can you hear the simultaneous interpretation? Is it working?

Ms. George, I have some questions for you. You are going to participate in the debate today.

I feel personally involved in what you said. You know that, clearly, the public gets worried when they hear about the likelihood of a mine opening in one of our regions. You said in your speech that there were always unhappy groups when there is a plan to open a mine in a given region.

I think it is healthy for people to be able to express their concerns. In my region, there is a potential uranium deposit. Obviously, we are not going to let just anyone come in with big boots, take away the resources and leave everything stripped, causing environmental damage that will have an impact on people's lives, health and environment. I think it is entirely legitimate.

One thing is troubling. Exploration is under provincial jurisdiction and development is under federal jurisdiction. So there is a grey area.

I think there has to be at least a framework, an act, and I would like to hear your opinion on that. Perhaps Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries makes you afraid of certain things for certain reasons. But, as the other witnesses have told us, Canada must have rules, legislation to control those companies, both here and abroad.

[*English*]

Mrs. Shirley-Ann George: Thank you for that question.

You bring up the issue of jurisdiction, and whose jurisdiction it is to be monitoring this, as well as what the role of Canada is.

Whether it be the federal or provincial government, or whether it be the Canadian and Mexican government, or the provincial and state and federal government in Mexico, for example, jurisdiction is always an issue we need to be respectful of. We would no more expect them to come into our country and start to do reviews than we should be going into theirs without meeting the proper norms, the international standards, for such investigations. So that is an important issue.

There is a role for Canada in this field, and a very important role. We should be acting on the international stage. There is the work that is being undertaken by Mr. Ruggie at the UN, the OECD work, the work on international standards that have been met that was cited by a number of the other speakers. Canada has a very important role to be at that table when those standards are developed and to be putting our important views into that context. Both from a corporate level and from a government level, we have not always been as diligent as we should be to be at that table, to be making sure the standards are high, and that we are moving everybody forward together.

[*Translation*]

Ms. Johanne Deschamps: Widespread consultations were conducted across Canada. Round table discussions produced results, a consensus, recommendations. What came out of the consultations was not useless. Representatives from mining companies and civil society, as well as experts and individuals, participated in the process. With this process, the government is pressured to implement regulations that fully address the whole issue of the companies' social responsibility.

Ms. Martin raised an important point. When host countries, those where the mining companies will operate, are not able to control those companies, there has to be legislation allowing the Canadian government to intervene. It must be able to investigate and impose penalties or measures on offending companies. It cannot do that at the moment.

We are talking about developing countries. We agree that these countries are in the process of being built, being developed, being born. In many cases, they do not have the means to take on that responsibility.

● (1210)

[*English*]

Mrs. Shirley-Ann George: Yes, there was a Canadian consultation. We agree with the statements that have been said before, and what Mr. McKay has said, that the government response to the consultation took way too long, but they have responded and they have put in place a framework now that provides a way to move forward.

Where Canada can make a difference, as I stated, is with countries that have weak governance. There's a very important role for CIDA to play in helping to build their framework, because when the framework is right it's much less likely that companies will get into trouble. That's a very important role for Canada to be looking at and fixing the underlying problems, and CIDA has a role to play in helping to build the governance framework in these countries.

The Chair: Thank you.

That's all the time you have.

We're going to move over to Mr. Abbott for seven minutes.

Hon. Jim Abbott: Thank you very much.

One of the challenges I see in discussing the bill is a process of dealing with allegations. With the utmost respect for Amnesty International, the allegations that have been made, particularly against Barrick and Porgera, are very serious. I wonder if you could give us a bit of background. How long did it take you to pull this report? What kind of calendar, what timeframe are we looking at where you were doing your due diligence?

Ms. Shanta Martin: Specifically, on the Amnesty International case report, which I believe you do have a copy of, we first raised our concerns in May of last year.

