



December 04, 2020

Sheri Meyerhoffer
The Canadian Ombudsperson for Responsible Enterprise
Office of the Canadian Ombudsperson for Responsible Enterprise
Government of Canada

RE: Operating Procedures for the Compliance and Dispute Resolution Mechanism of the Canadian Ombudsperson for Responsible Enterprise (CORE) - September 2020 DRAFT

Dear Ms. Sheri Meyerhoffer,

Transparency International Canada (TI Canada) is pleased to provide comments on the proposed Operating Procedures for the Compliance and Dispute Resolution Mechanism of the Canadian Ombudsperson for Responsible Enterprise (CORE). TI Canada is part of TI's Global Accountable Mining Program, funded by the BHP Foundation and Australian Government and implemented in over 20 countries.

The program aims to enhance mining's contribution to sustainable development by mitigating the corruption risks in mine permitting and licencing processes. As part of the global program, TI Canada conducted a study on understanding the transparency and accountability vulnerabilities that might lead to corruption risks in the environmental assessment (EA) processes in Ontario, British Columbia and the Yukon Territory. The study was conducted based on desktop research and 128 in-depth semi-structured interviews with EA experts from mining and environmental consultancy companies, government and civil society representatives, local and Indigenous communities in three jurisdictions. The findings are presented in the national report available on www.transparencycanada.ca.

Based on the information gathered in this study and similar studies, completed by the TI Chapters in over 20 countries, TI Canada provides the following comments about the draft Operating Procedures for the Compliance and Dispute Resolution Mechanism of the Canadian Ombudsperson for Responsible Enterprise (CORE).

According to Natural Resource Canada¹, 65% of total Canadian mining assets — with a total value of \$163.9 billion — were located abroad in 2017. Mineral exports were 19% of Canada's total export in 2018². Canada is also a globally recognized centre for mining finance. The Toronto Stock Exchange (TSX) and the TSX Venture Exchange are the top listing venues of mining and exploration globally, with 50% of the world's publicly traded mining and exploration companies listed on the TSX³.

¹ NRCan (2019), Minerals and the Economy, <https://www.nrcan.gc.ca/our-natural-resources/minerals-mining/minerals-metals-facts/minerals-and-economy/20529> (accessed: May 14, 2020).

² NRCan (2019), Minerals and the Economy.

³ NRCan (2019), 10 Key Facts on Canada's Minerals Sector, https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/emmc/pdf/2019/10-Key-Factson-Canada_s-Mineral-Sector-EN-access-1.pdf (accessed: May 14, 2020).



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Canadian mining and exploration companies are operating in Africa, South and North America, Central and East Asia, and Australia. A considerable number of countries, including Canada and Australia, where Canadian mining companies are active, are home to Indigenous communities and are developing economies. Almost all of the mining activities in these countries are in rural areas where access to modern communication infrastructure (e.g. internet) and qualified human resources are limited. Even rural and some Indigenous communities in Canada have similar limitations. Therefore, the listed comments aim to reflect possible issues sourced from these limitations, and as a result the effectiveness of achieving the CORE's mandate could be limited.

We are available for your questions and further engagement.

Sincerely,

James Cohen
The Executive Director
Transparency International Canada



**TI Canada comments on the Operating Procedures for the Compliance and Dispute Resolution Mechanism of the Canadian Ombudsperson for Responsible Enterprise (CORE) - September 2020
DRAFT**

- **Section 3**

The CORE's Compliance and Dispute Resolution Mechanism (CDRM)

Proposed operating procedure:

3.7. implement the CDRM processes in a flexible and transparent manner having regard to the circumstances of the parties, the nature of the case at hand, resources and the caseload of the CORE.

Proposed operating procedure:

3.8 committed to impartial, accessible, predictable, equitable and transparent CDRM processes that address power imbalances and are inclusive having regard to responsive to characteristics such as race, gender, ethnicity and the intersection of those characteristics.

Comment:

As part of TI Canada's Accountable Mining Program, we conducted in-depth interviews with Indigenous communities and local non-Indigenous communities in mining regions in Canada, e.g. Timmins, Kamloops. These interviews showed that vague definitions and measures create transparency and accountability vulnerabilities. Monitoring the effectiveness of such measures become limited. Therefore, a clear definition or explanation of what a 'flexible and transparent manner' means and how stakeholders and rights holder will monitor if the process is transparent are critical.

