House of Commons
CANADA

# Standing Committee on Foreign Affairs and International Development

FAAE • NUMBER 021 • 3rd SESSION • 40th PARLIAMENT

**EVIDENCE**

## Thursday, June 3, 2010

## Chair

**Mr. Dean Allison**

# Standing Committee on Foreign Affairs and International Development

**Thursday, June 3, 2010**

● (1105)

[*English*]

**The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)):** Pursuant to the order of reference of Wednesday, March 3, 2010, Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries, we'll commence. We are now at meeting number 21.

To all the witnesses today, I want to say thank you very much for being here. Some of you have come from close by and some from farther away. We thank all of you.

I'm going to ask you to try to keep your remarks to eight minutes. I realize that some of you have been told a different amount; I'm not going to cut you off, so do the best you can.

I want to get started as quickly as we can because we do have a lot of witnesses today. A few have said that they would be a bit late. We will probably start questions and then go back to them, should that happen to be the case, just to give everyone a chance.

It's good to see Mr. Stewart-Patterson back again. Why don't we just kick off with the Canadian Council of Chief Executives? You have Mr. Dillon along as well, who is the vice-president of regulatory affairs and general counsel. We'll have you start and after that we'll get to questions.

Mr. Stewart-Patterson, the floor is yours, sir.

**Mr. David Stewart-Patterson (Executive Vice-President, Canadian Council of Chief Executives):** Thank you very much, Mr. Chair.

Thank you, members of the committee, for inviting us here to testify and to discuss Bill C-300.

The Canadian Council of Chief Executives represents the heads of large globally engaged enterprises in every sector of our economy. We have spoken clearly and often about the importance of good corporate citizenship at home and abroad, and I think it's fair to say that by any objective measure Canadian companies are among the most socially and environmentally responsible operating in developing countries worldwide.

Far from promoting more responsible behaviour by Canadian corporations operating internationally, we fear that Bill C-300 would result in Canadian corporations either choosing not to make beneficial investments in developing countries or losing business to corporations based elsewhere that will not have the same regard for environmental, safety, and human rights standards.

The council's main concerns follow.

The legislation is based on a flawed premise, since it assumes that Canadian companies are not to be trusted in their international operations.

As yet, there is no internationally recognized set of standards against which Canadian practices can be judged.

By suggesting that unilaterally determined Canadian standards should take precedence over the laws and regulations established by sovereign nations, Canada would be engaging in a form of extraterritoriality that it consistently has rejected when attempted by other countries.

On a more practical note, the mere threat of a withdrawal of export financing from Export Development Canada or a loss of access to investment from the Canada Pension Plan Investment Board could easily jeopardize projects in developing countries. We know of no other national legislation that would seek to discipline the international activities of its resident corporations in this manner, and thus competitors in other countries would have an unfair advantage over Canadian companies.

The bill purports to screen out vexatious or frivolous claims, and yet it provides no effective mechanism for doing so. Any person can request an investigation, regardless of whether they're personally affected, and without having to supply any credible evidence of inappropriate behaviour by the corporation in question.

The filing of a single complaint sets the process in motion, and the mere fact of an investigation, regardless of its eventual outcome, would likely prejudice the Canadian company. In a bidding situation, a competitor could easily arrange for a complaint to be launched and then lobby the foreign government to exclude the Canadian company from the whole bidding process, on this basis: “Look, they're even being investigated by their own government, so how can you possibly do business with them?”

Undertaking an investigation under the act likely would require the assistance of the government of the developing country, which may or may not be forthcoming. In any event, Canadian ministers responsible would not have ready access to the resources or detailed expertise they would need to easily determine the merits of a complaint. And all of this would lead to unacceptable delays and prejudice to the Canadian company.

Let me be clear on one point. We believe that Canadian companies should always operate in a transparent and ethical manner, both internationally and at home, and we fully support efforts to improve the governance practices of all companies operating in developing countries.

The federal government has been engaged with responsible Canadian companies for some time in an effort to develop sound corporate social responsibility standards and their practical implementation. We should allow these efforts to continue rather than short-circuit them through misguided legislation.

I think it's fair to say that for many years Canada has been seen as a centre of excellence in the mining industry, both in terms of a significant number of Canadian champions competing around the globe and with respect to our ability to provide world-class financing of mining ventures anywhere. In an era when national brand is increasingly important, this legislation is likely to tarnish our well-deserved reputation for good corporate citizenship in the extractive sector. It could also imperil the brand of many other Canadian companies operating in developing countries, beyond those in mining and oil and gas. Therefore, I urge members from all parties to vote against this bill.

Thank you, Mr. Chairman.

**The Chair:** Thank you, Mr. Stewart-Patterson.

We're now going to move over to Laureen Whyte, from the Association for Mineral Exploration British Columbia.

Welcome. You'll have eight minutes, so the floor is yours.

**Ms. Laureen Whyte (Vice-President, Sustainability and Operations, Association for Mineral Exploration British Columbia):** Thank you.

Thank you for inviting us to join you, and I apologize; I've had the trip on which everything that could go wrong has gone wrong. I'm running.

I work with the Association for Mineral Exploration B.C. I work out of our Vancouver office. What I really wanted to do today is bring a perspective to you from the exploration community, primarily in British Columbia, but also nationally and internationally.

The Association for Mineral Exploration was established in 1912. We represent over 300 corporate and 3,000 individual members. These are primarily prospectors and junior exploration companies. We also have the exploration divisions of some of the senior companies in our membership.

Our areas of focus are primarily health and safety, aboriginal and community engagement, and policy development. We also have a large conference, Mineral Exploration Roundup, where we do technical work.

The context for our members is that in some ways it is quite daunting for folks who are working in a small office or perhaps on their own to try to understand operationally what the guidance is telling them to do. In terms of the international work that has been happening, we've had to make a lot of investment in understanding and providing guidance to our members on how they can implement operational practices that will meet the tests of health and safety standards, environmental management, social development impacts, and, now, human rights.

I want to share some of my own involvement in this. I have worked with first nations for almost 25 years, both in the community as a social worker and in development initiatives as an industry employee. I think the challenge and the opportunity can both be underestimated in terms of what the presence of industry can mean to a community, and it's primarily the examples of first nations that have raised a lot of questions for our members about what the expectations are of them internationally.

As for some of the things we've been working on in British Columbia, we have been working with first nations in an area where there is very little of the province that's covered by treaty, so we're working in very uncertain kinds of situations, in a lot of conflict situations, and where there is a lot of uncertainty about decision-making and reaching consensus within the communities.

We work with the Prospectors and Developers Association very closely as well, and we've been deeply involved in the development of e3 Plus, on which I know Tony Andrews has shared some details with you already.

We also are participating as PDAC moves to its field testing of e3 Plus, and we've engaged two first nations in B.C. to participate in the field testing with companies operating in their area. I think that the connection to what we do domestically should not be lost. There is an awful lot that we've learned here, and there are a lot of similar kinds of situations that we've developed some expertise in managing.

Internationally, I think it's been recognized by all that the real performance challenge is being able to bridge the governance gap that has been created by globalization. But the current international human rights objectives were framed in relation to the obligations of states, not businesses.

At a practical level, there is also a lack for us of an understanding of the breadth and coherence of response. What I mean by that is that understanding who is responsible for what in any given situation on the ground is very difficult for people to do.

The way we experience success is by collaborating with government, with communities, and with non-profit organizations. I can cite several examples in British Columbia where we've done that very successfully in remote communities.

● (1110)

We can't do it alone. Nobody can do it alone. I feel very strongly that the way people learn how to manage these situations is not through sanctions, but by learning. It's by learning from each other, by having the responsibilities and the criteria set out for them very clearly in operational terms, and by being able to go to somebody who can provide them with some guidance.

I just want to speak briefly about what we're doing here in Canada. We have been following the work of the UN special representative very closely. In my experience in working in communities on a personal level, I am very pleased to see the scope and the comprehensiveness with which the UN special representative is approaching this work. It fits with my own experience of success and with the kind of guidance that I've provided to my members and that has been successful for them.

I also believe that here at home in Canada we've been providing a lot of support to the CSR counsellor and doing what we can to contribute to the CSR strategy, the centre for excellence, and a number of other initiatives. We have a very large group of people participating deeply in all of these consultations and discussions.

I want to speak briefly to the provisions of Bill C-300 in particular. I believe that the punitive measures that would be aimed at Canadian companies would divert significant resources away from the collaborative process that is under way now. We've made a huge investment in that. We're seeing results.

I don't want to see my members taking their time and resources away from the work we're doing now, which is helping, to something that would put them in a compliance mode. The compliance mode for them would be to do the minimum required, to not integrate that into their own corporate culture, and to not discuss with other people what their practices are. It becomes an issue of liability for them, rather than one of learning from each other.

It's very hard for me as an association staff member to get my members to speak openly about the challenges they face. They don't like making mistakes. They don't like it when they have done something wrong. They can come to me now, and we can bring opportunities to them for sharing and learning among each other; if they're looking at sanctions as the first line of response, all of that will disappear and I will have no ability to engage my members in these initiatives.

I also want to say specifically about Bill C-300 that I don't believe the IFC and voluntary principles give us enough detail to justify sanctions. They're too general. They don't tell people what they need to do operationally. I believe that sanctions should be applied after efforts to improve performance have been exhausted, not before.

The loss of the opportunity to improve is a loss for communities, host governments, and the competencies of industries. The ability to work things out with the communities is a really valuable thing for those communities as well.

I also don't believe that the bill accounts for the level of resources that would be required to implement its provisions. I have a great deal of experience with what it takes to implement these things effectively.

Thank you.

● (1115)

**The Chair:** Thank you, Ms. Whyte.

We're now going to move to Mr. Nash.

Sir, you have eight minutes.

**Mr. Gary Nash (As an Individual):** Thank you, Mr. Chairman.

My thesis will be that Bill C-300 will create some serious issues for the government and will not be of net benefit to Canada.

To begin, I want to clarify that there are not 4,000 mining projects abroad. There are likely fewer than 200 in developing countries; I received this information the other day from a consultant friend of mine. In his case, he shows about 182 as of 2007.

