

Permanent Mission of Canada
to the United Nations
and the World Trade Organization



Mission permanente du Canada
auprès des Nations Unies
et de l'Organisation mondiale du commerce

GENEV-9369

The Permanent Mission of Canada to the United Nations and the World Trade Organization at Geneva presents its compliments to the Office of the High Commissioner for Human Rights, and has the honor to refer to Joint Communication AL CAN 1/2024.

In this regard, the Permanent Mission of Canada has the honour to submit Canada's response.

The submission consists of one document.

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



Geneva, 17 May 2024

Canada



CANADA'S RESPONSE TO JOINT COMMUNICATION AL CAN 1/2024

We welcome the opportunity to share the below information and links to Government of Canada content:

1. Additional information or comments in connection with the above allegations.

- Nil

2. Detailed information as to the steps taken by your Excellency's Government to engage with Belo Sun Mining Ltd regarding its responsibility to respect human rights throughout their operations, including the rights of human rights defenders, Indigenous Peoples and peasants, as required by the UN Guiding Principles on Business and Human Rights (principle 2).

The Government of Canada is aware of concerns regarding Belo Sun Mining Ltd. and is following the developments.

The Government of Canada expects Canadian companies operating abroad to respect human rights in their operations, and to adopt best practices and internationally respected guidelines on responsible business conduct, such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (RBC). Canada aims to align its approach to promoting RBC by Canadian companies abroad with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). One of the desired outcomes of Canada's RBC Abroad Strategy is to see Canadian companies integrate respect of the rights of Indigenous Peoples into their activities abroad, and to take actions that contribute to UNDRIP.

Through its network of more than 1,000 Trade Commissioners at offices in Canada and at diplomatic missions around the world, the Government of Canada actively promotes RBC best practices, including meaningful engagement with human rights defenders, communities, Indigenous Peoples and all relevant stakeholders, as well as providing advice on RBC to Canadian companies. Canadian diplomatic missions are expected to provide support to human rights defenders, including if the issues involve a Canadian company active abroad and/or one that receives support from Canada's Trade Commissioner Service. Canadian missions also raise awareness with civil society, human rights defenders and Indigenous organizations about [Canada's National Contact Point \(NCP\) for the OECD Guidelines for Responsible Business Conduct](#) and the [Canadian Ombudsperson for Responsible Enterprise \(CORE\)](#). Canada's approach to dispute resolution aims in part at reducing barriers and providing historically marginalized groups with access to grievance mechanisms.

3. 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 expects Canadian companies active abroad to respect human rights, to operate transparently and in consultation with host governments and local communities, and to work in a socially and environmentally responsible manner, while respecting applicable laws. Companies are also expected to adopt best practices and internationally respected guidelines on responsible business conduct, such as the *UN Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*.

Canada's expectations related to responsible business conduct (RBC) are reinforced in Canada's Responsible Business Conduct Abroad Strategy, launched in 2022: [Responsible Business Conduct Abroad: Canada's Strategy for the Future](#). The Strategy applies to all Canadian companies active abroad, regardless of size, sector or scope.

As part of the RBC Strategy, the Government of Canada, through its network of more than 1,000 Trade Commissioners at offices in Canada and at diplomatic missions around the world, actively promotes RBC best practices and provides advice on RBC and due diligence to Canadian companies active abroad, with an aim to provide clear guidance on preventative measures that Canadian companies can take to mitigate risks in various markets, as well as to raise awareness about tools available to support company RBC efforts.

Canada's Trade Commissioner Service requires Canadian companies to sign an Integrity Declaration when seeking certain types of services abroad, such as trade advocacy. Companies that sign the Integrity Declaration attest that they understand the Government of Canada's RBC expectations; have not been charged, convicted or sanctioned for bribery or corruption; and will not engage in such illegal activities. In April 2024 over 1,100 Integrity Declarations were in force.

