

**Canadian Economic Diplomacy:
Policy Gaps, Human Rights Impacts & Recommendations**

Submission to the United Nations Working Group on Business & Human Rights

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Justice & Corporate Accountability Project**

February 2018

This submission summarizes the findings to date from a body of empirical research that has endeavored to identify the human rights impacts of Canada's economic diplomacy policy. With this context, it reviews Canada's existing policy framework as it applies to economic diplomacy in order to identify the gaps in existing policy from an international human rights law perspective. This research and analysis forms the basis for two recommendations.

Human Rights Impacts of Economic Diplomacy

In 2007, the Canadian federal government announced its Global Commerce Strategy, followed in 2013 by its Global Markets Action Plan. These policies established "economic diplomacy", promising that "all Government of Canada diplomatic assets are harnessed to support the pursuit of commercial success by Canadian companies and investors." This includes the Canadian Trade Commissioner Service (TCS), which offers companies "privileged access to foreign governments, key business leaders and decision-makers." The policy claims that "other countries are doing the same, and Canada...must be more aggressive and effective than...the competition." The policy of economic diplomacy remains in place to date.

In an early case that raised concerns about the implementation of economic diplomacy, a Canadian documentary filmmaker sued the former Canadian Ambassador to Guatemala for defamation. The filmmaker had taken live video footage of the violent displacement of a community of Indigenous Guatemalans in 2007 by the Guatemalan military, police, private security, and employees of a Canadian mining company. After the video was posted online, the Ambassador publicly accused the filmmaker of having fabricated the footage. In 2010, an Ontario judge found that the Ambassador had slandered the filmmaker by making false statements about his film.¹

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¹ Voices-Voix, Steven Schnoor, July 2013, <http://voices-voix.ca/en/facts/profile/steven-schnoor>; Schnoor v. Canada, <http://www.schnoorversuscanada.ca/>.

Following this experience, advocates began detailed empirical research of the implementation of economic diplomacy in specific cases. In 2013 and 2015, a coalition of Canadian organizations published two substantial reports based entirely on documents obtained through federal access to information requests.² The reports profiled two different case studies in Mexico, where Canadian embassy staff and Trade Commissioners provided critical support to Canadian mining companies in spite of strong opposition from affected communities and in the face of serious and credible allegations of human rights violations. In both cases, violence occurred against community members and in one case, a high-profile community leader was assassinated.

Also in the 2015, MiningWatch published a report that identified a wide range of specific policies and actions of the Canadian state and its representatives in four Latin American countries.³ The report argued that these actions and policies, which included economic diplomacy, had exacerbated specific conflicts with Canadian companies, escalating the risk of harm for affected communities and human rights defenders. Much of this research also appeared in a 2016 book published by two Canadian political scientists who tracked many different forms of Canadian political intervention and influence in a number of Latin American countries to the benefit of Canadian resource companies.⁴

At present, the Justice & Corporate Accountability Project (JCAP) and MiningWatch are in the process of analyzing thousands of documents obtained through access to information laws in order to develop three more detailed studies of the Canadian government's implementation of economic diplomacy in Guatemala. Drawing these unpublished studies together with the published research referred to above, the main findings are threefold:

- First, Canadian embassies are failing to undertake adequate inquiry and investigation to ensure that companies are respecting human rights. This failure first occurs before embassies provide companies with support. While embassies are supporting companies, this failure continues, often in the face of highly credible allegations from affected communities.
- Second, the modalities of embassy support for companies under economic diplomacy undermine communities' efforts to defend their human rights, including their ability to influence their democratically elected representatives and access justice.

² Moore and Colgrove (2013) Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy. MiningWatch Canada, United Steelworkers & Common Frontiers, https://miningwatch.ca/sites/default/files/blackfire_embassy_report-web.pdf; Moore (2015) Unearthing Canadian Complicity: Excellon Resources, the Canadian Embassy, and the Violation of Land and Labour Rights in Durango, Mexico. MiningWatch Canada & United Steelworkers, https://miningwatch.ca/sites/default/files/excellon_report_2015-02-23.pdf.

³ Jen Moore (2015) In the National Interest?: Criminalization of Land and Environment Defenders in the Americas. MiningWatch Canada, https://miningwatch.ca/sites/default/files/inthenationalinterest_fullpaper_eng_1.pdf, p. 14. Also see: MiningWatch Canada, Backgrounder: A Dozen Examples of Canadian Mining Diplomacy, Blog, 8 October 2013, <https://miningwatch.ca/blog/2013/10/8/backgrounder-dozen-examples-canadian-mining-diplomacy#sthash.poxyIirH.dpbs>.

⁴ Tod Gordon & Jeffery R Webber, Blood of Extraction: Canadian Imperialism in Latin America (Fernwood, 2016).

- Third, embassies are failing to use their power and influence to support communities and human rights defenders who raise serious and credible concerns about human and environmental rights violations.

The Inter-American Commission on Human Rights (IACHR) has taken note of some of this research and has commented specifically on the significance of Canada's economic diplomacy policy in international law. After referring to its hearings on Canada in its 2015 report entitled *Indigenous Peoples, Afro-descendent Communities, and Natural Resources*, the IACHR stated that:

It is...jurisprudentially sound to understand that a State may be accountable under international human rights law for conduct that takes place in another country when the first state's acts or omissions cause human rights violations and the State in which the conduct has taken place is unable to protect or enforce the human rights in question.

