

# DISPUTED GROUND

*A Community User's Guide to the Review Process of the Office of  
the Extractive Sector Corporate Social Responsibility Counsellor*

(CANADA)

Created by the International Human Rights Program  
University of Toronto, Faculty of Law



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## USING THIS GUIDE

This Guide is meant to assist communities and individuals who allege that their human rights, labour rights, or environmental rights have been breached by a Canadian-based mining or extractive company operating outside of Canada (“affected communities”). In particular, this Guide provides basic information about accessing the Review Process set up by the Canadian government’s Office of the Extractive Sector Corporate Social Responsibility Counsellor (“CSR Counsellor”). The Guide also provides affected communities with general information about the various processes for resolution of claims (Section 2), practical considerations associated with the CSR Counsellor’s Review Process (Section 3), and sets out the requirements and time-line for submission of a request for review to the CSR Counsellor (Sections 3 and 4). Finally, the Appendix provides summaries of some of the standards that we understand will be considered by the CSR Counsellor in deciding whether a claim is eligible.

The International Human Rights Program at the University of Toronto, Faculty of Law (“IHRP”) is not affiliated with the Office of the CSR Counsellor and does not, in producing this Guide, endorse use of the CSR Counsellor’s Review Process. While the CSR Counsellor was consulted to ensure the accuracy of information about the Review Process, the CSR Counsellor’s Office did not assist in developing this Guide nor does it endorse its contents. The purpose of this Guide is to provide information to affected communities in an accessible format so that they can make informed decisions regarding whether participation in this process makes sense for them. Indeed, many civil society groups in Canada have expressed disappointment with the limitations of the CSR Counsellor’s Review Process. We are conscious of their criticisms and have laid out some of the main concerns in this Guide.

### DISCLAIMER

The information provided here is not legal advice or legal assistance, and the International Human Rights Program at the University of Toronto, Faculty of Law cannot provide such advice or assistance. If you require legal advice regarding how the legal rights of you or your community may be affected by participation or non-participation in the Review Process of the Canadian Office of the Extractive Sector Corporate Social Responsibility Counsellor, please contact a Canadian lawyer. This Guide was prepared by university law students, not lawyers or students-at-law and is not exhaustive or updated on a regular basis.

# CONTENTS

## 1/ INTRODUCTION

PG. 01

This Introduction will provide an overview of the Review Process and the context in which it was created.

## 2/ ALTERNATIVE MECHANISMS

PG. 03

Section 2 of the guide discusses alternative mechanisms for the resolution of claims which communities affected by the activities of a Canadian-based mining company will want to consider before deciding to engage with the Review Process.

## 3/ PRACTICAL CONSIDERATIONS

PG. 14

Section 3 outlines some practical considerations associated with filing a Request for Review in order to give affected communities an understanding of what participation in the process will require.

## 4/ HOW TO FILL IN THE COVER SHEET

PG. 20

Section 4 clarifies the requirements of a properly prepared Request for Review for communities considering filing a Request for Review.

## 5/ STEPS IN THE REVIEW PROCESS

PG. 23

Section 5 goes over each step in the Review Process, and mentions a rough time line of what to expect at each step.

## 6/ APPENDIX

PG. 27

The Appendix is a fairly detailed overview of some of the guidelines and standards that form the basis of the Review Process.

## SECTION 1 — OVERVIEW OF THE REVIEW PROCESS

### *What it is and What it is Not*



The CSR Counsellor's Office was created by the Canadian government in October 2009 in response to widespread concerns about the activities of Canadian mining companies operating in developing countries.

In October 2010, the CSR Counsellor created a "Review Process" that aims to provide a private, voluntary, and non-judicial forum for the resolution of claims by affected communities against Canadian mining, oil or gas ("extractive sector") companies operating outside of Canada.

A/ The Review Process is Private and Voluntary

B/ The CSR Counsellor is not a Judge; the Review Process is not a Court

## **A/ THE REVIEW PROCESS IS PRIVATE AND VOLUNTARY**

The goal of the Review Process is to provide a dispute resolution mechanism – based on dialogue between the Canadian company and the affected community. Unlike a court proceeding, the Review Process is not public. Also, the Review Process is entirely voluntary:

- » The Review Process will not start unless both the company AND the affected community agree to participate
- » Either party (the company or affected community) can decide to exit at any time
- » If they do, the process will automatically end

Much of the information involved in the Review Process may be subject to confidentiality requirements. The Office of the CSR Counsellor is not allowed to disclose information that it receives from either the Company or the community without their prior permission.

## **B/ THE CSR COUNSELLOR IS NOT A JUDGE AND THE REVIEW PROCESS IS NOT A COURT**

The Review Process is not equivalent to a court proceeding and the CSR Counsellor is not a judge (i.e. cannot make decisions that are binding on the company or affected communities). The Performance Standards that are listed in the [Appendix](#) are not the law of Canada. This means that there is no legal or financial penalty imposed on Canadian companies by the Canadian government if the company breaches the Standards. It also means that the Counsellor will not make any findings of fact about what actually happened, and so there will be no type of “decision” regarding whether or not the company actually breached the Standards.

The steps in the CSR Counsellor’s Review Process are as follows (more detail about the different stages of the Review Process is available in [Sections 3-5](#)):

- » Affected communities submit information or evidence to the CSR Counsellor that indicates that a Canadian mining company is breaching the endorsed Standards (this is called a “Request for Review”).
- » Upon receiving this information, the CSR Counsellor will decide whether the Request for Review can proceed through the Review Process. However, at no time will the CSR Counsellor make a decision as to whether the company’s actions actually breached the Standards.
- » If a Request for Review is accepted by the CSR Counsellor, the affected community and company will be notified.
- » The CSR Counsellor will oversee the beginning stages of dialogue with an aim to seeking an informal, non-judicial resolution to the conflict.
- » If a resolution to the dispute is not achieved, the CSR Counsellor can assist the parties in finding an acceptable mediator that is not affiliated with the Canadian government

## SECTION 2 – WHAT ARE YOUR OPTIONS?

### *Alternative Mechanisms Beyond the CSR Counsellor*



This section provides general information on some of the other local, national and international dispute resolution mechanisms that affected communities should consider before submitting a complaint to CSR Counsellor. This is a partial list, and there may be other options that could be more appropriate for the type of harm a community faces. For this reason, it is recommended that communities seek legal advice regarding the type of process they choose to engage with.

Factors that may influence a community's decision to participate in one of these processes include the nature of the complaint, the financial resources of the affected community, the amount of time they are willing to devote, and the type of resolution the affected community is seeking.

It is also important to note that the CSR Counsellor's Review Process is only available for complaints regarding companies that are headquartered in Canada or incorporated in Canada and which relate to activities that took place after **19 October 2009**. Other processes, including many of the ones listed below, apply to companies based on where they receive their funding, the region in which they operate, etc. It is important to understand that the options available will require knowledge of where the company is incorporated, where it is headquartered, where it operates, and how it is funded.

A/ Bringing Your Complaint Directly to the Company

B/ International Finance Corporation, Office Of The Compliance Advisor/Ombudsman (CAO)

C/ National Contact Points (OECD Guidelines)

D/ Courts of Law—Host Country

E/ Courts of Law—Canada

F/ Regional Human Rights Tribunals and Commissions

G/ International Human Rights Bodies

## **A/ BRINGING YOUR COMPLAINT DIRECTLY TO THE COMPANY**

### ***Type of Dispute / Problem / Complaint***

The company may have a process in place (usually called a “grievance mechanism”) to field complaints from affected communities. Such mechanisms may cover a broad range of complaints, from human rights abuses or labour to environmental damage.

Bringing you complaint directly to the company is often an important first step since it allows companies that have an effective grievance mechanism to find out about problems early, address any immediate concerns, potentially prevent problems from becoming worse, and ensure that other similar types of problems do not occur in the future.

