



GENEV-8544

Reference: Canada's response to AL CAN 1/2022

The Permanent Mission of Canada to the Office of the United Nations and World Trade Organization at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the joint letter AL CAN 1/2022 dated 10 June 2022. The Permanent Mission of Canada further has the honour to submit Canada's response.

The submission consists of one document.

The Permanent Mission of Canada to the Office of the United Nations and World Trade Organization at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 22 November 2022

Response by the Government of Canada to the Joint Communication from Special Procedures Reference AL CAN 1/2022

1. Please provide any additional information and/or comment(s) you may have on the above mentioned allegations.

The Government of Canada takes Special Procedure communications very seriously and expresses strong concern regarding the allegations in the joint communication. The Government of Canada expects the Canada-based private company in question – and all Canadian companies active abroad – to abide by all relevant laws, to respect human rights, to operate transparently and in consultation with host governments and local communities, to engage meaningfully with Indigenous Peoples, and to work in a socially and environmentally responsible manner that is consistent with internationally respected guidelines on Responsible Business Conduct (RBC). These include the UN Guiding Principles on Business and Human Rights and the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises. The Government of Canada is committed to advancing Indigenous rights, economic empowerment, and sustainable development in Canada and around the world. The Government of Canada believes Indigenous Peoples have the right to participate – and to be heard – in decisions that affect them at the global, regional, and the local level.

2. Please provide information on the legal basis for activities, including compliance with Canada's obligation pursuant to the UN Declaration on the Rights of Indigenous Peoples and other International human rights standards. Please indicate what measures the Government of Canada has taken to ensure that Canadian companies operating abroad are not causing or contributing to abuses of international norms and standards that Canada has undertaken to uphold, including those mentioned above.

Canada is party to the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *International Convention on the Elimination of All Forms of Racial Discrimination* as mentioned in the letter and has endorsed the UN Declaration on the Rights of Indigenous Peoples. Canada upholds international law and takes its international human rights obligations seriously. A treaty applies to a Party's territory, where it has jurisdiction. A treaty's obligations only apply outside a Party's territory if the treaty is explicit.

Canada's international legal obligations have been implemented domestically through constitutional, federal, provincial, and territorial laws and policies, including, for example, the Canadian Charter of Rights and Freedoms and human rights legislation. Canada has also endorsed and expressed its commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples. To this end, the *United Nations Declaration on the Rights of Indigenous Peoples Act*, enacted in June 2021, affirms the Declaration as a source for interpreting Canadian law and provides a framework to advance the implementation of the Declaration in Canada. The Act requires the Government to work in consultation and cooperation with Indigenous Peoples to take all necessary measures to ensure consistency of federal laws with the Declaration; develop an action plan to achieve the objectives of the Declaration; and develop annual reports on progress and submitting them to Parliament.

Canada also expects other States to implement their international obligations.

The Government of Canada takes all allegations of improper business conduct by Canadian companies abroad very seriously. The Government of Canada expects Canadian companies active abroad to abide by all relevant laws, to respect human rights, to operate transparently and in consultation with host governments and local communities, to engage meaningfully with Indigenous Peoples, and to work in a socially and environmentally responsible manner that is consistent with internationally respected guidelines on RBC. These include the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

In 2021, Global Affairs Canada (GAC) developed the [Feminist Approach to Natural Resource Governance and Management guidance](#) that informs its approach to natural resource and governance and management programming and policy. It advocates Canada's support for the development of the human rights capacity of Indigenous Peoples and other natural resource governance stakeholders by:

- Enabling rights-holders (women, Indigenous Peoples, Artisanal and Small-scale mining (ASM) communities and other vulnerable and marginalized people) to know and exercise their rights and seek redress for abuses thereof;
- Supporting human and land rights defenders through advocacy, engagement, and promotion of their work;
- Supporting access to justice for effective and gender-responsive judicial remedies and reparations, including accessibility to grievance mechanisms for Indigenous Peoples, as well as independent investigation of rights abuses;
- Promoting and raising awareness with civil society, women's rights organizations and Indigenous organizations on the Canadian Ombudsperson for Responsible Enterprises.

A key aspect of Global Affairs Canada's international assistance as it relates to natural resource governance is building the capacity of governments to respect and promote the rights of women, Indigenous Peoples and marginalized groups. GAC financially supports and engages with multilateral organizations and initiatives such as the Intergovernmental Forum on Mining Metals and Minerals and Sustainable Development (IGF) of which Guyana is a member. The IGF's [Mining Policy Framework](#) is the basis upon which IGF engages with member countries. The Framework provides mining policy best practice guidelines that increase the capacity of governments to, for example, respect and protect human rights and Indigenous Peoples' rights.

