Hollow core

By TAVIA GRANT
Staff

JOSE OLAYA, PERU - Deep in the rain forest of Peru's northern Amazon region, Natanael Sandi picks up a stick and pokes creek water that has an iridescent sheen. Nearby, oil clusters near a corroded pipe.

That petroleum seeps into the forest ground and creek beds, and oozes into the very rivers, streams and lagoons that Indigenous communities in the area - including the Quechua, Achuar and Kichwa peoples - use to bathe, wash clothes, grow crops and drink from. They also consume the fish and wild game that subsist on these waterways.

"The water that we drink, the air that we breathe - it is not normal, natural air. There is so much contamination in our territory," says Mr. Sandi, 37, an Achuar father of four.

As an environmental monitor for the village of Jose Olaya, Mr. Sandi is responsible for tracking and reporting oil contamination for an Indigenous federation that then notifies environmental authorities.

As part of the world's largest rain forest, the region he lives in - located more than 1,000 kilometres from the capital city of Lima - is environmentally crucial, and home to thousands of Indigenous peoples. It's also a region blighted with pollution.

Oil spills and leaks from aging pipelines, wells and infrastructure have persisted here for decades.

Mr. Sandi's territory is in Block 192, a plot of land nearly equivalent in total area to that of Prince Edward Island. Oxfam, the international organization that fights global poverty, has called the block "one of the worst environmental disasters you've probably never heard of."

Foreign companies, first from the United States, and then Argentina, have extracted oil in the block since the early 1970s. In 2015, Peru awarded operations of the area to Canadian hands: Calgary-based Frontera Energy Corp., a mid-sized explorer and producer of oil and natural gas, whose service contract expired in February, 2021. (The lot has been dormant since).

Environmental emergencies in Block 192 have not been uncommon over the decades, but during Frontera's time in the area, Peru's environmental regulator recorded 113 of them.

Although it can be difficult to know when specific oil contamination occurred, the oily water Mr. Sandi brought The Globe and Mail to is a few minutes' drive from a facility formerly used by Frontera. He escorted The Globe to several other such sites at the end of last year.

Frontera, which is listed on the Toronto Stock Exchange, has earmarked money toward remediating the area. But Mr. Sandi and others in these territories say the efforts have been insufficient, and are calling upon the Canadian government to hold companies to account - something it had pledged to do.

In 2018, the government announced that it would create the Canadian Ombudsperson for Responsible Enterprise, an office it said would have robust powers to demand answers and shame laggard companies operating abroad.

Canada is home to an outsized number of companies in the extractive sector - including nearly half of the world's publicly listed mining companies - and the CORE was touted by the Liberals as a watchdog befitting of the country's standing in the global economy. But despite promises that the office would be
given investigatory powers - such as the ability to compel the production of documents - that never happened.

For that reason, Indigenous leaders in Peru's Amazon decided not to pursue a complaint with the office. And in its four years in operation, The Globe found that the CORE, which has an annual budget of $4.9-million, has yet to complete a single investigation.

In addition to lacking meaningful powers, the original intention to expand the CORE's mandate beyond the mining, oil and gas, and garment sectors has been unfulfilled - even while evidence exists that industries outside of its remit deserve probing.

There is no shortage of alleged human-rights abuses - including harm done to people and the environment - that Canadian authorities could investigate. The Globe has recorded more than 50 instances in 30 countries in the past five years alone based on media reports, NGOs, academic reports and legal documents. The majority involve the mining sector, but they are also in the oil and gas, manufacturing and apparel industries.

The allegations, from workers, local villagers, community leaders and organizations against Canadian companies, in many cases are grave: killings of Indigenous community members; security forces opening fire on protesters; death threats against local leaders; health impacts from contaminated water; forced labour; and dangerous working conditions.

But as a result of the CORE's inadequacies, many of the human-rights groups that clamoured for the creation of such a watchdog have turned their backs on the project entirely.

"We're very disappointed right now. This is not what we had advocated for," said Ketty Nivyabandi, secretary-general of Amnesty International Canada, a human-rights group that had been supportive of the vision for the initiative.

"We're not recommending the office to communities that we engage with."

When parliamentarians held hearings in 2021 to consider the CORE's mandate, in response to criticism about its effectiveness, it heard testimony from Ayamara Leon Cepeda, an official from Puinamudt, an umbrella organization for various Indigenous groups of the Amazon.