The second point I would make is that exploration companies can be quite small, as you've just heard, and these companies, as far as I know, do not draw on EDC funds, nor do they receive investments from the pension plans. As a result, they're probably outside the context of the bill.

Therefore, the real target of this bill is mining companies with projects abroad, but there are some questions about that.

To what mining projects will the bill apply? Does it apply to foreign companies investing from their Canadian subsidiaries? Does it apply to foreign companies that happen to be listed on the Toronto Stock Exchange? Does it apply to joint ventures where Canadian mining companies have a greater, equal, or minority interest in the joint ventures? Will the joint venture partners also be investigated if you decide to pursue it?

To undertake a case-by-case review can be costly and lengthy. It could require in-depth, technical, on-site expertise, and obviously the cooperation of the host government, which may take time for a decision, as well as a fair and transparent process, with oversight, to ensure that the investigative and administrative processes are carried out properly.

Without sufficient resources to investigate and to meet the famous Treasury Board guidelines for contracting, it could take some years to resolve a complaint, given a significant number of complaints, which is likely with the passage of this bill. The longer it takes to decide, the greater the likely negative impact on the company's reputation, its market value, and its ability to move forward on other projects that do generate some community benefits.

What happens if the minister cannot meet the eight-month deadline? And even if it's extended, what then, in terms of the negative impact on the company? Will there be need for an investigation to determine if the complaint is frivolous, especially if the criteria are not specific enough to avoid this need?

With the announcement of a review, the public will generally assume that the company is guilty. The fact that the minister publishes in the *Canada Gazette* the decision of innocence or that the complaint is frivolous is of little value. Who reads the *Gazette* in the general public, in Canada, or abroad? And do journalists in the implicated countries or here always follow up on the story? If so, do they get it right? You must have some experience with that.

Ministerial decisions also provide an opportunity for politically biased decisions in accepting to review a complaint or possibly deciding that the infraction wasn't significant enough to inform EDC, because you will run into those types of things. Each situation can be said to contravene procedural fairness, and you've heard from a constitutional lawyer on this. To minimize bias, should not the parties implicated be allowed to comment on the information and analysis received by the minister, obtained during the review, and prior to the minister's decision? Should they be allowed to appeal the decision?

There is no provision for protecting a complainant from local interests that might be negatively affected by a guilty decision of the minister, and I can give an example of a circumstance like that. In some countries, it is possible that a complainant might be at risk not only from affected local interests, but also from his own government, if he were to write a letter of complaint to the minister. This is possible if the government favours the mining operation or if the government was complicit in ignoring the infraction or rejects the right of any foreign government to interfere in its domestic matters.

What is the implication for the Canadian government should the complainant be killed? And what about instances where corruption or blackmail is prevalent? Threatening to complain might be used to gain additional funding or a bribe from the company. How will the minister determine the real basis of the complaint or an interest that encouraged the complaint?

What about the corruption of judges in some developing countries? We know of some. What if the minister finds that the complaint was unfounded, but the judge, possibly as a result of corrupt practices, finds otherwise? If, as a result, the consequences for this company are serious, then will Canada intervene in support of the company?

● (1120)

As far as corruption is concerned, complaints might be used by the government in the country concerned to withdraw a mining licence from a mining company. I can give an example. Should this occur, especially if the minister gave credence for the complaint, what are the consequences for the Canadian government? Will the minister seek and obtain the agreement of that government before undertaking a review? If that government opposes a review by the minister, will the minister then dismiss the complaint? If not, what will it mean in terms of the relationship with that country?

If Parliament approves a bill that provides for extraterritorial application of Canadian law, what are the consequences if it conflicts with the provisions of the developing country's law or regulations—and there are examples—and if the domestic law was legitimately not intended to accord with international standards or guidelines?

How will the government react if another government also decides on a bill that allows it to undertake reviews of complaints against its mining companies? As you know, Canada has a good number of foreign companies operating, from South Africa to China, India, and Russia, etc. Would the Government of Canada welcome the involvement of the United Kingdom or China in such a review of a complaint against their companies in Canada? It opens up a real issue if many countries decide to copy this bill.

Suppose that a mining company obtains a court decision in the country of concern in which it is found innocent of an environmental infraction. Then, suppose that certain persons in that country, or even in Canada, are not satisfied with the court's decision and submit a complaint to the minister. Would that complaint be accepted for review or just automatically be rejected? The bill does not provide for that.

If the minister finds the company guilty of an infraction and the infraction was known but ignored by the company, could the minister's decision lead to criminal or civil charges against the company in that country?

If the Canadian government decided in favour of a Canadian company, it might create some political opposition to Canada and to other Canadian interests in the country. If it favours the local or other interests and not the company, then, as you know, the government will have helped to injure the reputation of that company and its potential access to other opportunities that could have provided additional trade and benefits for Canada.

Also, since companies prefer certainty with regard to funding and insurance, this will encourage the company to seek support from other than EDC. This could cause a bit of embarrassment to the company, particularly given the fact that EDC often encourages the use of Canadian suppliers of goods and services.

The bill provides for complaints of a social/human rights nature, which need to be defined. Are we talking about family breakup, crime, working conditions, and hiring practices? But on the social side, to assess the impact on social changes in the community, a baseline study is required to know whether there is an increase in social problems that can be related to a mine. If there is more than one industry in that area, how will the minister distinguish who is at fault?

Overall, what will be the measurable standards based on human rights principles or guidelines? John Ruggie, Special Representative of the Secretary-General of the United Nations, has been working on this for nearly five years, and he is still working. Bill C-300 allows 12 months for the minister to establish corporate accountability standards pertaining to human rights guidelines. As you know, a guideline can have a number of different measurable standards.

As an alternative, I would agree with the prior advisory committee to the round tables that many issues need clarification and a proper analysis, some of which is detailed in my larger paper. An expert group could be established to consider the complications raised in the paper, as well as the necessary standards, procedural guidelines, and decision-making roles to improve corporate performance that maintains a positive image of Canada abroad. Again, details are in my paper.

Thank you, Mr. Chairman.

● (1125)

**The Chair:** Thank you, Mr. Nash.

We're now going to move over to some individuals from Harvard Law School. We have Tyler Giannini, Sarah Knuckey, and Chris Albin-Lackey.

Welcome, all of you. I believe you're going to split your time.

**Mr. Tyler Giannini (Lecturer on Law, International Human Rights Clinic, Harvard Law School):** Yes, that's what we're going to do.

Thank you, Mr. Chairman.

Thanks to the committee for having us back.

My name is Tyler Giannini. I am a lecturer on law at Harvard Law School and the clinical director of the human rights program. I am joined by Ms. Sarah Knuckey from NYU, the New York University School of Law, and Chris Albin-Lackey, from Human Rights Watch.

Sarah and I are doing a joint statement. She will begin our statement.

**Ms. Sarah Knuckey (New York University Center for Human Rights and Global Justice, Harvard Law School):** Thank you, Tyler.

Chair and committee members, in October 2009 we provided testimony to this committee on allegations concerning gang rapes, physical abuse, and killings by security guards that we documented during three separate fact-finding missions to Barrick Gold's PJV mine in Papua New Guinea. Subsequently, we submitted a detailed supporting document, including extensive appendices of police and autopsy reports, which we encourage you to review.

Our 2009 testimony provided information on why independent, transparent, and comprehensive investigations by Barrick or the government of PNG have not yet occurred and are unlikely to take place. In 2006 the PNG government investigated deaths surrounding the mine, but four years later, it has yet to release the findings of those investigations.

We also testified to the existence of an MOU between the government of PNG and the PJV under which police reservists are part of the PJV security force, raising serious questions about the independence of any investigations by the police of Papua New Guinea.

Today, we respond to some of the claims made by Barrick Gold in its subsequent testimony to this committee, which further demonstrate the inherent problems of leaving a company to investigate itself and emphasize the importance of a bill like Bill C-300, which could help fill an alarming accountability gap.

First, let me address gang rapes. In response to our October 2009 testimony in which we documented numerous allegations of brutal gang rapes by guards on mine property, Barrick stated in its testimony that, to its knowledge, "no cases of sexual assault [have been] reported to mine management" and said, "It is not possible for the PJV to investigate an allegation it has never received...".

Committee members, this exemplifies a "hear no evil, see no evil" approach to human rights abuses. Through our investigations, we quickly discovered allegations of sexual violence. Barrick would have been able to do the same if it had conducted any investigations at all.

Sexual violence by PNG police across the country is well known, as is the reluctance of women to report rape. Senior Barrick officials have been aware of general rape allegations at the mine since at least August 2006. Given such knowledge, Barrick should have, at a minimum, taken steps to proactively prevent sexual abuses, including by installing surveillance cameras on the waste dump areas where women were raped, and in the guard patrol vehicles; by doing community outreach to women to inform them of their rights and how to complain; and by creating a reliable internal complaint mechanism.

Further, while Barrick seems to imply that the rape allegations we testified to are false because women have "numerous avenues" to report an allegation of rape, this grossly misstates the realities on the ground. Most of the women I met do not know to whom at the company to complain or are fearful of retribution, community disapproval, being arrested, or suffering further abuse from the police.

● (1130)

**Mr. Tyler Giannini:** Second, Mr. Chair, in its testimony, Barrick stated in regard to the police that "There has never been restricted access to the mine site", and that our October 2009 testimony that police "indicated that their investigative efforts have been hampered by PJV security" is "simply untrue". Barrick also stated that crimes on mine property are reported to the police and that "...PJV would conduct its own investigation...".

In our written submission, we included documents authored by a police investigator claiming that he had been prevented from accessing the mine and obtaining the time sheets and duty rosters he requested. We spoke with this individual and showed him the documents. He personally authenticated the documents in our presence. Other police officers have similarly told us that they have been hampered from investigating and having access.

This clearly indicates the need for a thorough and independent—and I stress independent—investigation. To the extent that Barrick conducts its own investigations, they have thus far been done in an opaque manner. Barrick should release information on the nature and outcomes of its internal inquiries, information on how many guards were disciplined or dismissed, and for what reasons, and information on whether guards were referred for criminal prosecution.

