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Chair

Mr. Kevin Sorenson

Standing Committee on Foreign Affairs and International Development

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• (0900)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good morning, colleagues. I will call this meeting to order.

This is meeting 41 of the Standing Committee on Foreign Affairs and International Development, Tuesday, November 24, 2009. Our orders of the day include a return to the committee's study of Bill C-300, an act respecting corporate accountability for the activities of mining, oil or gas in developing countries.

As a witness on our first panel today we have, by video conference from Córdoba, Argentina, the president and founder of the Center for Human Rights and Environment, Ms. Romina Picolotti. We welcome you this morning to our committee and are very grateful to have you with us today.

Also, from Entraide Missionnaire Inc., we have Denis Tougas, the coordinator. Mr. Tougas has appeared before our committee before, I believe, on the Great Lakes region study we did in regard to Africa. Welcome back. It's good to have you back here with us this morning.

Sending his regrets this morning is Robert Ouellette, the editor and chair of the Sierra Club Ontario. He is unable to be here.

We look forward to your comments, Ms. Picolotti. We would invite you to begin by opening with your 10-minute testimony.

Hon. John McKay (Scarborough—Guildwood, Lib.): On a point of order, Chair, up until six o'clock last night, all the witnesses were to appear together. In light of Mr. Ouellette's regrets, I would suggest that it would be far more efficient and useful if Ms. Evans actually joined the panel at this point. That way, we could have all the witnesses for the entire period of time. That way we'd have some efficiency and some dialogue and some discussion about the important issues before us.

I would offer that as a suggestion in terms of the usefulness of this committee.

The Chair: Thank you, Mr. McKay.

Let me just say, in trying to put this meeting together and trying to understand where a lot of our questions may come from and go to, we decided that it would be a good thing to have Ms. Evans appear by herself. That would give her more opportunity and more time. Last evening the Sierra Club was going to appear as well, which would have put four witnesses before the committee, and it was determined last night that it was going to be too many.

I appreciate that, Mr. McKay, but that's the agenda.

Madame Lalonde.

[Translation]

Ms. Francine Lalonde (La Pointe-de-l'Île, BQ): While the question asked and the position taken by Mr. McKay are only a suggestion, I'm making them a motion. It seems to me that we'll find it much easier. It should not be forgotten that there is our round, so only 45 minutes at a time to hear one or two persons, and then to—

[English]

The Chair: And Ms. Evans later.

Did you want to put that as a motion?

It's moved that we move them all together.

(Motion negated)

The Chair: All right. We'll continue the way that the agenda is presented.

Again, Ms. Picolotti, we welcome you here. Now that we have our housekeeping in order, we look forward to what you have to say.

• (0905)

Mrs. Romina Picolotti (President and Founder, Center for Human Rights and Environment): Thank you, Mr. Chair, and thank you, members of Parliament.

I'm honoured to have the opportunity to speak before the committee on a matter that greatly affects both Canada and Argentina. I speak before you today in two capacities, first as a former Secretary of the Environment of Argentina serving under the previous and present administrations; and second, as the president of the Center for Human Rights and Environment, a globally prized organization over which I now preside, based in Córdoba, Argentina. My position as environment secretary of Argentina was equivalent to a ministerial position in Canada. I was the highest environmental federal authority and I responded directly to the chief of cabinet of ministers and to the President.

It is not unknown to you that irresponsible mining activities are one of the most controversial types of industrial investments. This controversy is why the sort of debate you're having today about Canadian companies operating abroad, financed by Canadian taxpayers, is so important to promote more responsible investment worldwide. I commend you, your country's parliamentarians, for taking on this extremely serious and very difficult debate.

As environment secretary from 2006 to 2008, I focused Argentina on deepening our efforts at environmental protection after decades of mostly environmental interference. Among the many tasks and achievements to note during this period, I might mention having made substantial headway in forestry protection, corporate compliance of environmental codes, the creation of a federal environmental prosecutorial institution, and regulation of environmental insurance, among other issues.

Internationally, my secretariat was extremely active in spearheading climate change negotiations, including proposing, right here in Canada at the Montreal Protocol meeting, critical commitments that were approved to phase out ozone-depleting substances with high global-warming potential. Despite this good news for my country, I'm sorry to say that one of the areas where we had the most difficulty was in the mining sector.

You're obviously aware of the very large mine investments run by Canadian companies like that of Barrick Gold in Argentina. Unfortunately, far from being the beacon model of sustainable mining that we would hope for in the 21st century, Barrick Gold is a modern example of a powerful economic giant that unscrupulously manipulates local politics and is skirting environmental and social controls to maximize profit, minimize investment risk, and ignore local cultures and communities to the detriment of the greater global objectives of sustainable development.

As the former environmental secretary, I can personally attest to Barrick's tactics of obstruction to the control and compliance powers of the state. I have seen Barrick's use of forceful propaganda and traffic of influence on public officials and its intense marketing and PR gimmicks with the local communities. I approached Barrick in 2006 as environment secretary to exercise my jurisdictional authority over the San Guillermo Biosphere Reserve, a UNESCO site and national park in the province of San Juan, where Barrick's Veladero mine is located, with the objective of installing contamination-measuring units through the area. Barrick refused to give my team access to the lands in their mining territory and stalled all subsequent efforts to facilitate such entry until weather conditions changed so drastically in the early winter months that my team's work in the area was no longer physically possible.

● (0910)

I had also engaged with provisional and national authorities to attempt to reform the mining code and place the monitoring and control of the impacts of mining activities within the jurisdiction of the secretary of the environment. The mining sector opposed such participation of Argentinian environmental institutions and lobbied the government and the Congress strongly to obstruct these efforts, maintaining jurisdiction of mining operations solely within the mining agencies, whose objective is the promotion of mining, and not environmental controls.

In 2008, the Congress unanimously passed a glacier protection law. The new glacier law would in fact prohibit mining on, under, or in glacier parameters, something that probably sounds quite reasonable to Canadians, as you come from one of the most glacier-rich areas of the world. Well, so do we.

Canadian companies operating in Argentina did not want a glacier protection law to limit their mining prospects and subsequently

pressured the President into vetoing the law. If the President would not veto the law, Barrick would work to block other financial bills that were critical to stabilizing the Argentine economy during the global financial crisis. The President capitulated to Barrick's pressure and vetoed the bill, which has become known euphemistically as the Barrick veto.

Barrick has also pushed forward with several controversial mining projects in Argentina and, time and time again, shows that the company acts in bad faith with respect to the social and environmental community concerns that such large mining interests entail. One of Barrick's gold mining ventures, called Pascua Lama, occurs right on top of five glaciers. Unbelievably, Barrick conveniently failed to mention these facts in its original environmental impact assessment. It was only after communities protested the site choice and pointed out the presence of glaciers that Barrick admitted its mining venture was indeed taking place on at least five glaciers. However, by then, and only from prospecting impacts, much of the glaciers had already been severely impacted by Barrick's exploration. There is still strong resistance to the Pascua Lama project from local indigenous and farming communities that are greatly concerned with water management, contamination, and impacts on natural habitat and reserves.

As environment secretary of Argentina, I fought hard for the promotion of sustainable development and for accountability. I confronted many corporate sectors, engaging them in costly but responsible cleanup. Many did not like this intervention, but ultimately they understood that their responsibility to respect human rights and environmental standards was critical to their own survival and sustainability.

The mining sector, I'm sorry to say, responded quite differently from the rest. They were more resistant, more aggressive, and more dangerous. My closest staff and I were personally and physically threatened following our mining intervention. My children were frightened, my office was wire-tapped, my staff was bought, and the public officials that once controlled Barrick for me became paid employees of Barrick Gold. My mission and our mission as a nation to control mining was jeopardized. Ultimately, I was forced to resign due to insurmountable pressure from companies like Barrick Gold, which ultimately get their way when our institutions fail to control their performance and compliance.

As the maximum environmental authority of my country, I have witnessed first-hand that companies like Barrick Gold do not abide by internationally recognized environmental regulations. I have seen human rights violations from the mining sector that would not be tolerated in Canada but are accepted as the cost of doing business in countries like Argentina. This is why it is so important that you continue this debate and find ways to promote accountability of the mining sector from your vantage point. It is also important to understand that the image of Canada is inevitably related to the behaviour of these companies. When Canadian mining companies act in a manner that is not befitting the true Canadian image, the reputation of Canada and its people suffer.

• (0915)

I don't ask you to be against mining; I do ask you to be against impunity. I don't ask you to be against Canadian mining companies; I do ask you to ensure that the Canadian mining companies acting abroad are accountable to your own highest standards. I don't ask you to intrude on the sovereignty of countries that wish to promote the mining industry, but I do plead with you to consider that the decisions you make about holding Canadian companies to account for their behaviour can and do influence the way they will do business.

