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May 10, 2017

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Prime Minister of Canada  
Office of the Prime Minister  
80 Wellington Street Ottawa, ON K1A 0A2

**Support letter: Canadian extractive sector human rights ombudsperson**

Dear Prime Minister Trudeau,

We write to encourage your support for the creation of an independent ombudsperson's office for the receipt of complaints concerning the overseas operations of the Canadian extractive sector.

Canada's status as home to more than half of the world's mining companies and its dominant position in mining investment abroad create a key opportunity for the government to exercise global leadership on the human rights challenges that arise in the extractives context.

An ombudsperson's office with a mandate to independently investigate and publicly report on complaints related to human rights issues involving Canadian mining companies would be a crucial measure to safeguard human rights. This would help strengthen the mining industry's human rights practices consistent with the UN Human Rights Committee's recommendation that Canada establish an independent mechanism to investigate extractives companies operating abroad and a legal framework of remedy for abuses suffered by affected communities.<sup>1</sup> An independent ombudsperson was also a consensus recommendation during the 2007

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<sup>1</sup> Comments on Canada's sixth periodic ICCPR report, UN Human Rights Committee, CCPR/C/CAN/CO/6, August 13, 2015, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhkskwUHe1nBHTSwwEsgdxQHJBoKwgsSojmHCTV%2FF5a7OKz29yna9400qLeAawpMzCD50TanJ2C2rbU%2Fokxdos%2BXCyn4OFm3xDYg3CouE4uXS> (accessed March 15, 2017).

roundtable process that included the Canadian government, civil society, the industry, and other experts.<sup>2</sup>

Human Rights Watch is actively engaged in promoting the safeguarding of human rights in the global extractives industry. We are a founding member of the Voluntary Principles on Security and Human Rights and engage with the Principles through our research, our advocacy with governments and multilateral organizations, and our ongoing dialogue with companies. In January 2016, we sent a letter to Stéphane Dion, former Minister of Foreign Affairs, identifying abuses in the Canadian mining industry and calling on the Canadian government to take a leadership role in addressing them. Following that correspondence, Ken Roth, our executive director, met with you in Ottawa in March 2016 to discuss these and other issues. In April 2016, we provided then Minister Dion a first set of recommendations regarding the establishment of an ombudsperson's office for the regulation of Canadian extractives companies. In conjunction with the Canadian Network on Corporate Accountability (CNCA), we are disappointed and concerned to learn that Canada's 2017 federal budget does not include any reference to funding for a human rights ombudsperson.<sup>3</sup>

In the spirit of continued collaboration on this critical issue, below we outline core components that Human Rights Watch believes are essential for an independent ombudsperson's office to be effective:

### **A credible and accessible complaint process**

The ombudsperson's existence and functions should be made known to those affected by every project of the Canadian extractives industry abroad, and communities should be able to avail themselves of the complaints mechanism without facing undue obstacles or burdens.<sup>4</sup> The independence of the ombudsperson's office will be a key component of its

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<sup>2</sup> Further concrete steps towards accountability and transparency in the sector were delayed due to the shifting political climates in Canada.

<sup>3</sup> See Canadian Network on Corporate Accountability, "PRESS RELEASE: Canadian Network expresses concern that Federal Budget does not mention Human Rights Ombudsperson," March 22, 2017, <http://cnca-rcrce.ca/recent-works/press-release-canadian-network-expresses-concern-that-federal-budget-does-not-mention-human-rights-ombudsperson/> (accessed April 25, 2017).

<sup>4</sup> OHCHR, "Guiding Principles on Business and Human Rights," 2011, Principle 31 section b, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (accessed April 12, 2017). This will involve translation of relevant materials into local languages where mining projects operate.

credibility and success. The ombudsperson’s decisions should not be influenced by any outside actors, ensured through the creation of independent structures for resource allocation and staffing.

### **Transparency**

Transparency is necessary for successful confidence-building throughout the process.<sup>5</sup> To achieve these ends, the office’s reports must be public, such as reports on ombudsperson investigations, reasons for rejecting or closing cases, and final reports that include recommendations about how individual companies can better address ongoing human rights problems, remedy past abuses, and more effectively mitigate serious human rights risks.

### **Ability to trigger investigations**

The ombudsperson should be able to initiate investigations of alleged human rights abuses linked to business operations where warranted, and not only in response to complaints.<sup>6</sup> This is particularly important when communities lack the resources, information, or security to submit complaints.

### **Provision of meaningful remedy**

Where abuses are brought to light, the independent ombudsperson should press companies to ensure that affected parties receive meaningful remedy and that perpetrators be held accountable. Upon completing an independent investigation, the ombudsperson should have the power to make recommendations regarding remedy and reparations for harm done, as well as detailing actions to be taken by the companies, the complainants, and the government. This process should include clear and achievable timelines for the implementation of the ombudsperson’s recommendations, as well as incorporate rigorous monitoring and a reporting framework.

In cases where the ombudsperson’s recommendations are not implemented, they should be empowered to recommend penalties, such as the issuing of notices or the suspension

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<sup>5</sup> “Guiding Principles on Business and Human Rights,” Principle 31 section e.

<sup>6</sup> A useful mechanism to examine is the Compliance Advisory Ombudsman (CAO), or the accountability mechanism for the World Bank Group’s International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), particularly in its compliance function. The CAO Vice President can trigger compliance appraisals on IFC or MIGA investments, which has served to boost the mechanism’s legitimacy, especially with communities lacking the resources or security to submit their own complaints.

of government financial support, until the relevant party is compliant. The ombudsperson should also be able to recommend the withdrawal of government financial assistance to an enterprise responsible for harm of such a serious nature that it would be inappropriate for the Government of Canada to continue support.

### **Recommendations to government and industry**

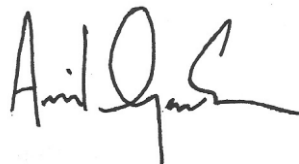
In addition to an independent investigative capacity and coordination with civil society, government, and industry, the ombudsperson's mandate should include making recommendations to the Canadian government on how to best go about identifying and mitigating future human rights violations in the mining industry. This mechanism should proactively identify issues and develop the best method of response. Much as the World Bank Group's Compliance Advisory Ombudsman's (CAO) advisory capacity allows it to make general recommendations that are not case-specific, the ombudsperson's office should provide the government with a broader set of lessons learned and recommendations for the systematic improvement of the environmental and/or social performance of the extractives industry.

Thank you for your willingness to consider this proposal and for your continued commitment corporate responsibility and human rights. An effective ombudsperson's office committed to independent investigation, accessibility, transparency, and effective remedy would send a strong signal that Canada is committed to corporate responsibility and human rights by assuming global leadership on this issue. We would welcome the opportunity to discuss these issues with you further, and in more detail, at your convenience.

Sincerely,



Farida Deif  
Canada Director  
Human Rights Watch



Arvind Ganesan  
Director, Business and Human Rights  
Human Rights Watch

Cc: The Honourable François-Philippe Champagne, Minister of International Trade

The Honourable Chrystia Freeland, Minister of Foreign Affairs

The Honourable Bill Morneau, Minister of Finance