Third and finally, there is the issue of abuses since 2006—in particular, killings. Barrick stated that "...there have been no fatal shootings by Porgera security personnel" since 2006. First, it's unclear what Barrick means by "security personnel". However, the existence of witness statements, together with the previously referenced autopsy and police reports on the 2006 to 2008 period and killings, as included in our prior submissions, bring Barrick's statement into question and reinforce again the need for an independent investigation.

In conclusion, Barrick's responses to the serious allegations of gang rapes and killings since 2006, and the inadequacy of both government and corporate investigations to date demonstrate, as previously testified, that there's a vital need for a bill like Bill C-300.

We also strongly believe that human rights standards and the voluntary principles, as referenced in the bill, do give specific guidance that is clear and manageable for companies and adjudicators considering allegations. An alleged abuser cannot police itself, and there must be genuine independent investigation into allegations of human rights abuses.

**Mr. Chris Albin-Lackey (Senior Researcher, Human Rights Watch, Harvard Law School):** My name is Chris Albin-Lackey. I'm a senior researcher with Human Rights Watch. We investigate and document serious patterns of human rights abuse in more than 80 countries around the world.

Less than two weeks ago, I returned from a month-long visit to Papua New Guinea. I travelled there to determine whether previously reported patterns of abuse by security forces around the mine at Porgera are accurate and, if so, whether they're a continuing problem. In fact, those abuses are a continuing problem, and they are also a very clear example of why the modest but meaningful regulations set down in Bill C-300 are so important.

I spent the bulk of my time in Porgera in the communities around the mine. I interviewed dozens of people who had been apprehended while trespassing on mine property—mostly people who eke out a living by scavenging for gold-bearing rock on the vast waste dumps around the mine. I also interviewed officials from Barrick Gold, community leaders, government officials, police officers, and mine security guards. We'll publish a full report of our findings and recommendations later in the year.

During our research, I found that the mine faces enormous security challenges, exacerbated by the failure of the Government of Papua New Guinea to maintain law and order in the area. PJV directly employs a sizable private security force to protect the mine and its employees, and we don't dispute the need for guards at that site. Our findings also indicate that Barrick does appear to be taking at least some serious measures to try to exercise stricter oversight over their security personnel and to respond appropriately to abuses that are brought to the attention of company officials.

Nonetheless, I documented serious allegations of continuing violent crimes by some security officers in 2009 and 2010. We documented several recent cases in which security guards appear to have used unnecessary or excessive force when trying to apprehend illegal miners and other individuals who were trespassing on mine property, but the most serious recent abuses that we documented were several gang rapes allegedly carried out by mine security guards, many of whom previously served as police officers. These brutal crimes mirror patterns of abuse that are all too common among the ranks of Papua New Guinea's police force, in which sexual violence is widespread.

Most of the alleged rapes adhere to a common pattern. The victims were women caught trespassing on the mine property by PJV security guards. In each case, the perpetrators told the women that if they tried to complain about the rape, they would be arrested on trespassing charges that carry heavy fines or jail time.

Victims of abuse by PJV guards told me that they did not know of any viable way of reporting these abuses. The police are feared rather than trusted, a problem that's compounded by the fact that most of the victims were committing the criminal offence of trespassing at the time they suffered the abuses.

For victims of sexual violence, the situation is even worse. Many fear reporting rapes because of a powerful social stigma that can often ruin a woman's life. None of the victims I interviewed knew who within the company they could complain to if they wanted to, and it does not appear that Barrick has made adequate efforts to establish clear and safe channels for such complaints.

Despite some important measures taken by Barrick, our research shows that incidents of serious abuse are still slipping through the cracks and that those cracks may be very wide. Barrick itself has not been transparent about the specific efforts it is making. The company has thus far not been able to provide us with specific information about the measures it has put in place to control and respond to abuse and has not allowed us to meet with the company officials who are most familiar with these issues. We hope this will be resolved as our dialogue with Barrick moves forward.

We do recognize that a big part of the problem is that the Government of Papua New Guinea provides no meaningful law enforcement around the mine other than the current deployment of mobile police squads that are largely supported by the company itself. The government also exercises virtually no meaningful oversight or regulation of the company security force.

This means that Barrick, like other companies operating in Papua New Guinea, is forced to rely almost entirely on its own mechanisms to monitor and discipline company security personnel. The example of Porgera shows that in a challenging and largely unregulated environment this task is simply too great for companies to accomplish on their own.

While robust standards set by companies themselves are important, they must be accompanied by robust government regulation. If that regulation is not present where companies operate, then it should be present here at home.

Canadian companies that are serious about respecting human rights in their operations abroad should welcome the additional scrutiny and the additional guidance that Bill C-300 would provide.

● (1135)

Thank you very much.

**The Chair:** Thank you very much, Mr. Albin-Lackey, as well as Ms. Knuckey and Mr. Giannini.

Penelope Simons has just shown up. We weren't expecting you here till noon, but it's great to have you sooner. We can get you right into the routine.

Ms. Simons is an associate professor in the common law section of the Faculty of Law at the University of Ottawa.

Welcome. You have eight minutes for your presentation.

**Dr. Penelope Simons (Associate Professor, Faculty of Law, Common Law Section, University of Ottawa):** Thank you.

Thank you very much for inviting me to appear before the committee.

I'm an associate professor of international law and international human rights law at the University of Ottawa. I also teach corporate law. I specialize in the human rights impacts of extraterritorial corporate activity. I've been engaged in investigation and research in this area for over a decade.

I was a member of the Harker mission that was sent to Sudan in 1999 to independently investigate and report on the alleged link between oil development and human rights violations, particularly the allegations of forced displacement around the oil fields and oil-related development where Talisman Energy, a Canadian company, was operating.

I want to address today three key arguments against the introduction of Bill C-300 that have been raised in testimony. The first argument is that the standards imposed in Bill C-300 are too high and will affect the global competitiveness of Canadian extractive companies. The second argument is that Canadian companies are going to have to relocate to other jurisdictions because of the impact these high standards will have on competitiveness.

The third argument I want to address is one that was raised in testimony by Mr. Dade, from FOCAL. It is that if we impose such high standards on Canadian companies that they will be forced to withdraw from certain projects, Chinese companies will take their place, and, in the end, because Canadian companies do such good corporate responsibility work, the local people will be worse off under the regime of the Chinese companies.

In terms of the first two arguments, we heard these types of arguments in the 1970s when the government began to introduce environmental regulations. These are now law, and businesses continue. We heard them when issues arose requiring consultation with aboriginal people before undertaking extractive activity on their traditional territories. The requirement of consultation and accommodation is now entrenched in our constitutional law, and it is also now a requirement under the new Ontario Mining Act. The extractive industry has continued to flourish. It has continued to be very profitable despite these regulatory developments.

The first argument is that the standards are too onerous in Bill C-300 and that Canadian companies will therefore suffer a debilitating competitive disadvantage if Bill C-300 is enacted. The bill requires Canadian companies to comply with the IFC performance standards, with the voluntary principles on security and human rights, and with human rights provisions that are to be determined. These provisions are to ensure that these companies operate in a manner that is consistent with international human rights standards.

Well, Canadian extractive companies already have to comply with the performance standards. The IFC and the OECD countries' export credit agencies, including Export Development Canada, claim they already apply the performance standards to those companies seeking financial support.

All major Canadian extractive companies are funded by financial institutions that subscribe to the Equator Principles, such as the Royal Bank of Canada, Scotiabank, and Export Development Canada, and these institutions also claim to apply their performance standards to borrowers. The voluntary principles on security and human rights have been endorsed by the Canadian government and have also been adopted by major extractive companies, including Talisman Energy.

All companies that seek Export Development Canada's support will already be subject to human rights screening for the impacts of their project. EDC claims to take human rights into account in its decision on whether or not to fund a project.

In its “Taxation Issues for the Mining Industry: 2009 Update”, the Canadian Intergovernmental Working Group on the Mineral Industry stated, “Corporate social responsibility...activities are believed to be vital to ensure the competitiveness of industry”.

The other point that I'd like to make is that OPIC, one of the export credit agencies of our biggest trading partner, is now required by an amendment that was made to the Foreign Assistance Act in December 2009 to issue “a comprehensive set of environmental, transparency and internationally recognized worker rights and human rights guidelines with requirements binding on the Corporation and its investors”.

● (1140)

These standards are to be no less rigorous than the performance standards among others, so Bill C-300 is not such a great extension. This is happening in other places as well, and in particular in the U.S.

It's becoming a significant competitive disadvantage for Canadian companies not to comply with high environmental and human rights standards. You remember the issue of Pacific Rim in EI Salvador; El Salvador has recently banned all metal mining in the country because it is concerned about the environmental impacts of the gold industry and other industries on their water supply. Bill C-300 will help to redress this bad press. These standards are already being complied with, so there is no reason for these companies to be saying that they're too high.

The second argument is that the competitive disadvantage is so great that Canadian companies will have to move to other jurisdictions. Companies do relocate their headquarters, and corporations often make changes to their structures or use complex corporate structures to avoid domestic regulation, so will the enactment of Bill C-300 cause large numbers of Canadian extractive companies to move out of Canada? This is doubtful, and it's doubtful for a number of reasons.

The first point is that Canada is home to over 75% of the world's largest mining and exploration companies, and this is not just by chance. There are important reasons that mining and exploration companies are headquartered or otherwise present in Canada. Canada is resource-rich in oil, natural gas, potash, uranium, nickel, copper, gold, and diamonds and has some of the highest mineral exploration activity in the world within its own borders.

Mining in Canada is a lucrative business. The corporate operating profits in the Canadian mining industry were at $9.1 billion in 2008; that's double what they earned in 2007. Mining companies are able to raise billions of dollars on the Toronto and Vancouver stock exchanges. These two exchanges are the world's largest source of equity capital for mining companies undertaking exploration and development.

The Toronto Stock Exchange and the Toronto Stock Exchange Venture Exchange list 10 times more public mining companies than any other exchange in the world. In 2009, these two exchanges traded 79.1 billion mining shares and raised $22.2 billion in equity capital. Canada's insurance, banking, legal, and engineering industries have specialized groups that are tailored to providing, respectively, insurance, financing, legal advice, and technical mining support to mining corporations.

