

Response by Extractive Sector CSR Counsellor to MiningWatch Canada brief on the review process of the Office of the CSR Counsellor

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Catherine Coumans
Research Coordinator
MiningWatch Canada
Suite 508, 250 City Centre Avenue
Ottawa, Ontario

Dear Ms. Coumans,

I have read MiningWatch Canada's brief on "concerns with regard to the mandate and review procedure" of the Office of the CSR Counsellor. Kindly post this response alongside your website briefing, on your Facebook page, and in other forums where you distributed the original brief.

The Office of the CSR Counsellor supports enhanced access to remedy for communities, groups and individuals adversely affected by the activities of Canadian mining, oil and gas companies. Given that significant shortages and shortcomings in access to remedy were highlighted in the 2008 UN Framework on Business & Human Rights, we see merit in any additional serious effort at providing windows for recourse. This is our objective. We act in concert with the Canadian National Contact Point ("NCP") (and many other mechanisms) and are supportive of their efforts, and we aim to not replicate or supplant them. Our objective is to be a balanced, informed interlocutor. We seek to understand the issues from a wide variety of perspectives, but we do not take sides or advance positions.

Late last fall, the Office of the CSR Counsellor launched a new dispute resolution process for overseas communities and Canadian mining, oil and gas companies. In constructing this mechanism, we extensively benchmarked existing grievance mechanisms, of which there are many (see www.baseswiki.org), looking both at global good practice and at the body of critique levelled at existing processes. We also extensively workshopped the draft rules of procedure released in May 2010, and benefited from the balanced feedback of over 300 individuals and organizations during our formal consultations (June-August 2010). Because the Office's process is meant to be used by people outside of Canada, we paid particular attention to the voices of people overseas. And when we asked them, "what would provide value to you?" the overwhelming response was that value was found in a process that could contribute to positive change on-the-ground, both through a review, and through preventative measures. You can read more on these discussions in the dozen reports of the Office posted on our website http://www.international.gc.ca/csr_counsellor-conseiller_rse/.

During our public consultations, and the hundreds of inputs and conversations these entailed, many important considerations were raised, and many of these were directly incorporated both into our documents and our general approach. However, the rationales you note in your advice to use the National Contact Point were never once raised during these extensive consultations - not even in MiningWatch Canada's own written submission to the Office.

On a separate note, a number of your concerns actually relate to the debate around the value of voluntary non-judicial processes. Of course the Office's process is, as are many alternative dispute resolution methods, voluntary. But a legalistic investigative process requires formal host country permission, which can take years to secure. If a community has a problem with a Canadian company right now, it does not always want to wait years, and hire an army of lawyers, to make progress. Non-judicial processes offer the benefits of lower barriers to entry, and practical solutions that build and preserve long-term relationships. Just as mediation exists alongside the courts for matters of Canadian family or business law for example, such a consensual, dialogue-based approach has proven its value for communities over the past decade, in such diverse forums as the Defensoría del Pueblo in Peru, the Compliance Advisor/Ombudsman (CAO) office of the World Bank and the Oxfam/Tintaya dialogue table. And since many of the difficulties encountered are not now, and may not ever be, matters of legal statute, safe spaces for dialogue and problem-solving will continue to play an important role in resolving conflicts and providing remedy.

But let's not make this a beauty contest – non-judicial, judicial, NCP, CAO, and other processes are not “better” or “worse” than what we have constructed. They are just different and provide different benefits and disadvantages. Some people may appreciate the fact that the NCP is a multi-departmental Government of Canada committee; others may prefer a dedicated office such as ours. Still others might prefer to work through a private third party. Some people may find it useful that our process is transparent; others may prefer absolute confidentiality. As a result, items you consider as shortcomings may be seen by others as advantages. These are matters for users to decide – our role is to ensure they understand potential value so they can make an informed choice. The Office does not pretend to be the solution to all troubles. But we do intend to make a positive difference and I invite you to share that goal with the communities you interact with.

Yours very truly,

Marketa D. Evans

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http://www.international.gc.ca/csr_counsellor-conseiller_rse/