Additionally, the Canadian Embassy and Consulates in Brazil (Brasilia, Rio De Janeiro, São Paulo) organize activities promoting RBC and best practices (including topics such as human rights, environmental and social impacts, gender equality, conflict prevention, and stakeholder engagement among others). Some examples of the events organized since 2018 are as follows:

- Seminar "Extractive Sector & Indigenous Community Relations" to discuss private sector best practices on stakeholder engagement (2018);
- Organization of events in Brazil with the International Resources and Development Institute on their strategy for mainstreaming gender equality into natural resource governance (2018);
- Support provided to Canadian company Consensas to participate in the 2018 Green Mining/ Clean Technologies trade mission to Brazil, and provide information on managing data and developing a traceability system, addressing policy compliance, risk mitigation, environmental and social impacts in the extractive sector;
- Support for the Mining Association of Canada (MAC) who, together with Brazil's mining association, adapted MAC's Towards Sustainable Mining for Brazil (2019);
- Market study on trade and investment in emerging markets and increasing interest in RBC, environment, social and governance (ESG), diversity and inclusion, governance, and sustainability (2019-2020);

- Collaboration with the Voluntary Principles on Human Rights and Security Secretariat to promote the Voluntary Principles and the National Working group in Brazil (2022-2023);
- Training sessions on RBC/diversity and inclusion with a focus on gender equality, Indigenous Peoples, and minority inclusion;
- Training sessions and coaching with Canadian companies on stakeholder engagement and conflict prevention (community engagement) (2023-2024).

Moreover, Global Affairs Canada commissioned the Canadian General Standards Board (CGSB) to lead the development of an RBC due diligence standard, which will follow rigorous requirements of the Standards Council of Canada. The Department and CGSB formed a Technical Committee of experts from industry, civil society, academia and other government departments to develop the Standard. While Canadian companies active abroad have always been encouraged to address their environmental, social, and economic impacts in a responsible manner, the Standard will provide them with a roadmap to do so. It will help companies to take action and to report on how they are mitigating risks in a range of areas related to RBC, including but not limited to human rights, environment and climate change, anti-bribery and corruption, and the rights of Indigenous Peoples. While the standard is expected to be applicable to all Canadian companies operating abroad, it will be designed with a particular focus on the needs and capacities of SMEs.

Canadian companies are expected to undertake thorough supply chain due diligence to reduce the risk that they are directly or indirectly sourcing products from entities implicated in forced labour or other human rights violations.

- Under amendments made to the Customs Tariff, in 2020, it is illegal to import products mined, manufactured or produced, in whole or in part, by forced labour. Further amendments to the Customs Tariff, in force as of January 2024, expanded this prohibition to also prohibit goods made with child labour more broadly.
- Under the Fighting Against Forced Labour and Child Labour in Supply Chains Act (“Supply Chains Act”), in force as of January 2024, certain entities and government institutions are required to publicly report to the Minister of Public Safety on steps taken to address forced labour and child labour in their supply chains by May 31 of each year.
- Building on the measures introduced through the Supply Chains Act, the government has also committed to introduce legislation in 2024 to eradicate forced labour from Canadian supply chains and ensure that Canadian businesses operating abroad do not contribute to human rights abuses.

The Government of Canada is a strong advocate for the Voluntary Principles on Security and Human Rights and we encourage all Canadian natural resource companies with operations in high-risk areas to use the Voluntary Principles (VPs) as a tool to help anticipate and mitigate risks associated with the deployment of public and private security.

Canada supports the Voluntary Principles Initiative (VPI) as a forum that promotes multi-stakeholder dialogue, mutual learning, relationship building and collaborative problem-solving, making it possible to respond effectively to security and human rights challenges.

Canada encourages Canadian natural resource companies to use the VPI’s publicly available tools including the new Guidance on Respecting the Rights of Human Rights

Defenders which offers an analytical and operational framework to identify and address risks to human rights defenders across key elements of VPs implementation: risk assessment and due diligence; stakeholder and community engagement; and relationships with security forces and host country governments.

4. Specific information on any steps that may have been taken by Canada's embassy in Brazil to support human rights defenders from the communities directly and indirectly affected by the Volta Grande mining project, in line with Canada's Voices at Risk Guidelines, in particular section 4.2 of the Guidelines. If no such action has been taken, please explain why.

The Trade Commissioner Service in Rio de Janeiro (RIO) regularly shares information on Responsible Business Conduct principles and tools with Canadian clients of the TCS. RIO also invited Belo Sun to participate in three RBC trainings on stakeholder engagement and conflict prevention (in person workshop in March 2023, webinar in February 2024, and one-on-one training in March 2024), though Belo Sun did not attend.