Other resource-rich countries such as Australia and China are actually considering introducing resource taxes. China wants to introduce a 5% tax on crude oil, coal, and natural gas sales, and Australia is introducing a “super profits tax” on windfall profits of resource companies. Other countries in Africa, Asia, and Latin America have also considered windfall taxes and, in some cases, have actually implemented them.

Canada, on the other hand, has no such tax. On the contrary, Canada has a number of advantageous tax incentives to encourage investment in domestic mining. Flow-through shares, for example, allow investors to write off 100% of their exploration expenses being passed down, and the federal government's program of super flow-through shares gives an additional 15% tax credit for grassroots exploration.

As you can see, there are significant incentives for extractive companies to remain in Canada.

The final point I want to address is this argument that when Canadian companies pull out of countries, the Chinese will then fill the void and the people will be worse off.

In his testimony, Mr. Dade from FOCAL stated that it was a mistake to put pressure on Talisman to withdraw from Sudan and that Talisman had moved to address the human rights issue with a very rigorous and serious corporate social responsibility program. He said, “The investment is being controlled by the Chinese. The people in the communities are, if anything, worse off than they were before. This is a scenario that has a possibility of repeating itself throughout the hemisphere.” This is the argument of constructive engagement—better us than them.

First—I won't go into any detail, and I'm happy to answer questions on this—Talisman's self-regulation efforts in Sudan were very weak and deeply flawed. They claimed they had engaged the Government of Sudan and made progress on human rights issues, but there was no independent evidence to support this argument. In fact, the human rights situation deteriorated while Talisman was operating in Sudan.

● (1145)

The other point that's important is the distinction that needs to be made between corporate accountability and corporate social responsibility activities. Talisman claimed it was a force for the good, and this is misguided, okay? Its community development works, the hospitals, the schools, and the wells, those corporate social responsibility activities it was doing for the communities, were located in garrison towns. These were towns that were held by the government in rebel-controlled areas. They were not accessible to ordinary persons who were in or near the concessions and they contributed to the Government of Sudan's counter-insurgency strategy.

A company that claims to support human rights and to be guided by the Universal Declaration of Human Rights can't legitimately argue—at least out loud—that philanthropy can be an excuse for engaging in or being complicit in egregious violations of human rights. This is the point about the constructive engagement argument. Some situations exist where corporations can't be neutral actors, and no argument can be made that it's better to have a Canadian company there, being complicit in human rights violations, than to have another company. As a matter of good public policy, we need standards and an accountability mechanism.

I would like to address one more argument if I have time. This is the argument that Bill C-300, if it is enacted, will violate the sovereignty of developing states. As an expert in international law, I need to clarify this misunderstanding.

International law gives states extensive authority and capacity to regulate the conduct that takes place outside of their territory, that is, in the territory of other states. Canada may regulate the activity of its corporate nationals: any companies that are incorporated in Canada or headquartered in Canada.

In fact, Canada does already regulate the activities of its nationals extraterritorially in a variety of circumstances. It has done so in a number of circumstances: for instance, to implement treaty obligations, such as the convention against torture, the Rome Statute of the International Criminal Court, and certain anti-terrorism laws.

But it has also extended its criminal jurisdiction where no treaty obligation was in place. So before the protocol to the Convention on the Rights of the Child came into place, Canada had already regulated the engagement of Canadian nationals abroad in sexual activities with children and in child prostitution. That had already happened.

In addition, common law civil liability also applies extraterritorially, so this is an absolute possibility under international law. Enacting this bill does not violate the sovereignty of developing states.

One final very short point is that the argument has been made in witness testimonies on Bill C-300 that the investigation mechanism will promote vexatious and spurious claims that companies will not be able to refute. Companies are already being tried in the court of public opinion, because there is no effective forum for assessing the validity of these claims. Companies need a credible and objective forum to promote dispute resolution and to help them to avoid and resolve conflict. Bill C-300, the mechanism that is proposed, could provide such a forum.

Thank you very much.

● (1150)

**The Chair:** Thank you very much, Ms. Simons.

Now we are going to start our first round, with seven minutes for both the questions and the answers.

Let's get started with Mr. McKay for seven minutes.

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

I thank all of you for joining the debate. I appreciate that all of you are on the same panel. Hopefully we can go back and forth with a few ideas.

I also want to thank Mr. Stewart-Patterson for in effect giving a pithy summary of the corporations' position. I thought it would be most useful if I asked those who promote Bill C-300 to respond to some of the assertions you've made in your paper.

For the first assertion, I will direct my question to Professor Giannini: the legislation is based on a flawed premise that assumes that Canadian companies are not to be trusted in their international operations. You made a rather interesting point about companies that investigate themselves. Can you expand on that point, please?

**Mr. Tyler Giannini:** Thank you, Mr. McKay.

The belief that Canadian companies can't be trusted I think is an overstatement, and it oversimplifies the situation here. I think that Canadian companies, in fact, with guidance from international law and human rights, would be better ambassadors internationally.

In fact, one of the key things here is that the standards of international law are manageable. One of the things that was referenced earlier was the voluntary principles. Two specific documents were referred to: the UN Code of Conduct for Law Enforcement Officials and the UN basic principles on the use of force. These provide specific guidance on what excessive force would mean.

Within that sort of context, what this means is that companies would know that this is the standard: we need to use necessary and proportional force, but not excessive force. That's something that people who look at standards would be able to look at. Lawyers within companies would be able to make those sorts of decisions.

With those sorts of decisions, you would then be able to be better ambassadors about where to draw the line as a company, what's accessible, and what is not. Mining can be a productive way of developing a country and we all understand that. We're not saying that mining cannot be a very useful part of a development scenario.

● (1155)

**Hon. John McKay:** I have to caution professors who go on and on—

**Mr. Tyler Giannini:** Yes, of course. I saw that.

**Voices:** Oh, oh!

**Hon. John McKay:** Let me direct my next question to Professor Simons. It has to do with the "guilty before trial" argument, which I think you addressed in the latter part of your remarks.

But the companies here are worried that, somehow or other, if an allegation is made, they're tarred, feathered, hung, drawn, and quartered, and it's all over for them. Could you address that, please?

**Dr. Penelope Simons:** Well, I certainly understand the companies' concern about this. The point is—and I did make this point already—that they already are being tried in the court of public opinion. Providing a mechanism whereby you can have proper investigation, proper procedures, evidence put forward, and a chance for the company to refute allegations that have been made would obviously enhance their ability to make their own case.

In addition, the problem of spurious and vexatious claims is something that is always addressed in legal forums. For example, courts routinely dismiss these types of claims in civil cases. I think this is a very important... It's important to have a place, as I've said, where these allegations can be heard and due process can be followed.

**Hon. John McKay:** Thank you.

To go back to Professor Giannini, there's a view that there is no internationally recognized set of standards for corporate social responsibility against which Canadian practices can be judged. Could we have your comments on Mr. Stewart-Patterson's views?

**Mr. Tyler Giannini:** Well, I believe that the standards here do in fact provide the preciseness that we need. Would that precision...? For example, the code of conduct asks who would fall within the jurisdiction and the basic principles provide that as well. In the context of the Porgera mine, we're looking at a situation in which the police are working in collaboration with the mine itself.

In that sense, you have officers of the law, whether appointed or elected, who are exercising police powers. They are susceptible to those standards. So in that situation, these standards kick in. It can be done.

**Hon. John McKay:** I'll direct the next question to Laureen Whyte.

Your essential argument is education but no sanctions. Your company and the people you represent don't want to lead with liability, if you will; I think that was the phrase you were concerned with.

Tell me what you think about this statement:

> ...The development of policies and guidelines for measuring serious failure by a company to meet CSR standards, including findings by the Compliance Review Committee. In the event of a serious failure and when steps to bring the company into compliance have also failed, government support, financial and/or non-financial for the company should be withdrawn.

That's directly from the round table report. Do you agree with that statement?

**Ms. Laureen Whyte:** Perhaps I should clarify. I wasn't arguing that there should be no sanctions at all—

**Hon. John McKay:** But Bill C-300 is a sanctions regime—

**Ms. Laureen Whyte:** What I'm suggesting is that sanctions not be the first line of response, that there be—

**Hon. John McKay:** But no one's arguing that Bill C-300 is the first line of response. You have a CSR counsellor. You have the best practices that the government has set up. There are the PDAC folks who have set up e3 Plus. There's all kinds of educational encouragement to do the right thing.

This bill is in the event that companies ultimately don't do the right thing, and possibly we've had described here a serious failure of human rights standards. So do you still think that there should be no sanctions regime at the end of the day?

**Ms. Laureen Whyte:** I believe there should be sanctions at the end of the day.

**Hon. John McKay:** So, then, you would agree with Bill C-300 at the end of the day?

**Ms. Laureen Whyte:** No. I'm not agreeing with Bill C-300 at the end of the day. What I'm saying is that there is I think the most consensus we've ever had on a lot of these issues emerging through the work that the UN special representative is doing.

**Hon. John McKay:** Finally, let me just ask Mr. David Stewart-Patterson a couple of questions here, particularly with respect to what I would respectfully suggest is backpedalling on the part of the companies.

As you well know, in 2007 there was a round table report, which had in it the phrase I've read to Ms. Whyte and which included that in the event of a serious failure, and when steps to bring the company into compliance have failed, government support—financial and non-financial—for the company should be withdrawn.

Why are the companies backpedalling at this stage since they've already agreed that a sanctions regime within the ombudsman framework is acceptable?

● (1200)

**Mr. David Stewart-Patterson:** I wasn't involved in those particular discussions, so I can't speak to what went into that.

**Hon. John McKay:** But a lot of your companies were. Talisman was one of the participants. I don't understand the backpedalling.

**Mr. David Stewart-Patterson:** I think what's important to address here is that we're taking a concept of corporate social responsibility and trying to turn it into a matter of law. I think Professor Simons made the point that CSR gives one a competitive advantage. It is something that companies do inherently on a voluntary basis, because doing what's right is good for business. Doing what's right means going beyond what is required by law or regulation. It's inherently a voluntary activity.