Canada is a supporting member of the Extractive Industry Transparency Initiative (EITI), for which Guyana is an implementing country. EITI promotes international transparency standards in the oil, gas and mining sectors in an effort to deter corruption, and improve the governance of natural resources. EITI seeks to foster the inclusion of Indigenous Peoples' organizations in national multi-stakeholder groups, composed of government, companies and civil society, which support the implementation of the EITI Standard in implementing countries. Canada understands the EITI Board has urged Guyana to implement legal provisions for public participation in policy making for extractive sector governance, including in the implementation of legal provisions related to free, prior and informed consent in the extractive licensing process, with a view to ensuring full adherence to national policies and laws. Canada understands that the Government of Guyana has committed to redouble its efforts on this front.

Canada is also a member and current Chair of the [Voluntary Principles on Security and Human Rights \(VPs\)](#). This multi-stakeholder initiative is comprised of governments, companies, and civil society organizations seeking to support companies in the industries of extracting, harvesting, developing natural resources, or energy in ensuring their security arrangements respect human rights. Together, members strengthen their capacity to address complex security and human rights issues in business operations around the world.

Guided by the UN Declaration on the Rights of Indigenous Peoples, Canada is committed to advancing Indigenous Peoples' rights, economic empowerment, and sustainable development globally. Canada is a strong supporter of the work of the UN Special Rapporteur on the Rights of Indigenous Peoples, the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), and the UN Permanent Forum on Indigenous Issues (PFII). A priority for Canada remains ensuring enhanced participation of Indigenous Peoples on issues affecting them.

3. Please highlight the steps that your Excellency's Government has taken or is considering to take to protect against human rights abuses by business enterprises domiciled in its territory and/or jurisdiction, including conducting human rights due diligence, in accordance with the UN Guiding Principles on business and human Rights (UN Guiding Principles).

The Government of Canada takes all allegations of improper business conduct by Canadian companies abroad very seriously. The Government of Canada expects all Canadian companies operating in Canada and abroad – regardless of sector – to abide by all relevant laws, to respect human rights, to operate transparently and in consultation with host governments and local communities, to engage meaningfully with Indigenous Peoples, and to work in a socially and environmentally responsible manner that is consistent with internationally respected guidelines on RBC. These include the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. This expectation applies to Canadian companies sourcing their goods and services abroad as well as those with operations abroad.

Canada's approach to responsible business conduct (RBC) includes prevention, legislation in select areas, and access to remedy through Canada's two non-judicial dispute resolution mechanisms.

With respect to prevention, through its network of more than 1,000 Trade Commissioners at offices in Canada and at diplomatic missions around the world, Canada actively promotes RBC best practices and provides advice on RBC to Canadian companies active abroad. Trade Commissioners work with Canadian businesses to help them grow by connecting them with international opportunities, funding, and support programs. Global Affairs Canada provides RBC training to its Trade Commissioners to help them support Canadian companies to do business in a socially and environmentally responsible manner that is consistent with internationally recognized standards and practices.

In April 2022, Canada launched its new RBC Strategy, *Responsible Business Conduct Abroad: Canada's Strategy for the Future*. This five-year strategy (2022–2027) sets out priorities for the Government of Canada to support Canadian businesses active abroad to integrate leading responsible business practices into their operations and to help them mitigate potential risks of doing business overseas. The Strategy includes the development of a digital RBC Attestation, which will tie the discretionary services offered by the Trade Commissioner Service to a company's assurance that they acknowledge the importance of RBC. Once operational, this assurance will include adherence to Canadian laws and other international legal norms and

conventions on human rights, labour rights and the environment, and as applicable, good faith participation in Canada's two dispute resolution mechanisms.

A company's track record on RBC is also taken into consideration by Trade Commissioners prior to providing trade advocacy support. For example, Canadian companies seeking trade advocacy support abroad must sign an Integrity Declaration, which attests that the Canadian company understands the Government of Canada's RBC expectations, has not been charged, convicted or sanctioned for bribery or corruption, and will not engage in such illegal activities. As of July 2022, 1,550 Integrity Declarations signed by Canadian companies are in place.

Canada has also adopted legislation addressing critical issues related to RBC such as corruption, transparency and most recently, forced labour. For example, Canada has made it a criminal offense to offer a bribe to a foreign public official under the Corruption of Foreign Public Officials Act (CFPOA). Under the Extractive Sector Transparency Measures Act (ESTMA), Canada requires extractive companies listed in Canada to declare all taxes paid and where they are paid. In July 2020, amendments to the Customs Tariff made it illegal to import products manufactured wholly, or in part, through forced labour.