She specifically called out Frontera for not responding swiftly to spills and lamented the fact that the CORE - which she said had a "lack of power" - wasn't an office worth approaching to address that inaction.

In light of Ms. Cepeda's public testimony, The Globe requested an interview with the CORE's staff half a dozen times over several months, but no one was made available. E-mailed questions were often answered unsigned, with direction to visit their website for information about the office.

Struck by the gravity of Ms. Cepeda's criticisms, The Globe set out to Peru's Amazon to find out what, if anything, the CORE was missing.

Jose Olaya is a case study in the type of community that could use an investigator asking some tough questions on its behalf.

The remote village, near the border with Ecuador - which is only accessible by a prop plane or a twoday river-boat ride from the city of Iquitos, followed by an hours-long drive on a dirt road - is far from a government presence, and, for companies that operate there, much external oversight.

In a modest building toward the village's entrance, Gulmara Chuje Salas often works seven days a week as a nurse in the community. However, as the sole health care provider in the village, she has to fill multiple other roles: obstetrician, doctor and lab technician.

She grew up in the village, and as the years have passed has seen more sicknesses - such as headaches, stomach ailments and skin conditions - which she believes are from contamination from oil operations. "They say the water is contaminated, but people consume it just the same," she says.

One study, which was published in 2021 by a group of researchers that includes the Barcelona Institute for Global Health, found higher levels of lead in Indigenous populations living at river basins near oil-production sites in the region. (It was not directly linked to Frontera's operations, but conducted in the same region in 2016, a year after the company started operating there).

The study, which included 1,047 adults and children, showed that in this remote, non-industrialized area, high blood lead levels pose a risk for health among residents in the area.

Half of the children tested had high blood lead levels - putting them at risk for adverse health outcomes such as neurological impairment, kidney damage, anemia and immunotoxicity. By
way of comparison, young children's lead levels in the study were 6.5 times higher than those reported for young children in the US between 2013 and 2014.

In the neighbouring town of Andoas, Elmer Hualinga, who is a Quechua community leader and also works as an environmental monitor in his territory, had his own blood tested in 2016, which showed elevated lead levels.

Mr. Hualinga is frustrated that more hasn't been done to prevent the contamination.

"We can't even count on having water that's fit for human consumption," he said. "We don't even have the most essential thing."

Jose Olaya would welcome more health studies on the impacts of contamination, says Aurelio Pinola, the apu (or leader) of the community, but a lack of resources and its remote location mean few doctors, researchers or scientists come. Many households function without electricity and safe drinking water. Despite years of revenues generated by the oil companies in the area, the community has not seen sustained improvements to quality of life, he says.

Jose Olaya is just one of 25 Indigenous communities with territories that touch Block 192, many of which have spoken out about contamination in the area - and their concerns are backed up by some prominent groups.

In 2021, two United Nations special rapporteurs on human rights sounded the alarm over the dearth of efforts to clean up oil pollution in the block. Decades of contamination "has threatened absolutely everything these communities need for survival - their crops, water, fish, forest and sacred sites," said the experts. "At the same time, these communities do not have proper health facilities to adequately address their medical issues."

That same year, as Frontera's contract was expiring, the company faced criticism among communities in the Amazon about its environmental record.

The actions of Frontera "have caused great indignation and discomfort as well as serious concerns due to the continued impact that the five years of activity has generated in our fragile territories and Indigenous communities," noted an open letter from Indigenous leaders in the territory to Frontera, adding that this has damaged the lives of the nearly 7,000 people who live in the area.

The company declined The Globe's interview request with its chief executive officer, Orlando Cabrales Segovia, as it said it no longer operates in Peru.

In a two-paragraph statement in response to The Globe's questions, Frontera - which also has operations in Colombia, Ecuador and Guyana - said it is committed to "conducting business safely and in a socially, environmentally and ethically responsible manner."

It noted that an abandonment plan for the block "has been coordinated with the government of Peru and with all the stakeholders involved, including local communities in the area."

The company "is honoring its contractual commitments and will continue to comply with its outstanding social and environmental obligations."