In the past, when we've come up against issues of people's expectations having risen over time, whether in dealing with environmental standards or in aboriginal consultations—these are two examples—then we have changed the law to change what is required as opposed to what is encouraged.

**Hon. John McKay:** But only after much kicking and screaming on the part of...

**Mr. David Stewart-Patterson:** No, but the point is what I'm trying to get at here. I mean, the essence of this bill is to try to turn corporate social responsibility, which is inherently a voluntary activity, into a new vehicle for changing what is required, for raising the minimum that is required by law.

I think if you want to change the law, you change the law. If you're trying to encourage companies to do more of the right thing, to go beyond what is required, then you have to think of how we encourage, as opposed to how we force people to comply. I think that's the issue Ms. Whyte was talking about.

**The Chair:** Mr. McKay, we're over time now. We'll get back to you in another round, I'm sure.

Madame Deschamps.

[*Translation*]

**Ms. Johanne Deschamps (Laurentides—Labelle, BQ):** Ms. Simons, could you tell me what you think of what Mr. Stewart-Patterson has just said?

[*English*]

**Dr. Penelope Simons:** Thank you.

This idea that somehow corporate social responsibility can't become a part of law...I mean, corporate social responsibility has always been the initial way of developing expectations and norms that can then become legally entrenched.

The point is that if you leave it to companies to do the right thing... Under corporate law in most countries, corporations are required to act in the best interests of the company, and this requires them to ensure that they actually make a profit. Where you have a conflict between corporate social responsibility activities and profit, you're going to end up with them following the profit requirement. So you do need to bring this type of activity into law in order to ensure that corporations comply with human rights.

This gives corporations benchmarks against which they can measure their activities and actions. It gives them guidance on what they need to do.

[*Translation*]

**Ms. Johanne Deschamps:** I have some more questions for you, Ms. Simons.

We have heard testimony suggesting that companies operating in Canada might go overseas if Bill C-300 were to come into force. Is there reason for concern that there could be a mass exodus of Canadian companies leaving Canada for fear of attacks on their credibility?

[*English*]

**Dr. Penelope Simons:** As I said in my testimony, I think there's always a concern that companies will use corporate structures to try to move to different jurisdictions or avoid regulation.

My point is that with extractive companies, I think there are a significant number of incentives for them to stay in Canada, not least of which is the fact that Canada has a lot of incentives to encourage mining and mining activity within its own borders. It's important for companies that want to engage in mining to be located here in Canada.

There are a number of other reasons that I can go through again if you want me to. However, we have experts here—different engineers, banking experts, and insurance experts—all of whom have tailored groups that operate and provide technical advice, financial support, or legal support to these companies, whatever their expertise may be.

This is also an argument that is now being made in Australia by mining companies: now that there's this threat of introducing the super tax, they're all going to relocate somewhere else. Does that mean they're not going to mine in Australia anymore? Australia is a country of huge natural resources. There may be a few companies that do relocate, but I think the majority of them will not, for the reasons I've outlined.

● (1205)

**Mr. John Dillon (Vice-President of Regulatory Affairs and General Counsel, Canadian Council of Chief Executives):** Mr. Chairman, can I just respond to a couple of those points?

**The Chair:** Yes.

**Mr. John Dillon:** Thank you.

It seems to me there are a couple of premises to what Ms. Simons has said, which we fundamentally reject.

The first is the suggestion that when the profit motive somehow conflicts with environmental protection or human rights, companies will always choose to ignore those issues of environment and human rights and look only to profit. Whatever may have been the practice in the past, that is certainly not where Canadian companies and members of the CCCE are today. I fundamentally reject that premise.

Second is that somehow companies choose the location of their operations in order to avoid regulation. Again, that's a premise that I fundamentally reject.

I'm not sure what you've heard from other witnesses, but we're not here today to suggest that Bill C-300 will suddenly lead to all Canadian mining companies moving their head offices offshore. We are, however, concerned about Canadian companies losing out on opportunities to competitors that don't face the kinds of investigations we're talking about.

I don't know what Canadian companies may decide to do about location of investment in the future, but we're not here to suggest that all of those companies are suddenly going to move their head office. We are concerned with the potential impact on a Canadian company, in the very competitive environment our companies face today, when a rival bidder from another country has an opportunity and the government in that developing country is unsure because there's an investigation under way, which, as Mr. Nash pointed out, could take many years to conclude. That is what we're concerned about.

[*Translation*]

**Ms. Johanne Deschamps:** I thought you had raised your hand.

Professor Giannini, in your opinion, what is it about Bill C-300 that really frightens the mining companies?

[*English*]

**Mr. Tyler Giannini:** I think that fundamentally Bill C-300 sets up a regime that companies should actually be used to. They're used to a regime that has a collaborative approach at the beginning, as Mr. McKay pointed out. Then you'll have some sort of complaint mechanism on the back end when things go wrong.

While companies may not like those sorts of complaints mechanisms, they're actually fairly routine in legal forums, as Professor Simons has pointed out. I think the fears about this are overstated. Actually, there could be a competitive advantage if they embraced this, if they went to countries and to the places where they wanted to invest and said, “We actually embrace these standards and we are going to be good corporate citizens in your country”.

We believe that is the way to build trust with communities so that you don't have problems down the road that can be quite costly in terms of reputation and in terms of actually having to deal with the dissatisfied communities. These sorts of regimes can actually work as a comparative advantage in the long run.

I think that's where our business in human rights is headed and where the special representative, John Ruggie, is headed with all of this.

[*Translation*]

**Ms. Johanne Deschamps:** My next question goes to Mr. Albin-Lackey or Ms. Knuckey.

When we listen to your testimony and read your reports in which you describe human rights violations by some companies, we can conclude that certain companies are delinquent overseas and we need ways or legislation in order to sanction them. Looked at another way, is the government response to the round table reports—a response that was somewhat timid in that it proposed voluntary measures—sufficient to allow us to proceed against delinquent companies? Like it or not, some companies are delinquent and most companies are not models. But there are always exceptions to a rule. That is what we are discussing today.

So what do we do to stop those companies committing these atrocities overseas?

● (1210)

[*English*]

**Mr. Chris Albin-Lackey:** I think the example of the Barrick mine at Porgera in Papua New Guinea is very relevant to this discussion, because it is actually an example of a situation in which there is no real regulatory framework being applied, given the failure by the government of Papua New Guinea to apply its own laws and regulations to the situation.

So what you have, essentially, is a company that says it is applying all of the standards that are incorporated in Bill C-300. Barrick is not yet a member of the voluntary principles on security and human rights, but it says that it applies them in all of its operations. It says that it has a zero tolerance policy for all of the abuses that our research and Harvard and NYU research uncovered there. They say they're doing everything they can think of to combat these abuses, but the fact is that they haven't managed to go as far as they need to go.

I think their failure to do so really does expose the limits of a purely voluntary framework. There has to be some kind of binding regulation to go along with whatever voluntary measures businesses choose to participate in. Even if those voluntary measures are very useful and ought to be encouraged, they're not an adequate replacement for government regulation in and of themselves.

**The Chair:** Thank you very much.

Just before we go to Mr. Lunney, I have a quick question.

I can appreciate that the abuses that go on there are really not tolerable, no matter what, but when you have countries that can't enforce that, where does the line get drawn between the company that's responsible for security forces and the country that really lacks the ability because of the culture of the country?

We're not talking about countries like Canada, where there are rules of law, etc. How much of this, in your opinion, Ms. Knuckey, is the responsibility of the company and how much of it is because of a lack of governance in the country?

**Ms. Sarah Knuckey:** I would say that it's both.

A government of course has the obligation, both under its domestic criminal law and under international human rights law, to investigate all allegations of abuses like gang rape, beatings, or killings. But especially in this case, as Mr. Albin-Lackey mentioned, where the government has literally no capacity and apparently no willingness to actually investigate transparently and comprehensively these allegations, the company itself has taken on a state responsibility in this particular area and has the obligation to investigate independently the allegations that have been made.

**The Chair:** So in countries where there's poor governance, you're suggesting that these mining companies actually need to take on more of that role themselves when the government hasn't really stepped up to the plate and when there are allegations and concerns.

**Ms. Sarah Knuckey:** It would certainly be ideal if they did step up to the plate, but any attempt by any security force to entirely internally investigate itself will always be susceptible to allegations of bias.

On behalf of the United Nations, I investigate killings by police forces in countries all around the world. Any serious police force has external oversight, and usually civilian external oversight, because, of course, internal mechanisms are always susceptible to internal corruption or bias. It's the same here.

**The Chair:** Thank you very much.

Mr. Lunney, sir.

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

I thank the witnesses for appearing today. All of us around the table recognize that it's an issue on which there is a variety of opinions. We heard them at the table today.

I think it's clear that we all recognize Canada's major role in the world in this regard. Canada has played a role in the development of the guidelines that exist around the world—voluntary guidelines. We have participated in many of the processes and we've encouraged Canadian companies to be involved in all of these: the Equator Principles, OECD guidelines, and IFC guidelines. I believe that EDC was one of the first organizations worldwide to sign on to the OECD guidelines.

We've been working in this direction. We've been through an extensive consultative process here in Canada, a round table process that was collaborative and brought everybody to the table, and we've come up with a strategy. The government has already announced the strategy, out of a collaborative process, to address some of the concerns out there and to enhance our capacity in this area.

Mr. McKay himself was involved in or aware of this round table process that was collaborative and called for an independent counsellor to address these issues. One of our objections with this Bill C-300, one of our concerns here, is the politicizing of this whole agenda by putting it in the hands of a minister.

Regrettably, we would find the kinds of allegations that are not easy to sort out from afar, or to investigate quickly, given the legal uncertainties, and we would be in a position where members could use parliamentary privilege to bash away at a minister, to make unfounded allegations under the cover of parliamentary privilege, with no legal consequences, and at the expense of the Canadian economy and the well-being not only of extractive companies, but of our economy itself.

That is one of the fundamental flaws that I see in the bill. I'm very concerned about it. I think Mr. McKay and others would be wise to consider that. Regardless of which party is in power, that would create a very untenable situation for something that may not be resolved quickly, given the legal uncertainties in the bill.