Even the smallest improvement in an accountability mechanism here in Canada may go a long way to avoid the historical problems that this sector has visited on many populations around the world. I ask you to consider the predicament you have before you and look for ways to influence the behavioural pattern and minimize the impact of the foreign operations of Canadian mining companies financed by your taxpayers.

Thank you, Mr. Chair.

The Chair: Thank you, Ms. Picolotti.

We'll now move to Monsieur Tougas.

[*Translation*]

Mr. Denis Tougas (Coordinator, Table de concertation sur la région des Grands Lacs africains, Entraide Missionnaire Inc.): Good morning.

Thank you for having me here this morning.

The purpose of my contribution is to demonstrate the benefits that would accrue from implementation of the complaints handling mechanisms proposed by Bill C-300, particularly its ability to assemble information from various sources, based on two specific cases in the Democratic Republic of the Congo, that have been mentioned here on a few occasions.

First, a few words on the expertise of Entraide Missionnaire, which represents many of the francophone Catholic missionary communities in Canada. Since 1988, Entraide Missionnaire has hosted an issue table on the Great Lakes Region. Its objective is to inform and sensitize the Canadian public and authorities to the complex realities of that country. The table focused more closely on the Congolese mining industry starting in 1997, during the first Congo war, when our Congolese partners asked us to inform them about the nature and objectives of the Canadian mining companies that were signing contracts with the parties to the conflict. Since

then, together with our Congolese partners, we have been closely monitoring the changes in the mining industry in the Congo.

With regard to the Congo, I will merely remind you that the country was at war from 1996 to 2003, a war that nearly degenerated into a regional conflict when seven countries got involved in it. The wars resulted in millions of deaths, millions of refugees, millions of displaced persons and completely destroyed the country's political and administrative structures. Since the 2006 elections, the Congolese government has been trying to restore its authority and administrative services to the country as a whole, but has been unable to do so. It is in this context of violence and armed conflict, of major democratic deficit and widespread administrative disorganization that Canadian and other companies have come and established themselves in the Congo, at their own risk—a risk that they have not always been able, or wanted, to assess.

Here's the first case. In June 2000, when it became obvious that the illegal exploitation of natural resources was one of the primary reasons for the war, the UN Security Council established an expert panel to shed light on the links between the conflict and the exploitation of those resources. Until June 2003, the panel produced a series of reports identifying countries, companies and individuals joined together in “elite networks”, to use its expression, that were taking advantage of the climate of violence and insecurity to seize the Congo's wealth, and mining wealth first of all.

In addition to those “elite networks” directly involved in the conflict, the expert panel, in its second-last report of October 2008, identified nearly 100 foreign businesses, including seven Canadian mining companies, as being in direct violation of the OECD's guiding principles. In concrete terms, the expert panel accused those businesses of indirectly participating in the prolonging of the war and the resulting massive human rights violations, by continuing to do business with either a rebel group or the central government, and by paying mining concession acquisition fees, royalties or taxes, the proceeds of which were used to buy weapons.

In addition, based on supporting documentary evidence, it accused one of the Canadian companies of engaging in corruption involving persons close to the government in order to obtain certain concessions. In view of the outcry raised by this accusation made by an instrument of the United Nations, the Security Council extended the panel's mandate so that it could receive explanations from the companies concerned. In its final report, the expert panel classified the cases of 43 of those foreign businesses, including the seven Canadian companies, as “resolved”, while stating that that in no way invalidated the information previously obtained by the expert panel concerning the parties' activities.

In addition, the President of the Security Council called on all states concerned to conduct their own investigations into the expert panel's revelations. It also stated that all the “restricted but non-confidential” documents relating to the investigations would be available to states requesting them.

• (0920)

The Belgian senate held a parliamentary commission of inquiry and the National Contact Points of Great Britain, the United States and Belgium reviewed the cases of 13 of their companies cited in the report. Authorities so requesting obtained the documents claimed from the UN Office of Legal Affairs. In general, these initiatives revealed a significant degree of laxism on the part of the companies in their relationship with Congolese political and military authorities. In Belgium, the Senate commission's revelations led to judicial inquiries into corruption and money laundering. In three cases, the National Contact Points issued news releases to state that there was a problem. No action was taken in response to those news releases. As for the Belgian senate committee, most of the recommendations contained in its report were forgotten. The senate committee had no power of sanction.

Here in Canada, from 2002 to 2004, groups in Canadian and international civil society, as well as Congolese groups, asked the Minister of Foreign Affairs and the National Contact Point to obtain this documentation and pursue these inquiries in accordance with the Security Council president's recommendation. In 2005, our National Contact Point announced its decision to take no action in response to the expert panel's report.

For your information, for the 2008 fiscal year, the Canada Pension Plan held \$297 million worth of shares in six of the companies cited in the expert panel's report. In 2004, the Canada Investment Fund for Africa granted \$15 million to a company cited by the expert panel. Today, the figure is approximately \$5 million.

Here's the second case, which is known to you, I believe. Anvil Mining and its Canadian staff are suspected of aiding and abetting crimes against humanity. In 2008, the Canada Pension Plan held \$20 million worth of shares in that company. In October 2004, six or seven rebels took control of the City of Kilwa, near the Anvil Mining mine. Company employees were requisitioned by Congolese authorities to transport military personnel by aircraft and truck to retake the city. The company also provided food rations to soldiers and paid their wages. The city was retaken in 48 hours, but its inhabitants had fled.

The UN observation mission to the Congo conducted an on-site investigation, which established that more than 100 persons had been killed during the military operation, including 28 by summary execution. According to witnesses, the soldiers had plundered the city, made arbitrary arrests, raped women and tortured prisoners. The report also indicates that Anvil Mining provided logistical support for the operation. Witnesses stated that the company had not only transported soldiers, prisoners and wounded, but had also conveyed the bodies of civilians who had been killed in order to bury them in a mass grave.

In the House of Commons in June 2005, Roger Clavet, member for Louis-Hébert, put a question on this subject to the Minister for International Cooperation. To date, that question has not been answered.

A military trial was conducted in the Congo in 2007. Three expatriate employees of Anvil Mining, including one Canadian, were summoned

to testify. The court acquitted the company and its three employees on charges on aiding and abetting crimes against humanity. Four Congolese citizens were sentenced to life in prison, but on charges unrelated to the massacre. Louise Arbour, UN High Commissioner for Human Rights, who was in the Congo at the time, said this: I am troubled by the court's findings that the events in Kilwa were the accidental result of combat, despite the fact that there was substantial eyewitness testimony at the trial and material evidence that serious human rights violations had been deliberately committed.

She pressed the court of appeal to weigh all the evidence and consider the rights of the 144 victims. Ms. Arbour's long-awaited appeal was unfortunately dismissed by the military court shortly thereafter. Starting in June 2005, Canadian, Congolese and international organizations demanded that the government conduct its own investigation into the incidents. Those demands were forwarded to the ministers concerned and to the National Contact Point. Similarly, following the court of appeal decision, most of those organizations asked the governments of South Africa, Australia and Canada to investigate the company and their nationals who had been involved in the incidents, as it had become clear that the victims could not be heard in the Congo.

• (0925)

In response, Canada's National Contact Point said that it had met with the company and had made it understand the Government of Canada's expectations: that it comply with the OECD's guiding principles, particularly its human rights recommendations. No investigation would be conducted.

Here are a few lessons I invite you to draw from these two cases.

In our view, both cases illustrate the benefits that would have resulted from the passage of Bill C-300 for the companies, the Government of Canada and the groups and individuals who felt they had been adversely affected by certain mining activities.

In both cases, the complaints were not frivolous or vexatious. Investigations were conducted and members of the authorities, such as the President of the UN Security Council and the UN High Commissioner for Human Rights stated their opinion on the validity of the accusations. And yet no authority in Canada took action on those complaints. No one was accountable for those decisions.

No one took action in response to those requests to conduct an investigation and thus to confirm or contradict the charges, undermine the position of the companies or that of the Government of Canada.

On the ground in the Congo, as a result of the pervasive corruption and lack of transparency with respect to the conditions in which mining contracts are signed, the legitimacy of those contracts is still in doubt. In the current context of extreme poverty for the vast majority of the population, that could mean additional costs for the companies to increase security for their operations against the local communities that are not benefiting from the exploitation of their resources.

Somewhat as the previous witness said, Canada is losing its reputation.

Canada's diplomatic personnel have been and continue to be very active in supporting Canadian companies in the Congo, despite persistent doubts about the integrity of their contracts and behaviour. On a number of occasions, embassy staff and, on occasion, the ambassador, have publicly supported the companies despite their disputes with either the government or the local communities.

Even more important, Canada is purportedly blocking settlement of the Congo's debt to the Paris Club. That debt of approximately \$4 billion or \$5 billion was incurred as a result of Mobutu's pranks. That settlement is necessary for the country to have access to the International Monetary Fund's Poverty Reduction and Growth Facility, which the country very much needs. And that is because one of the Canadian companies cited in the expert panel's report is dissatisfied with the outcome of the renegotiation of one of its mining contracts. The Congolese government has decided to cancel one of those contracts.