Canada's embassy in Brasilia and its consulate in Rio de Janeiro have provided information regarding the CORE and OECD National Contact Point mechanisms to human rights defenders who approach the missions with complaints about and/or allegations of wrongdoings by Canadian companies.

Canada recognizes and applauds the key role played by human rights defenders in protecting and promoting human rights, often at great risk to themselves, their loved ones, their communities, and the organizations and movements they often represent. [Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders](#) provides practical advice, tools, and resources to Canadian officials. The implementation of the Guidelines is tailored to local contexts and circumstances, and to the specific needs of the human rights defender(s).

Canada has a long-established record of providing support to human rights defenders, including through bilateral and multilateral diplomacy, and international assistance. Canada's support for human rights defenders takes many forms and responds to changing needs. This includes, but is not limited to:

1. Working in multilateral forums to strengthen international rules and norms;
2. Providing the necessary platform to advocate for open civic space;
3. Engaging with local authorities through bilateral diplomacy;
4. Leveraging partnerships with other countries, civil society, Indigenous Peoples and the private sector, including Canadian business interests abroad; and
5. Building capacity, including through funding for human rights organizations

Global Affairs Canada works with human rights defenders and local, regional, and international human rights organizations through its officials at Headquarters and at its missions abroad. This active cooperation helps to inform Canada's human rights policies, priorities, and activities internationally.

Through bilateral dialogue and its network of missions, Canada engages with local authorities on an ongoing basis to underscore the obligation of states to protect all individuals in their territory and subject to their jurisdiction, including human rights defenders. Canada may also issue public statements, deliver speeches, and use social media or diplomatic démarches in support of human rights defenders, alone or in partnership with other countries, when such advocacy is not expected to put the safety of human rights defenders at risk.

Canada's approach to supporting human rights defenders is based on these key values:

- Human rights are universal and inalienable; indivisible; interdependent and interrelated.
- Do no harm—the safety and privacy of the human rights defenders are paramount.
- Consent—actions on specific cases should be taken with the free, full, and informed consent of the human rights defenders in question, wherever possible, or of their representatives or families, in the alternative.

In cases involving conflict between an affected community and a Canadian company, its subsidiary, sub-contractors and/or suppliers, one of Canada's non-judicial dispute resolution mechanisms can be called upon to review and make non-binding recommendations. These two mechanisms are [Canada's National Contact Point \(NCP\) for the OECD Guidelines for Responsible Business Conduct](#) and the [Canadian Ombudsperson for Responsible Enterprise \(CORE\)](#).

Canada provides international assistance to support and protect human rights defenders. This can take many forms, including multi-year funding for key human rights groups, multi-stakeholder engagement to advance awareness of responsible business conduct standards, targeted contributions that Canada's diplomatic missions offer to grassroots groups for training courses, seminars, and other initiatives. Canada also supports human rights education internationally in partnership with Canadian organizations and assists organizations that provide emergency assistance needs. A principal objective is to build bridges between human rights partners and stakeholders.

5. Information regarding the measures that your Excellency's Government is taking or considering taking to ensure that persons 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 has two non-judicial dispute-resolution mechanisms: Canada's National Contact Point (NCP) for Responsible Business Conduct and the Canadian Ombudsperson for Responsible Enterprise (CORE).

The NCP can provide dispute resolution for the wide range of issues covered by the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, including human rights, labour issues, and the environment. The NCP can facilitate dialogue or mediation to help resolve complaints involving multinational enterprises operating in or from Canada in all economic sectors. The NCP can also issue recommendations on implementation of the Guidelines.

The Canadian Ombudsperson for Responsible Enterprise (CORE) has a mandate to review allegations of human rights abuses arising from a Canadian company's operations abroad in the mining, oil and gas, and garment sectors. The CORE can also undertake a review at their own initiative, as well as offer informal mediation services to help resolve complaints.

Canada's approach to dispute resolution is founded on mechanisms that reflect the objectives of the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for MNEs, and provides for relatively accessible, low-cost, and constructive dispute resolution.

Canada's dispute resolution mechanisms complement Canada's judicial system and can be a more accessible option for stakeholders to identify and resolve issues. Bringing a complaint to the CORE or NCP does not preclude a party from pursuing a complaint in other fora.

