

# TALK IS NOT ENOUGH

## Why Canada needs an Extractive Sector Ombudsperson

According to an unpublished study commissioned by the Prospectors and Developers Association of Canada (PDAC), between 1999 and 2009, Canadian mining companies were at the centre of at least 55 mining-related social conflicts.<sup>1</sup> Both industry and civil society organizations report that world wide, mining conflicts are on the rise.<sup>2</sup>

The people who defend their environment, their livelihoods and their human rights in these situations – often poor and always less powerful than the companies they face – frequently lack the protection and support of authorities, and are often targeted with threats and violence.

The Canadian government addresses such conflict with two mechanisms: the Corporate Social Responsibility (CSR) Counsellor, established in 2009, and the National Contact Point (NCP),

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established in 2000 under the OECD Guidelines for Multinational Enterprises.

But when OECD Watch reviewed 250 community complaints made to NCPs *world wide* over the last 15 years, **only three – and none of them from the Canadian NCP** – led to an actual improvement in conditions for victims of corporate abuse.<sup>3</sup> The CSR Counsellor has achieved even less.

In the end, all that affected communities get with these two mechanisms is dialogue – if their complaint even gets through the door.

When it comes to human rights abuse, unlawful and unethical practices, destruction of livelihoods and environmental degradation, talk is not enough.

The NCP and CSR Counsellor mechanisms are **neither adequate nor appropriate** to respond to these problems. An Ombudsperson is both.

Here are the key differences between the NCP, the CSR Counsellor and CNCA’s proposed Extractive Sector Ombudsperson.

Core mandate feature	CSR Counsellor	Canada’s OECD NCP	Ombudsperson
Does it undertake <b>investigation</b> ?	<b>NO</b> Does not assess information provided by the parties. May engage in fact-finding only to improve “the understanding of the issues giving rise to the dispute.” <sup>4</sup>	<b>NO</b> Reviews evidence at intake. Onus is on claimants to provide all evidence, in English or French. Refuses to investigate even when expressly requested by claimants. <sup>5</sup>	<b>YES</b> Has investigatory powers. Can seek to compel production of documents and testimony. Makes findings of fact.
Does it <b>assess if standards are breached or harm caused</b> ?	<b>NO</b> Does not make any assessment of corporate performance. <sup>6</sup>	<b>NO</b> Does not indicate whether the OECD guidelines were breached. <sup>7</sup>	<b>YES</b>

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Are <b>complaints made public</b> ?	<b>YES BUT</b> Since mid-2013, not a single complaint appears in the public registry of requests for review, although the counsellor states that he has conducted a number of reviews since 2015. <sup>8</sup>	<b>YES BUT</b> During the process, parties can be restricted from making public comments about the issues, even regarding non-confidential matters. There is no public registry with all complaints filed. The names of concerned companies and countries are often not disclosed. <sup>9</sup>	<b>YES</b> The mechanism prioritizes accountability through transparency, striking an appropriate balance between commercial confidentiality and transparency.
Does it help <b>solve the problem</b> or <b>bring remedy</b> to affected people?	<b>NO</b> Failed to mediate a single case brought before it. At least three of the six cases brought to the office were closed due to companies' withdrawal or refusal to participate. <sup>10</sup>	<b>NO</b> Nearly 50% of the complaints submitted were rejected at the initial stage. Only 2 cases reached agreement. Companies subsequently did not respect the agreements, and no remedy was provided. <sup>11</sup>	<b>YES</b> The Ombudsperson's mandate specifically includes making recommendations to the government and companies to address existing and prevent future problems, and for remedy where warranted.
Are companies <b>required to participate</b> when a complaint is filed?	<b>NO</b> Mechanism is purely voluntary. <sup>12</sup> In case of refusal to participate, the company will be ineligible for trade advocacy support.	<b>NO</b> Mechanism is purely voluntary. <sup>13</sup> In case of refusal to participate, the company will be ineligible for trade advocacy support.	<b>YES</b> The Ombudsperson is required to investigate valid complaints, screening out frivolous or vexatious claims.
Are there <b>sanctions for non-compliance</b> ?	<b>NO</b> No sanctions for non-compliance with endorsed standards. <sup>14</sup>	<b>NO</b> No sanctions for non-compliance with the OECD guidelines. <sup>15</sup>	<b>YES</b> Ineligibility for government services.
Is the mechanism <b>independent</b> ?	<b>NO</b> Reports directly to the Minister of Trade. <sup>16</sup>	<b>NO</b> It is an inter-departmental agency chaired by Global Affairs Canada. Unlike other NCPs, there is no independent board, decision-making authority, or multi-stakeholder oversight committee. <sup>17</sup>	<b>YES</b> Operates at arms-length to government.
Are <b>human rights</b> a priority, and can it make policy recommendations to government?	<b>NO, on both counts</b>	<b>NO, on both counts</b>	<b>YES, on both counts</b>

