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**Statement by Shanta Martin
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to
Canadian House of Commons, Foreign Affairs and International Development
Committee hearings regarding Bill C-300, An Act respecting Corporate Accountability
for the Activities of Mining Oil or Gas in Developing Countries**

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This submission focuses on three key areas:

1. Introduction of the legislation is entirely appropriate in the context of international law.
2. The proposed legislation is particularly apposite given the position in which Canada places itself in the global mining sector.
3. Examinations being undertaken by a Canadian authority would be beneficial.

1. INTRODUCTION OF THE LEGISLATION IN THE CONTEXT OF INTERNATIONAL LAW

According to the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises:

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

In response to this predicament, the Special Representative has outlined a 'framework' – the Protect, Respect, Remedy framework, which articulates the State duty to protect human rights abuses from harm by business, the corporate responsibility to respect all human rights, and the need for greater access to effective remedies for the victims of human rights abuses.

Under international law, States are the primary duty bearers, and given this discussion is with parliamentarians, this statement focuses on the protect pillar of the Special Representative's framework.

States have a duty to protect against human rights abuses by non-State actors, including by business.

To help States interpret how to fulfill their duty to protect against human rights abuses, the UN treaty monitoring bodies have recommended that States take *all necessary steps* to protect against such abuse, including to prevent, investigate, and punish the abuse, and to provide access to redress.

The State duty to protect has both legal and policy dimensions, so that while policies that encourage corporate responsibility for human rights have a role, so too does legislation and regulation.

In elaborating the State duty to protect, the Special Representative has noted that:

*There is increasing encouragement at the international level, including from the treaty bodies, for home States to take regulatory action to prevent abuse by their companies overseas.*¹

In the advance copy of his most recent report regarding operationalizing the framework,² which will be presented to the UN Human Rights Council next week, the Special Representative further notes that all States have the duty to protect against corporate-related human rights abuses within their territory *and/or jurisdiction*. He explains that there is a critical distinction between jurisdiction exercised directly in relation to actors or activities overseas, and domestic measures (such as Bill C-300) that have extraterritorial implications. He also emphasizes that States should make greater efforts to ensure that companies based in, or conducting transactions

¹ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Advance Edited Version A/HRC/8/5, 7 April 2008, par 19.

² Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Business and Human Rights: Further Steps Toward the Operationalization of the "Protect, Respect and Remedy" Framework*, A/HRC/14/27, 9 April 2010, pars 46-48.

through, their jurisdictions do not commit or contribute to human rights abuses abroad, and to help remedy them when they do occur.

2. THE PROPOSED LEGISLATION IN THE CONTEXT OF CANADA'S POSITION IN THE GLOBAL MINING SECTOR

To quote from the Canadian Government's Corporate Social Responsibility Strategy:

"Canada is a particularly strong player in the global mining sector. Canadian financial markets in Toronto and Vancouver are the world's largest source of equity capital for mining companies undertaking exploration and development. Mining and exploration companies based in Canada account for 43 percent of global exploration expenditures. In 2008, over 75 percent of the world's exploration and mining companies were headquartered in Canada. These 1293 companies had an interest in some 7809 properties in Canada and in over 100 countries around the world."³

In a review for the SRSG of alleged corporate-related human rights abuses found in a sample of 320 cases posted on the Business and Human Rights Resource Center web page from February 2005 to December 2007, the largest single sector involved in corporate abuses were the extractive industries (28% of all cases).⁴ Often human rights abuses in this sector are related to the high degree of impact such operations have on land and water resources. Forced relocation of existing communities is also not uncommon, while pollution or overuse of water sources prevents local communities from accessing clean water. The arrival of well-resourced companies seeking to win over local communities can lead to increased violence and social conflict, particularly where people excluded from benefits feel they have not received their fair share. There are also often severe human rights impacts experienced as a result of poorly trained and heavy handed security forces used to protect EI sites. Frequently, the rights of women are disproportionately affected.

In that context and in light of the comments of the UN SRSG, it is entirely appropriate that Canada should introduce legislation that would lead to domestic repercussions for Canadian extractive industry companies that fail to respect human rights in their operations abroad.

³ Foreign Affairs and International Trade Canada, *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector* (2009), available at <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr.aspx>

⁴ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises Addendum: Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse, A/HRC/8/5/Add.2
23 May 2008.