Without the investigations called for in Canada and internationally, one wonders on what basis the Government of Canada decided to give such strong support to companies denounced in a UN report.

For many more years, the Congo will continue to be a democratically weak country and to have governance well below what constitutes a suitable business context. Political tensions can be expected to rise as the 2011 elections approach. Social tensions in the mining sector resulting in strikes, demonstrations and the eviction of manual diggers and local communities are already present and could last a long time.

In this context as well, the Export Development Canada has already announced that it intends to support the project of Tenke Fungurume Mining, one of whose partners, the Canadian company Lundin, was also cited by the expert panel.

In conclusion, in this specific unstable business climate, passage of Bill C-300 would hold out a definite benefit.

• (0930)

[English]

The Chair: *Merci beaucoup*, Monsieur Tougas.

We'll move into the first round.

Mr. McKay.

Hon. John McKay: Thank you, Mr. Chair. Thank you to both witnesses.

I'll direct my questioning to Madam Picolotti.

You say in your testimony that you and your closest staff were personally and physically threatened following your mining intervention; your children were threatened, your offices wiretapped, your staff bought; your mission was jeopardized; and you were ultimately forced to resign when the President backed down under pressure. Yet you were also the winner of the Sophie prize in 2006, which I understand to be Norway's equivalent to the Nobel Prize, and they say, "Picolotti has given poor and disempowered people rights-based protection against exploitation and environmental destruction." said chairman of the board, Gunhild Ørstavik. She shows how human rights operate not in isolation but intimately concerned with the environment.

My first question to you, Madam Picolotti, is this. You must have made some serious enemies in Argentina, having initially started quite an aggressive set of investigations and then, in effect, being forced to resign, while your work is being recognized internationally as quite outstanding work. I'd be interested in your comments.

Mrs. Romina Picolotti: Yes, Mr. McKay.

When President Néstor Kirchner, the former President of Argentina, requested that I join government as the Secretary of the Environment, he decided to put the Secretary of the Environment at the ministerial rank. He gave four times more budget than we'd had before, and Argentina managed to receive the biggest loan ever from the World Bank, \$800 million, for the performance of environmental policies in Argentina.

Yes, we built environmental policy, and Argentinian government began, for the first time in history, to put a lot of pressure on compliance on environmental law. We shut down Shell, for example. Shell has the biggest mine and refinery here in Argentina. We shut them down because they were not complying with the law. We worked closely with the Minister of the Environment from the Netherlands to make Shell comply with environmental law in Argentina. I must say that the cooperation between the two governments, even though Shell was putting a lot of pressures on gas prices in Argentina because we were shutting them down, was excellent. Finally, Shell signed an agreement with the government, with the Secretary of the Environment, and invested what we requested in environmental cleanup to comply with the environmental law. It was the same with Firestone and Danone.

Yes, we made enemies, but we also made friends along the way. At the beginning there was a lot of reluctance about our performance, but at the end the companies began to understand that we could also help them to comply with the law.

I'm sorry to say that—

• (0935)

Hon. John McKay: I take it that you were not universally successful, though, in particular with one company you keep referring to in your testimony: Barrick Gold. Would you say that Barrick is in compliance with Argentine law as it presently exists?

The other point I want to ask you about is the image of Canada. It was referenced by both Monsieur Tougas and you that the image of Canada is largely projected to people of Argentina and to Belgium, as the case may be, by the activities of companies such as Barrick. What would you say about the image of Canada in Argentina?

Mrs. Romina Picolotti: I will start with your first question on the legal part.

I'm not a judge, I'm not part of the judiciary, so I cannot say whether Barrick complies with the law or not, but I can say that Barrick Gold has dozens of legal claims before the court right now. There are two claims against the company before the Supreme Court of Argentina, before the ombudsman of Argentina, before the provincial government ombudsman of San Juan, so there is a lot of doubt and legal claims being made about the compliance of the company with the law. And I can say that they're not complying with the environmental insurance that they should have for these kinds of operations.

Concerning the reputation of Canada, you know, the presence of these companies is pretty big in the communities and it represents Canada there. There are no embassies of Canada there, but Barrick Gold is in this area. Barrick Gold is from Canada, so it's inevitable that people relate this company to the country it comes from. If you talk to the people there, they say, "They would not do this in their country. Why do they do it here?" Inevitably, as I said before, the image and the reputation of Canada is really hurt by the behaviour of this company.

Hon. Bob Rae (Toronto Centre, Lib.): Briefly, I have the same question in English and French for Mr. Tougas and Madam Picolotti. Have you had discussions with the Government of Canada? During the time you were Secretary of State for Environment and Sustainable Development, Madam, did you make representations to the Government of Canada with respect to the activities of Barrick Gold?

[Translation]

The same question is also for Mr. Tougas. You have experience. You talked about the embassy's position, but I would like to know to what extent the Canadian government was aware of the humanitarian challenges and to what extent it responded to those representations.

[English]

Madam, could you respond to that question? Did you contact the Canadian government? Were you in touch?

Mrs. Romina Picolotti: I was not in touch directly with the Canadian government. I was in touch with the Chilean government, because it was a binational project and it was our counterpart during these operations.

The Chair: Mr. Tougas, do you want to respond to that very quickly? We are over our seven minutes.

[Translation]

Mr. Denis Tougas: There had been regular contact with all ambassadors posted to the Congo since 1997, all trade delegates, the people from the National Contact Point, the people from Foreign Affairs. I attended at least four meetings with representatives of the various departments and representatives of some of those companies.

Yes, the government was very much aware of our concerns about the situation on the ground. The response to that was always the same: no follow-up.

[English]

The Chair: Thank you very much, Mr. Tougas.

Would you have a copy of the letters that you sent to the ambassadors at all? Would you be able to forward us a copy of those letters?

All right, thank you.

We'll move to Madam Lalonde, *pour sept minutes*.

[Translation]

Ms. Francine Lalonde: I'll take half a minute to say that what is going on shows that we should have taken much more time.

I'm going to start with Mr. Tougas. You described a situation that many Quebeckers and Canadians would not be able to believe is true if the witness who reported it was not extremely credible. This takes us back to a colonial situation that was denounced in every way when it applied to the development of the new countries of North America.

Explain to us how this bill would be advantageous. You finished your frightening presentation by saying that Bill C-300 would be an improvement.

• (0940)

Mr. Denis Tougas: Thank you.

I said that Canada's reputation was jeopardized. Yesterday, Canada was called neocolonial in a Kinshasa newspaper. I'll read you the headline: "Consequence of the mining contract reviews, Kinshasa taken hostage: Paris Club wants to impose unconscionable contracts."

Then more than one article focused on the situation, and this appeared: How can Canada and the United States in the Club of Rome bring this kind of pressure, take the Congo hostage, because they are dissatisfied with the internal settlement between the government and the company?

I'm talking about the future, not the past. Bill C-300 would benefit the companies. Both the government and the communities on the ground would have outside recourse. You know it as well as I do that the governance of the Congo is not up to par; corruption is everywhere. This would make it possible to solidify Canada's efforts to support these businesses. I cited two cases, but there are a number.

Canada has taken a public position, and people have said that Canada was aiding and abetting something. If there was an organization such as that provided for by Bill C-300, a parliamentary organization or a Canadian organization could say whether the allegations are true or false. Canada would then have all the legitimacy to support these businesses more than it does now.

Ms. Francine Lalonde: I would like to put the same question to Ms.—

[English]

The Chair: May I interject here?

Madam Picolotti, can you hear us clearly? Do you have French translation there—or do you speak French?

Mrs. Romina Picolotti: Yes, I speak French. The translation is not very good, so I couldn't understand one of the questions.

Can you repeat your question, please? If you can do so in French, that's fine.

The Chair: Madam Lalonde.

[*Translation*]

Ms. Francine Lalonde: Madam, you made an extremely troubling presentation, and I told the previous speaker that, if he hadn't been an extremely credible witness, what he said would be absolutely incredible for most, if not all Quebeckers, and Canadians as well.

You said that you and your family had been physically threatened. When you had every reason to believe that the president would support your actions, he invoked his veto. We are dealing with what I call a "colonial" situation. You nevertheless said that this bill could be useful. Could you explain to us how it could be?

[*English*]

Mrs. Romina Picolotti: Yes.

First, though, if you will allow me, perhaps I can answer the last question a little better. Did I have contact with the Canadian government? As the environment secretary, I did not have contact directly with the Canadian government, but there were demonstrations before the Canadian embassy in Buenos Aires by the communities that were affected by this project. There was engagement, a lot of engagement, between the mining secretary of Argentina, the mining secretary of San Juan, the Governor of San Juan, and the Government of Canada. They were invited to Canada. They went to Canada many times, at least once a year. So there was engagement between the two governments, but there was not engagement between the environmental parties of the governments.