The first instance in which the police went in to burn down the houses right next to the Porgera underground operations occurred on April 27. Thereafter, we made a number of inquiries going forward, and obviously some of those were from a desk-based scoping study. Then we undertook an in-country investigation between August and October of last year and presented those fairly promptly to Barrick Gold as well as to the Papua New Guinea government. We requested further information and so forth, had a meeting with Barrick Gold and Porgera Joint Venture in December of last year, and as I said, we did hold off on the immediate publication of that report at the request of Barrick and Porgera Joint Venture, because they indicated they wished to provide us with further information and they indicated there would be a role for them to play in calling for an investigation. So we ultimately released the information in February of this year.

Hon. Jim Abbott: Okay.

I'm interested in the August-to-October timeframe. How many people were involved on behalf of Amnesty International? Were they nationals, or were they people who went to Papua New Guinea from outside of Papua New Guinea?

Ms. Shanta Martin: They were both. Amnesty International conducts its research both from the context of having researchers who are based in London, as well as working with local partner organizations.

Hon. Jim Abbott: So you didn't actually have people go from London to PNG?

Ms. Shanta Martin: Yes, we did.

● (1215)

Hon. Jim Abbott: Oh, you did. How many?

Ms. Shanta Martin: I went from London and worked with partner organizations in Papua New Guinea. We also had members of our staff in London who were working on the case, but in terms of those who went from London to Papua New Guinea, it was myself.

Hon. Jim Abbott: How many people in London would be working on this?

Ms. Shanta Martin: I would say approximately seven or eight people are involved in the case in one degree or another.

Hon. Jim Abbott: Okay.

I'm curious about the resources in order to do that. How many dollars would you guess Amnesty International has invested in this particular report?

Ms. Shanta Martin: I don't have that information with me. I'm not sure that I could actually provide you with any accurate figure on that.

Hon. Jim Abbott: If I said a figure of 100,000 or 200,000 you would have a better guess than I would, wouldn't you?

Ms. Shanta Martin: I would say it's much lower than that.

Hon. Jim Abbott: It's lower than that?

Ms. Shanta Martin: Keeping in mind Amnesty International obviously works on a very meagre budget relatively, and certainly our wages are not so high, so....

Hon. Jim Abbott: Who would the people in Papua New Guinea, typically be?

Ms. Shanta Martin: In what sense...?

Hon. Jim Abbott: Well, I mean, they obviously have to make an income from somewhere in order to support themselves and their families. Where would they normally be deriving their income? Are they deriving their income from this kind of investigative work?

Ms. Shanta Martin: Well, in the context of the Papua New Guinea cases we've been looking into, we work with local partner organizations who are also non-governmental organizations that derive their own wages.

Hon. Jim Abbott: It's just that when we're taking a look at this and the seriousness of the allegations, the fact is that this company or any other company is put back on their heels by the allegations that are made. Unlike in a court of law, where a person is innocent until proven guilty, it seems to me there is a presumption of guilt on the part of the world when Amnesty International or other organizations come forward with some of these claims, which I understand have been dealt with pretty summarily by, in this case, Barrick.

Ms. Shanta Martin: Well, certainly one of the things I mentioned just before was that, as I understand it, Bill C-300 is intended to do away with vexatious and false claims, that there is a requirement of due process in Canada, and that clearly this process that is suggested under Bill C-300 would be subject to those requirements of due process.

Now, if it appears to companies such as Barrick that there is an unfair aspect in terms of NGOs bringing information to the public domain, one way to deal with that is to ensure that there is an appropriate authority within Canada that is tasked with examining these issues, so that the company itself has the opportunity to present its information in a fulsome and clear way. Amnesty International's investigations have found there's often a lack of desire to fully share all of the information that would be necessary to get to the bottom of any concerns the company might have.