Even if the company does not address your problem effectively, it may be important in the future to show that you brought the problem to their attention in a timely manner. However, a company may also claim that meeting with a community to discuss a complaint is proof that they have been consulted and agreed to the mining project.

### ***Criteria for Applying***

The criteria for applying will vary depending on the type of mechanism that the company has in place, but usually company level grievance mechanisms are meant to be easy to access.

### ***Process, Time line and Cost***

The type of process, how long it takes, and how much it costs will vary for each company. An ideal company level grievance mechanism will be relatively easy to access and inexpensive, as it should not require legal representation, excessive evidence gathering or travel.

### ***Potential Resolution***

The resolution available will vary depending on the nature of the mechanism that the company has in place and whether or not the company acts in good faith. These mechanisms may, at the very least, help affected communities and the company reach a compromise.

### ***Additional Information***

It is possible that the company will not have a proper grievance mechanism in place, or that they will not adequately deal with your complaint. If this is the case, you should explore some of the options listed below.



## **B/ INTERNATIONAL FINANCE CORPORATION (“IFC”) – OFFICE OF THE COMPLIANCE ADVISOR/OMBUDSMAN (“CAO”)**

### ***Type of Dispute / Problem / Complaint***

The Office of the Compliance Advisor/Ombudsman (“CAO”) is another independent dispute resolution option for affected communities where the mining operation at issue is financed or supported by the International Finance Corporation (“IFC”) of the World Bank Group. The CAO’s work can involve conflict assessment, mediation and dispute resolution on social and environmental issues, and complaints. The CAO responds to complaints from project-affected communities with the goal of enhancing social and environmental outcomes on the ground.

### ***Criteria for Applying***

The complaint relates to an IFC or MIGA financed project, meaning that the operation or project that is affecting the community has received financial support (i.e. loans and start-up financing) from the IFC or the Multilateral Investment Guarantee Agency (“MIGA”), **and**

The complaint raises social and environmental issues (including human rights issues) that are set out in the IFC Performance Standards (see Appendix), **and**

The complaint is filed by an individual and/or community directly affected by the company project, or filed by their representative(s) (i.e. lawyer or civil society representative).

A full list and map of IFC funded projects can be found at: <http://www.ifc.org/disclosure>

The 8 IFC Performance Standards set out guidelines for the types of issues for which this mechanism applies. The 8 IFC Performance Standards are:

1. Social and Environmental Assessment and Management
2. Labour and Working Conditions
3. Pollution Prevention and Abatement
4. Community Health, Safety and Security
5. Land Acquisition and Involuntary Resettlement
6. Biodiversity Conservation and Sustainable Natural Resource Management
7. Indigenous Peoples
8. Cultural Heritage

*See the Appendix at the end of this Guide for an overview of these Performance Standards*


### ***Ineligibility***

The CAO does not assess cases involving fraud or corruption. Those types of complaints are referred to the World Bank Office of Institutional Integrity (INT).

### ***Process, Time line and Cost***

Affected communities can send a letter to the CAO detailing their problem. A template of the letter can be found on the CAO website. Complaints must be submitted in writing and may be in

any language. Complaints can be sent by e-mail, fax, mail/post, or delivered to the Office of the CAO in Washington, DC.

 International Finance Corporation  
Office of the CAO  
2121 Pennsylvania Avenue, NW  
Washington, DC 20433, USA  
Tel: + 1 202 458 1973  
Fax: + 1 202 522 7400  
E-mail: [cao-compliance@ifc.org](mailto:cao-compliance@ifc.org)

The CAO will inform affected communities of the eligibility of their case within 15 working days. Eligibility decisions are based on the “Criteria for Applying” (above).

If a complaint is accepted for further assessment (i.e. meets the 3 eligibility criteria), the CAO Ombudsmen has approximately 120 working days to assess the conflict. The purpose of this assessment is to clarify issues raised by the affected community; to gather information on how the other parties, such as the IFC and the company, view the situation; and help the parties determine whether and how they may be able to resolve the complaint.

### ***Potential Resolution***

There are two possible outcomes of the CAO Ombudsman assessment:

1. CAO specialists will work with the affected community and company and other stakeholders to develop a consensual (i.e. voluntary) process of assisted negotiations or other collaborative strategies for addressing the issues raised in the complaint. For example, agreements developed through these processes may include proposals for future action (such as a program of remedial action to be adopted by IFC/MIGA or the company).
2. If it is determined that a collaborative solution is not possible, the CAO Ombudsman will transfer the case to CAO Compliance for consideration. If this occurs, an independent third party will audit and assess the IFC’s role in the problem and issue a public report. Recommendations will be made and progress towards compliance with the Performance Standards will be publicly monitored.

### ***Additional information***

The CAO Ombudsman will respect any requests for confidentiality of stakeholders’ identities or information communicated to the CAO.

 For more details on how to file a complaint please see the following website: <http://www.cao-ombudsman.org/howwework/filecomplaint/>

## C/ NATIONAL CONTACT POINTS (OECD GUIDELINES)

### *Type of Dispute / Problem / Complaint*

If a company may be in violation of the OECD Guidelines, affected communities may bring a complaint against the company to a National Contact Point (NCP). The OECD Guidelines deal with many issues, including human rights, environmental concerns, the International Labor Organization core conventions, anti-corruption measures, and consumer interests.

### *Criteria for Applying*

Any individual, organization, community, employee, trade union, or non-governmental organization may access the mechanism. There are two possible NCPs to which they may make their complaints: The NCP in the country where the violation occurred (i.e. your home country's NCP). This country will only have a NCP if it adheres to the OECD Guidelines. The host-country NCP is generally where the complaint will be dealt with.



A list of NCPs can be found at: <http://www.oecd.org/dataoecd/17/44/1900962.pdf>

If the host country does not adhere to the OECD Guidelines/does not have an NCP, then a complaint may be made to the NCP in the home country of the company that violated the guidelines. This country will only have a NCP if it adheres to the OECD Guidelines. If it is a Canadian company, you can contact the Canadian NCP:



Canada's National Contact Point

125 Sussex Drive

Ottawa, ON Canada, K1A 0G2

E-mail: [ncp.pcn@international.gc.ca](mailto:ncp.pcn@international.gc.ca)

Fax: (613) 944-7153

Different national NCPs will require different information in the complaint. Before submitting a complaint, affected communities should find out what information is required. General information that should be included in all complaints includes:

- » Your identity and contact details,
- » Your interest in the matter,
- » The identity of the offending company,
- » The location of the violation, and
- » A description of the violation of the OECD Guidelines. (This is the most important information to include in your complaint. The NCP will not accept the complaint unless you can show a violation of the OECD Guidelines.)

### *Process, Time line and Cost*

The role of a National Contact Point is to: 1) respond to questions about the OECD Guidelines, and 2) provide an informal mechanism for resolving violations of the OECD Guidelines. When you submit a complaint to the NCP:

The NCP will assess your complaint and decide whether to accept or reject it.

If the complaint is accepted, the NCP will assist you in accessing mediation. The NCP will ex-

amine the complaint in more detail by talking to people in the business community, employee organizations, non-governmental organizations, and other experts.

### ***Potential Resolution***

If the affected community and company agree, the process may result in compensation. If a mediated settlement is not possible, the NCP will issue a statement regarding the Guidelines and whether or not they believe there was a breach. This statement may also offer recommendations.



For more details, including a complete list of the OECD Guidelines, please see the following website: [http://www.oecd.org/document/60/0,3746,en\\_2649\\_34889\\_1933116\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/60/0,3746,en_2649_34889_1933116_1_1_1_1,00.html)

### ***Factors to Consider***

There are some reasons why you may choose not to use this mechanism. For example,

- » The Guidelines may not cover your specific complaint.
- » There can be a relatively high cost of filing a complaint. This includes both financial costs and time (approximately one to two years). The cost will vary depending on the NCP that is contacted. NCP complainants may require legal representation, or at least civil society assistance.
- » There is no monitoring of the recommendations.
- » There are no consequences for serious and repeated violations.