In addition to preventative and legislative measures, Canada has two non-judicial dispute resolution mechanisms:

As an adherent to the OECD Guidelines for Multinational Enterprises, Canada maintains a National Contact Point (NCP). The NCP is mandated to:

- Promote awareness of the *OECD Guidelines on Multinational Enterprises*, which are the most complete and authoritative set of global standards on how to run a business responsibly;
- Review allegations that a multinational enterprise operating from or in Canada, and in any sector, is not observing the Guidelines (the Guidelines address a wide range of issues, including: human rights, employment and industrial relations, the environment, bribery, consumer interests, science and technology, competition, and taxation); and,
- Facilitate dialogue or mediation to help complainants and multinational enterprises resolve issues. As part of this process, the NCP can also make recommendations, follow-up where relevant, and report publicly on outcomes.

[The Canadian Ombudsperson for Responsible Enterprise \(CORE\)](#) was established in 2018 to strengthen Canada's longstanding and extensive engagement with RBC. The CORE's mandate includes the following activities:

- Promote the implementation of *the UN Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises*;
- Advise Canadian companies on their practices and policies with respect to RBC;
- Review allegations of human rights abuses arising from the operations of Canadian companies abroad in the mining, oil and gas and garment sectors;
- Offer informal mediation services; and,
- Provide advice to the Minister on any matter relating to her mandate.

The budget of the CORE has increased nearly every year since the inception of the Office in 2018.

The CORE operates at arm's length from the Government of Canada. On March 15, 2021, the CORE launched its online complaint process for reporting potential human rights abuses in the mining, oil and gas, and garment sectors.

Given the seriousness of the allegations here, and the importance that Canada places on the responsible business conduct of Canadian companies active abroad, this joint communication has been forwarded to the CORE.

4. Please provide information on concrete progress in requiring or encouraging companies domiciled in your territory and/or jurisdiction to implement human rights due diligence processes.

The Government of Canada is committed to increasing supply chain transparency and promoting RBC.

In addition to the RBC measures detailed above, Canada's new RBC Strategy – [Responsible Business Conduct Abroad: Canada's Strategy for the Future](#), launched in April 2022 – includes a component to increase the uptake of RBC with a focus on due diligence and accountability. To this end, the Government of Canada is developing a series of tools to help Canadian companies mitigate risks, including new digital tools, a due diligence reporting standard, the aforementioned digital RBC Attestation, and access to Canada's two dispute resolution mechanisms.

Canada also encourages companies and potential investors in Guyana to design and implement a solid RBC program that reflects the local community's needs and is based on a partnership approach. Canada's High Commission in Guyana developed a Guyana Mining Toolkit to adapt the Canadian Aboriginal Toolkit, which was developed by Natural Resources Canada, to meet the needs and requirements of the Guyana mining industry.

In 2020, Canada became the second country in the world (after the U.S.) to ban the importation of goods produced by forced labour. This was done through an amendment to the Customs Tariff that prohibits the importation of goods mined, manufactured or produced in whole or in part by forced labour. In addition, Canada is working to advance legislation to eradicate forced labour from Canadian supply chains.

Much of the focus of Global Affairs Canada's work on natural resource governance is oriented towards the implementation of Canada's Feminist International Assistance Policy (FIAP). In terms of natural resource governance, the FIAP seeks to increase the capacity of women, Indigenous Peoples and marginalized groups to participate in natural resource governance and management decision-making, and promoting and protecting their rights. This work is primarily done through multilateral institutions. For example, Global Affairs Canada has funded the Inter-American Development Bank's [Fund for the Extractive Sector in Latin America and the Caribbean](#). This resulted in projects that:

- completed the first Emerging Women Leaders Program for the extractive sector in Peru, graduating 29 women from the private and public sectors;

- supported the Mining and Energy Ministry of Colombia to adopt the “Gender Equity in Mining and Energy 10 Guidelines” and published the action plan to further gender equity in the sector;
- assisted in integrating the Human Rights Policy for Mining and Energy in Colombia;
- published a study on stakeholder engagement best practices in extractives for five Latin America and the Caribbean countries with over 40 case studies.

5. Please provide information on any consultations with the Wapichan indigenous communities prior to the approval of the project, and whether their free, prior informed consent was sought and received, particularly concerning any potential relocation and social, cultural and environmental impacts. We would appreciate information regarding safety measures put in place to hold consultations during the global pandemic.

The Government of Canada expects all Canadian companies operating in Canada and abroad – regardless of sector – to abide by all relevant laws, to respect human rights, to operate transparently and in consultation with host governments and local communities, to engage meaningfully with Indigenous Peoples, and to work in a socially and environmentally responsible manner that is consistent with internationally respected guidelines on RBC.