Hon. Jim Abbott: But I think what you've done there is you've simply finished describing Canada's CSR counsellor, who is just coming up to speed. In other words—

Ms. Shanta Martin: As I understand it—

Hon. Jim Abbott: I'm only suggesting that if Bill C-300 is needed two or three years from now, if the CSR counsellor function is not an appropriate function or is not working well, perhaps we would have to take a look at something like Bill C-300. But unless I'm mistaken, from what I heard you say, you have just described the CSR counsellor that the Canadian government has set up as a result of the round table that we had in this country.

Ms. Shanta Martin: I believe there are two distinct differences between the Canadian counsellor and what is proposed under Bill C-300. One is that the counsellor hasn't actually got, within the scope of what she is undertaking, a requirement to articulate what the guidelines are the company would be required to abide by. The second is that the investigative mechanism that the counsellor has is without any capacity to compel the production of documents or testimony from a company, whereas certainly in relation to what Bill C-300 proposes, due to the relationship and the significant dependence that a lot of Canadian companies have on public support, there would at the very least be a significant basis for a lot of companies to comply with requests from the minister in relation to the production of documents and other testimony.

So where the counsellor has only the capacity, on a voluntary basis, to engage if a company wants to be engaged in a dispute resolution process, the ministers under Bill C-300 would have a fact-finding capacity and would also have the capacity to ensure that there is some follow-up, if they find that the way in which a company has behaved falls short of the guidelines.

● (1220)

The Chair: Thank you.

Thank you, Mr. Abbott.

Now we'll move back to Mr. Dewar for seven minutes.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair, and thank you to our guests.

I would like to start with the Revenue Watch Institute.

Ms. Lissakers, you were essentially suggesting an amendment to the legislation, and I'm interested in that. I might be mistaken, but I don't think we have actually heard that particular point of view, which is a requirement for transparency in terms of moneys that are passed on to governments. Could you tell us a bit more about that, what jurisdictions, and essentially how that would work and how we could amend our bill here?

Ms. Karin Lissakers: Thank you.

Under the extractive industries transparency initiative, for example, which has now been endorsed by the G-8, by the G-20, and has wide support, including from the Canadian government, which is contributing to the trust fund that helps countries with implementation of the EITI, there is a strong recognition of the value of the transparency of payments from companies to governments in resource-producing countries. This is a way to increase the accountability of the government's management of those moneys and to reduce the risk that payments are diverted for self-enrichment and other corrupt purposes. The logic for supporting this transparency is that if the revenues that are generated from the extractive resources are spent for the public benefit by the recipient state and government officials, the business environment will be better, the political environment will be better, and everybody gains—the consumers, the importers, the investors, and the citizens of the resource-rich countries.

I'm surprised.... As I say, the International Accounting Standards Board is working on an accounting standard. The U.S. Senate just considered setting transparency standards. The IFC already has a transparency requirement related to any of its extractive investments, co-investments with companies, and the U.S. Overseas Private Investment Corporation, OPIC, has this transparency requirement, using the IFC and the EITI standard as a reference point. It seems to me, then, that it would be logical to include this provision in Bill C-300, since it moves in the same direction of meeting international best practice and enforcing it when Canadian public moneys are at risk.

Mr. Paul Dewar: Thank you.

If you wouldn't mind, if you have a link to a website or if you have those standards available.... I'm sure our researchers could find them as well, but if it's simple to send us the links, that would be helpful.

Ms. Karin Lissakers: I can do that.

Mr. Paul Dewar: In the spirit of dialogue, Ms. George, I know you've been very clear about how you feel about the bill, but in light of what we've heard, would you see that requirement of disclosure being a concern for your members?

Mrs. Shirley-Ann George: The EITI is a relatively new international standard that many Canadian companies already adhere to.

Mr. Paul Dewar: So notwithstanding your issue with the legislation, you wouldn't have a problem if it were a requirement to have that disclosure?

Mrs. Shirley-Ann George: I haven't asked my members if there would be a broad consensus, but the ones I have spoken to seem to be supportive.