Having said that, I note that some of the people at the table here have been involved in the collaborative process and have some extensive experience in developing cooperation from conflict, even in British Columbia, my home province, where we have a number of issues with communities, first nations communities in particular.

You made reference to that, Ms. Whyte.

Canada has been developing tremendous expertise in trying to sort out these things. They're not easy to solve domestically, and are certainly even harder internationally, but I wonder if you'd care to expand on the B.C. experience, your organization's experience—it's been around since 1912—your participation in the collaborative process, and some of the lessons that have been learned that might be beneficial.

● (1215)

**Ms. Laureen Whyte:** One of the most important things we've learned in working with first nations in B.C. in particular is that where there is a great deal of fluidity in terms of jurisdiction, decision-making, issues management, and all kinds of things—and we have been working in that area for quite some time now—what has become quite apparent to us is that only in partnership can we succeed in anything that we do in the communities.

I think there are also a couple of other considerations to take into account here.

When people say there would be some credibility attached to a Canadian company that would be regulated by the Canadian government overseas, people question that statement and whether or not the fact that the Canadian government is regulating something means it's going to provide a solution for a community that's going to address its needs. Specifically, first nations here have pointed to that in conversations about Bill C-300. I don't think we can say internationally that we've figured this out in a way that keeps communities whole and protects their human rights and their dignity.

So there are questions to be asked in that regard, but I think the other thing that's really important is that our experience, certainly with first nations, is that there are components that are done on a collaborative basis, where we learn from each other, and there are components that have a legal element to them, and they're both at play. They're effective together. We work with that.

The problem I have with Bill C-300 is that we've been working very hard on this issue for quite some time now and we're very close to seeing the results of John Ruggie's work. Our CSR counsellor is consulting with us extensively to try to build some kind of Canadian framework that makes sense for us, that does have that operational detail. I really don't think you can regulate things effectively without looking at the operational detail.

We've been doing this for only a few years. This isn't an area of practice that we have a lot of experience with in terms of managing it to a good outcome. It does take some time. That's what we spend a lot of our time on as an association: helping people to understand how they manage this stuff on the ground.

● (1220)

**Mr. James Lunney:** Following up on consultation, your organizations were part of the consultative process that led to our CSR strategy and the counsellor.

Was the Canadian Council of Chief Executives involved in those discussions as well? Were you consulted? Were you involved in those round table discussions...?

**Mr. David Stewart-Patterson:** Just to be clear, I'm sure we had member companies who were involved, but probably through their sector associations. We, as a council, were not directly involved.

**Mr. James Lunney:** Thank you.

But were you consulted? Mr. McKay's bill has come forward here. I'm not sure there was any consultation with anybody, frankly, on this issue. Were you consulted regarding this bill before it was brought forward?

Can you answer that, Ms. Whyte, or any of you...?

**Ms. Laureen Whyte:** We were not consulted.

**Hon. John McKay:** [*Inaudible—Editor*]...if they want to.

**Mr. James Lunney:** Thank you, Mr. McKay—on your own time.

There has been speculation that if the measures that have been discussed a little bit already come in, the measures in Bill C-300, which really start with a punitive approach, it might take a while, given the time and the legal uncertainties, for anybody to sort out exactly what's happened in the extraterritorial setting.

First of all, let me just ask simply, is the possibility that companies might reconsider relocating headquarters something that you might see on the horizon?

**The Chair:** That's all the time we have, but go ahead and answer the question.

**Mr. James Lunney:** Let me ask my follow-up question, then, really quickly.

**The Chair:** Be very quick.

**Mr. James Lunney:** I want to say that it's been implied that the voluntary process with the CSR counsellor would be useless because it's not mandatory, but it seems to me that a company that's being investigated or being asked for information from the CSR counsellor would have a very strong motivation to comply fully.

I just wonder whether or not that would be the case. Because there will be public reporting and public censure and an effect on stock markets and so on, for not complying, it seems to me that it would be quite profound.

Would you care to comment?

**Ms. Laureen Whyte:** My experience has certainly been that, given support and offered a constructive space for dialogue and solution and resolution, companies that I have worked with would choose that every time. It doesn't make sense for them not to avail themselves of a process like that. They take their social licence very seriously, and we are experiencing that as a significant political risk in B.C. because of the uncertainty with first nations. We have a number of companies leaving because they cannot obtain social licence to operate.

**The Chair:** Thank you very much.

Mr. Rafferty, welcome back. The floor is yours, sir.

**Mr. John Rafferty (Thunder Bay—Rainy River, NDP):** Thank you very much, Chair. Thank you to the committee for asking all the really good questions already, but I have a couple that I would like to ask also.

Professor Simons, I guess you're first, because you were last in and everybody's asking you first anyway.

You talk about the court of public opinion and about the positive aspect of actually having things dealt with for the companies. I agree with the logic, and I also agree with what you've said, but because you know how governments are, are you concerned that there won't be enough resources to deal with things in a timely and fair fashion?

You hear complaints from overseas. I'm just thinking of some of the expenses. People will have to travel and so on. Each complaint could tend to be not only a lengthy affair but a very expensive affair.

● (1225)

**Dr. Penelope Simons:** Yes, it could be expensive. Court cases are expensive as well; they're even more expensive.

With regard to this issue of being under-resourced, the counsellor's office is already under-resourced. She certainly doesn't have much money in her budget. I think that having something under Bill C-300 would be much better.

It doesn't have to remain that it's a minister; I take the point that having it as a minister might compromise its independence. But that is there because it's a private member's bill that can't request resources of the government. As Mr. Dewar pointed out a few weeks ago, that can change with the stroke of a pen, and you can create something that is more independent. I think the argument that it is not independent is a bit disingenuous.

Could you just repeat the last part of your question?

**Mr. John Rafferty:** I was wondering whether you were concerned that the necessary resources wouldn't be allotted, either as part of this bill or otherwise in the future, to deal with complaints in a timely and fair manner that in fact does exactly what you think should be done, which is to have it dealt with in a legal manner so the air is clear.

**Dr. Penelope Simons:** I assume that if this bill comes into law the government will resource it properly. I would have to assume that. I can't speak for what the government will do, but if you create a mechanism that is actually enacted into law, and it's actually supposed to do this, then they will have to provide a certain budget for it to do this. It would probably be better resourced than what we currently have with the counsellor.

I'd just like to make one more comment quickly about Bill C-300 and the lack of consultation. That point was just raised. The bill implements the core remaining proposals of the round tables, on which there was excessive consultation, so I think it's disingenuous, again, to say that there was no consultation on the substance of this bill.

**Mr. John Rafferty:** Okay. Thank you.

Ms. Whyte, you represent smaller mining companies and mining interests. One of the things that people have talked to me about, and that I've heard critics argue, is that in fact the real problem with Canadian companies working overseas is the small companies. It's not the large companies. I wonder how you would respond to that.

**Ms. Laureen Whyte:** Certainly, smaller companies don't have the capacity themselves to manage the multiple kinds of things they have to manage now. Not only do we need people who understand geology and some of the basics of the business, but we need anthropologists and environmental specialists. It's becoming very challenging for small companies to resource the capacity that's required for them to meet the various tests.

**Mr. John Rafferty:** Okay.

Did you want to add something?

**Ms. Sarah Knuckey:** I'd just like to make a short comment. I'd like to stress that, at least in our case, we're talking about gang rapes, beatings—including some that appear to rise to the level of torture—and killings. Some of what I've heard here today seems to imply that we should leave these crimes unpunished or that we should negotiate a solution. Perpetrators of crimes like these need to be brought to account, and if the host country or the corporation allegedly involved doesn't investigate, then clearly Canada, as the home country, should step in.

**Mr. John Rafferty:** Okay.

Mr. Nash.

**Mr. Gary Nash:** I would like to make just one point. One of the problems we find in developing countries is the lack of knowledge of many of the indigenous and other communities that are in the remote areas. I just came back from Peru. There were shootings. There were 34 people killed because an oil company tried to go into an area where the aboriginal people did not want it to go.

When I was in the government, I established an aboriginal division. I was in the government for four years, which was enough. One of the things that we have done in Canada is to set up a division to educate communities, even in Canada, on what exploration is all about and what mining is all about. There is a big gap out there that also needs to be filled.

**Mr. John Rafferty:** Mr. Nash, let me stay with you for a question.

If Bill C-300 is a bad bill, but some kind of CSR strategy is important, as you indicated in your remarks, how should we pursue a CSR strategy without this bill?

● (1230)

**Mr. Gary Nash:** Without this bill, as I mentioned in my paper, there is a host of issues that have not been properly analyzed. Even the round table identified a host of issues that need further analysis.

Let me just make the point that in my view we don't have sufficient understanding of what some of the consequences are. Even here today, there were points raised that need some consideration. Are the standards too high? I don't know the answer to that, to be quite frank, but if the companies are complaining, tell us exactly where these standards are too high and why they are too high.

I don't know the answer to that, but all I'm saying is that before we move too far forward, we need a bit more analysis. I'm not saying forever, but it's very clear from the round table that there are major gaps in our understanding. If you want to get the bill right, or if you want to do the right thing, then let's make sure we are on the right track. I don't believe we are with this bill.

**Mr. John Rafferty:** Do I have time for one more question, Chair?

Mr. Stewart-Patterson, how should this bill be amended to suit your needs? I'm thinking, what about changing the counsellor—

**Mr. David Stewart-Patterson:** I'll give you a quick answer: kill it.

**Mr. John Rafferty:** Well, let's assume that the bill is going to go forth, and if you could—

**Mr. David Stewart-Patterson:** Well, you seem very good at assuming funding; I'm not sure that's a good assumption either.

**Mr. John Rafferty:** I think Ms. Simons was assuming the funding, not me. But what about changing a counsellor to an ombudsman, for example? Or are there things that can be done to this bill to make it acceptable?

**Mr. David Stewart-Patterson:** No. I think the bill suffers from a fundamental flaw, which can't be fixed by amendment. Frankly, I think it comes back to some of the issues that have been raised both by Professor Simons and by our colleagues from Harvard here.

