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Independent accountability needed for Canadian mining companies abroad

There are few mechanisms now for compensating victims and holding companies accountable.

By CHARIS KAMPHUIS, PENELOPE SIMONS, SHIN IMAI

Over 20,000 people from the mining industry gathered in Toronto for the annual [conference](#) of the Prospectors and Developers Association of Canada last week. This is known as one of the largest mining conferences in the world and reflects Canada's worldwide dominance in the mining industry.

However, some Canadian mining companies have come under criticism for human rights violations associated with their projects overseas. Most recently, the Justice and Corporate Accountability Project released a detailed [report](#) documenting over 400 people harmed, including over 40 deaths over a 15-year period, in Latin America alone, associated with Canadian mining activity. [Three cases are](#) now [proceeding](#) in Canada regarding allegations of rape, murder, slavery, and serious bodily harm.

Yet, few such suits will be able to overcome the significant obstacles to accessing Canadian courts, and in many situations there are no effective mechanisms for compensating victims and holding companies accountable. One step toward addressing this problem is an independent process with the power to investigate allegations, come to conclusions, and recommend changes in practice.

During the election campaign, the Liberals promised to create an independent ombudsperson for the extractive sector that would do just that. The government is now [actively considering](#) how to implement the idea.

The main representative of the industry, the Prospectors and Developers Association of Canada, is “reluctant to endorse” an ombudsman, according to a [National Post](#) reporter, because, the group says, “We’re not seeing a lot of evidence that are negative impacts out there.”

The fact that some mining companies deny that there are problems is part of the problem. This was the experience of the Norwegian Council on Ethics, which advises the Government Pension Fund Global, the largest fund of its type in the world, [valued at](#) over CDN\$1-trillion. When the council began to investigate allegations of human rights abuse by Canadian mining company Tahoe Resources, it received starkly [different stories](#) from the community and the company, which denied any wrongdoing. The council was well enough funded that it could conduct its own investigation. The company said the council’s analysis was based on imprecise media coverage and speculation, and it accused the council of assuming guilt while a case against the firm’s former security manager hadn’t yet concluded. In the end, the pension fund [decided](#) to divest from Tahoe because of the council’s [findings](#) that there was “an unacceptable risk of Tahoe Resources contributing to serious human rights violations.” There are many more cases that would benefit from such an independent investigation.

The fact that the Prospectors and Developers Association argues that there is not enough evidence of adverse impacts is problematic given the evidence. It is also odd that it would hang its argument on the idea (although erroneous) that harms caused by Canadian overseas mining operations are few. Would we repeal our drinking and driving laws because drivers argued that there were not enough accidents caused by drinking and driving to justify investigations?

A second representative of industry, the Mining Association of Canada, [suggests](#) that any new legislation should involve a “joint fact-finding” process, [rather than](#) an independent investigation. While this sentiment may seem nice, it is clearly not appropriate where the mining company denies any wrongdoing and refuses to co-operate.

Take the example of the corporate social responsibility counsellor, the federal government’s voluntary mechanism for addressing specific disputes between mining companies and communities. In three cases it approved for mediation since its inception in 2009, the [companies withdrew](#), terminating the process.

A new mandate for the CSR counsellor in 2014 has proven even weaker, introducing an ill-defined [role](#) of “dialogue facilitation” and moving the mediation process to the National Contact Point for the Organisation of Economic and Co-operation and Development. This body has not had great success with voluntary mediation either. In the only case it handled in 2015, it invited

China Gold, a Canadian company accused of human rights abuses in Tibet, to participate in the process. The [company did not even bother to show up](#).

It is hard to imagine making an investigation contingent on the co-operation of the person being investigated. What if an investigation of drinking drivers could only proceed if the driver agreed to be investigated?

In our view, there needs to be an ombudsman who is independent of the mining industry. The need for law reform is best summed up by former Supreme Court of Canada Justice Ian Binnie, a strong proponent of greater accountability. In a 2013 interview with the *Ottawa Law Review*, he [said](#): “one of the most fundamental precepts of our legal system is that if there is a wrong there should be a remedy. And at the moment, these people in the third world have no remedy.”

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