Frontera was hit with 33 environmental fines from Peru's Agency for Environmental Assessment and Enforcement between 2017 and 2022, in part for spills and their potential impacts on water, flora, fauna and human health. The fulfillment of the abandonment plan that Frontera cited in its response to The Globe was a contentious issue in the community.

According to Ms. Cepeda, the Peruvian government had asked for the plan for years before it was submitted. As of two months ago, it was still under evaluation by Peruvian authorities.

The company told The Globe it has allocated US$12.3-million and "is currently executing remediation activities in Peru."

In Jose Olaya, the complaints about contamination aren't reserved just for Frontera. Often, Indigenous leaders there also point a finger at the Canadian government.

In their open letter to Frontera, they stated that the company still has obligations to address the contamination, and that Canada, as the home state for the company, is "responsible for the impacts that its subsidiaries are generating in our ancestral territories.... We expect it will take measures to guarantee reparation and prevent the repetition of such actions."

Mr. Pinola said the Canadian government "should demand from [Frontera] to come clean up the things that they have left contaminated."

The failure of the CORE to become an office with meaningful powers stands in stark contrast to the image that was painted for Canadians five years ago.
On Jan. 17, 2018, at a news conference in Ottawa, Canada’s then international trade minister François-Philippe Champagne announced the office's creation with some strong words: "To fly the Maple Leaf means something. It means being associated with a set of values based on dignity, respect, diversity and tolerance," he said.

The Canada brand, he said, "conveys extraordinary commercial advantage. But it also comes with extraordinary responsibilities."

The ombudsperson, he explained, would be mandated to, among other things, independently investigate allegations of human-rights abuses arising from a Canadian company’s activities abroad, adding that Canada would be the first country in the world with such an office.

The office would initially focus on the mining, oil and gas, and garment sectors, with the plan to expand to other industries within a year of the ombudsperson taking office. It was to be underpinned by a new advisory body on responsible business conduct.

Human-rights organizations, including Amnesty and Oxfam Canada, were ecstatic. The creation of such a mechanism - quicker, less expensive, more accessible than court but still empowered to enforce action - was just what they have been pushing for for more than a decade.

The office did not take shape, however, as promised. Fifteen months later, a very different office was launched under Global Affairs and the late Jim Carr, then minister of international trade diversification.

Sheri Meyerhoffer, a lawyer with 17 years of experience in the oil and gas industry - including a role in the 1990s with the Canadian Association of Petroleum Producers - and 13 years in international governance and human rights, was named as the first ombudsperson.

But rather than being imbued with powers to compel documents and witnesses for thorough investigations, her team was to conduct reviews and "joint fact-finding" efforts.

After four years, its mandate to expand to other sectors still has not happened.

Now, some of the Canadian human-rights organizations that Ottawa sought to align itself with when announcing the office are actively discouraging people from filing complaints. They say it's a waste of time and effort, owing to the CORE's lack of power to investigate, its lack of independence from the federal government and - if an abuse is deemed founded - its inability to force a company to fix the harm.

Ken Neumann, national director of the United Steelworkers union, was one of several leaders present for the 2018 announcement of the CORE - a move he says he regrets.

"Knowing what I know now, I would not have joined Minister Champagne on the podium in January, 2018," Mr. Neumann told the House of Commons committee that studied the CORE’s mandate in 2021. "Without the power to compel witnesses and documents, there is no breakthrough; there is no good first step."

(The Globe requested an interview with Mr. Champagne, but his office declined).

In February of this year, ombudsperson Ms. Meyerhoffer told MPs that the CORE is currently handling 15 complaints.

Thirteen of those are in the Xinjiang region in China, which were originally filed last year and relate to forced labour. Another complaint, filed in November, alleges abuse of the right to a living wage by two Canadian companies operating in Bangladesh. The CORE wouldn’t provide details about the last complaint, saying that it would release information about it in April. All of them, they said, are in the "initial assessment stage."

To date, not a single case has been completed, meaning there have been zero investigations or reviews finished in the CORE’s four years of operating.

And though the organization can recommend sanctions to companies - such as the withdrawal of trade services or Export Development Canada financing - and it can "name and shame" companies that are refusing to co-operate or are found to have violated human rights, it appears it has not done so.

Shin Imai, professor emeritus at York University's Osgoode Hall Law School whose research focuses on corporate accountability, says the ombudsperson's lack of investigatory powers has rendered it ineffective. On the CORE's record, he said: "I don't think it's unfair to say they have done nothing so far."