Turning to how this law can help, I would say it's very important, as I said before, to have collaboration between governments to control this economic giant. That seems to work much better, as it did in Shell case. The Netherlands government collaborated with us on that, and suddenly Shell had to change.

This is something that you need to be very aware of. Everything you do to control the way they operate from their headquarters obviously will have a good impact on the way they operate in their subsidiary country. It is extremely difficult for a government that is building its democratic institutions to build properly and with strength toward these big economic powers. There are many dimensions of control. I think countries should not only be promoting but also be working together on controlling.

That's what this bill is about, basically.

• (0945)

The Chair: Thank you very much, Ms. Picolotti.

We'll now move to the government side. Mr. Abbott.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Thank you to both witnesses for excellent testimony.

Ms. Picolotti, I'd like to enter into a quick question and answer so that we can get through a lot of material.

First, I'd like to point out that from the perspective of the Canadian government, we support CSR and the intent of Bill C-300. The

intentions are valid and worthwhile. However, sometimes we end up with unintended consequences.

What is your expertise on Canadian law? And this is not.... I just want to qualify what it is we're talking about here.

Mrs. Romina Picolotti: I'm not an expert on Canadian law. My background is that I'm a lawyer, but I'm not an expert in Canadian law.

Hon. Jim Abbott: Thank you very much.

How much money a year does Argentina make from Canadian mining companies? Do you have any idea?

Mrs. Romina Picolotti: I can talk about some of the projects, but the amount will be around.... Let me check the numbers; I have them here. I want to give you exact numbers.

Hon. Jim Abbott: An estimate would be fine.

Mrs. Romina Picolotti: It's around \$8 billion.

Hon. Jim Abbott: Is that Argentinian dollars?

Mrs. Romina Picolotti: No, it's American dollars.

Hon. Jim Abbott: Eight billion American dollars?

How many people are employed in Argentina by Canadian mining companies? Do you have any idea?

Mrs. Romina Picolotti: That varies, because the projects have different phases. I cannot tell you for sure. For example, on the Veladero Pascua Lama project, the company says it will hire around 3,000 people.

Hon. Jim Abbott: So would it be in the tens of thousands?

Mrs. Romina Picolotti: That doesn't mean that all of them will be Argentinian.

Hon. Jim Abbott: Yes, but of Argentinians, it would be in the tens of thousands?

Mrs. Romina Picolotti: It could be.

Hon. Jim Abbott: You spoke about the Barrick veto. It was interesting that Ms. Lalonde brought up the issue of colonialism. I have to say that I see this as being very much a colonial law whereby, if I understand you correctly, you would hope that the effect of this Canadian law would be to achieve results in Argentina. To me, that is a kind of colonial perspective.

• (0950)

Mrs. Romina Picolotti: I would not say so. When you define “colonialism”, it’s to override the jurisdiction and maybe take over the resources of a country, and this is not what the law is about, as I understand it. I think this law is about controlling how and in which companies the government invests and ensuring that these companies behave according to international standards. We’re talking about international standards, so I would not see this law as a colonialist law. I think what is happening right now, and the consequences of not controlling, of not abiding by international standards, is colonialism, but not the application of this bill.

Hon. Jim Abbott: But it’s interesting that Mr. Tougas said the government of the Congo is not up to snuff; that is, not up to standard. I think you have said that the Argentinian process in place in Argentina is not up to standard. Therefore, you would be looking to Canada to apply law to bring the Argentinian or the Congo results up to standard.

Mrs. Romina Picolotti: No, no. I’m sorry I didn’t express myself very clearly. It’s not my language.

As in many developing countries in the world—and I will set Congo aside, because really Congo is a different situation—those countries that are in the process of constructing democracy, in Argentina our institutions sometimes have not become strong enough to deal with these giant economic powers. This needs time.

What I understand is that the application of Bill C-300 will provide necessary help to these countries, because you control these companies at home. That will of necessity have an impact on how these companies behave abroad. This is what I’m talking about. I’m not talking about you coming to my country and taking over the jurisdiction to apply the law; this is not what I’m talking about.

What I’m saying is that applying this law in your own jurisdiction will necessarily have consequences in my jurisdiction. This is the case in many other areas too. If I control pollution on my side, that may have effects on your side: the application of the law in my jurisdiction will have a positive effect in your jurisdiction. That doesn’t mean colonialism; it doesn’t mean overriding jurisdiction. It’s just the application of law in your own jurisdiction that has effects in others. That’s normal, I think. It does not seem uncommon.

Hon. Jim Abbott: If 60% of the world’s mining companies are registered in Canada and a certain percentage of them said they didn’t like Bill C-300 but still wanted to continue to work in Argentina and so were going to change jurisdiction and simply pick up and pull out of Canada, as far as their head office was concerned, then there really wouldn’t be any net positive result, from your perspective, in Argentina, would there?

Mrs. Romina Picolotti: No, but they could have done that already, without the application of the bill, because there are many countries with laws that are less severe than Canadian laws. So they could have said that.

Hon. Jim Abbott: Perhaps you make my point, that the standards of Canadian companies are possibly not as high as they should be, and there may be some problems in many distant situations around the world, but the fact is that with the standard that we have, I don’t know that we would necessarily want to see people fleeing Canadian

jurisdiction to go to a lower standard, because it wouldn’t be a net result of benefit to Argentina or to the Congo.

Mrs. Romina Picolotti: I don’t think so, because these companies then would not be able to receive taxpayer money from Canadians. If I were a company, I would think twice about that, because I understand that if I were to leave Canada, then I would not be able to receive the pension funds from the Canadians to operate, isn’t that right? So it’s a trade-off.

The Chair: Thank you very much, Ms. Picolotti. Thank you, Mr. Abbott.

We’ll now move to Mr. Dewar.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair, and thank you to our guests.

Ms. Picolotti, thank you for your intervention.

I note that recently, in our media, a situation in Ecuador was in the news that essentially laid out some of the scenarios that you have laid out and that Mr. Tougas has in the Congo; that is, of Canadian companies, Canadian interests, intervening in local politics, if you will. In the case that was recently in the media with respect to Ecuador, it was the pattern that seems to be happening around the world whereby Canadian companies, to protect their mining interests, are hiring local security forces. In the case of Ecuador, to quote a farmer, “This community is on the brink of civil war.” He wasn’t referring to Peru exerting its interest through a civil war; he was suggesting it’s between those who are farmers and locals and the mining interests.

I heard my colleague Mr. Abbott suggest that this legislation is actually a colonial Trojan horse. I juxtapose that, Madame Picolotti, with your intervention wherein you said that you approached Barrick in 2007, as environment secretary, “to exercise my jurisdictional authority”. Your authority was blocked to protect a UNESCO site—and we all know what that is—in the province of San Juan where Barrick’s mine is located.

So you were actually blocked from getting access to a UNESCO site by a Canadian mining company. Is that your evidence?

• (0955)

Mrs. Romina Picolotti: Yes, this is what it is.

We tried to go inside. There’s only one way to go inside the reserve, and then you need to go a little bit on their mining road, and they just blocked the access. So I sent the federal police to try to gain access, but the company opposed and the paperwork with the governor was complicated. Then the winter came, and we couldn’t get inside.

Mr. Paul Dewar: When you were the environmental secretary, your mandate was to protect the environment, obviously. Would you have benefited from the legislation that we have in front of us, to help you do your job? In other words, if there had been a concern about Canadian mining interests—in this case, you mentioned Barrick Gold—and your doing your job, would an accountability mechanism from our side, if there were one, have helped you do your job as the environment secretary? As you said, there's a kind of shared interest here.

Mrs. Romina Picolotti: It would help in the sense that if I could apply Argentine law to these companies, I would never be able to do what you can do with this law—that is, to hurt the heart of the company, which is the finance, the economic part. The Supreme Court of Argentina cannot sentence to stop financing from your taxpayers to this company. This cannot happen. This is work that only you can do.

Mr. Paul Dewar: My friends have critiqued that somehow this bill is interfering with your law. In fact, what you're saying is that this bill would help you enforce the law, because in the case of Canadian companies, you can't say that Canadian taxpayers can't provide funds for those companies. You're limited in that scope, right?

Mrs. Romina Picolotti: Absolutely. This is a value added. You control your part and we control our part. This is how I see this, basically.

Mr. Paul Dewar: As opposed to colonialism, I think it's called shared interest.

Mr. Tougas, I want to come back to you and the Congo. You mentioned the expert panel reports that were done and the fact that there were concerns in the Congo, and we referred to seven Canadian companies that seem to have broken the OECD guidelines. I know the chair asked you to provide letters and documents for the committee regarding ambassadors' correspondence. I'm wondering if you could also make available to the committee, because it would help us do our job, the reports that were done on the Congo, referencing the fact that there hadn't been any response by Canada in terms of those references. If you could do that, it would be helpful.