Essentially, in the examples they were talking about, their issue wasn't so much with whether a company was behaving in a socially responsible way but was more about whether the government of the country involved was maintaining rule of law. We just heard some suggestions from Ms. Knuckey. The government has an obligation to investigate, and where the government has no capacity, the company has to take on a state responsibility.

I read that as saying that we want a bill passed by the Canadian Parliament to tell Canadian companies to judge for themselves whether to override the sovereign power of another state, to judge for themselves whether they're operating in a failed state and therefore take on state roles like investigation and punishment.

I find that an astonishing principle for the Government of Canada to want to uphold. I would be very surprised if your party would stand up for the notion that companies should override the authority of sovereign governments.

**Mr. John Rafferty:** I wonder if we have time for a very quick response to those comments, maybe from the Harvard group.

**Mr. Chris Albin-Lackey:** Well, on this last point, no one is talking about the Canadian government overriding the sovereign responsibility of any country. The idea is—

**Mr. David Stewart-Patterson:** You're going to get companies to do it—

**Mr. Chris Albin-Lackey:** No. If we're talking about company employees and security guards and state security forces—those who are deployed to protect the company—committing serious abuses, the idea is not that a Canadian company should build a prison and throw into it all those who are guilty of these abuses. The idea is that Canada's corporate citizens ought to be held to account for the behaviour of their own employees and the security forces they rely on for protection. They can't simply say that they don't know what they're doing or that they don't have any capacity to investigate it.

All this bill says—all anyone at this table is arguing—is that you can't advance the argument that a company working overseas can employ an armed private security force and then simply throw up its hands and say there's nothing it can do when abuses are committed by those forces.

I also wanted to respond very quickly to one of Mr. Nash's points, the idea that maybe these standards are too high and there needs to be more consultation about where they should be.

I wonder if you could find a major Canadian company operating overseas that doesn't claim that it already adheres to every single standard set down in this bill—not that it would like to or that it tries to, but that it actually does and that it succeeds in doing so. Why, then, are these standards so vague or impossible to live up to in the context of this legislation if, in the context of their PR and the things they say to their shareholders, it seems very clear and easy to say that they're already meeting all of these things anyway?

● (1235)

**Mr. John Rafferty:** Mr. Chair, do we have time to hear from Mr. Nash?

**The Chair:** No, we don't. You're way over time. We don't see you that often, John, so I wanted to give you some time.

**Mr. John Rafferty:** Thank you, Chair.

**The Chair:** Mr. Van Kesteren, we're going to drop the time to five minutes as we start our second round.

The floor is yours, sir.

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

Thanks to all of you for coming here.

You know, we all watch the *Law and Order*s and those sorts of things, and every once in a while—usually inevitably—at the end of the program, something happens and a criminal gets off on a technicality. You're left to wonder how that could ever happen. Well, it's because of the law of unintended consequences when a law is put in place.

I think you alluded to that, too.

I want to go back a bit; this is just a little history lesson, although I don't claim to be an expert in this field. I remember the Sudan—I want to think about that for a second—back in the eighties, prior to that. Ethiopia at that time was under the sphere of the Soviet Union. They were exporting the revolution, and that just got taken...

Glen probably knows this a little better than I do, but the Sudan, which was a backward African country that tribal.... It just turned into a hellhole, quite frankly. So now the Russians are gone and they're left with this mess. Into that we saw a company—Talisman—set up and try to do business in that kind of unstable environment.

We know the history and what happened since. Talisman is gone and the Chinese are there.

Ms. Simons, I'm wondering, have you followed up on the Chinese lately? Have you followed up to see just how they're doing as far as some of those human rights and...?

**Dr. Penelope Simons:** I'm not saying the situation is any better. The war is over in that area of Sudan. We're not talking about Darfur, we're talking about the upper western Nile area. The Chinese were already there when Talisman was there.

**Mr. Dave Van Kesteren:** But was the situation better?

**Dr. Penelope Simons:** When Talisman was there? No, the situation was not better. They were in the midst of war, and the human rights situation actually deteriorated when Talisman was there.

**Mr. Dave Van Kesteren:** But has the situation...?

Have you been back? Have you gone to investigate what's happening?

I'm not trying to trap you or anything. I'm just—

**Dr. Penelope Simons:** I haven't, but somebody else who was on the Harker mission, Georgette Gagnon, went back, with John Ryle, the following year. As well, numerous reports have come out, and Human Rights Watch and other groups have talked about it.

I still think the argument is spurious that just because... If Talisman had stayed, do you think the situation would be any better now? I don't think so. What they were doing in terms of their philanthropy was helping the government's counter-insurgency program.

So I don't think there's a lot of merit in that argument.

**Mr. Dave Van Kesteren:** Well, I would argue that you'd have a real tough time going back there, because quite frankly the Chinese just wouldn't put up with it.

I'm talking about the law of unintended consequences, and I will ask some of the other panellists to respond, but before I do that, Mr. Giannini, I'd like to ask you this: how many mining companies have you investigated in the past, besides the mining company in Papua New Guinea? Do you have a list of them?

**Ms. Sarah Knuckey:** I investigate unlawful killings for the United Nations. I have been to many countries around the world to investigate violations by militaries, police, private actors, and rebel groups. I have been to the Congo, Kenya, Brazil, Colombia, and Afghanistan.

**Mr. Dave Van Kesteren:** So this is not an exception. This is a broader problem you're finding throughout the globe.

**Ms. Sarah Knuckey:** Is what a broader problem?

**Mr. Dave Van Kesteren:** Well, the allegations of what happened in Papua New Guinea, is that something you're finding in Congo and other countries as well?

**Ms. Sarah Knuckey:** There are certainly many violations such as rape, torture, and killings by private security forces.

**Mr. Dave Van Kesteren:** It's not just Canadian companies that are being charged with this.

**Ms. Sarah Knuckey:** No. There are militaries and rebel groups all around the world that violate international law.

**Mr. Tyler Giannini:** On the question of other extractive industries, certainly it's not just Canadian companies. There are other companies around the world that have been involved in such abuses. I've investigated these in South Africa and Burma and I've spent extensive time looking at that issue.

It occurs when you have a situation where there's a poor governance regime, there's a company that's connected, and the security operations are a consistent concern. That's one of the reasons why the voluntary principles were developed in the first place.

**Mr. Dave Van Kesteren:** I guess this is what I really want to know: when you investigate other companies, are they free world companies?

The point I'm making is this. It's that the very companies that want to have change—and I think this has been put out quite well this morning—the very companies that are interested in doing the right things and that have been cooperative, quite frankly, with some of the things you're suggesting, come from...companies like the ones we know in Canada and possibly the U.S.

But do you ever investigate the Chinese? Do you ever investigate the Saudis? Do you ever investigate the other jurisdictions?

● (1240)

**Mr. Tyler Giannini:** In many situations, what you find is that there's a consortium. It's normally an international consortium. For example, in Burma, the consortium was made up of French, U.S., Burmese, and Thai companies. So the entire consortium has its own responsibility and the reporting looked at all of their involvements.

**Mr. Dave Van Kesteren:** Now I'll go back to Mr. Stewart-Patterson.

I want you to comment on the suggestion that some of the foreign countries...we'll leave out names, but those that don't come from the free world... Will they do a better job? Can we expect them to conform to this? Will there be an opportunity for us to go in to see if these changes have been made?

**Mr. David Stewart-Patterson:** I think I said at the outset that I believe the Canadian companies are on the leading edge of doing the right thing within this industry and within other industries operating around the world. We do better, on the whole, than companies from any other countries.

I think it's very interesting that Professor Simons, in her reference to the Sudan, was quite disparaging of the efforts made by Canadian companies in terms of their community investment programs, which I presume were done in accordance with what was required by the host government. She did mention that Chinese companies were operating there at the same time, but made no reference as to whether their CSR efforts were as good as, better, or worse than those of the Canadian companies.

It is that relative comparison that I think would be instructive, so perhaps she can speak to that.

**The Chair:** Okay. Hold on a second. We are going to finish up with Mr. Nash.

We're coming back here and we're going to have another round, so maybe you can get it in then.

**Mr. Gary Nash:** I would like to give evidence that, indeed, Canada did lead the world in the mining industry. In the eighties, the Mining Association of Canada was the first mining association to develop an environmental policy. I know because I was involved. We set up the International Council on Metals and the Environment, which is the precursor to the one in the U.K. now, and we had 32 international mining companies. The whole focus was on sustainable development, environmental and social performance, and what they call “the triple bottom line”.

You've seen what the Prospectors and Developers Association has done, and you've seen recently, in the last number of years, what the Mining Association has done as well. And that is far ahead of any other country that I'm aware of.

**The Chair:** Thank you.

We're going to move to Dr. Patry.

You have five minutes, sir.

[*Translation*]

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

[*English*]

I will speak in French, if you don't mind. That's my mother tongue.

[*Translation*]

Mr. Stewart-Patterson, on page 3 of your brief, you say: “The federal government has been engaged with responsible Canadian companies for some time in an effort to develop sound CSR standards and their practical implementation”. When you say “the federal government”, are you talking about the corporate social responsibility counsellor? What do you mean by “federal government”, which is such a broad term?

If I understand correctly, you are telling us in your statement that mining companies are presently working to develop CSR guidelines.

[*English*]

**Mr. David Stewart-Patterson:** I think maybe just to clarify some of the confusion around here, your colleague, Mr. McKay, originally asked a question about earlier consultations and round table discussions, and we had other references to those, so I've indicated that our council was not directly involved in those activities and I can't comment on them in detail. But I think the point was made by your colleague across the table in terms of the nature of those discussions that went on. I think they clearly involved all parties.

**Mr. Bernard Patry:** Yes, but you say you're not involved and you're quoting this, and this is—

**Mr. David Stewart-Patterson:** I'm citing the fact that they took place. That's all.

**Mr. Bernard Patry:** Okay.

Now, do you really think the counsellor has a certain power in the sense that...? I mean, it's just a counsellor. Do you really think that any company like Barrick Gold would take advice from this counsellor?