Calls for more robust oversight of Canadian companies abroad go back for decades. In 2005, a standing committee recommended that Canada should establish "clear legal norms" to ensure that companies are held accountable when there is evidence of environment or human-rights violations and develop new
mechanisms for dealing with complaints.

These calls intensified in April, 2013, when the Rana Plaza clothing factory in Dhaka, Bangladesh, collapsed. At least 1,100 people were killed and more than 2,500 injured, one of the worst industrial disasters on record. Clothing of Loblaw Cos. Ltd.'s Joe Fresh label was found in the rubble of the factory. The collapse sharpened global attention on poor working conditions in the country's garment sector, and on the responsibility of the companies that did business with the factories.

Two years later, creating such a watchdog was part of a Liberal campaign promise.

But despite Mr. Champagne's promises that the CORE would have investigatory powers, when Mr. Carr announced the opening of the office in April, 2019, the word "investigate" was no longer in its mandate. Mr. Carr did, however, still have an interest in including those powers, and commissioned an independent legal review to study how to imbue the office with them.

The resulting report, which was not made public by the federal government but leaked to the media in 2021, noted that, without a way to compel the co-operation of companies, "the CORE's effectiveness may be compromised." It outlined two options that would give the office those powers: It could appoint the CORE as a commissioner under the Inquiries Act, or, the "preferable" approach, enact a law around it. (The CORE was created by an order in council, which is less permanent than legislation.)

At the same time, the report also warned that having an office with those powers runs the risk of being caught up in court challenges.

Long before the report became public, the CORE's advisory body was in shambles: All 14 human-rights organizations and labour union reps resigned on the same day in July, 2019, having lost confidence in the government's commitment to international corporate accountability.

"Without independence and investigatory powers, the CORE won't serve impacted communities," said Emily Dwyer, policy director of the Canadian Network on Corporate Accountability (CNCA), who was one of the people who resigned.

By September, 2019, Mr. Carr publicly supported granting the office these investigatory powers. The most effective way to ensure the ombudsperson has the tools they need would be to enact "a standalone legal framework for the office, including stipulating its powers to compel documents, witnesses, and other key testimony," he said in a letter to the CNCA, a network which has 40 member organizations.

To this end, he added, "I have asked my officials to begin the work required to pursue such a legal framework."

Then, the world tilted. First, there was the disruption of a federal election campaign that fall.

And just after the election, Mr. Carr was diagnosed with blood cancer and needed time off for treatment. His replacement, Mary Ng, could have picked up on Mr. Carr's plan to work on a legal framework to give the CORE powers to investigate. She did not.

Her office declined an interview request.

When questioned on whether the office lacks teeth in a 2021 committee hearing, Ms. Ng said she believes the ombudsperson "has the tools and the instruments she needs to be an effective mechanism for human rights abroad."

In an interview in October, before his death, Mr. Carr shed some light on the pressures in establishing the CORE. He said it was a complicated file, and that internally, one of the hotly debated issues was whether Canada had extraterritorial jurisdiction, such as the legal powers, outside of its borders to compel documentary disclosure without running afoul of other nation states.

In the end, he thought "it made sense to give it the authority to do the job responsibly," he said.

Mr. Carr acknowledged that he felt the weight of intense lobbying from the mining industry. "I did feel that pressure." He didn't elaborate but promised to explain in a follow-up interview. He died before that could take place.

The Mining Association of Canada has said that creating an office with investigatory powers is the wrong approach and has instead supported joint fact-finding efforts and other collaborative methods, such as mediation, to resolve disputes.

In the four years after the CORE opened, the Mining Association of Canada had 15 meetings with Ms. Meyehoffer, the most of any lobby group to meet with the office, according to records of the Office of the Commissioner of Lobbying of Canada.

(These records do not contain the con-
tent of what was said in these meetings.

"We thought, we don't need another adversarial, judicial or quasi-judicial system," said Ben Chalmers, senior vice-president of the Mining Association of Canada, in an interview. "We need a system that can complement what we have, and one that can actually bring communities and companies together to work through these issues."