I want to ask you a question. When we're looking at the cases you mentioned, we see that each of these companies had access to Canadian funds. Is that correct?

•(1000)

Mr. Denis Tougas: Most of them.

Mr. Paul Dewar: In the case of Bill C-300, there would have been an ability to bring forward the evidence and the behaviour of those companies in terms of their behaviour in the Congo. What's your opinion on how that would be seen by the Congolese government, in terms of our being able to hold Canadian mining interests to account? Would they welcome that or would they see that as a problem?

[Translation]

Mr. Denis Tougas: Absolutely. When I talk about the governments of the Congo, I'm talking about the central government and the provincial governments that have a mining branch that is also very active. In the case of Anvil Mining, if an intervention by the Canadian government contradicted the military court judgment, the

Congo would no doubt have absolutely opposed it or would have been angered. However, as regards legitimacy and transparency, I think the government would be absolutely delighted.

I'm trying to think what example I could cite you. These negotiations have been going on for two years, involving 61 mining contracts, 6 of which are Canadian contracts. The discussions have not been public, although the signed contracts have been made public. That's where we've seen how unequal and unfair these contracts were.

We don't yet know the outcome of all these revelations, but we will know soon. What we do know for the moment is that there are questions that have not been answered. There's the fact that unconscionable contracts, which should have been completely redone, were renewed. We'll see what happens.

I previously contacted civil society groups, particularly the Conférence Épiscopale Nationale du Congo, the CENCO, a committee of which is monitoring this situation very closely, studying it and will be giving us its recommendation as to what we can do here.

I repeat, there is still a real struggle between the Congolese government and two companies. I'll name them for you: First Quantum Minerals Ltd. and Tenke Fungurume, which includes the Lundin Group of Vancouver. The struggle continues internationally. If Bill C-300 were passed, we obviously would have been able to use it and to have a Canadian viewpoint on the matter.

[English]

The Chair: Thank you very much, Mr. Tougas.

Thank you, Ms. Picolotti, in Córdoba, Argentina. We appreciated the ability to speak with you today about different extraction and mining companies in your country.

We're going to suspend for one moment. We'll allow Mr. Tougas to leave his place at the table and we'll invite Ms. Evans to make her way to the table.

Thank you.

•(1000)

_____ (Pause) _____

•(1005)

The Chair: I call this meeting back to order.

In the second portion of our committee time this morning, from the Office of the Extractive Sector Corporate Social Responsibility Counsellor, we're very pleased to have our new counsellor, Marketa Evans.

Ms. Evans, we certainly thank you for appearing, and we look forward to your testimony. You've undoubtedly had an opportunity to get into your new position, and maybe you'd like to tell us a bit about that. We look forward to your testimony and also to questions. Welcome to our committee.

Mrs. Marketa Evans (Counsellor, Office of the Extractive Sector Corporate Social Responsibility Counsellor): Thank you very much.

Good morning, and thank you very much for giving me the opportunity to share my thoughts on this very important topic this morning.

My name is Marketa Evans, and about one month ago I took up the role of Canada's CSR counsellor for the extractive sector overseas. I'm not here to represent any position on Bill C-300; I represent neither the government nor industry nor civil society. I think my priority in my role is to contribute to an informed strategic public conversation that could capitalize on Canada's extractive sector dominance to make a more significant contribution to our human development objectives. I believe this positive potential has been largely untapped in any strategic or integrated manner. But I also believe there's actually a groundswell of support from a wide-ranging cross-section of Canadian stakeholders to make it happen.

In an effort to be most helpful to the committee I'll focus on two main points and then we can get to some questions. The first is who I am and a little bit about my mandate. The second is some issues for the committee to consider as it deliberates this bill.

First, I'll give you a little bit about my background and the role of the CSR counsellor.

I've never worked for the extractive sector in any capacity, nor have I ever worked in government. While I was employed at the University of Toronto, I conducted research on global corporate citizenship in general and on business-NGO engagement in developing countries more particularly. I examined in the course of that research and in some detail two case studies where Canada played a significant role. The first one was Talisman in Sudan and the second was the issue of conflict diamonds, which eventually resulted in the well-known Kimberly Process Certification Scheme. So my views here have been informed by my research work; by literally thousands of conversations that I have had with a very wide variety of stakeholders who generously shared with me their candid views and insights; by my students in a graduate course I taught for several years on this topic; by my involvement in the Devonshire Initiative, which is a co-created platform for NGOs and the Canadian mining industry to build trust and foster partnerships; and by visits to mine sites in emerging markets.

Most recently I was employed by one of the world's oldest and largest aid and development NGOs, one that works in almost 50 developing countries. So perhaps it won't be a surprise to you to hear that my benchmark of success in this role will be very clear: are the people in developing countries better off as a result of the presence of a Canadian company? In particular, the focus should be on the poorest, the women and the children, since not only do they bear the brunt of poverty, hunger, disease, and discrimination, but also because they are the most crucial change agents.

A few points frame my thinking on this. I didn't actually start off looking at the extractive sector. I was looking at business more generally, but I quickly came to realize that mining, metals, and energy are crucial to the realization of the millennium development goals. There is no improvement in basic living standards, no electrification, no water and sanitation, and no infrastructure without those industries.

Second, I realized that developing country governments are increasingly seeking out resource exploitation and investment as well as advice on how to best manage resources and revenue flows.

Third, private sector development is increasingly accepted as a crucial factor in poverty reduction and social development. Global best practice is moving very quickly to multi-party, multi-stakeholder work with, not for, the private sector. NGOs are seeing the potential benefit in shifting both the thinking and the practice of the extractive sector, and this is as evidenced in global partnerships now existing between CARE and Anglo-American, for instance, and Shell and International Alert, BirdLife and Rio Tinto, just to name a few.

• (1010)

But we all know that wealth creation is not sufficient. I believe Canada has an unprecedented opportunity to seize a leadership position in this sector and realize its potential as a constructive development actor. In mining alone, Canadian companies invest sums that are on par or exceed CIDA's investments in developing countries, and they have a long-term time horizon—10, 20, 30 years—conducive to making the kinds of changes that we need to see in developing countries.

The 2005 SCFAIT committee report, the round table's process, the advisory group report—all these contributed to launching what I believe is an important national conversation. The government took a long time to respond to the report, but much constructive progress was made in that two-year timeframe, even in the absence of a formal government response. You've already heard about most of these—the Voluntary Principles on Security and Human Rights, our participation in the Extractive Industries Transparency Initiative, the launching of the Devonshire Initiative, and e3 Plus.

Because many civil society organizations and others have emphasized the special importance of the human rights agenda in extractive industries, it is useful to flag once more the significant work of the UN Secretary General's special representative on business and human rights, Professor John Ruggie. He is now four years into his six-year mandate, and Canada was an early and strong supporter of what I believe has now become a serious and credible framework for moving forward on this crucial issue.

In early November, Professor Ruggie and I were present at a two-day consultation hosted in Toronto by Osgoode Law School. Many Canadian experts participated. My understanding from that consultation is that no state is currently proposing even voluntary human rights standards for business and that no guidelines for business exist at this time. The Ruggie framework, which was endorsed by the United Nations Human Rights Commission last year, concluded that the human rights obligations of a state do not translate literally for business. Business has responsibilities with respect to human rights, but these are different, and articulating them is the project of this phase of the Ruggie mandate.

I have a few quick words about my mandate. I'm appointed through an order in council for a three-year term. I report directly to the Minister of International Trade. Minister Day and I have agreed on the importance of keeping this role at arm's length from the government and from the department, and I take seriously the importance of establishing a credible, constructive office.

The order in council stipulates two elements of the role. The first is to review issues brought before the office by either NGOs or companies; the second is to advise all stakeholders on the implementation of the standards.

Much has been made of the fact that I am not called an ombudsman. I have carefully reviewed the recommendations made in the advisory group report, and I see little daylight between what was recommended in the report and my role.

The criticism that the role is toothless revolves around two elements. The first is the ability to compel participation in a review. The order in council explicitly states that both parties must agree to a review. I'm not sure how compulsory participation would operate in practice, but I have no particular position on such a requirement. My working hypothesis consists of two parts. In the first place, a quality review would be difficult to undertake without both parties' consent—and for such a review you need access to people, files, and premises. In the second place, significant incentives for parties to participate already exist. Being involved in the process means you have some say in the outcome, while the reputational fallout from failing to consent would need to be explained to investors, donors, and the media. Public reports are to be issued in all cases. Nevertheless, I could imagine some reasonable situations in which either an NGO or a company might be justified in declining participation, although I'm not aware of any actual cases right now.