Canada seeks to support developing countries in strengthening institutions, laws and policies for the sustainable management of natural resources, to increase the participation of women and traditionally marginalized groups in decision-making and access to natural resources, to protect human rights defenders and to strengthen frameworks for RBC. Canada is a core funder of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), which supports its 80 member countries in leveraging mining for sustainable development to ensure negative impacts are limited and financial benefits are shared. Guyana is a member of the IGF and have benefited from its technical assistance.

In conformity with the principle of sovereignty of States, a State may not exercise jurisdiction over the territory of another State without the latter’s consent and as a result, Canada would not engage in consultation within another State.

The primary responsibility for regulating the activities of companies in any State lies with its democratically elected government. National governments retain the authority to oversee corporate activities within their jurisdiction according to their national law.

6. Please provide details on the measures taken by your Government to undertake environmental and human rights assessments regarding the impacts of mining operations on Wapichan indigenous peoples in line with international standards, including in relation to their right to health and any plans to adopt appropriate mitigation and protections measures against water pollution, mercury spills, deforestation, and increased risk of covid-19 with influx of miners from Guyana and Brazil.

The Government of Canada expects all Canadian companies operating in Canada and abroad – regardless of sector – to abide by all relevant laws, to respect human rights, to operate transparently and in consultation with host governments and local communities, to engage

meaningfully with Indigenous Peoples, and to work in a socially and environmentally responsible manner that is consistent with internationally respected guidelines on RBC.

Under Canada's Feminist International Assistance Policy, Canada promotes a feminist approach to natural resource governance abroad, which promotes empowerment and inclusion, strengthens institutions and frameworks and protects human rights defenders. Canada has provided support to the South Central Peoples Development Association to empower Indigenous Peoples to effectively govern their lands, manage projects and represent their communities' rights and interests.

The responsibility for regulating the activities of companies in Guyana lies with its democratically elected government. A State may not exercise jurisdiction over the territory of another State without the latter's consent and as a result, Canada would not engage in consultation within another State.

7. Please provide information regarding the measures that your Excellency's Government has taken, or is considering taking to ensure that those affected by activities occurring outside your territory by business enterprises domiciled in your jurisdiction have access to remedy in your country, through State judicial or extra-judicial mechanisms.

The Government of Canada provides two dispute resolution mechanisms to help find solutions when issues arise pertaining to the conduct of Canadian businesses abroad:

- The National Contact Point (NCP) for RBC for the OECD applies to all economic sectors and offers dispute resolution for a wide range of issues including disclosure, labour issues, human rights, environmental issues, and bribery.
- The Canadian Ombudsperson for Responsible Enterprise (CORE) offers dispute resolution for alleged human rights abuses in the mining, oil and gas and garment sectors. The CORE also has the ability to receive complaints and undertake a review at its own initiative.

Given the seriousness of the allegations here, and the importance that Canada places on the responsible business conduct of Canadian companies active abroad, this joint communication has been forwarded to the CORE.

The Government of Canada expects that Canadian companies involved in a dispute resolution process will participate in good faith. If a company has not acted in good faith during the course of or follow-up to the review process, both the NCP and CORE can recommend the withdrawal of all Trade Commissioner Service support and support from two of Canada's Crown corporations which support business opportunities abroad – Export Development Canada and the Canadian Commercial Corporation.

It should be noted that bringing a complaint to one of Canada's two dispute resolution bodies does not preclude a party from pursuing a complaint in other forums, such as the courts in host countries or in Canada.

8. Please provide information on the measures taken by your Government to ensure that impacted residents have adequate access to basic social, medical, food, safe drinking water and sanitation and other services. Please provide information on any remedial measures that your Government has taken, or has planned for the community members which will be subject to relocation, or forced to relocate due to the loss of

access to livelihood, safe drinking water and food sources caused by the mining activities.

The Government of Canada expects Canadian companies active abroad to abide by all relevant laws, to respect human rights, to operate transparently and in consultation with host governments and local communities, to engage meaningfully with Indigenous Peoples, and to work in a socially and environmentally responsible manner that is consistent with internationally respected guidelines on RBC. These include the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

Government of Canada programming in Guyana is geared towards providing opportunities for vulnerable and underserved communities to build their capacity to be stronger advocates and to take advantage of economic and social empowerment prospects. Canada has prioritised collaborations and partnerships with the Ministry of Amerindian Affairs, the National Toshios Council (NTC), village councils and other Indigenous groups. Canada has supported several Indigenous Peoples via different programs to promote sustainable economic opportunities and empowerment of Indigenous Peoples and communities in Guyana.

The primary responsibility for regulating the activities of companies in any State lies with its democratically elected government. National governments retain the authority to oversee corporate activities within their jurisdiction according to their national law.