It is open to private parties to bring civil actions against Canadian corporations. Depending upon where the business is incorporated, these matters tend to fall within the purview of provincial courts. It is also possible in these types of litigation for a party (including the defendant corporation) to object to the court exercising its jurisdiction on the basis that the dispute should be heard in another forum, for example, because of the location of evidence and witnesses. The court will then decide whether to proceed or to decline to exercise its jurisdiction.

In a 2020 decision, the Supreme Court of Canada held that three individuals from Eritrea could proceed with a civil action in Canada against a Canadian mining company. They alleged violations in Eritrea of the customary prohibitions of forced labour, slavery, cruel, inhuman or degrading treatment, and crimes against humanity. The Court declined a preliminary motion to strike the claim. Later that year the company reached a settlement with the plaintiffs, the terms of which are confidential.

6. Information regarding the measures that your Excellency's Government has taken, in response to the recommendation provided in the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visits to Canada in 2017.

Canada has implemented a number of measures since 2017:

- The Canadian Ombudsperson for Responsible Enterprise (CORE) was created in 2019 to strengthen Canada's longstanding and extensive engagement in RBC. The CORE focuses on allegations of human rights abuse in the mining, oil and gas and garment sectors that started after May 1, 2019, or before then but are ongoing. The CORE can receive complaints, initiate its own reviews, and offer informal mediation services. The CORE works at arm's length from the Government of Canada, is supported by appropriate resources, and became fully operational in March 2021.
- Following the 2018 OECD Peer Review of Canada's NCP, a number of reforms were implemented to address recommendations on enhancing the NCP's operations. A new NCP website was launched to ensure information on the role and activities of Canada's NCP remains up-to-date and accessible. The NCP's enhanced online presence includes a new "case tracker" to provide greater transparency on specific instances in progress. Additionally, the NCP's case-handling procedures were updated in 2022. Key changes include a commitment to publish the NCP's Initial Assessments, as well as the removal of a prohibition on "campaigning" by parties during the specific instance process. The NCP's updated procedures now also note that the NCP can recommend the denial of future support by Canada's Trade Commissioner Service, Export Development Canada, and the Canadian Commercial Corporation for Canadian companies which do not participate in the NCP process or fail to participate in good faith.
- Canada has long been a proponent of the *United Nations Guiding Principles on Business and Human Rights* and actively promotes their implementation by Canadian companies. This expectation is underscored in Canada's RBC Abroad strategy, launched in 2022.

7. Information regarding the measures that your Excellency's Government is taking to implement its Responsible Business Abroad strategy, particularly as it relates to the above allegations.

In 2022, Canada launched its [Responsible Business Conduct Abroad: Canada's Strategy for the Future](#). This 5-year Strategy (2022-2027) sets priorities for the Government of Canada, through the Trade Commissioner Service and partners, to support Canadian companies abroad to:

- adopt world leading responsible business practices;
- help them gain a competitive advantage;
- mitigate risks; and
- contribute to a strong and inclusive economic recovery.

The Strategy, which applies to all Canadian companies active abroad, strengthens Canada's balanced approach to RBC, which includes preventative measures, legislation in select areas, and access to dispute resolution.

Since its launch, Global Affairs Canada has been rolling out elements of the Strategy action plan, which include, among other initiatives, the development of the Canadian RBC Standard for Due Diligence and Reporting and the implementation of an RBC Attestation for all TCS clients.

As a key deliverable of the RBC Strategy, the Government of Canada – in tandem with industry, civil society, and academia – is working to develop a national standard on RBC due diligence and reporting for Canadian companies abroad, as noted in Question #3. The Standard is expected to provide a common set of indicators for Canadian companies to account for how they address the actual and potential negative impacts of their business activities abroad. While the Standard is expected to apply to all Canadian companies operating abroad, it will have a particular focus on the needs of small and medium-sized enterprises. A technical committee to develop the Standard is in place, and work is ongoing.

Another key initiative of the Strategy is the new RBC Attestation under development that will soon be required for all Trade Commission Service (TCS) clients to receive support. The RBC Attestation is intended to raise awareness about Canada's RBC expectations and inform TCS clients about RBC-related laws and policies.

As referenced in Question #3, Canada's Trade Commissioners at offices in Canada and at diplomatic missions around the world also actively promotes RBC best practices and provides advice on RBC and due diligence to Canadian companies active abroad.