### ***Additional information***

If your complaint to the CSR Counsellor deals only with a violation of the OECD Guidelines, the Counsellor will not accept the complaint. The Counsellor will refer it to the National Contact Point instead.

## **D/ COURTS OF LAW—HOST COUNTRY**

### ***Type of Dispute / Problem / Complaint***

A host country is the country in which the company has located their factory or mines or other parts of their business. Courts in that country may be able to resolve disputes between affected communities and the company. Affected communities will need to consult a lawyer who is entitled to practice in the host country to determine whether laws have been infringed related to the affected community's complaint.

### ***Criteria for applying***

Whether, by whom and where a lawsuit can be brought are technical legal questions that depend on the laws of the host country and the specific facts of the case. These legal processes may need to be started within a strict time limit. To answer these questions, affected communities will need to consult a lawyer who is entitled to practice in the host country.

### ***Process, Time line and Cost***

Formal legal processes can be confusing, expensive, and time consuming. Affected communities should consider whether there are local or international organizations or lawyers who can provide free or inexpensive legal advice, assistance or representation.

### ***Potential Resolution***

The main benefit of legal dispute resolution is that, if an affected community is successful, it may result in a binding decision that may include a requirement that the company stop the offending activity or pay compensation. However, if the affected community is not successful, some jurisdictions may force the community to pay the company's costs associated with defending the lawsuit. These costs may be substantial. Again, affected communities must consult a lawyer who is entitled to practice in the host country to assess all of these potential outcomes.

### ***Additional Information***

Whether or not a legal remedy is worth pursuing is largely dependent on national law in the host country. For example, legislatures in several countries, including Ghana and South Africa, regularly oversee and investigate company activities, and are passing laws to protect their citizens. However, many affected communities live in host countries where the government is not creating laws to protect communities, or is not enforcing the laws (often as a result of corruption).

## E/ COURTS OF LAW—CANADA

### *Type of Dispute / Problem / Complaint*

If the Company in question has significant connections to Canada (for example it is incorporated or headquartered in Canada), it may be possible for a legal proceeding to be brought in Canadian courts. Similar to the host country disputes, the problem must be one that is recognized by Canadian law as a legal problem. This area of law is complex and in a state of flux.

### *Criteria for Applying*

Any attempt to bring a lawsuit in Canada for disputes that occur in a different country will necessarily be complex, difficult and uncertain. These legal processes may also need to be started within a strict time limit. Affected communities will need to consult a Canadian lawyer to determine if it is possible to bring proceedings in Canada.

The corporate and securities law system that applies to companies operating from Canada rarely address human rights issues. Affected communities will need to consult with a Canadian lawyer to determine if their complaint could be brought forward in a Canadian court. This will depend on both the illegal nature of the company acts (according to Canadian law) and the ability of a Canadian court to hear an action that originates in a different country (or “jurisdiction”).

### *Process, Time line and Cost*

As with host country judicial mechanisms, bringing an action before Canadian courts can also be a long and expensive process. You must hire a lawyer who is able to practice law in Canada, or partner with an organization that can help to find legal representation in Canada and assist with the high cost.

### *Potential Resolution*

As with host country judicial mechanisms, the company may be forced to stop the activities that are causing problems, or to take measures to prevent problems from happening in the future. You may also receive financial compensation for the losses you and your community have suffered. But the same potential problems arise: if a community is unsuccessful with their claim, the court may order the community to pay the legal costs of the company. Again, it is very important that an affected community consult with a Canadian lawyer to consider all possible issues before deciding on this option.

### *Additional Information*

There have been a few attempts by foreign affected communities to bring actions against Canadian mining companies in Canadian courts. Some actions currently being considered by the courts include:



- » *Canadian Association Against Impunity v. Anvil Mining Corporation* - [http://www.ccij.ca/programs/cases/index.php?WEBYEP\\_DI=14](http://www.ccij.ca/programs/cases/index.php?WEBYEP_DI=14)
- » *Choc v. HudBay Minerals Inc.* - <http://www.chocversushudbay.com>
- » *Ramirez v. Copper Mesa* - <http://www.ramirezversuscoppermesa.com>
- » *Recherches Internationales Quebec v. Cambior Inc.* - [http://www.business-human-rights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelect-edcases/CambiorlawsuitreGuyana?sort\\_on=sortable\\_title](http://www.business-human-rights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelect-edcases/CambiorlawsuitreGuyana?sort_on=sortable_title)

## F/ REGIONAL HUMAN RIGHTS TRIBUNALS AND COMMISSIONS

Some regions have established systems to promote and ensure the protection of human rights. These human rights tribunals and commissions only deal with violations of human rights by states that are a party to a specific treaty or convention. These regional systems cannot consider complaints directly against companies. Therefore, to fall within the jurisdiction of these bodies, affected communities could bring a complaint alleging that the host country is not taking adequate steps to protect and promote human rights through, for example, effective regulation or oversight of mining activities. As can be seen by the Marlin Mine example, below, this is possible where a company is severely impacting the local environment and the government does not intervene, but this is a rare case.

To bring a complaint to these tribunals and commissions, a community will almost certainly require assistance from an NGO and/or legal representation from a lawyer with experience in the particular human rights regime.

### *The Americas*

The Inter-American Commission on Human Rights (IACHR) is a body that can investigate complaints of human rights violations by states (not specific companies) that are members of the Organization of American States (“OAS”). Any person, group or NGO can make a complaint to the IACHR in English, French, Spanish or Portuguese.

The IACHR will write a report outlining the complaint and make recommendations to the violating state. If the Commission is not satisfied with the state’s response to their recommendations, the complaint may be referred to the Inter-American Court of Human Rights. This Court cannot be accessed by any manner except an initial complaint to the IACHR, and can only consider complaints against states parties to the *American Convention on Human Rights* (note that Canada is not a party to this Convention).

#### **CASE EXAMPLE: MARLIN MINE IN GUATEMALA**

This mine, owned by Montana Exploradora de Guatemala, a subsidiary of Canadian mining company Goldcorp, was alleged to be contaminating groundwater in the surrounding community. When a report from the University of Michigan and Physicians for Human Rights revealed increased levels of mercury, zinc, copper, lead and arsenic in the blood and urine of people living in the area, a complaint was made to the IACHR by local Mayan communities. On May 20, 2010 the IACHR granted a “precautionary measure,” recommending that the government of Guatemala shut down the mine until a final decision is made. On June 23, 2010 the government of Guatemala announced that it would move to suspend operations at Marlin Mine. However, as of March 2011, the Marlin Mine had not been shut down and continued to operate in commercial production.

To access the IACHR process, a community will likely need to hire a lawyer with experience advocating before the Commission. Additional information about the process can be found on the following websites.



- » IAHRC website: <http://www.cidh.oas.org>
- » Inter-American Human Rights Court website: <http://www.corteidh.or.cr>
- » Organization of American States website: <http://www.oas.org>

## ***Africa***

The African Commission on Human and People's Rights is a body of experts who aim to promote human rights and ensure their protection under the *Banjul Charter*. The *Banjul Charter* is a document that speaks to the rights of individuals and peoples, and applies to all member states of the Organization of African Unity ("OAU").

The African Commission can act as a tribunal, looking at complaints made by individuals or communities against a member state of the OAU. The Commission can issue reports to the states concerned, but it is up to the states or the OAU to take action against any violations of human rights.

To gain more information about this process, a community will likely need to secure legal representation. Additional information about the Commission and the *Banjul Charter* can be found on the following website:



African Commission on Human and People's Rights website: [http://www.achpr.org/english/info/charter\\_en.html](http://www.achpr.org/english/info/charter_en.html)

## ***Asia***

As of 2011, an Asian system for human rights protection does not exist.