Despite the CORE's pledge to be transparent, the office, which has a staff of 20, puts little information on its website on the nature of the complaints or what countries the concerns come from. In its latest annual report, it says it received five complaints in the last fiscal year, but they did not move forward for various reasons. In one case, the complainant was unresponsive, and in another, the allegations weren't within the timeframe prescribed when the CORE was created.

In that fiscal year, the CORE also reported underspending $2-million owing to delays in staffing - and "a lack of eligible complaints."

The Globe submitted multiple interview requests over months to speak with Ms. Meyerhoffer. Her office postponed and finally declined. When the CORE was e-mailed questions to clarify details in this story, the office responded that "the nature of our complaint process requires a significant degree of confidentiality," and that it takes time to address them.

In testimony to an international trade standing committee in February, Ms. Meyerhoffer acknowledged her lack of powers. Granting her office the power to compel documents and witnesses would yield "a greater positive impact," she said.

At this point, she said, "we have some indication now that not all companies are going to engage.

The only way we could move forward and do a true, thorough job would be to have those powers."

The Globe spoke with several local community leaders and organizations in Namibia, Ecuador and the Dominican Republic who are seeking redress owing to impacts from Canadian firms but who are opting not to complain to the CORE. They are instead turning to other avenues, such as the RCMP or the International Labour Organization, both of which have their own limitations.

In Namibia, environmentalists, wildlife conservationists and Indigenous activists have been fighting a Canadian oil company whose activities they say could jeopardize elephant migration routes and water sources. Calgary-based Reconnaissance Energy Africa Ltd. (ReconAfrica) is exploring for oil near two national parks and a UNESCO World Heritage Site. But the activist groups opted not to file to the CORE, as it lacks teeth, and instead complained to the RCMP over alleged financial wrongdoing - a process whose scope won't include the company's environmental or human-rights record.

ReconAfrica said it is committed to "safe, responsible and ethical resource development" and that it is not drilling near migratory routes or any other area that would adversely impact wildlife. Rinaani Musutua, a community advocate in Namibia, says she "always regarded Canada as a good country."

However, her recent experience trying to get Canadian officials to respond to environmental and human-rights concerns associated with the company has shown otherwise.

"The environment doesn't matter, people don't matter to the Canadian authorities, unfortunately," Ms. Musutua says. "So that gave me a really, really bad taste."

Human-rights NGOs and other non-profits, who are often the first point of contact when a remote community or organization is seeking avenues for justice in Canada, now actively urge them to steer clear of the CORE.

"We're advising against using the CORE," said Catherine Coumans, research co-ordinator of MiningWatch Canada, adding that the ombudsperson role "could actually deepen the harm that they've already experienced, because she doesn't have the powers to actually level the playing field with the company."

Canadian officials and trade groups often declare this country as a world leader in corporate social responsibility.

Moreover, the Trudeau government has long proclaimed that Indigenous relations are a top priority - working on implementing the UN Declaration on the Rights of Indigenous Peoples - and said it expects Canadian companies to "show leadership on reconciliation with Indigenous communities abroad."

Canada's track record, however, shows in many cases this is not happening.

Penelope Simons, law professor and
Henderson Chair in Human Rights at the University of Ottawa, warned that, without more stringent oversight to ensure companies are respecting human rights, there are reputational risks to Canada.

"It is going to become more and more difficult to get legal and social licences to operate in those countries," she says. "And it could also eventually affect Canada's ability to negotiate treaties that support businesses with host states."

In oversight of corporate activities and human rights violations, "Canada is definitely lagging behind its Western counterparts," says Surya Deva, professor at Macquarie Law School in Australia and global expert on business and human rights, noting that it hasn't adopted a business and human-rights national action plan like Denmark or the Netherlands. Nor has it enacted mandatory human-rights due-diligence laws like France, and soon the EU, that force companies to address any adverse impact of their activities on people and the planet.

In Jose Olaya, the community still awaits a full remediation of its homelands. At the end of several days of escorting The Globe through the jungle, Mr. Pinola, the village's apu, took a moment while standing outside of his home to point out that if a company operating in Canada was alleged to have contaminated the environment, authorities would be getting to the bottom of it.

"You yourself have seen it. We have walked a long, difficult walk. You've seen it very well, and now I hope you take it into account," he said. "We sincerely ask that Canada will force Frontera to come to do the cleanup."

With reports from Chris Hannay and Stephanie Chambers