The second critique centres on the lack of automatic sanction. I have no particular view on sanction. What I would need to understand more deeply is how and under what conditions sanctions can be an effective tool in prevention and performance improvement on the ground. In any case, I strongly recommend to the committee that sanctions should be as envisaged in the advisory group report—that is to say, measured, commensurate with transgression, allowing sufficient time and tools for remediation and action plans, as the culmination of a fulsome engagement process, and importantly, incremental to what is already in place. According to the advisory group report, only in cases where there was both “serious non-compliance” and a company that ignored remediation would there be a recommendation around possible withdrawal of financial and/or non-financial support.

● (1015)

I fully understand that some civil society organizations see the review process in the round table's report as a package deal, which is to say, an ombudsman with a tripartite review committee. But there's nothing in the order in council to dictate how the review process under the counsellor's office is to be established, and nothing to interdict the eventual creation of such a multi-stakeholder committee should one be desired or warranted. Indeed, there is a tripartite execute committee currently being established to guide and support the CSR centre for excellence.

I want to emphasize that there is no review process in place right now and there are no preconditions or preconceptions as to how it should be established or how it should eventually function. A serious, credible review process is one of my key priorities, and my commitment is to establish it in an open, fully participatory way, drawing on as much expertise as I can, benchmarking to existing review processes, and learning from those experiences. In my view, that process will be more productive and fruitful embedded in an enhanced conversation on a few other issues, to which I now turn.

The first is to ensure we have a full understanding of the problem. I think we've had some powerful case studies, some powerful indications of what is happening. In some cases these were instances that were quite specific and in some cases they relate much more generally to well-known linkages between resource exploitation and human rights abuses or environmental degradation. Some allegations go back 10 or 15 years.

I suggest we still have significant room for a diagnostic of why these events are happening. Are companies stupid, wilful, blind? Is there evidence to support the notion that the industry still has not gotten the message on CSR? Have they learned nothing? Is there evidence to suggest the problem is getting better or worse? A richer empirical diagnostic of the problem would ensure that we better understand root causes, lessons learned, dissemination techniques. We could get a better handle on our objectives and success indicators. In three, five, or ten years, what do we expect or want to be different? What results do we want and how would we measure progress? Such an approach would allow us, I believe, to chart a productive path forward and align our work on key elements that need to be tackled.

Second, I would recommend we ensure that we have sufficient information to make informed choices about potential unintended consequences. With increasing demand for natural resources globally, it is to be expected that where resources exist they will be exploited, if not by Canadian companies, then quite likely by someone else. Perhaps a Canadian divestment would spur more artisanal mining, which is often characterized by the worst forms of child labour and significant environmental degradation. Perhaps the property would be taken over by a state-owned company, companies that tend to have poor human rights records. Perhaps the concession would simply be purchased by a company that was not subject to media, shareholder, activist, or government scrutiny. Or perhaps the Canadian company would simply be bought by a sovereign wealth fund, as has increasingly been happening.

You heard Amnesty International testify before you that it did not intend for Talisman to pull out of Sudan. I had been told that, off the record, during my research interviews by several of the NGOs that were involved in the campaign against Talisman, but it was the first I'd heard of it publicly. Companies are capable of significant change in attitude and performance, and Talisman is now ranked among the top 50 CSR companies in Canada. So I believe we should make a further investment of what the implications are of Canadian divestment.

Third is to more actively leverage our efforts and, to the greatest extent possible, work in tandem with like-minded countries, donors, agencies, etc. We want all citizens in developing countries to have a voice, not simply those who happen to be located in the vicinity of a Canadian mining operation. We want them to be empowered on all the issues they face, and for that we need to work much harder on citizen empowerment, particularly for marginalized or underrepresented groups, much harder on education, on fostering local government responsiveness, on reducing corruption, enhancing accountability, and so on.

• (1020)

This is one of the main reasons I've long championed a much stronger NGO voice in this conversation, not simply to move the thinking of the corporate sector itself but especially because NGOs are absolutely crucial to the progress on the ground on citizen empowerment.

Finally, I caution that reviews are not a silver bullet. In practice, they can be extremely expensive and difficult to conduct. Rarely do they seem to mark a once-and-for-all conclusion to any debate. Review mechanisms exist today and some sit idle. While we can certainly build a better mousetrap, even a carefully designed mechanism will not necessarily deliver a crisp, clean, easy answer on whether a company is in or out of compliance on any particular standard.

Both the government's CSR strategy and Bill C-300 reference the IFC performance standards that were established in April 2006 and form the basis for banks' Equator Principles. There are eight IFC standards, covering social, cultural, labour, community, biodiversity, environment, and indigenous issues. Each standard is supported by many recommendations covering assessments, management systems, training, community engagement, monitoring, and so on. The

eight standards themselves run to 34 pages, and the supporting guidance notes are a further 170 pages.

Because the standards have been created to be used in a wide variety of environments and by a large variety of companies, each requirement contains areas of subjective interpretation. I'll just quickly cite one example to give you a flavour.

The Chair: Very quickly, please.

Mrs. Marketa Evans: Yes.

Performance standard 6 is entitled, "Biodiversity Conservation and Sustainable Natural Resource Management". The standard is supported by a number of recommendations, including recommendation 14, which reads:

The client will manage renewable natural resources in a sustainable manner. Where possible, the client will demonstrate the sustainable management of the resources through an appropriate system of independent certification.

So you can see the difficulty of making sure compliance can be assessed in a quick and clean manner.

In conclusion, I believe we're at the beginning of a fruitful and meaningful national conversation about the role of our extractive sector in the human development agenda. I think we've had some indication that there are many Canadian stakeholders, social investors, academics, and NGOs who wish to contribute to this conversation and search for common ground in order to significantly improve outcomes on the issues we care about.

Thank you for your time today. I look forward to your questions.

The Chair: Thank you, Ms. Evans.

We'll move very quickly to Mr. Patry and Mr. Rae.

[*Translation*]

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

Thank you for being here this morning, Ms. Evans. I'd like to get a clearer understanding of your mandate.

Let's talk about it.

• (1025)

[*English*]

I'm going to read in English the request for review.

Article 6 says, The Counsellor may review an issue on receipt of a request from

(a) an individual, group or community

That's fine, and if I go to limitation on authority, you see that :

The Counsellor shall only undertake a review with the express written consent of the parties involved.

[Translation]

You were here this morning during the very well-documented testimony of Ms. Picolotti, from Argentina. If you had received a request for review from an NGO, such as MiningWatch, concerning what is currently going on in Argentina, would you have been able to investigate the NGO's allegations without the prior consent of the mining companies concerned?

[English]

Mrs. Marketa Evans: Are you asking, would I be able to?

Mr. Bernard Patry: Yes.

Mrs. Marketa Evans: No, for a couple of reasons. One is that the mandate is not backdated. I think that's one—

Mr. Bernard Patry: Let's say you receive something new. I'm not talking about the backlog. I'm just asking, if you receive something totally new, will you be able to investigate? Yes or no. That's all.

Mrs. Marketa Evans: With the written consent of both the parties.

Mr. Bernard Patry: That means the mining companies. Do you believe that any company would ask you to investigate its own way of working?

Mrs. Marketa Evans: Yes, I absolutely believe they would consent.

Mr. Bernard Patry: Thank you. That's all.

The Chair: Thank you, Mr. Patry.

Mr. Rae.

Hon. Bob Rae: First of all, Madam Evans, let me say that I wish you well in your work. We certainly don't see it as incompatible with whatever emerges from our discussions with respect to Bill C-300. I think your work is a vital part of the structure we need to create to get to a resolution of some of these significant issues.

You did point out in your testimony that in the two areas—one of them my colleague Mr. Patry has referred to, the consent of the parties, and the second one is the question of sanctions—if there were some modest changes to the bill that brought it into line with the language of the round table with respect to the process regarding sanctions, you would agree that it would be a fuller implementation of the round table recommendations than what the government has currently put in place.

Mrs. Marketa Evans: Again, what I would need to understand is the relationship between sanction and results on the ground. From my viewpoint, we just don't have enough information.

We heard about two cases today, for instance. If I understood correctly, immediately I wonder why a company would block the access of a minister of environment to a UNESCO heritage site. Without a full understanding of why these situations are happening, I think it's very difficult to know what kinds of tools would best be used to address those problems.

Hon. Bob Rae: But ultimately, if a company were found to be in serious non-compliance with standards, and secondly, they ignored, let's say, a compliance plan or whatever words we want to use, you understand that what I would consider to be the modest consequences of that in the bill—that is to say, EDC would have

to take that into account in respect to their financial activities, and we'll have to figure out the wording, and that the Canada Pension Plan would also have to take it into account—does give companies a fair bit of time. You have a whole investigation process. You have the whole question of serious non-compliance. You then say, well, you haven't complied with the plan. I mean, we're looking at a few rogue actors here, right? Hopefully we're not looking at the mainstream of the industry.

Mrs. Marketa Evans: I would expect we're not. But again, I don't think we have a good enough sense of what we are talking about. I think it is fairly important to figure out the nature of the problem. Certainly I could see a situation where if you have all those other processes in place for remediation or whatever and the problem is not one of wilful negligence, then there would be a lot of opportunity to change the outcome even before you got to the review process. I think that is one of the objectives of the CSR centre of excellence, for instance.