The IACHR further noted that foreign investment often occurs with the direct involvement of the investing state. As an example, the IACHR specifically named Canada's economic diplomacy policy and observed that this policy deepens the necessary connections for state accountability. The IACHR recommended that investing states refrain from offering public support to companies involved in human rights violations and refrain from influencing the adoption of norms or policies that solely favor the home state's economic interests, in detriment of human rights protection in host countries.

Economic Diplomacy & Human Rights Policy Gaps

In 2014, the government referred to economic diplomacy in its CSR policy, *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad*. The policy defined economic diplomacy as a suite of services for companies including letters of support, advocacy efforts and participation in trade missions. It stated that Canada's TCS also assists extractive companies who are contributing to Canada's economic growth, have a demonstrated capacity for internationalization, and have strong potential to add value to Canada's economy. It described TCS assistance as on ground intelligence, practical advice, local contacts, problem solving and market assessment.

The 2014 CSR policy asserted that Canada expects companies to "respect human rights and all applicable laws, and to meet or exceed widely-recognized international standards for responsible business conduct." According to the policy, companies that align their operations with the policy will receive "enhanced Government of Canada economic diplomacy". The policy also envisioned a CSR related role for Canadian embassies and the TCS with respect to Canadian companies. It suggested that these agencies might support companies' CSR practices by helping them conduct social risk analyses, form partnerships with civil society groups, facilitate dialogue with local communities, and identify opportunities for social support programs.

The 2014 policy further included some limited tools to encourage "alignment" with its CSR guidance and participation in dialogue. A company that refused to participate in voluntary review and dialogue processes would face the withdrawal of TCS and "other Government of Canada

advocacy support abroad”. If a company did not participate *and* did not “embody CSR best practice”, it would further be denied economic diplomacy. However, as long as a company participated in the dialogue process proposed, it would continue to receive government supports even if its practices were in fact contrary to the policy’s standards. Under the 2014 CSR policy, there is only one known case where embassy support was withdrawn, at least in principle, from a company after harms were alleged and it refused to dialogue with complainants.⁵

In 2016 the federal government announced another policy with respect to Canadian embassies: *Voices at Risk: Canada’s guidelines on supporting human rights defenders*. This policy elaborates on Canadian embassies’ commitment to supporting human rights defenders in the countries where they operate. It also gives embassies practical guidance with respect to the appropriate contexts and modalities of support. The *Voices at Risk* policy does not mention economic diplomacy.

In January 2018, the Minister of International Trade announced his intention to create the Canadian Ombudsperson for Responsible Enterprise (CORE). While the announcement involved only a few specific details, it will have some limited implications for economic diplomacy. The forthcoming Ombudsperson will be mandated to independently investigate allegations of human rights abuses abroad against Canada companies operating in the mining, oil and gas, or garment industries. On this basis, the Ombudsperson will be empowered make recommendations, including for changes to government policy and/or the withdrawal of trade advocacy support.

This patchwork of policies in relation to economic diplomacy can be synthesized as follows:

- First, embassies are mandated under economic diplomacy to support companies’ commercial success. This includes supporting them to do good CSR.
- Second, embassies should support human rights defenders.
- Third, embassies support may be withdrawn from companies that refuse to respect human rights or remedy harms. Under the new CORE mechanism, a recommendation for the withdrawal of embassy support would occur only after rights have been violated and any such recommendation will not be enforceable.

This synthesis helps reveal three major gaps in the policy status quo in Canada in light of the human rights impacts of economic diplomacy:

- First, there is no clarity with respect to the standards that govern *how* embassies should promote and respect human rights *from the outset*, when deciding whether or not to support companies and when engaging with local governments.
- Second, there is no mechanism of public scrutiny to ensure that embassies are complying with the current policy framework. Civil society organizations and affected communities have no information with respect to how, if at all, embassies are “expecting companies to

⁵ Global Affairs Canada (2015) Final Statement on the Request for Review regarding the Operations of China Gold International Resources Corp Ltd, at the Copper Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-gyama-valley.aspx?lang=eng>.

respect human rights” and how, if at all, embassies are supporting human rights defenders. For two years, Global Affairs Canada has refused to release documents in response to a complaint to the Information Commissioner about redacted documents. A recent complaint to the Canadian Public Service Integrity Commissioner alleges that the Canadian embassy in Mexico failed to uphold applicable policies.⁶

- Finally, there are no binding obligations on embassies to promote and respect human rights and there are few if any accountability mechanisms for sanctioning any failure to do so.

Recommendations

1. The Government of Canada should create binding laws and codes that govern how Canadian embassies engage with Canadian companies, affected communities, and local governments. These standards must be rooted in international human rights law principles and Canada’s duty to promote and respect human rights.
2. The Government of Canada should create a transparent mechanism for public oversight of Canadian embassies’ compliance with applicable laws and policies, including accountability provisions for failure to comply.

⁶ Justice & Corporate Accountability Project, Submission to the Public Sector Integrity Commissioner in Relation to the Embassy of Canada in Mexico, 5 February 2018, <https://miningwatch.ca/sites/default/files/2psicpublicfinal.pdf>