## ***Europe***

While there is robust regional protection of human rights in Europe, the European Court of Human Rights is not considered in detail since more affected communities are based in either Africa, Asia or Latin America.



## G/ INTERNATIONAL HUMAN RIGHTS BODIES

The following international human rights bodies will accept certain complaints against states who are either violating human rights or not ensuring their proper protection. The Office of the United Nations High Commissioner for Human Rights contains multiple Committees that oversee and monitor how well states are following their commitments under international treaties.

Certain Committees may consider individual complaints regarding violations of the particular international treaty that it oversees. To make an individual complaint against a state to a Committee, the state will need to have signed that specific international treaty. The following is a list of the main U.N. human rights bodies and the treaties each monitors:

### **THE HUMAN RIGHTS COMMITTEE**

Treaty: The International Covenant on Civil and Political Rights

### **THE COMMITTEE ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN**

Treaty: The Convention on the Elimination of Discrimination Against Women

### **THE COMMITTEE AGAINST TORTURE**

Treaty: The Convention Against Torture

### **THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**

Treaty: The Convention on the Elimination of Racial Discrimination

### **THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES**

Treaty: The Convention on the Rights of Persons with Disabilities

A community will likely need to secure the services of a lawyer with expertise in international law in order to access these Committees.



To learn more about the specific individual complaints procedures for each of these separate covenants and conventions, please refer to the following website: <http://www2.ohchr.org/english/bodies/petitions/index.htm>

# SECTION 3 – IS THE CSR OFFICE A GOOD OPTION?

## *Practical Considerations Before Accessing the Review Process*



The following list is meant to highlight some of the practical considerations affected communities should consider before they go through the CSR Counsellor’s Review Process. Please bear the following points in mind when reviewing these items:

The CSR complaint mechanism is a process by which communities can bring complaints against Canadian extractive companies working abroad. The Companies must be incorporated in Canada or headquartered in Canada.

The CSR process is not a legal mechanism nor is the CSR Counsellor able to enforce any remedies.

When a community enters the process they must be willing to enter into a conversation with the company and reach a resolution through dialogue. If the affected community or the company is unwilling to openly discuss the complaint with the other party, this process will not be effective.

The following information was compiled through review of the literature published by the Office of the CSR Counsellor, public statements by the CSR Counsellor, and conversations with the CSR Counsellor and her staff.

 The CSR Counsellor’s website address is: [http://www.international.gc.ca/csr\\_counsellor-conseiller\\_rse/index.aspx](http://www.international.gc.ca/csr_counsellor-conseiller_rse/index.aspx)

- A/ Travel
- B/ Public Information and Confidentiality
- C/ Translation
- D/ Financial
- E/ Skills, Training & Resources
- F/ Documents to Include in a Request for Review
- G/ Outcomes
- H/ Others

## **A/ TRAVEL**

**Will a representative from the affected community need to travel to Canada during the Review Process? And if so, what is expected of them in Canada?**

Travel will not be necessary in most situations. The CSR Counsellor has stated that she aims to keep the process local. If a community member/representative decides to come to Canada, it would be helpful to be prepared to speak with lawyers and executives from the company.

**How can an affected community ensure that its interests are being represented?**

We recommend that affected communities find a Non-Governmental Organization (NGO) partner, ideally one based in Canada or familiar with Canada. Potential advantages of a partnership with an NGO include access to and support from someone who:

- » Is fluent in English or French
- » Can help interpret forms
- » Can assist with access to the Canadian media
- » Has ready access to the CSR Counsellor

**What accommodations will be made for a community that cannot afford to travel and/or does not have a Canadian/NGO representative?**

Because the CSR Counsellor must remain neutral, the Office will not provide financial support to applicants (whether from affected communities or companies). We note, however, that this is likely to have a disproportionately negative impact on affected communities, since they are based outside of Canada and often do not have access to financial resources.

**What support can the CSR Counsellor provide to the applicants?  
(e.g. consular, interpretive, travel, etc.)**

In conversation with the CSR Counsellor, she indicated that Canadian diplomatic missions (i.e. consulates and embassies) will provide a first point-of-entry to the process, for example, by providing general information and answering general questions. The Office will not provide travel or interpretive expenses. We note that this is likely to have a disproportionately negative impact on affected communities in non-English/French speaking jurisdictions or from geographically isolated areas.

**Will anyone from the CSR Counsellor's Office travel to the community?**

If the CSR Counsellor decides that a local assessment will help the process in a specific case, someone from the Office may visit the community. The community will not normally be required to arrange accommodations for the CSR Counsellor or her staff except in exceptional circumstances (i.e. where the community is remote and there are no other accommodation options).

## **B/ PUBLIC INFORMATION AND CONFIDENTIALITY**

**Communities are asked to only submit "publicly available information." How does the community determine what is "publicly available"?**

Where the affected community is aware of the information and did not receive it from a confidential source or illegally, it will likely be considered publicly available. Publicly available information may include photographs taken from public property (i.e. without trespassing), statements

provided by affected persons (not on a confidential basis), information available on the internet, information in court filings, press reports/media releases, human rights reports, public filings of the corporation (i.e. Annual Reports, Audited Financial Statements etc.), etc. Communities should not submit any information related to the company or individuals that is commercially sensitive or confidential (such as medical records).

#### **Can the community disclose confidential information that it has acquired?**

The CSR Counsellor has stated that the Office will not accept confidential information at the beginning of the Review Process. The type of information one might wish to share, and how this will be done, will be determined through discussions with both parties.

#### **Will the community's confidentiality be maintained?**

The CSR Counsellor is subject to the Canadian *Privacy Act* and is required to keep personal information confidential.

#### **Can the representative from the community who participates in the Review Process report back to the community on details of the Review process?**

The CSR Counsellor has indicated that this will be appropriate in the normal course of the Process, unless the participants do not want that to be the case. Presumably, this opens up the possibility that a company could express its wish to keep a community representative from reporting back to the community. The CSR Counsellor would assess if that is appropriate on a case-by-case basis.

### **C/ TRANSLATION**

#### **Do the forms and supporting documents submitted need to be in a particular language?**

All forms and supporting documents must be submitted in English or French.

#### **If a video or audio clip is submitted, will communities need to send translated transcripts?**

Communities would likely need to prepare transcripts if they send audio or video with their initial submission. That said, the CSR Counsellor explained in conversation that it is possible that if the evidence is straightforward transcripts may not be required. Please keep in mind that, according to the CSR Counsellor, video or audio evidence goes above and beyond the Office's requirements.

### **D/ FINANCIAL**

#### **How costly will this process be?**

Though there is no application fee for the Review Process, there may be other costs associated with preparing the application. Items that may impact cost include voluntary travel to Canada, the need for translation of materials (especially for affected communities that do not speak French or English), written submissions (versus electronic), access to local NGO funding and support, etc.

It is safe to say that this process will be significantly less expensive than court proceedings, where legal costs are often prohibitive. Still, the need for services like translation and communication with the CSR Office in Canada will likely make this process more expensive for a community than local/company-level grievance mechanisms (see Section 2).

What funding might be available from the Office? From external organizations in Canada?

The CSR Counsellor does not have any funding to assist affected communities to access or navigate the Review Process. Again, this will have a disproportionately negative impact on affected communities who tend to have vastly fewer resources than companies. Communities may receive funding and assistance from other organizations.

## **E/ SKILLS/TRAINING AND RESOURCES**

Are there examples of previous applications, or training on how to put an application together?

Please see [Section 4](#) of this Guide for an example of how to properly complete a request for review application cover sheet. We are not aware of any training services to assist with submitting an application. However, you may be able to obtain assistance from other organizations.