• (1030)

Hon. Bob Rae: Barrick will make its own defence—it has the resources to do so—and other companies will, no doubt. But as we begin to pursue this issue more and more...for example, the statements made by Monsieur Tougas today with respect to the activities of the companies in question are very serious—

Mrs. Marketa Evans: They are. They are very serious.

Hon. Bob Rae: —and they have serious ramifications for Canadian foreign policy. So I don't see how we can...

I'm glad to see my colleague, the parliamentary secretary for CIDA, stating today that the Conservative Party supports at least the intentions of Bill C-300, because I think we do have to go down a track, as a country, in saying we understand corporate social responsibility as being a very critical aspect of our activities in the world.

Mrs. Marketa Evans: I absolutely concur, and I think, in fact, it can drive a leadership position for Canada. I certainly think that if these kinds of allegations are damaging Canada's reputation overseas, it's well beyond time to state that case. Absolutely.

The Chair: Thank you very much, Ms. Evans.

We'll move to Madame Deschamps.

[Translation]

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): Thank you for testifying today.

I think that, in appointing you, the government has given itself a good showcase. Perhaps it wants to atone for certain things, or to consider the serious consequences emerging from the report of the roundtables. It contained a number of recommendations. Socially, and as a government, it had to make at least a small gesture.

Just before you, we heard two forceful pieces of testimony. You were here. You heard the lady from Argentina and Mr. Tougas report to us on events in the Congo. What is apparent from that testimony is the major lobbying being conducted by the mining companies in those countries on the states in place, among other things. They are very powerful and they are exercising very strong pressure, which considerably undermines the efforts of people on the ground. These people are fighting a titan. We can say as well that the Government of Canada is also under pressure from the mining companies.

You, who are a recently appointed counsellor, are dealing with two cases, those we heard about this morning. What are you doing about that? Where do you begin? You heard these two people who came and denounced abuses and environmental disasters. They are witnesses, and they have files; this is well documented. What will you do afterwards, once you've met those people?

Aren't you just a messenger to the Minister of International Trade?

• (1035)

[English]

Mrs. Marketa Evans: No, I don't believe I'm just a messenger to the Minister of International Trade.

What do I do? I want to start by saying that there is no review process in place right now. I think it's actually really important to construct that in a way that's going to take into account the views of a lot of stakeholders, not just my view about how we should proceed in this case. I want to be really clear about that. If this office is going to be credible, I think it is going to have to draw on the expertise of a lot of people in constructing the question of how we would address this.

My lens on this is absolutely that mining companies are very powerful actors in developing countries. I think that is one of the main reasons NGOs are increasingly engaging with the sector. It can be a very powerful actor for doing very positive things in developing countries. The flip side of doing damage to people in the field is that it can also have a very positive impact. It can raise environmental standards and labour standards. It can do a lot in terms of social and community development outcomes that maybe the government can't do and that even NGOs can't necessarily do, because NGOs may not have the same level of access to government as the companies would.

I still have to come back to the question of why. And I don't understand the answer to that. I think that is actually a very important question. Why are we hearing these stories? Why is it that companies are engaged in this kind of terrible behaviour? We need to understand that in order to build the proper tool kit to deal with it.

[Translation]

Ms. Johanne Deschamps: But Ms. Evans, your mandate is on a voluntary basis. If you note any factors that make you think the matter should be pushed further, everything is being done on a voluntary basis. You even said in your presentation that major incentives would be offered to people who took part in the process.

What do you mean by that? How can people be urged to take part in a process voluntarily when we know in advance that no penalties will follow from that process?

[English]

Mrs. Marketa Evans: I think it's probably important to say that I do believe there are sanctions currently existing. So even in the absence of any government sanction, I do think there are significant sanctions that exist, both in these countries...and if we don't believe those sanctions are up to standard or if we don't believe they're enforced, our first point of entry should be working on the capacity and the empowerment in those countries to ensure that those regulatory standards and that enforcement is raised.

I do believe that both companies and NGOs will have big incentives to participate in a review. I think most organizations are very sensitive to reputational fallout. I think they will be much more likely to want to participate in a process that's going to allow them to contribute to the report and to the outcome. Having the counsellor talk to companies about how they can improve performance... I mean, I'm coming from an assumption—and of course it may be an incorrect one—that most companies do not wish to be complicit in genocide and human rights abuses and rape and all the other very serious allegations that we've heard. That is my going-in assumption. So that's why I'm interested in uncovering the why, because if it is in fact true that this is happening, we need to understand why it is happening. I don't believe it serves corporate interests. I'm not suggesting that they want to abide because they're really good people and have other people's interests at heart; rather, it's because it serves corporate interests to not be subject to the reputational fallout.

• (1040)

The Chair: Thank you, Ms. Evans.

We'll move to Mr. Obhrai, please.

Mr. Deepak Obhrai (Calgary East, CPC): Thank you, Mr. Chairman.

Thank you for coming here today, Ms. Evans, and congratulations on your appointment to this position.

Let me start by saying first that the round table conference done by the government and the stakeholders was a very extensive consultation process involving the NGOs, the mining community, and everybody else. Through that extensive round table conference, we came out with a lot of recommendations, including your appointment and the setting up of the institute for excellence. This puts Canada into the forefront of corporate social responsibility in reference to other countries.

What surprises me most in this whole thing is that we are not letting that process go through; we're not letting them see what has happened. If there were concerns and everything on issues that came out after this round table conference and its recommendations, and on what you have been talking about, and two years down the road from now nothing much had happened and the stories we just heard here were to keep repeating themselves, then yes, I can see something different coming out of here. This is an evolutionary process.

The problem with this bill is that it has jumped all of that. It has made assumptions right at the beginning in saying that this, this, or this thing is going to happen, not taking into account the tremendous amount of consultation in that process. As a matter of fact, this bill that has been brought here has had absolutely a very poor consultation process, and now, when all the stakeholders are coming out, we can hear the author of this bill trying to find ways and things to amend it, but he should have been part.... I don't know whether he was also part and parcel of that round table conference, where he would have heard about what the other stakeholders were doing. What we are having here is his selected people coming in here to tell us and not doing this....

The main point here, as you have pointed out, is that this is a beginning process, that this is a process that will build up. This is a process that will put Canada on top.

The Talisman issue in Sudan was a clear case of how the evolution moved forward, but the vacuum was filled by other countries that had a very low social standard of corporate social responsibility. Today in Africa, China is all over the place. As you rightly pointed out, countries want to develop their extractives, their resources, for the betterment of the people.

So my first question to you here is this. In your opinion, is there any other country that you know of in any part of the world that has a counsellor or a similar position and a centre of excellence that is supported by all stakeholders? Or are we number one in the world in breaking ground on this one?

Second, don't you think it would be logical with your power as you build up...? In your testimony, you stated many times that you need more facts and everything to comment. Wouldn't it make logical common sense for us to let you do your work, to go ahead with everything here, before we come out with something that is very negative for the industry?

Mrs. Marketa Evans: Well, I can't disagree with the latter part of your statement. I certainly do believe there is a fulsome process here that we can undertake.

In terms of the first part of your question as to who else there is, I haven't done a sufficient benchmarking exercise in order to be able to say that. For instance, I'd be looking specifically to Australia and other mining countries, but it's my understanding that it's the only CSR counsellor position, although of course there are other national contact points for OECD guidelines.

Mr. Deepak Obhrai: Going back to all these issues, we have heard about Congo and we have heard about all these things in Africa, but we don't seem to talk about the other players. Yesterday, the minister for mines in Afghanistan said that China was going to come there and do extractives and that he was looking forward to it because that would give a tremendous boost to his budget. Nobody's talking about corporate social responsibility there. Therefore, it becomes a dangerous point for Canada to put Canadian mining industries at a disadvantage.

My colleague here just mentioned what's happening in Argentina and how much money Argentina's coffers are getting and how much it is developing the industry.

I guess I just want to put a statement forward, and then I'll give this to my colleague Mr. Lunney. Would it not be logical to say that a process has been put into place, an excellent process?

And when the opposition starts muttering, that means I'm on the right path, I can tell you that.

Voices: Oh, oh!

Mr. Deepak Obhrai: That's how I judge it.

I just want to say that the process—because I was also at the round table conference and everything—has been excellent in putting Canada in the forefront. Canadian companies are doing an excellent job of building resources in the countries that I visited—in Zambia, Tanzania, and everywhere else—to see how much work is being done over there.

Therefore, I would say—and I will leave it at that—that your appointment is great, you will do a great job, and we look forward to having you working on our behalf.

● (1045)

The Chair: I'm sure, Ms. Evans, you'll agree with that last part of the comment. But there may be other comments there as well that you'd like to speak to.

Ms. Evans, please.