Mr. Paul Dewar: Ms. Martin, we've heard from the government about the role of the commissioner. As you probably know, the commissioner's not up and going yet. Would you trust putting this information in front of the commissioner—now I'm referring to some of the cases you've been working on, be it Papua New Guinea or others—in light of the restrictions within the ambit of her office? What are your feelings about the way the commissioner has been structured, and would you have confidence in her being able to look into the concerns you've brought forward with any depth?

● (1225)

Ms. Shanta Martin: I don't want to discount the possibility of the CSR counsellor having some positive impact, but my main concern is with the entirely voluntary nature of any activities she engages in with respect to companies saying they'd rather not. The second concern is that even if through that process she has recommendations as to what goes forward, those are entirely voluntary. There are no teeth. There's nothing to back up the recommendations.

I understand there is some concern among civil society in Canada regarding the way in which that counsellor will go forward. What I think is quite interesting is that Bill C-300 is hardly proposing much beyond what is already in play. What it does do is say there will be ramifications if a Canadian company does not respect human rights overseas. Now those ramifications are entirely within the capacity of the state to withhold or to provide, and in that sense it seems to me that it entirely makes sense that Bill C-300 is trying to regulate the extent to which public support will be given to companies when they may not respect human rights. And again, going back to the CSR round table—the ombudsman process that was proposed within the CSR round table, which had the consensus, the agreement of all parties to that round table, including industry—I think that what was proposed and what has since come out in terms of the CSR counsellor are quite different things.

Mr. Paul Dewar: I couldn't agree with you more on that.

Mr. Hodge, there's an expression here in Canada, “all hat”. There's concern about the complaints commissioner being “all hat”—in other words, what's underneath is of question. I'm just curious as to your point of view. If we have a commissioner who is not able to do more than take in information, and there's a requirement, as you probably know, that they have two to play with—in this case it's up to both players to decide whether they're going to participate in the process—then it's very difficult to make any headway with these limitations. So the commissioner takes in information, and if she determines they can go ahead, that's predicated on the participation of both parties. As you know, if there are complaints or concerns of one over the other, you could easily say no thank you.

In terms of the people you work with, isn't it important to have “fair play and daylight”, that the rules apply to both sides equally, and that both would have to participate in some form? We can argue around what the rules of engagement are, but isn't it important to have those who have concerns and the companies responsible both involved? If they're not involved, then there are questions about due process.

The Chair: Mr. Dewar, that's all the time we have.

Mr. Hodge, if you'd like to answer that question, then we're going to start our second round.

Mr. Robert Anthony Hodge: Thanks very much, Chair.

I have just a quick comment to clarify something. ICMM companies are all committed to EITI. It wouldn't require anything in this legislation to change this situation in Canada. What it requires is a decision on the part of the Government of Canada. The Government of Norway has recently committed to participating in EITI. The Government of Canada could do that tomorrow if they so choose.

In terms of the points you raise, Mr. Dewar, there is no question, and I've said very clearly, there is a need in the system to be looking at the broader sense of CSR, of which the complaints mechanism is one part. There is a need for rules to ensure fairness in that playing field. I have no doubt of that. Our concern, and the one I have articulated and emphasized, is that Canada should not be doing this unilaterally. There is a role in Canada for part of this, just as there is a role in other countries. We should be doing this in partnership, not on our own.

The Chair: Thank you, Mr. Dewar.

We're going to start our second round. I know we told our witnesses we'd be going until half past, with the possibility of a few extra questions. I still have a couple of questions around the room, so we'll go for at least another ten minutes, if that's okay with the witnesses.

● (1230)

Ms. Karin Lissakers: I'm at your disposal.

The Chair: Perfect. Thank you very much.

We're going to start with five minutes, and we'll get two or three rounds in before we wrap up. I'll go to Mr. Lunney, Dr. Patry, and then maybe back to Mr. Van Kesteren or Mr. Goldring.

Mr. Lunney, the floor is yours.

Mr. James Lunney (Nanaimo—Alberni, CPC): Thank you, Mr. Chair.