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

Amnesty International has provided the Committee with a number of reports, urgent actions and other publications wherein Amnesty International has raised concerns regarding such human rights abuses. In the order of the list provided, the cases relate to mining operations involving the following Canadian companies (usually through subsidiaries):

- Papua New Guinea – Barrick Gold Corporation⁵;
- El Salvador – Pacific Rim Mining Corporation⁶;
- Mexico – New Gold Inc⁷;
- Mexico – Blackfire Exploration Limited⁸;
- Mexico – Teck (78.8%) and Goldcorp Inc (28.2%)⁹;
- Guatemala – Hudbay Minerals Inc¹⁰;
- Guatemala – Goldcorp Inc¹¹; and
- Ecuador – Copper Mesa Mining Corporation (formerly Ascendant Copper)¹².

⁵ Available at <http://www.amnesty.org/en/library/info/ASA34/005/2009/en> and [http://www.amnesty.org/en/news-and-updates/report/police-violence-and-illegal-
evictions-near-papua-new-guinean-gold-mine-must-](http://www.amnesty.org/en/news-and-updates/report/police-violence-and-illegal-evictions-near-papua-new-guinean-gold-mine-must-)

⁶ Available at [http://www.amnesty.org/en/news-and-updates/salvadoran-
environmental-activists-killed-radio-station-staff-threatened-20100105](http://www.amnesty.org/en/news-and-updates/salvadoran-environmental-activists-killed-radio-station-staff-threatened-20100105)

⁷ Available at <http://www.amnesty.org/en/library/info/AMR41/066/2009/en>

⁸ Available at [http://www.amnesty.org/en/library/asset/AMR41/062/2009/en/6843f8e3-b15a-4bee-
a8c4-a92045c0c863/amr410622009en.html](http://www.amnesty.org/en/library/asset/AMR41/062/2009/en/6843f8e3-b15a-4bee-a8c4-a92045c0c863/amr410622009en.html)

⁹ Available at [http://www.amnesty.org/en/library/asset/AMR41/047/2009/en/21a9c8d9-7b4b-4d71-
8ca2-2cc8d6667162/amr410472009en.html](http://www.amnesty.org/en/library/asset/AMR41/047/2009/en/21a9c8d9-7b4b-4d71-8ca2-2cc8d6667162/amr410472009en.html)

¹⁰ Available at [http://www.amnesty.org/en/library/asset/AMR34/013/2009/en/a59ee6b3-9c19-4292-
b6cd-a0051c058f64/amr340132009en.html](http://www.amnesty.org/en/library/asset/AMR34/013/2009/en/a59ee6b3-9c19-4292-b6cd-a0051c058f64/amr340132009en.html)

¹¹ Available at <http://www.amnesty.org/en/library/info/AMR02/001/2007/en>

¹² Available at [http://www.amnesty.org/en/library/asset/AMR28/002/2007/en/02ffcfd0-838b-414e-
96f4-07b1780c54e2/amr280022007en.html](http://www.amnesty.org/en/library/asset/AMR28/002/2007/en/02ffcfd0-838b-414e-96f4-07b1780c54e2/amr280022007en.html) and

On these last two cases, we would draw the attention of the Committee to three recent developments:

- A Human Rights Impact Assessment undertaken at Goldcorp's Marlin Mine has recently been released, which found that Goldcorp had failed to respect the rights of indigenous peoples in Guatemala.¹³
- The Inter-American Commission of Human Rights has also recently written to the Government of Guatemala calling for the immediate suspension of operations at the Marlin mine while the Commission investigates allegations of human rights abuses. The Commission has also requested the government take various other preventative actions to prevent further impacts on human rights.
- A Canadian court on Friday 7 May 2010 dismissed a case against Copper Mesa and the TSX noting that "I can well understand the concern on the part of citizens of countries in which Canadian companies do business to ensure that the actions of those companies are carried out with the same care and attention as if they were conducted in Canada" (para. 51), but the Court said that that would be a matter for legislatures and not the courts.¹⁴ In other words, Mr Chair and members of the Committee, this is a matter for you.

Amnesty International is not alleging that in all of the cases we have highlighted to you that the Canadian company involved is the perpetrator of the abuse.

Amnesty International has also documented human rights abuses associated with State decisions and actions. At times, these may appear to be designed to facilitate extractive industry operations, but the role, if any, of the company may be less than clear.

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

<http://www.amnesty.org/en/library/asset/AMR28/003/2007/en/69e9512f-9f51-456a-bb32-df12976c8940/amr280032007en.html>

¹³ Available at <http://www.hria-guatemala.com/en/MarlinHumanRights.htm>.

¹⁴ <http://www.ramirezversuscoppermesa.com/legal-docs-motion-to-strike-decision-may-7-2010.PDF>

3. THE APPROPRIATENESS OF EXAMINATIONS BEING UNDERTAKEN BY A CANADIAN AUTHORITY

Particularly (but not exclusively) in the circumstances just outlined, where the host state is often unwilling or unable to conduct a full, fair and impartial investigation that would lead to holding accountable the perpetrators of human rights abuses, examination of the issue by the Canadian-government would be of great value. These examinations would also be of value in supplementing investigations of host states where such investigations occur. Moreover, they would offer the opportunity to delve into and clarify the situation, to the benefit of both the victims of the human rights abuses, as well as any companies that may be unjustly accused.