How accessible is the CSR Counsellor going to be throughout the application process?

The CSR Counsellor will not be able to guide communities through each step of the application process. However, the CSR Counsellor has committed to providing transparency regarding progress through the different stages of the process. For instance, the CSR Office will provide clear feedback where a submission is incomplete or where a submission is denied.

How will the CSR Counsellor ensure that obstacles such as access to computers, internet, etc. will not prevent communities from engaging in the CSR process?

Communities should approach the CSR Counsellor with any communication barriers they face. Communities may be able to seek assistance from relevant NGOs for assistance with technologies.

## **F/ DOCUMENTS TO INCLUDE IN A REQUEST FOR REVIEW**

Who can initiate a Request for Review?

Individuals, groups, or communities that are directly affected by a Canadian-owned or operated extractive (mining, oil, gas) project can initiate a Request for Review (the 'Requesting Party'). Any member of the community can decide to bring a complaint to the CSR Counsellor. The complaint must relate to activity which took place after **19 October 2009**.

How does a Requesting Party make a Request for Review?

The requesting party must submit a completed Cover Form. (See the Annotated Cover Sheet included in [Section 4](#) for clarification of the information required by that document.)

What evidence should be provided to support a Request for Review?

The CSR Counsellor requires that a Request for Review be supported by some evidence: at a minimum, this requirement can be met by providing a letter that describes the Requesting Party's experience during the history of the resource development project including the conduct by the company which the Requesting Party believes is a breach of the endorsed Standards (IFC Performance Standards, Voluntary Principles, and the Global Reporting Initiative and the OECD Guidelines for Multinational Enterprises). Some Standards are discussed in detail in the Appendix. The Requesting Party may provide further documentation if they feel it is necessary to support their side of the story.

Documentation provided must not include confidential materials; to clarify, any information available to company employees that is labelled as “confidential” or that is understood to be commercially sensitive information should not be shared at this stage.

Also, personal information about individuals who have been affected by the company’s operations need not be disclosed — for example, if the claim is based on health concerns, personal medical records do not need to be given; a general report from a medical professional outlining the health risks created by the company’s conduct would be sufficient.

#### **Does the Requesting Party have to show that they have tried to resolve the problem before?**

Before submitting a Request for Review, the CSR Counsellor’s office requires that the Requesting Party show that it has attempted to resolve the situation. In conversation with the CSR Counsellor, she stated that this requirement would be met if the Requesting Party had contacted the company in an effort to resolve their concerns but received no response, or a response with which the community is unsatisfied. Some evidence of this attempt at resolution must be provided; a copy of correspondence with the company will be sufficient.

#### **What if the affected community is represented by an NGO or lawyer?**

If the Requesting Party is an individual or organization filing a Request on behalf of an affected community, proof that the community has authorized the aid and assistance of the individual or organization must be provided to the CSR Counsellor in the Request for Review.

#### **In what format can information be submitted (i.e. emails, hard copies, etc.)?**

Submissions must be made in writing and can be submitted by email, regular mail, or fax.

### **G/ OUTCOMES**

#### **What are the possible outcomes of the Review Process?**

It is difficult to answer this question since the Review Process is not open to the general public. In any event, it is expected that the outcome will be informal or mediated reconciliation on one or more of the issues between the affected community and company. In this regard, it is a similar process to the Compliance Advisor Ombudsman (CAO – see Section 2).

Remember, this is not a legal mechanism with enforceable legal remedies, and the process depends on the voluntary cooperation of both the community and the company. It is also important to remember that the company or the community may choose to stop participating in the Review Process at any stage, as it is entirely voluntary.

### **H/ OTHER**

#### **Can a community amend the initial Request for Review application to include new issues, facts, etc?**

The CSR Counsellor advises that new information cannot be added after the initial application has been submitted unless and until the Request for Review moves beyond the first stage (i.e. the CSR Counsellor accepts the request).

**Will the CSR Counsellor explain to a community why their application was not accepted?**

If ineligible, a community will be provided with written reasons as to why their grievance did not fall within the mandate of the CSR Counsellor.

**How will this process affect applications to other complaints mechanisms, such as those listed in Section 2?**

Participation in this complaints mechanism will not affect a community's ability to seek other dispute resolution options, such as those listed in Section 2.

If the community is making a complaint to a National Contact Point (see Section 2), then they cannot make the same complaint to the CSR Counsellor based purely on a violation of the OECD Guidelines. Otherwise, there is nothing preventing a community accessing other complaint mechanisms at the same time.

**If appeal is rejected, can a community re-apply?**

A rejected applicant can reapply so long as they fall within the CSR Counsellor's mandate and have resolved the issue(s) within the original application that caused it to be rejected, or if new information is presented or arises. The application process will remain the same.

# SECTION 4 — HOW TO FILL IN THE COVER SHEET

*An Annotated Cover Sheet, with comments explaining each step*



In this section, we have reproduced the CSR Counsellor’s Request for Review Form to assist affected communities to understand the type of information they will be required to submit. We have also included commentary on specific aspects of the form in italics where we believe additional information would be helpful. Please note that this commentary is not part of the official Request for Review Form.



# Request Process of the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor

## Request For Review Form

Please complete both the front and back of this form and submit it with your written submission.

All documents must be submitted in English or French.

Incomplete applications will NOT be registered and will be returned to parties for completion.

***The Office acts as an impartial advisor and facilitator, an honest broker that brings parties together to help address problems and disputes. This approach is based on the view that a credible, impartial and transparent process can help identify workable solutions to disputes. In order to effectively build space for dialogue, the process is not adjudicative or investigative. The overall objective of the process is the promotion of constructive dialogue and creative problem-solving.***

*Note: This form has been annotated to help affected communities to understand what is required when filling out the form. All information in this format and identified with an \* has been added to assist your understanding. These comments do not comprise part of the official Request for Review form, and have NOT been added by the CSR Counsellor.*

### STEP 1/ CONFIRM THAT YOU MEET THE CRITERIA TO SUBMIT A REQUEST FOR REVIEW TO THE OFFICE:

- ☐ You are an individual, group or community AND
- ☐ You reasonably believe that you are being or may be adversely affected by the activities of a Canadian extractive sector company AND
- ☐ You believe that the activities of the Canadian company are inconsistent with the endorsed performance guidelines.

OR

- ☐ You are a Canadian extractive sector company AND
- ☐ You believe that you are the subject of unfounded allegations concerning your conduct abroad in relation to the endorsed performance guidelines AND
- ☐ You can identify a suitable responding party

### STEP 2/ PLEASE ANSWER YES (Y) OR NO (N) TO THE FOLLOWING QUESTIONS:

- Y | N Did the activity you are concerned about take place after 19 October 2009?  
*\* If the activity started before 19 October, 2009 but continued after that date, your request may be submitted.*
- Y | N Do the activities relate to a Canadian company in the oil, gas or mining sectors?
- Y | N Does the issue relate to the overseas operations of a Canadian extractive sector company?  
*\* There must be a link to Canada; is the head office in Canada or is the company incorporated in Canada? If the company exploring for or operating the mine is a local company that is 100% owned and controlled by a Canadian company, the Request may be submitted but, like every Request, it will only proceed if the Canadian company agrees to participate in the Review Process.*
- Y | N Did you take action within a reasonable period of time after you found out about the issue?  
*\* Taking action refers to attempts to resolve the dispute and then filing the Request for Review.*
- Y | N Is the activity in question more than trivial in nature?  
*\* For example:  
-Has there been involuntary resettlement of locals?  
-Has there been environmental damage or pollution affecting an individual or community?  
-Has something with significant cultural heritage been damaged?  
-Have the livelihood of a local individual or community been impaired, including indigenous and non-indigenous citizens?  
-Has the health and safety of a local individual or community been threatened or affected?  
-Has there been a breach of the Performance Standards that has led to a significant impact on the community, or a risk to individual community members that qualifies as more than trivial?*
- Y | N Are you willing to enter into constructive dialogue with the responding party.  
*\* Constructive dialogue will include some type of informal mediation and will require the sharing of information.*