We enjoy the participation of the witnesses and appreciate all of your contributions. We are having a discussion of this. It's a discussion that's going on around the world on these important matters of CSR. But I think it's important to state, for some of our international participants, that we have a process in Canada. We've been in part of these discussions. We've had an extensive round-table consultation with stakeholders—people from the industry, as well as NGOs and other interested parties. We've put in place a mechanism that should contribute positive outcomes. Some of us would like to see that process have a chance to have an impact.

I have some concerns about what has been expressed in terms of Canada projecting our influence onto other countries. We are actually known more as a nation that works cautiously and in collaboration with international partners.

As a member of the defence committee, I was in Afghanistan about a year ago, and one of the other members of this committee was there with us. Our approach in Afghanistan is quite different from some of our international partners. We dialogue with the local officials in Kandahar: we don't tell them what we'd choose as projects to help them economically; we work with them to decide what would help them.

But when you talk about complicated issues—we're worried about frivolous or vexatious concerns—I think there's a better way to describe them, because they're very serious allegations. An example was raised about police actions in Papua New Guinea. You alleged human rights abuses that were corporate-related, but you went on at great length about the police involved in burning houses, rapes, and all kinds of misconduct. That is alleged to be corporate-related.

For Canada to project and go in to sort out failures of governance capacity and authorities in other nations is quite a significant challenge. We need to think this through carefully. I'm don't know if people imagine that we just go in and tell another nation that frankly their governance capacity just isn't there and they are doing it all wrong, and therefore we're going to send in—I don't know, armed forces? What do you have in mind here?

I think we do have a responsibility to act, and that's what the discussion is about. But allegations that are very serious could withhold funding from Canadian companies that do not have a chance to defend themselves and are basically guilty by accusation. That could have very serious ramifications.

I'm not sure who to direct that question to, but I think it warrants some discussion here. I'd be interested in hearing how either side wants to respond to that.

The Chair: Ms. Lissakers, why don't you start, and then maybe Mr. Hodge.

Ms. Karin Lissakers: I was involved in the legislation of the foreign practices in the United States, which made it a criminal offence for U.S. corporations to bribe foreign government officials. The U.S. law actually preceded the OECD decisions and the Canadian law by some 20 years. We heard many of the same arguments about bribery: "Well, this is us imposing our own cultural and social norms on other countries. It will put our companies at a disadvantage." But the fact is that the wisdom of that legislation and the direct benefit to corporations are now widely recognized and accepted.

Bill C-300, if I read the text correctly, would not impose standards on other countries. It would simply impose the standard for the use of Canadian government support for investments. It says we will not support, directly or indirectly, practices by corporations that are guaranteed, insured, or funded by us that violate international norms of human rights and environmental best practice, even if the country where they are operating has vast human rights abuses, or doesn't have effective enforcement or even laws for environmental protection. I think this is a very common approach by the home states of corporations that provide the capital and political risk insurance or export credits.

I don't think this breaks any new ground in terms of the principles, including the review and enforcement action. In the U.S., the anti-bribery statute is enforced by the U.S. Department of Justice.

● (1235)

The Chair: That's all the time we've got. I'm going to ask Mr. Hodge to reply quickly. We're over our time.

Mr. Hodge, could you make maybe one final comment before we move on?

Mr. Robert Anthony Hodge: Thank you, Chair.

Just to make a short comment, indeed, my sense is different from yours on this one, Karin. My sense is that as I work in countries around the world and meet with people and talk with people, in fact they will see this as an imposition on what they would see as their sovereign right to govern the activities within their own borders the way they see fit.

However, what we're really saying is that the way forward on this is not to deny that strict rules or systems need to be in place, but rather that Canada should use this as an opportunity and take the time to think about how to do it collaboratively with other partners. That's the point I'm trying to make.

The Chair: Thank you very much for that.

Thank you, Mr. Lunney.

We're now going to move over to Dr. Patry for five minutes.