Unlike an investigation by a non-governmental organization, such as Amnesty International, an examination that carries with it the weight of the Canadian government, and which has the potential to result in the withholding of public monies, possesses greater power to influence companies to cooperate with the enquiry. Among other things, this could lead to greater disclosure of corporate documents and witness statements. The full extent of corporate documents and testimony is often unattainable by the victims of human rights violations, or by NGOs. Without access to this evidence, it can be very difficult for an investigation to result in the elucidation of all the facts that make clear who was responsible and who should be held accountable. As such, victims of human rights abuses are often left without fulfillment of their human right to an effective remedy. Moreover, the failure to hold perpetrators to account means that further abuses are neither deterred nor prevented.

Amnesty International is aware that the Committee has heard from representatives of the International Human Rights Clinic, Harvard Law School, and Center for Human Rights and Global Justice, New York University School of Law and that their statements pointed to the failure of any independent investigation to occur and/or result in accountability of perpetrators of human rights abuses around the Porgera mine.

Amnesty International's recent experience in investigating human rights abuses by police resident at Barrick's Porgera mine in Papua New Guinea reveals a similar pattern.

Amnesty International's investigations are documented in the report provided to the Committee, which demonstrates that aspects of the police activity in Porgera were carried out in violation of both domestic law and international human rights law. In particular, Amnesty International's findings indicate that the destruction of houses in Wangima village since April 2009 resulted in the forced eviction of people, in contravention of international human rights law. Those affected by the forced evictions have not been provided with assistance to ensure that their rights are respected and protected. The destruction of property was carried out without legal authority and contrary to the terms of search warrants issued by the District Court at

Porgera. Consistent testimony and other credible evidence, as detailed in the report, show that police used excessive force in Wangima and during other police raids within the Special Mining Lease (SML) area. There is significant evidence that police aimed firearms at residents and threatened them while destroying their property and burning their houses, and on at least one occasion, severely beat a man and his son during an interrogation in Mungalep. There were also allegations of rape by police officers, which warrant further investigation.

Amnesty International has raised its concerns and presented its findings to the government of Papua New Guinea. We have called for a comprehensive investigation by the Papua New Guinean authorities into the police action, appropriate sanction of those responsible for human rights violations and the provision of effective remedies to victims of the forced evictions and other violations.

Amnesty International has also urged Barrick and PJV to call for a full and independent investigation. The police activity occurred within the mining lease and alongside the mine's underground operations, within sight of company personnel. Several documents and other information that might throw light on what transpired at Wangima and the role of PJV, if any, in the police action have not been provided by Barrick or PJV, despite request from Amnesty International.

After several months of asserting the contrary, in December last year, Barrick and PJV privately accepted the validity of community and NGO allegations that the police had forcibly evicted people from their homes and burnt down their property. The companies told Amnesty International that an investigation by the authorities was warranted. They even asked Amnesty International to provide them more time prior to launching our report, including time to urge such an investigation. We took this request on good faith and delayed releasing our findings for over a month. Yet to the best of our knowledge, despite evidence that the activity was unlawful and contrary to the human rights of those affected, Barrick and its subsidiaries have still not urged an independent and full investigation.

Perhaps the situation would be different if the Canadian Government were to have enquired into the situation. Amnesty International understands that Barrick has received significant support from EDC on projects other than the Porgera mine, which might cause the company to be more open to enquiries from the Canadian government.

Conclusion

The passage of legislation that would lead to the withholding of public support to Canadian companies involved in human rights abuses overseas, would clearly demonstrate that Canada takes its international duties regarding protecting human rights very seriously and will not tolerate the abuse of human rights by companies.

It would send a clear message to Canadian companies that not only is respect for

human rights a societal expectation, but that if they do not respect rights there are real ramifications.

In the extractive industries, these messages will not only be heard by Canadian companies. They will be heard by other States (including other home states), other companies, and most importantly, by the people whose human rights might be at risk by the extractive operations of companies from any state.

Those people would find themselves in a better position as a result of the actions of the Canadian government in demanding accountability of Canadian companies. This would likely have the result that Canadian companies would be more welcome in communities overseas, than companies from other states, thereby providing Canadian companies with a competitive advantage. Moreover, the women, men and Indigenous peoples often subject to human rights abuses involving companies would be able to point to the actions of Canada so as to demand that their *own* governments require companies to operate in a manner respectful of human rights, to hold them accountable if they continue to commit human rights abuses, and to ensure remedies are available.