**Mr. David Stewart-Patterson:** I think any sensible company takes good advice, no matter what the source.

**Mr. Bernard Patry:** Oh. I cannot believe you—

**Voices:** Oh, oh!

**Mr. Bernard Patry:** I have a question for Madam Simons.

*Avec les tables rondes*, there was a lot of work done. These round tables, as you say, came up with a fabulous report. One of the conclusions of this report was that there was a possibility that an ombudsman could investigate without imposing any sanctions. If the government would accept this... In a sense, they didn't accept it, because there was a lot of pressure from corporations, from *les chefs d'entreprise du Canada*. This is why they didn't accept it.

As a doctor, I would say they came up with just a little mouse; there's nothing there. There's no power, nothing; it's just *de la poudre aux yeux*. What do you think about this? If we had a real ombudsman, would...? The only possibility is to do an investigation. What do you think about this, Madam Simons?

● (1245)

**Dr. Penelope Simons:** Well, that would certainly be better than what we have now, which is a counsellor with the capacity to investigate only where the parties agree, meaning that a company can state that it doesn't want any investigation into a particular situation.

Having an ombudsman would be better than what we have now, but I still think that having this type of mechanism to engage an investigation with regard to allegations, with sanctions, makes much more sense. Because if you don't have sanctions, then there's not much incentive to comply, apart from the reputational incentive, which then you have to investigate to make sure they're actually complying.

**The Chair:** Thank you.

Mr. Pearson.

**Mr. Glen Pearson (London North Centre, Lib.):** Thank you, Chair.

Ms. Simons, the committee knows about my own past history and involvement in Sudan. This conversation about Talisman always drives me a little bit crazy. I've been there a lot. It's no worse under the Chinese than it was under Talisman. I think that's a specious argument.

Without Bill C-300, what Talisman went through was gruelling. It went through a 7% share drop. It divided the country as a result of its own lack of expertise in knowing what to do in the country. It didn't heed the government's advice when the government of the day gave it advice not to do it.

My concern is not so much with what everybody is talking about here, but that within Canadian society we had teachers' federation groups delisting from Talisman. We had all sorts of other NGOs and we had companies speaking out against Talisman. It actually created a rift within Canadian society, and I am concerned about that.

We had no place to go to in the end to actually find out what was going on, to find out who was actually obeying the standard and who wasn't. I wonder, since you were part of the Harker report—and I'm aware of its work—if you could speak to that comment about its effects on Canada.

**Dr. Penelope Simons:** Do you mean the effects it had on Canadian society?

**Mr. Glen Pearson:** Yes.

**Dr. Penelope Simons:** I think you're right. There was a huge campaign. As you've said, it did divide people and it did have a negative impact. Had we had standards in place beforehand, like the ones that we have in Bill C-300, and some sort of mechanism to investigate these things, it could have been dealt with in a much different way.

Talisman would have had guidelines on how to deal with it. If they had decided to go in, as they did, and what happened had happened, I think it would have been concluded that it was not a good investment and that there was no way you could go in there and not be complicit in the human rights abuses that were going on. I think that if there had been a regulatory mechanism to prevent that type of engagement in the first place, to give companies that got into situations guidance about what they needed to do, and to provide for some sort of complaints mechanism, it would have completely changed the impact on Canadian society.

**Mr. Glen Pearson:** Thank you.

Thank you, Chair.

**The Chair:** Thank you.

We're just going to finish up with Mr. Braid.

Welcome to the committee.

**Mr. Peter Braid (Kitchener—Waterloo, CPC):** I'm honoured to be here. Thank you, Mr. Chair.

Thank you to all the witnesses for being here.

Ms. Knuckey, I will start with a question for you, please. You mentioned that you have participated on behalf of the UN in investigations of human rights abuses.

What punitive mechanisms, if any, are there under UN authority? Once you've assessed that there has been an abuse, does the UN have punitive mechanisms that can be applied against the state, a company, or an individual?

**Ms. Sarah Knuckey:** In the particular system in which I work, it's a special procedures system that reports to the Human Rights Council of the United Nations. When a report is submitted to the Human Rights Council, it can make a public statement or pass a resolution about violations by the particular state that the report is addressing.

● (1250)

**Mr. Peter Braid:** Thank you.

Mr. Stewart-Patterson, I'll turn to you, sir. Can you assess what costs, if any, Bill C-300 would have on business or what costs there would be to doing business? Can you comment on that at all?

**Mr. David Stewart-Patterson:** I don't think you can really quantify that, because part of the problem with the bill is that essentially it creates a new layer of uncertainty. We were just talking here about the impact of public opinion and other marker mechanisms in reaction to what happened in the Sudan.

The fact is—and I've said this for many years—that anything a company does anywhere in the world, for better or for worse, now affects its reputation everywhere in the world. And reputation, as was the case in the Sudan, has a direct impact on the share price, on the viability of the business, on the jobs and incomes that flow from that business, and on people who invest in that business. The reality is that you can't hide bad stuff in today's world. There are very effective responses out there that don't require the Canadian government to step into place and tell Canadian companies to override the rule of law or the lack of rule of law in another sovereign state.

So I can't tell you to what extent this bill is going to add additional costs, but it certainly adds an additional layer of uncertainty. It certainly creates another vehicle by which anybody, whether prompted by a competitor or otherwise, can smear the reputation of Canadian companies. As we've already said, smearing a company's reputation can have very real impacts on that business, the people who work for it, and the people who invest in it.

**Mr. Peter Braid:** I think Mr. Pearson helped, in fact, to answer this question. In your mind, do you believe that the court of public opinion in and of itself is sufficiently powerful?

**Mr. David Stewart-Patterson:** I think we had an example of that in the Sudan, didn't we?

And again, I'm still curious. There was a statement that there is no way you could go in there without being complicit in human rights abuses. Well, Canadian companies were not the only ones in there. Are all the other companies being condemned in the same way? And if not, why not?

**Mr. Peter Braid:** Mr. Stewart-Patterson, here is a final question for you. Right at the end of your presentation, you indicated that Bill C-300 could "also imperil the brand of many other Canadian companies operating in developing countries, beyond those in mining and oil and gas" sectors. Could you just elaborate a little bit on that?

**Mr. David Stewart-Patterson:** Again, it's a spillover effect. Canada's brand basically is built upon the individual reputations of all Canadians as individuals and of Canadian companies as actors on the global stage.

So if we do our best to kind of shoot ourselves in the foot and smear our own reputation and help others smear our reputation in the mining sector, that's going to spill over onto Canada's brand more broadly. For example, if there's has been a campaign against a mining company in a particular country, well, maybe another company in another industry is going to have trouble doing business in that same jurisdiction.

**The Chair:** Mr. Saxton, do you have one quick question?

**Mr. Andrew Saxton (North Vancouver, CPC):** I have a quick question for Mr. Nash. I'm trying to get my head around this. What we're looking at are some very heinous and awful crimes that have been committed, but to my knowledge, from what I've read, most of them are committed by locals. These are not Canadian citizens. They are employed by Canadian companies, but they are locals.

So how are we supposed to police them when they are locals in their country committing a crime? They happen to be on the payroll of a Canadian company, but they're not Canadians committing crimes abroad, which is very different from the examples that this lady, the legal expert here, mentioned.

We have extraterritorial laws, but those extraterritorial laws are for Canadian citizens committing crimes abroad, not for locals committing crimes in their own countries. I'm trying to understand how we are supposed to police locals committing crimes in their own countries.

**Mr. Gary Nash:** I'm not a lawyer, but I would say the only way that... Well, there are two institutions that can react. There is the local government: in other words, within their own system. Or alternatively, the company could make a policy decision that if certain acts do occur, along whatever lines, that appear to be criminal or whatever, it will not engage those people again or whatever. I can see only those two alternatives.

But I can't see the Canadian government going in and investigating the complaint about whether or not a security guard raped somebody. I see that as problematic. I really do. I wouldn't recommend it, because there could be so many other situations where local people cause problems. Are you going to have the Canadian government go in every time somebody complains that the company hired so-and-so, who caused the problem?

I think from a practical point of view... Legally, if this bill goes ahead, maybe they could look at it. And you know my position on the bill. I think a lot more work needs to be studied, with a lot more understanding of what some of the issues are. So I would just say that from a practical point of view, it's not the way to go. I'd leave it up to the local or whatever...

● (1255)

**The Chair:** I'll give the final comment to Ms. Simons.

**Dr. Penelope Simons:** Thank you.

Just on that point about the Canadian government regulating local citizens of another country, this regulation is for Canadian citizens, for Canadian companies; it's for Canadian companies that hire or otherwise engage security forces, for example, to protect their businesses. So whether or not those security forces are local people, the Canadian company has a responsibility to ensure it does adequate screening, to ensure it hires and trains the security forces, or hires security forces that don't have backgrounds in human rights and abuses and trains them with respect to proper conduct in terms of protecting the activities.

So it's not quite what it is. I don't think we can say that this is regulating locals in other countries. That's not what this bill is doing. It's asking companies to take responsibility for those they engage to protect their business enterprise in a certain place.

**The Chair:** Thank you.

To our witnesses, I just want to thank everyone today. I thought there was some good discussion and some good dialogue today. Thanks to all of you for being here.

I'm going to let the witnesses go. We need to go in camera just for a little bit of committee business. I'm hoping it won't take too long. I will thank the witnesses and let them step back.

We'll suspend for one minute and then come back just for a little bit of committee business.

[*Proceedings continue in camera*]

**Published under the authority of the Speaker of the House of Commons**

## SPEAKER'S PERMISSION



**Additional copies may be obtained from: Publishing and Depository Services**
**Public Works and Government Services Canada**
**Ottawa, Ontario K1A 0S5**
**Telephone: 613-941-5995 or 1-800-635-7943**
**Fax: 613-954-5779 or 1-800-565-7757**
**publications@tpsgc-pwgsc.gc.ca**
**http://publications.gc.ca**

**Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

## PERMISSION DU PRÉSIDENT



**On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt**
**Travaux publics et Services gouvernementaux Canada**
**Ottawa (Ontario) K1A 0S5**
**Téléphone : 613-941-5995 ou 1-800-635-7943**
**Télécopieur : 613-954-5779 ou 1-800-565-7757**
**publications@tpsgc-pwgsc.gc.ca**
**http://publications.gc.ca**

**Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca**