

Canada's 3rd Cycle Universal Periodic Review:
Written submission to the UN Human Rights Council

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Economic Rights / Extraterritorial Obligations

Submitted by:

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The Canada Tibet Committee is a federally-registered not for profit organization. The Committee was established in 1987 with a mandate to defend and promote human rights in Tibet. The Committee advocates human rights-based approaches for Government of Canada policies and programs that could impact the enjoyment of human rights in Tibet.

Introduction

1. As part of its mandate to defend and promote human rights in Tibet, the Canada Tibet Committee (CTC) monitors the enjoyment of economic rights in Tibetan areas of China including in matters related to discrimination, labour, and corporate behaviour in the context of Canadian trade and investment activities.
2. The CTC supports the view expressed by various UN experts that states have the responsibility to carry out human rights due diligence with respect to economic policy, and that this responsibility extends beyond borders to wherever the impact is felt.ⁱ This is particularly true with respect to international trade and investment policy.
3. In 2016, the Government of Canada announced exploratory talks with the Government of China aimed at a bilateral free trade agreement (FTA) based on its new “progressive trade” agenda.ⁱⁱ Since its announcement, the Government has consulted broadly with Canadians about their views. As part of that consultation process, the CTC submitted written recommendations emphasizing the need for an ex-ante human rights impact assessment (HRIA) of the trade agreement.ⁱⁱⁱ
4. The Canada Committee also supports the long-standing recommendation by Canadian civil society organizations for a national ombudsman office or similar mechanism to be created to better monitor and investigate claims of Canadian corporate abuse abroad, particularly in the extractive sector.^{iv}

Relevant 2nd cycle UPR recommendations to Canada

5. During its 2nd cycle Universal Periodic Review (UPR) in 2013, Canada received recommendations related to the conduct of economic policy and human rights:
 - i. Theme A23: 128.29 – Implement recommendations of the United Nations treaty bodies (Portugal) (Source of position: A/HRC/24/11/Add.1 - Para. 8)
 - ii. Theme B6: 128.151– Continue efforts towards the establishment and implementation of an effective regulatory framework for holding companies registered in Canada accountable for the human rights impact of their operations (Egypt) (Source of position: A/HRC/24/11/Add.1 - Para. 42)
6. Since 2013, UN treaty bodies, as well as other special procedures of the Human Rights Council, have made recommendations to the Government of Canada regarding the importance of due diligence in economic policy-making, and also about the need for a regulatory framework to hold Canadian companies accountable for the human rights impact of their activities.

7. In its 2016 review of Canada, the UN Committee on Economic Social and Cultural Rights (CESCR) expressed concern “about the lack of impact assessments explicitly taking into account human rights prior to the negotiation of international trade and investments agreements.” The Committee further recommended that trade and investment agreements negotiated by Canada should “recognize the primacy of Canada’s international human rights obligations”. The CESCR recommended that Canada introduce “effective” mechanisms to investigate complaints about corporate abuse.^v

8. In its 2017 review of Canada, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed concern that “victim’s [sic] of actions of transnational corporations registered in Canada, whose activities negatively impact the rights of persons outside of Canada do not have adequate access to justice.” The CERD recommended that Canada “ensure access to justice through judicial and non-judicial remedies for violations of rights of persons by transnational corporations registered in Canada, operating abroad, and that Canada “swiftly establish an independent ombudsman mandated to receive and investigate human rights complaints against Canadian corporations operating in other countries.”^{vi}

9. In 2017 following its mission to Canada, the UN Working Group on Business and Human Rights suggested that the Canadian government ensure that existing as well as future trade and investment agreements include adequate safeguards to protect the environment, human rights and labour rights.^{vii} The working group advised that Canadian companies be asked to “align their activities to the UN Guiding Principles as a condition to receiving other benefits such as advocacy services, or participation in trade missions”. Further, the working group recommended that “Global Affairs Canada could also play a stronger role in disseminating the UN Guiding Principles among trade and export programs at the provincial level”.

New information: insufficient implementation of 2nd cycle recommendations

10. When the Government of Canada announced exploratory discussions with the Government of China towards a FTA, it failed to provide information about how it would assess the potential impact of the agreement on human rights. Despite the recommendations by UN treaty bodies, the Government of Canada has not carried out a human rights impact assessment nor has it indicated any intent to do so despite the vulnerability in Tibetan areas of China.

11. For example, the CTC has pointed out that even in the midst of economic growth, Tibet remains the poorest region of China and that within Tibet, Tibetans are the most vulnerable.^{viii} The Tibetan people lack political power and they experience systemic human rights violations on a regular basis as documented by the United Nations.^{ix} Tibetans are disadvantaged in terms of accessing the economic benefits of trade because of specific government policies that deny them equal access to education, employment, and foreign travel. Such conditions are clear indicators that an HRIA is required.

12. Second, the Government of Canada has not yet established a procedure to hold companies registered in Canada accountable for human rights violations in other countries. As a result, and given the political reality in Tibet where access to justice is an elusive goal, Tibetan victims of Canadian corporate abuse are still unable to obtain justice.

13. For example, in 2015, the Canadian National Contact Point for the OECD Guidelines on Multinational Enterprises (NCP) published its final statement in response to a request for review submitted by the Canada Tibet Committee regarding the activities of a Canadian company operating in Gyama Valley, Tibet.^x Although the NCP found that the allegations had merit, and despite sanctions placed on the company for non-participation in the review process, the Government of Canada was unable to obtain remedy for victims of the abuse or to prevent further abuse as the company proceeded with phase two of its project without complying with any NCP recommendations.

14. Third, the Government of Canada has not taken adequate steps to ensure that provincial governments are aware of, or that they comply with its 2014 *Enhanced Corporate Social Responsibility Strategy*, as suggested by the UN Working Group on Business and Human Rights.

15. For example, when the Canadian NCP announced its sanctions against the Canadian company operating in Tibet – including a prohibition against participation in trade missions - the company was at that very moment participating in a provincial trade mission to China. In another example, in her response to a letter from the CTC requesting more information about the Government of Alberta’s partnership with a Chinese extractive company operating in Tibet, the Premier of Alberta responded that human rights in Tibet are the responsibility of the federal Minister of Foreign Affairs.^{xi}

Recommendations

16. The Human Rights Council should seek clarification from the Government of Canada regarding the full and complete implementation of treaty body recommendations including recommendations related to assessing the human rights impact of trade and investment agreements, enhanced judicial or non-judicial mechanisms for victims of corporate abuse, and efforts to mainstream such efforts within provincial governments.

- a. Members of the Human Rights Council should encourage Canada to carry out a human rights impact assessment of the Canada-China FTA during the exploratory talks and before full negotiations proceed.
- b. Members of the Human Rights Council should urge Canada to create an extractive sector ombudsperson or similar mechanism without further delay.

- c. Members of the Human Rights Council should ascertain what specific steps Canada has taken to ensure that its provinces and territories endorse and apply federal policies related to corporate social responsibility.

ⁱ See the UN Guiding Principles on Business and Human Rights, 2011, at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf and Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 2011 at http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23

ⁱⁱ Canada, China to start free trade talks, Reuters, September 22, 2016, <http://markets.businessinsider.com/news/stocks/UPDATE-1-Canada-China-to-start-free-trade-talks-explore-extradition-treaty-SNC-601727-1001413614>

ⁱⁱⁱ Canada-China Trade Consultations, written submission, Canada Tibet Committee, 2017 at <http://tibet.ca/blog/wp-content/uploads/2017/06/CCFTA.-screening.-May2017.pdf>

^{iv} See “Open for Justice” campaign website at <http://cnca-rcrce.ca/campaigns-justice/>

^v Concluding Observations on the Sixth Periodic Report of Canada, paras 15 and 16, CESCR, 2016 at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCAN%2fCO%2f6&Lang=en

^{vi} Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada, paras 21 and 22, CERD, 2017, at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCAN%2fCO%2f21-23&Lang=en

^{vii} Statement at the end of visit to Canada by the United Nations Working Group on Business and Human Rights, June 1, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21680&LangID=E>

^{viii} Based on facts published in the China Human Development Report, UNDP China, 2016, at <http://www.cn.undp.org/content/china/en/home/library/poverty/the-living-standards-dimension-of-the-human-development-index--m.html>

^{ix} Tibet issue raised in opening statements at UN Human Rights Council, Central Tibetan Administration, September 30, 2017 at <http://tibet.net/2017/09/un-member-states-press-china-on-tibets-human-rights-cases/>

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

^{xi} Letter to the CTC from Alberta Premier Rachel Notley dated August 17, 2017. On file.