Voluntary, non-transparent and ineffective mechanisms will not address the problems that harm communities and damage the reputations of both industry and Canada.

Canadians are asking for an Ombudsperson: mandatory, transparent and effective. The Liberal Party, the New Democratic Party, the Green Party and the Bloc Québécois all promised to establish one. And victims can no longer afford to wait.

## Endnotes

- 1 Canadian Centre for the Study of Resource Conflict. "[Corporate Social Responsibility: Movements and Footprints of Canadian Mining and Exploration Firms in the Developing World.](#)" October 2009.
- 2 International Council on Mining and Metals. "[Research on company-community conflict.](#)" March 2015. In April 2016, 200 organizations called on the Canadian government to take action on mining abuses in Latin America.
- 3 Daniel, Caitlin, Joseph Wilde-Ramsing, Kris Genovese and Virginia Sandjojo. "Remedy Remains Rare." OECD Watch. 15 June 2015.
- 4 Global Affairs Canada. "[Rules of Procedures for the Review Mechanism of the Office of the Extractive Sector Corporate Social Responsibility \(CSR\) Counsellor.](#)" 20 October 2010.
- 5 Global Affairs Canada. "[National Contact Point Specific Instances: Goldcorp Inc. and FREDEMI/CIEL.](#)" 3 February 2012. OECD Watch. "[FREDEMI Coalition vs Goldcorp.](#)" n.d.
- 6 Global Affairs Canada. "[Guidance Note No. 2: A Guidance Note for Canadian Companies on the Review Process of the Office of the Extractive Sector CSR Counsellor.](#)" June 2011.
- 7 Global Affairs Canada. "[Canada's National Contact Point \(NCP\) for the Organisation for Economic Co-operation and Development \(OECD\) Guidelines for Multinational Enterprises \(MNEs\).](#)" 12 May 2016.
- 8 Global Affairs Canada. "[CSR Counsellor: Registry of Requests for Review.](#)" 28 October 2013.
- 9 Global Affairs Canada. "[Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development \(OECD\) Guidelines for Multinational Enterprises.](#)" 31 July 2014. OECD Watch. "[Case database, National Contact Point: Canada.](#)" n.d.
- 10 Global Affairs Canada. "[CSR Counsellor: Registry of Requests for Review.](#)" 28 October 2013.
- 11 OECD Watch. "[Case database, National Contact Point: Canada.](#)" n.d.
- 12 Global Affairs Canada. "[CSR Counsellor: The Review Process.](#)" 4 November 2013.
- 13 Global Affairs Canada. "[Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development \(OECD\) Guidelines for Multinational Enterprises.](#)" 31 July 2014.
- 14 Global Affairs Canada. "[CSR Counsellor: The Review Process.](#)" 4 November 2013.
- 15 Global Affairs Canada. "[Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development \(OECD\) Guidelines for Multinational Enterprises.](#)" 31 July 2014.
- 16 Global Affairs Canada. "[CSR Counsellor: About Us.](#)" 2 February 2015.
- 17 OECD. "[Guidelines for Multinational Enterprises: Canada - National Contact Point.](#)" n.d.