[*Translation*]

Mr. Bernard Patry (Pierrefonds—Dollard, Lib.): Thank you very much.

Ms. George, I have great respect for the Canadian Chamber of Commerce, but I have to say that your testimony this morning is a lot more negative than other representatives of your organization have given before this committee.

The Canadian Chamber of Commerce participated in the Interdepartmental Working Group on Corporate Social Responsibility. One of the working group's conclusions was to create an ombudsman position with investigative powers. I have to say that there is no punitive intent. It is important that that be said. But the Corporate Social Responsibility Counsellor position that has just been created is just an empty shell, in my view.

Has the Canadian Chamber of Commerce already done any research in developing countries on companies' social responsibility? From whom do you get your information, apart from the companies themselves? Have you already talked to civil society representatives in some of those countries? I am not talking about NGOs, but about real civil society representatives. For example, representatives from the conference of bishops from the Democratic Republic of Congo came here to see us.

Right at the beginning of your remarks, you said that Bill C-300 "would leave the problem unresolved". So I gather there is a problem. Can you tell me how you see the problem?

[*English*]

Mrs. Shirley-Ann George: Thank you for that question.

Actually, the Canadian chamber was not invited to be part of that consultation, so we were not involved in that process. There were others that were involved, and there were some recommendations made to the government, which the government reviewed, and it put the vast majority in place.

You asked how I define the problem. Of course there is much more work to be done on improving human rights around the world. There's no argument on that. The argument is whether this is the right process. Our position, very clearly, is that it is not the right process. This is a process where anybody can come forward with an allegation and the company's reputation is damaged immediately, before there's any opportunity for it to respond, before there's any opportunity for these claims to be put aside. This is unlike the counsellor process—which you think has no teeth, and we would disagree—where there is a discussion and an annual report and companies that are found to have done wrong are reported publicly and will pay the price. This is for those that have done wrong, not for those that are just alleged to have done wrong. That is where the fundamental difference is.

Mr. Bernard Patry: Ms. George, can I ask you another question? You didn't answer my first one. It was concerning your sources. Where do you draw your sources if you've never been on the ground in the other country? Where do you draw your sources? I'm not talking about NGOs; I mean local NGOs, let's say from any country—I don't know, Congo, Peru, Ecuador, any of these people. Have you ever met these people?

● (1240)

Mrs. Shirley-Ann George: No, we have not met these people.

The Chair: Thank you.

We're going to move back over to finish off with Mr. Van Kesteren and Mr. Goldring, who are going to split their time.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

To follow up on Mr. Abbott's statement, I'd really like to protest. There are so many questions that need to be asked that I don't know where to start.

I could maybe mention to Ms. George that we were talking somewhat about the mining. We haven't even touched on the service sector yet, which is such an important factor in our government and in our economy too.

I have a letter here from Goldcorp protesting allegations, and we need to hear from these people too. This is such an important issue. This is something we need to study much more deeply. I think we've only scratched the surface, so I too am very concerned about the mix of witnesses. I appreciate them all very much.

I want to talk to Mr. Hodge. We've met on another occasion on another committee as well. There is so much more we need to ask you as well. I don't know where to begin, but the one nagging question I have is to Ms. Lissakers.

Forgive me, but who are you, who funds you, and what is your organizational statement? We don't have this information here. We're hearing lots of testimony, but maybe you could just give me a Coles Notes version, please.

Ms. Karin Lissakers: I apologize to the committee. I was trying to abbreviate my remarks and left out the introduction.

The Revenue Watch Institute is an independent, not-for-profit organization devoted to promoting effective, transparent, and accountable management of oil, gas, and hardened mineral resources in resource-rich countries.

We are funded by the Soros Foundation, the Open Society Institute, the Bill and Melinda Gates Foundation, the Hewlett Foundation, and the Government of Norway's Oil for Development program.