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Canada

- Y | N Have you made some effort to engage the responding party, or have you tried a local grievance mechanism, with a view to resolving the dispute?  
*\* Not every method needs to have been tried, but some type of local dispute resolution must be attempted before the claim is brought to the CSR Counsellor.*
- Y | N Does your request include information directly from an affected party?  
*\* If the claimant is an NGO on behalf of a community, has the NGO been authorized to submit a complaint on their behalf and is the complaint substantiated with information directly acquired from the affected groups?*
- Y | N Have you read the Office's rules of procedure?  
*\* The rules are available at [http://www.international.gc.ca/csr\\_counsellor-conseiller\\_rse/assets/pdfs/Rules%20of%20procedure%20FINAL.pdf](http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Rules%20of%20procedure%20FINAL.pdf)*

**IF YOU ANSWERED NO TO ANY OF THE QUESTIONS ABOVE, IT IS LIKELY THAT YOUR REQUEST WILL NOT BE FOUND ELIGIBLE FOR THIS PROCESS.**

### STEP 3: PLEASE PROVIDE US WITH THE FOLLOWING INFORMATION:

- \_\_\_\_\_ Your name, organization and contact information.  
**Note:** We can keep your identity confidential at this time, but we cannot accept anonymous requests.
- \_\_\_\_\_ The organizational name of the responding party.
- \_\_\_\_\_ If any organization is assisting you, please provide their name and contact information.  
**Note:** Please provide proof of authorization for any aid or assistance being provided.
- \_\_\_\_\_ To the best of your ability, the endorsed CSR standards at issue (you are not required to cite specific clauses, but tell us which ones you believe are relevant).  
**Note:** If your Request for Review relates solely to the OECD Guidelines for Multinational Enterprises, please send it to the Canadian National Contact Point.  
*\* Canada's NCP can be reached at:*  
 *Canada's National Contact Point (BTS)*  
*125 Sussex Drive*  
*Ottawa, ON Canada K1A 0G2*  
*E-mail: [ncp.pcn@international.gc.ca](mailto:ncp.pcn@international.gc.ca)*  
*Tel: (613) 996-0245*  
*Fax: (613) 944-7153*
- \_\_\_\_\_ In your written submission, please provide us with a summary of the situation and any relevant background information and documents.  
*\* Provide only publicly available information; confidential information should not be included in the Request for Review Form .*
- \_\_\_\_\_ Please also provide us with a description of previous efforts made to resolve the issue.  
 If you have previously submitted a Request for Review on the same issues, make sure that you have included sufficient new information, or your Request for Review will not be accepted.  
*\* If you have previously submitted a Request for Review on the same issues, make sure that you have included sufficient new information, or your Request for Review will not be accepted.*

Personal information collected for the Review Process will be used to establish contact between the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor and the Requester and the Responding Party, to assess the eligibility of the Request for Review (written submission), and to carry out the review to completion. The identity of the Requester and the Responding Party will be made public in the online Request for Review Registry. A Requester can ask that their identity not be included in the online Registry. The identity of the Requester will be provided to the Responding Party, subject to a request for confidentiality. The identity of parties to the Review Process will be shared with Canada's National Contact Point. This information will be protected in accordance with the federal Privacy Act and may be accessed referring to the personal information bank described in InfoSource as DFAIT PPU 906.

### CONTACT US

The Extractive Sector CSR Counsellor

Government of Canada

1 Front Street West, Suite 5110, Toronto, Ontario, M5J 2X5, CANADA

Tel: +14169732064 Fax: +14169732140 Email: [csr-counsellor@international.gc.ca](mailto:csr-counsellor@international.gc.ca)

Visit: [www.international.gc.ca/csr\\_counsellor-conseiller\\_rse](http://www.international.gc.ca/csr_counsellor-conseiller_rse)



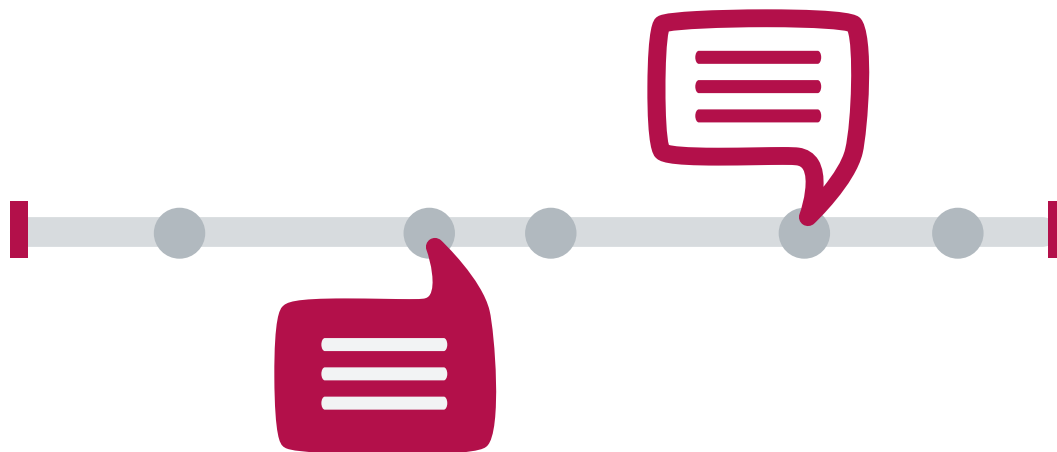
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## SECTION 5 – THE STEPS IN THE REVIEW PROCESS

### *A General Time line of What to Expect*



Remember: The Review Process is a voluntary process and either party can withdraw from it at any time at which point the CSR Counsellor will issue a final report and post it online. However, the CSR Counsellor is committed to encouraging continuance with the process once it is initiated.

- Step 1/ Request for Review
- Step 2/ Acknowledgment
- Step 3/ Eligibility Assessment
- Step 4/ Informal Mediation and Trust Building
- Step 5/ Structured Dialogue

## STEP 1/ REQUEST FOR REVIEW

Once it is determined that a company is headquartered in Canada or incorporated in Canada and that the activities at issue took place after **19 October 2009**, a project-affected individual, group, or community (“the Requesting Party”) sends a Request for Review and supporting documents to the CSR Counsellor’s Office. (Please see the sample request for review cover sheet in [Section 4](#).)

## STEP 2/ ACKNOWLEDGMENT

UP TO 5 BUSINESS DAYS AFTER RECEIPT

When the CSR Counsellor’s Office has received a Request, it will respond to the Requesting Party within 5 business days after receipt to acknowledge receipt. The Office will create a file number for the Request and inform the company that a Request for Review based on its actions has been made. The CSR Counsellor’s website will be updated to indicate that a request has been received.

## STEP 3/ ELIGIBILITY ASSESSMENT

UP TO 40 BUSINESS DAYS

The CSR Counsellor will review the Request to determine whether it meets the eligibility criteria. Whatever the result, the Requesting Party will be informed in writing. If the Request is found ineligible, the CSR Counsellor will provide reasons for the finding.

## STEP 4/ INFORMAL MEDIATION AND TRUST BUILDING

UP TO 120 BUSINESS DAYS

If the CSR Counsellor finds the Request eligible, the Requesting Party or its representative will begin a trust-building dialogue with the company. No confidential information is to be shared at this stage. During trust building the Requesting Party or its representative may talk with representatives of the Company to provide the context for the Request and to determine whether it is possible to resolve the dispute through this process. Trust-building will continue for up to 120 days or until both parties and the Counsellor all agree that there is a good chance for successful dispute resolution. At the end of 120 days the Counsellor may either end the process and issue a final report; OR extend trust-building another 90 days if reasonable progress has been made; OR recommend that the Structured dialogue stage be entered.