Additionally, the commitment to impartial, accessible, predictable, equitable processes is essential, and TI Canada supports such a process. However, effective implementation of these commitments is also critical, and the statistics discussed under Section 19 will play a critical role in monitoring CORE's adhere to these commitments. Therefore, these statistics should published in a disaggregated format that adheres to confidentiality terms.

Proposed operating procedure:

3.11 An offer of informal mediation services will depend on factors such as whether the human rights dispute appears to be within the CORE's mandate, the nature and severity of possible adverse human rights impacts, whether providing services is likely to assist in preventing a human rights abuse, the availability of other services to the parties, and the resources and caseload of the CORE.

Comment:

A screening process with clear benchmarks to evaluate the nature and severity of human rights impacts is necessary for enhancing the fairness, transparency and accountability of CORE in CDRM processes. The screening process will also guide individuals and communities with limited technical backgrounds and access to information and resources to evaluate the factors, the nature, and severity of possible adverse human rights impacts.



- **Section 5 Request to file a Complaint**

Proposed operating procedure:

5.1 There is no required format for making a request to file a complaint.

Comment:

Based on the experience and comments we received during the Accountable Mining study conducted in Ontario, Yukon and British Columbia, TI Canada strongly recommends standardizing complaint filings. The standardized procedure along with simple guidelines will help and lead individuals and communities, especially Indigenous communities with limited technical capacity and resources, to provide specific insights to help CORE evaluate a situation fairly. Lacking a standardized format may be a challenge to those inexperienced with filing a complaint and providing the rationale and supporting evidence.

Proposed operating procedure:

Admissibility Criteria

5.6.2 What is complained about is allegedly an abuse of an internationally recognized human right;

Comment:

The listed admissibility criteria in 5.6.2 are technical and not clear for an individual or community without experience and knowledge about internationally recognized human rights issues.

As the requester needs to provide sufficient information to satisfy the Ombudsperson, the criteria should be listed with a standard checklist or similar screening guideline to lead the requesters with limited experience and knowledge of internationally recognized human rights issues.

In interviews during our Accountable Mining study, Indigenous communities in Ontario and British Columbia cited limited capacity and time as two major barriers for the them to engage the EA process effectively. In this regard, making the term “*an abuse of an internationally recognized human right*” tangible based on a screening process or guideline will help those with limited technical capacity and background and improve the quality of applications the Obdusperson receives.

9. Dispute Resolution

Proposed operating procedure:

9.10 If the parties reach an agreement through mediation, the Ombudsperson will monitor the implementation of any terms of settlement and may assist the parties with implementation as requested or required.

Comment:

Describing the monitoring process and making the monitoring findings publicly available will motivate the parties to follow the terms of the reached agreement. The monitoring process might be challenging, especially if the complaint issue happened abroad and in a rural area, such as related to an exploration project. Additionally, such practice will improve transparency and corporate accountability.



11. Requirement to Act in Good Faith

Proposed operating procedure

11.5 If a Canadian company has not acted in good faith during a review or a follow-up to a review, the Ombudsperson may make recommendations to the Minister on implementing trade measures including:

11.5.1 The withdrawal of trade advocacy support provided to the Canadian company by the Department of Foreign Affairs, Trade and Development (known as “Global Affairs Canada”);

11.5.2 The refusal by the Department of Foreign Affairs, Trade and Development to provide future trade advocacy support to the Canadian company;

11.5.3 The refusal by Export Development Canada to provide future financial support to the Canadian company.

Comment:

These measures are effective for enforcing requirements and reached agreement terms. We recommend using these measures for enforcing the effective implementation of any terms of the settlement and based on the results of monitoring findings of implementation of any terms of settlement under 9.10.

12. Conduct of a Review

Proposed operating procedure

Participation by the Parties

12.2 Where a Canadian company does not participate actively in a review including refusing to provide relevant information, the CORE may draw appropriate negative conclusions or adverse inferences during fact-finding.

Comment:

We recommend creating a database that contains:

- the information of the finalized mediation and review processes;
- subjects of unfulfilled agreement terms reached through mediation,
- subjects to retaliation; and
- subjects refusing participation to provide relevant information as part of the conduct of a review.

Such a database can report to the Minister for implementing trade measures against the subjects of above-listed actions for a specific term. Such data could be collected as part of the statistics described in Section 19 Statistic. Through this database, subjects of low responsible business conduct compliance and performance can be subject to financial measures and might be limited to staking claims and acquiring mineral rights in Canada. The open data would also enhance due diligence for foreign governments. The Accountable Mining program study shows that such compliance and due diligence capacity will significantly improve accountability and public confidence about the free-entry system mineral resource governance practice in Canada.