We provide capacity-building to both governments and civil society. We do a lot of research on extractive research policies. We provide technical assistance to governments. We provide grants for training to civil society and—

Mr. Dave Van Kesteren: Excuse me. What is your annual budget? What is your mission statement? I want to hear that.

Ms. Karin Lissakers: Our annual budget is almost $12 million.

Mr. Dave Van Kesteren: What's your mission statement? You must have—

Ms. Karin Lissakers: It is to promote effective, transparent, and accountable management of extractive resources for the public benefit in the resource-rich countries.

Mr. Dave Van Kesteren: Thank you, Mr. Chair. I'm going to pass—

Ms. Karin Lissakers: We work very cooperatively with the ICMM and other corporations in the EITI and other contexts.

The Chair: Mr. Goldring, you have two minutes left.

Mr. Peter Goldring (Edmonton East, CPC): Ms. George, it had been mentioned in some papers that I have from Perrin Beatty, and it is my understanding as well, that your Canadian Chamber of Commerce has been an active player in Canada's contribution to the development of the ISO 26000 guidance on social responsibility. To understand the importance of this, there was a comment made previously that to voluntarily comply to certain standards is problematic, but ISO 9000 is known internationally and worldwide as a very desirable standard for businesses that can be lucky enough to subscribe to it and gain that listing. It is a credential for business dealing that is very well respected internationally. Should they develop this same standard for the ISO 26000, I'm sure that even though it's voluntary, by and large, it will be a good and marketable standard for a corporation to have.

Maybe you could comment on that, and also on where that ISO 26000 standard is at present. Would this not be, even at a preliminary stage, information that this committee should be apprised of, in order to know the direction they're going and so that we're not all, at the end of the day, in contradiction with this standard in this bill?

Mrs. Shirley-Ann George: Thank you.

The ISO 26000 is not a standard but guidance that is being put together through the ISO process. It's an international process that is looking at a set of guidelines to help not just companies but NGOs, government, and all organizations to behave in a socially responsible manner. It is a very complex topic. It is taking a long time for it to move forward in such a way that there's some agreement.

The Canadian Chamber of Commerce has been involved in other international corporate social responsibility forums for a number of years. We played a very, very active role in the good work that the OECD did on guidelines for multinational corporations. We continue to work in those kinds of venues.

We believe very strongly that there is a need for guidelines for companies and that it does bring them along. The example I used before, EITI , is a very good example of that.

If I may, Mr. Chair, there have been a lot of comments on what Mr. Ruggie has said about a very important study that's being done by the UN, and I'd like to make sure that the committee hears a little bit more of the context of what he has said. His work is going to be game-changing. As he releases his final report and countries start to implement it, it's going to be very important, and Canada is going to want to be part of that discussion.

He has said on corporations that "...companies cannot be held responsible for the human rights impacts of every entity over which they...have some influence, because this would include cases in which they are not the causal agent, direct or indirect, of the harm in question". Just because they're located in the region does not make them responsible—sorry, that was my edit.

He continues, saying, "Nor is it desirable to have companies act whenever they have influence...". Particularly, companies should not be going over governments. He says:

> Asking companies to support human rights voluntarily where they have influence is one thing; but attributing responsibility to them on that basis alone is quite another.
>
> ...it is not [always] possible to specify definitive tests for what constitutes complicity in any given context.

This is an area that is difficult. It is one where the work of important organizations is moving forward. Canada needs to be part of that process. Canada should not be making Canadian companies get ahead of it.

● (1245)

The Chair: Thank you.

Thank you very much, Mr. Goldring.

I thank our witnesses.

To Ms. George here in Ottawa, thank you very much.

To Ms. Martin and Mr. Hodge in the U.K., thank you for taking the time to be with us today.

To Ms. Lissakers from New York, thank you very much.

For those of you who would like to grab a little lunch before we get back to committee business, I'm going to suspend the meeting for about two minutes to go in camera

Thank you once again.

[*Proceedings continue in camera*]

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