### LETTER OF INTENT

Before beginning the next stage (structured dialogue) both parties must consent to the process in writing. The parties are expected to work together to compose a letter of intent. The way that this letter is drafted and signed will vary in each case, and so there is no formal procedure for who initiates the letter, what role the CSR Counsellor plays in the letter writing process, etc.

The purpose of this letter is to determine the terms of reference for the structured dialogue. The terms of reference will be the mutually agreed upon obligations of each party in the process of coming to the desired outcome. Until both parties sign this letter, no confidential information should be shared. It is likely that companies will insist that any information shared as part of this process be kept confidential. If so, community representatives would be prevented from sharing this information with their communities.

## STEP 5/ STRUCTURED DIALOGUE

UP TO 120 BUSINESS DAYS

The CSR Counsellor will work with representatives of the Requesting Party and the company according to the terms agreed on in the letter of intent. Representatives of community will be chosen by the community, and could include community members and/or NGO partners.

The goal is to work together to resolve the dispute. If the dispute is resolved, the process ends and the Counsellor will post a report online. If, after 120 days, the parties have not come to a resolution, the CSR Counsellor will choose one of two outcomes. If the Counsellor believes that resolution is unlikely, the Counsellor will end the process and post a final report online. Or, if the Counsellor thinks reasonable progress has been made and that the parties would benefit from formal mediation, the Counsellor will facilitate access to mediators so that the process can be continued outside of Canadian government involvement.

### FORMAL MEDIATION

If the parties are in agreement, the CSR Counsellor may facilitate selection of an appropriate mediator who will be neutral, independent and culturally sensitive. Both parties will need to agree on an appropriate mediator. The CSR Office will not pay for this mediation. The process will continue until the parties inform the Counsellor of the result of formal mediation.

### NOTE ABOUT MEDIATION AND THE FINAL REPORT

The CSR Office has a mandate to do informal mediation, but may also help the parties to access formal mediation. Informal mediation will be facilitated by the CSR Counsellor, and it is entirely voluntary, meaning that either party can leave the process at any time. Formal mediation will be facilitated by an outside party and the community and company may be bound to reach a resolution in that process. Whatever course is taken (informal only, or both informal and then formal) the Counsellor will write a final report when mediation has ended, and post it online.

Note that even in this final report, there will be no legally binding decision, and no findings of fact related to the Standards that have been broken. It is difficult to predict what information will be included in a final report, but it is important to understand that it will not include a finding that the company breached a Standard or committed a wrongful act.

## CONCLUSION

The CSR Counsellor's Review Process is intended to assist affected communities and Canadian extractive companies when complaints and disputes emerge, through informal dialogue and possible mediation. In this regard, the Review Process may help certain communities to resolve or overcome problems caused by mining activities that directly affect them.

Still, as this Guide has indicated, there are many things that the Review Process cannot do. It is important for any community considering this process to keep the following points in mind:

**This is a voluntary process**

A company must voluntarily decide to participate, and there is nothing to stop them from refusing to do so, or from leaving the process at any time.

**There will be no sanctions, penalties, findings of fact or determinations of wrongdoing**

The CSR Counsellor is not a judge, and does not possess the ability to publicly state that a company has breached a Standard, or legally impose a remedy for an affected community.

**A company can request to keep certain information confidential**

There may be important information regarding the mining project and/or the complaint that will not be publicly exposed in this process.

**There are significant concerns about the financial imbalance between companies and communities in this process**

The CSR Counsellor is supposed to be a neutral party, and so will not provide any funding to assist a complaint. This means that communities will need to pay for all of the same things as well-financed international mining companies, such as:

- » Translation of a community's documents into French or English
- » Translation of the CSR Counsellor's documents into the language of the community (if not French or English)
- » Potential travel costs
- » Potential administrative costs of gathering evidence, computer access, international phone calls, etc.

The CSR Counsellor's process may be the right option for certain communities, but there may be a better alternative mechanism (some other options are listed in [Section 2](#)). It is our hope that the information in this Guide will assist affected communities in determining whether the CSR Counsellor's process is the best choice given their particular circumstances.

## APPENDIX

### *WHAT HUMAN RIGHTS VIOLATIONS WILL THE CSR COUNSELLOR CONSIDER IN DETERMINING ELIGIBILITY?*

The CSR Counsellor will consider endorsed performance standards (The IFC Performance Standards, Voluntary Principles, and Global Reporting Initiative and OECD Guidelines for Multinational Enterprises). This Appendix includes short descriptions of some of the IFC Performance Standards (“IFC Standards”) and the Voluntary Principles on Security and Human Rights (“Voluntary Principles”). As discussed in Sections 3 and 4 of this Guide, affected communities should be able to show that their problem falls within the general scope of the endorsed Standards in order to make a Request for Review to the CSR Counsellor. The Cover Form for a Request for Review is clear that this is not a demanding requirement. It says: “To the best of your ability, [state] the endorsed CSR standards at issue (you are not required to cite specific clauses, but tell us which ones you believe are relevant).”

This appendix does not summarize each Standard, or even every aspect of each relevant standard or principle. Instead, we have summarized some of the central requirements so that affected communities can get a sense of which ones might be relevant to their complaint. Affected communities who do not see their specific problem reflected in this Appendix should not assume that it does not fall within the scope of the endorsed Standards. Instead, they should consult a full text of the standards/principles to determine whether their problem falls within the general scope of them.

It is important to note that these Standards are not the law and that the CSR Counsellor has discretion whether or not to accept a Request for Review based on an alleged violation. Furthermore, at no time in the Review Process will the CSR Counsellor make a ruling on whether a Standard has in fact been breached by the company.

For full text of the endorsed CSR standards, please see:



#### **IFC PERFORMANCE STANDARDS**

<http://www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards>

#### **VOLUNTARY PRINCIPLES**

<http://www.voluntaryprinciples.org/principles/introduction>

#### **GLOBAL REPORTING INITIATIVE**

<http://www.globalreporting.org>

#### IFC Performance Standards

- 1/ Social and Environmental Assessment
- 2/ Labour and Working Conditions
- 3/ Pollution Prevention and Abatement
- 4/ Community Health, Safety and Security
- 5/ Land Acquisition and Involuntary Resettlement
- 6/ Biodiversity Conservation and Sustainable Natural Resource Management
- 7/ Indigenous Peoples
- 8/ Cultural Heritage

Voluntary Principles on Security and Human Rights Risk Assessment

Voluntary Principles: Public and Private Security

# IFC Performance Standard 1

## *Social and Environmental Assessment*

### APPLICATION

This standard applies to all corporate projects that pose social and environmental risks.

### DEFINITIONS

**Consultation:** Consultation involves two-way communication between the company and the affected communities, providing the communities with opportunities to express their concerns about the project.

### UNDER THIS PERFORMANCE STANDARD A CORPORATION IS OBLIGATED TO:

- Perform a social and environmental assessment that analyzes the potential impacts on the region by
  - » All sites that are directly owned by the company;
  - » Any sites that rely on, or are relied upon by the company and
  - » Any other areas affected by the project.

**NOTE:** *The company should assess whether third parties (like contractors) pose a risk to the community because of the project. As part of the Assessment, the company must identify people and groups that may be affected by the project for whatever reason, and then begin the process of community engagement.*

- Perform community engagement with affected groups. Community engagement must include three elements:
  - » **Disclosure** - The company will provide communities with access to information on the purpose, nature, scale and time line of the project, and any risks of the project on those communities. This disclosure should occur before the project begins, and for as long as it continues to operate.
  - » **Consultation** - The company must seek community input when their projects might harm that community, environmentally or socially. Proper consultation should begin early in the Assessment process and will be carried out on an ongoing basis. The consultation process should be inclusive, culturally appropriate, in the language preferred by the affected communities and attentive to their decision-making process and the needs of their disadvantaged or vulnerable groups.
  - » **Grievance Mechanism** - The company must respond to communities' concerns related to the project by establishing and publicizing a grievance mechanism (see Section 2 – A). Participation in the grievance mechanism will not prevent community members from seeking legal remedies.