Mrs. Marketa Evans: I'm sorry, I didn't hear a question there. My apologies.

The Chair: Mr. Lunney, very quickly.

Mr. James Lunney (Nanaimo—Alberni, CPC): Thank you. I appreciate your being here.

I wanted to bring out that at the beginning you mentioned research that you had done at the University of Toronto on CSR. You mentioned the Talisman situation, and I appreciate that you very succinctly talked about the complications of Canadian divestment. It doesn't always work out well for the local country as well.

On the so-called conflict diamonds and the Kimberley Process that came out of that, it has really helped to solve a very, very nasty situation. In the past, you mentioned the Devonshire process that you were instrumental in helping to get established here. Could you tell us a little about the Devonshire process and what that means.?

Mrs. Marketa Evans: I'd like to speak first about the Kimberley process, because I did look at that quite extensively. I drew some lessons from that about how you get better results on the ground. This is just a personal evaluation. I believe that better results on the ground were achieved through cooperation of all the actors, and I believe the Kimberley process showed that there were overlapping interests between NGOs and companies. The NGOs could have very well taken a very different path towards De Beers. De Beers was not much loved in the world at that time—perhaps it still isn't; I don't know. They actively pursued engagement with the company because they knew they could not solve the problem on their own.

I think that's actually quite an important lesson to be drawn. Nobody had to change their DNA, as it were. People just needed to figure out ways of working together. None of the NGOs involved in the Kimberley process stopped campaigning for process improvement, practice improvement, holding Kimberley to account, or holding De Beers to account.

The Devonshire Initiative is a platform that was created a couple of years ago, and it really is designed to build trust and relationships for partnering on the ground. I emphasize it's to improve outcomes on the ground in developing countries. It's a platform that engages the Canadian mining industry with Canadian development NGOs.

The Chair: Thank you.

Mr. Dewar.

Mr. Paul Dewar: Thank you, Chair, and thank you to our guests.

Do you believe that one of the key facets of corporate social responsibility, when it comes to the extractive industries, is for companies to be consulting with the local population about their projects?

Mrs. Marketa Evans: Absolutely.

Mr. Paul Dewar: Do you know about the case I referenced with the previous witnesses in Ecuador, the so-called Mirador project?

Mrs. Marketa Evans: I don't know it sufficiently to comment.

Mr. Paul Dewar: There is a recent media report, and it might have the name of the company wrong—Corriente Resources mining. The reason I bring that up is that the process, according to the media report, was that the locals weren't consulted thoroughly. In fact, this has led to violence in the community. In September 2006, locals asked what would happen—I'm quoting from the media report, "to their farms, rivers and forests once drilling started". They didn't get sufficient response from the government and from the company, and they protested, which is what people do in democracies when they want to have their voices heard.

What happened next is very disturbing, because there was a local senator, analogous to a premier of the Amazon area, who joined the citizens in the protest. Here's what happened. And it seems to be this pattern we see: there was an alignment between the military and the company. At the point where they crossed this checkpoint—there was a military checkpoint, and the protesters went across the checkpoint—there were 200 soldiers armed with tear gas and rubber bullets. They started shooting, and the senator—this is an elected representative of the people—said he "hid in the forest and when I came out of the woods hours later, I was arrested and charged with invading military territory". They then were taking him away. He said:

I grabbed onto a tree and wouldn't let go...They tore me from it. They tied my hands. My nose and mouth were bound in tape. My feet too. They put me on the helicopter and took me away to Zamora (a 15-minute ride by chopper). I think the only reason they didn't kill me there was because people saw them put me on the helicopter. When I arrived I had a lot of bruises. I was punched, kicked and...

It says "dominated"—I think there's a translation issue.

Of course, the company would give a different story.

My point is that if we had a scenario where we have Canadian companies involved in this kind of process, do you think this would be the kind of thing you'd want to investigate?

• (1050)

Mr. James Lunney: I have a point of order. What Mr. Dewar is saying is that the company is responsible. I thought he said, in reading that account, that it was military. Now you just said the company is involved in this kind of activity.

Mr. Paul Dewar: The mining is the company.

Mr. James Lunney: Okay.

The Vice-Chair (Mr. Bernard Patry): Go ahead, Mr. Dewar.

Mr. Paul Dewar: I have no idea what that intervention was.

Do you believe the company has a responsibility to do its role to consult the people in this kind of project? In this scenario, if someone were to put forward to you their concerns on behalf of the community, if the company weren't wanting to cooperate, would you be able to investigate?

Mrs. Marketa Evans: Absolutely, local community consultation is crucial to securing the social licence to operate.

Mr. Paul Dewar: But not the legal licence, the social licence. Perhaps you could tell us what that is.

Mrs. Marketa Evans: Right, but I think that social licence to operate right now is actually more important than legal licence to operate, and it's intimately embedded in legal licence to operate. That is to say, I think a lot of companies have gotten in trouble by box-ticking on legal permitting and failing to really do enough on social licence to operate.

Mr. Paul Dewar: I want to be clear here. That doesn't preclude someone from going ahead to mine a project if they don't have what you call the social licence to operate.

Mrs. Marketa Evans: I think it actually has been the main cause of a lot of projects not going forward.

Mr. Paul Dewar: But legally speaking, they can still go and mine.

Mrs. Marketa Evans: Right, but they can't access the land.

Mr. Paul Dewar: We've heard interventions that perhaps it's otherwise, that if they're provided with the legal means to do so, they can and will.

Mrs. Marketa Evans: Right. The reason I think this is important is, as I mentioned a few minutes earlier, it's absolutely in the interests of companies, right? Because it costs them hundreds of millions of dollars when they don't get this right. I think that's an important driver.

Mr. Paul Dewar: If the company didn't want to cooperate in the investigation like the one I just outlined—which might be coming to you soon, I don't know if you've received it yet—in that scenario, if the company decided they didn't want to cooperate, you could not investigate.

Mrs. Marketa Evans: No, I could not investigate.

Mr. Paul Dewar: If EDC were supporting a project, and a concern was brought forward to you and EDC was involved in that concern, would EDC be required to cooperate and provide documentation, or could they just say they don't want to? In other words, is EDC forced to comply with an investigation or are they treated similarly to a private company?

Mrs. Marketa Evans: I can't really say, because there is no review process in place right now. I think that's a very good question that should be explored with EDC. I can't really speak to how it would unfold, because the process doesn't exist right now.

• (1055)

Mr. Paul Dewar: What you're saying then is...?

Mrs. Marketa Evans: There is no review process right now, so I can't say.

Mr. Paul Dewar: So in the scenario, company X is mining in the country and people have concerns about their behaviour. Those concerns are brought forward to you, and we find out that EDC is supporting that company. I would think you would go to both the company and to EDC, as an interested party. What you're saying is that right now you're not sure if there's a requirement for EDC to cooperate or if they have the same right of refusal as a private company. That hasn't been reviewed?

Mrs. Marketa Evans: Nothing has been clarified because there is no process in place. I would fully expect that they would want to do that, but I can't say that.

Mr. Paul Dewar: I'm just not aware of the full scope of your mandate at this point. You're saying those rules haven't been put in place.

Mrs. Marketa Evans: That's right, the rules haven't been put in place.

Mr. Paul Dewar: When will they be put in place?

Mrs. Marketa Evans: As I said in my remarks, I think the process of constructing actually needs to be taken very seriously; otherwise we risk creating yet another review mechanism that nobody feels is credible or useful. I've certainly heard those kinds of comments about other review mechanisms, right? So what's the point? It has to be used in order to be useful.

Mr. Paul Dewar: Basically, you're waiting to have a case put in front of you—

Mrs. Marketa Evans: No, we're going to construct the process, as I mentioned in my remarks, in a very collaborative fashion, in a way that is completely open and transparent, that will allow everybody to come in and say what would need to be true for this process to be considered credible, constructive, and useful for all the parties.

Mr. Paul Dewar: What timeline do you have in mind?

Mrs. Marketa Evans: I don't have one.

Mr. Paul Dewar: So right now you can't receive any complaints.

Mrs. Marketa Evans: There's no process. There are no rules of procedure.

The Chair: Thank you.

Mr. Paul Dewar: Thank you.

The Chair: Thank you very much, Mr. Dewar and Ms. Evans. We very much appreciate your testimony here today.

That concludes our time. We have a few more moments to go into committee business, if you choose. The other thing on the 15 minutes is that there is no one meeting here after our meeting, so if you want to continue—

Mr. Bernard Patry: If it's a filibuster, no.

The Chair: Mr. Dewar.

Mr. Paul Dewar: I would put forward a request to vote on the motion we have before this committee.

The Chair: We can't put off debate on a motion.

Mr. Paul Dewar: I'm just asking if we have the will of the committee to do that.

The Chair: We don't. We have a motion to adjourn.

Are we all in favour of that motion to adjourn? Opposed?

The meeting is adjourned.

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