## IFC Performance Standard 2

### *Labour and Working Conditions*

#### APPLICATION

This standard applies to all employees hired directly by the corporation. When the corporation hires workers through a third party, the corporation should make efforts to ensure that third parties also abide by this standard.

#### DEFINITIONS

**Worker organization:** Can include a trade or labour union or any other form or worker organization including a worker committee.

**Forced labour:** Any kind of work that is done under the threat of force or penalty and can include indentured labor (compensation in forms other than money), or bonded labour, which creates forced labor by creating a debt obligation.

#### UNDER THIS PERFORMANCE STANDARD A CORPORATION IS OBLIGATED TO:

- Adopt a human resources policy regarding the management of its employees which complies with worker rights under the country's national labour law.
- Document and communicate with workers, clearly and in their language, regarding the terms of their employment and working conditions.
- Respect the terms of the collective bargaining agreement if such an agreement is in place.  
***NOTE:** If there is no collective bargaining agreement in place, the corporation will be in breach if it fails to provide working conditions that, at a very minimum, comply with national labour laws.*
- Base its employment decisions on principles of equal opportunity and fair treatment and to refrain from discriminating against an employee based on personal characteristics unrelated to the job.
- Have a retrenchment plan in place to minimize the negative impacts to workers and their communities in the event of facility closure or of significant layoffs.  
***NOTE:** This plan should provide fair and transparent criteria for layoffs, address issues such as severance pay, offers of alternative employment and retraining, and include consultations with workers and their organizations throughout.*
- Have a grievance mechanism in place where workers can raise their workplace concerns to someone who is not their immediate supervisor.  
***NOTE:** The mechanism cannot be seen as a substitute for seeking redress through legal channels or through the collective bargaining process.*
- Comply with national law regarding the minimum work age and not to employ children under the age of 18 in work considered dangerous, or which provide unfair wages, interferes with their education, or is harmful to their overall development.

- Provide workers with a healthy and safe work environment or fails to take steps to eliminate or address potential hazards, through worker training or otherwise.
- Refrain from employing forced labour.
- Refrain from discouraging or interfering with workers' rights to join worker organizations of their free choosing or from bargaining collectively; favouring one worker organization over another; or discriminating or retaliating against workers due to their organizing activities.

## IFC Performance Standard 3

### *Pollution Prevention and Abatement*

#### UNDER THIS PERFORMANCE STANDARD A CORPORATION IS OBLIGATED TO:

- Apply pollution prevention and control technologies and practices that are best suited to avoid, minimize or reduce negative impacts on human health and the environment.
- Avoid or minimize to the extent possible the release of pollutants with the potential for local or regional impacts.
- Avoid or minimize to the extent possible the production of hazardous and non-hazardous waste materials and to dispose of the waste in an environmentally sound way.  
***NOTE:** Where a third party is used for waste disposal, the company will use contractors that are reputable and legitimate organizations licensed by the relevant regulatory agencies.*
- Avoid the use of chemicals and hazardous materials that are internationally banned due to their negative environmental impacts, and consider the use of less hazardous substitutes.
- Be prepared to respond to accidental and emergency situations in a manner appropriate to the operational risks.  
***NOTE:** This provision requires that the company have a plan in place addressing the training, resources, responsibilities, communication, procedures, and other aspects needed to effectively respond to emergencies related to project hazards.*
- Consider the amount of pollutants the environment can absorb without causing an unacceptable risk to human health and the environment; existing and future land use; and the potential for cumulative impacts with uncertain and irreversible consequences.
- Promote the reduction of project-related GHGs in a manner appropriate to the nature and scale of the project operations and impacts.
- Quantify and monitor GHGs on an annual basis in accordance with internationally recognized methodologies.

## IFC Performance Standard 4

### *Community Health, Safety and Security*

#### APPLICATION

This Standard addresses the company's responsibility to avoid or minimize the risks and negative impacts on the community's health, safety and security. Projects must address the potential for problems arising from equipment accidents, structural failures, and releases of hazardous materials. Companies must also consider the impact on the community's natural resources, the potential exposure to diseases, and the risks associated with the use of security personnel.

#### UNDER THIS PERFORMANCE STANDARD A CORPORATION IS OBLIGATED TO:

- Evaluate the health and safety risks to and impacts on the affected community at all stages of the project and disclose information about those risks and impacts to the community.
- Have its infrastructure and equipment designed and constructed by qualified professionals and certified or approved by the proper authorities.
- Take all reasonable measures to prevent the occurrence of accidents associated with moving equipment on public roads and other forms of infrastructure.
- Modify, substitute or eliminate any condition or substance causing a hazard during any stage of the project.
- Minimize the occurrence of natural hazards (e.g. landslides or floods) by minimizing impacts of project activities on soil, water, and other natural resources.
- Prevent or minimize exposure to diseases (including diseases associated with water contamination and the influx of project labour).
- Develop emergency response protocols.
- Assess and mitigate the risks to the community presented by security arrangements.

**NOTE:** *This standard requires the company to ensure proper training of security personnel regarding appropriate conduct and acting within the law. It also requires the company to attempt to ensure that the personnel are not implicated in past abuses, and to report any allegations of unlawful or abusive acts to public authorities when appropriate and take action to prevent recurrence. See also Voluntary Principles on Security and Human Rights (below).*

## IFC Performance Standard 5

### *Land Acquisition and Involuntary Resettlement*

#### APPLICATION

This standard applies to involuntary resettlement by a corporation in the process of acquiring land rights.

#### DEFINITIONS

**Physical Displacement:** relocation or loss of shelter.

**Economic Displacement:** loss of assets or access to assets leading to loss of income or livelihood.

**Involuntary Resettlement:** physical *and/or* economic displacement as a result of project-related land acquisition. Resettlement is involuntary when individuals or communities do not have the right to refuse land acquisition, for example, in cases of lawful expropriation, restrictions on land use, or negotiated settlements where the buyer can resort to expropriation or restrict land use if negotiations fail.

**Host Community:** any community receiving displaced persons.

#### UNDER THIS PERFORMANCE STANDARD A CORPORATION IS OBLIGATED TO:

- Disclose all relevant information to and consult on an ongoing basis with affected persons and communities (including host communities) in the decision-making process related to resettlement.
- Establish a grievance mechanism (in accordance with Performance Standard 1) that addresses concerns about compensation and relocation.
- Carry out a census to identify persons who will be i) displaced by the project, and ii) eligible for compensation and assistance, and, to discourage inflow of persons ineligible for these benefits.

**NOTE:** *in the absence of host country government procedures, the corporation is required to establish a cut-off date for eligibility of benefits that is written down and disseminated throughout the project area.*

- Offer physically displaced persons and communities full compensation for loss of assets.
  - » Where livelihoods are land-based, or where land is collectively owned, the corporation must offer land-based compensation.
  - » If people living in the project area must move, the corporation must:
    - (i) Offer a choice among feasible resettlement options, including adequate replacement housing or cash compensation prior to relocation, AND
    - (ii) Provide suitable relocation assistance.

**NOTE:** *Persons with no recognizable legal right or claim are not entitled to compensation for land, but the company must provide:*

- (i) Full compensation for the structures on the land or improvements to land; AND
  - (ii) Resettlement assistance sufficient to restore their standard of living at another site.
- Meet the requirements set out in this Standard as well as Performance Standard 7 where communities of **Indigenous Peoples** are to be physically displaced from their traditional communally held lands;
- If the land acquisition causes economic displacement, regardless of physical displacement, the corporation is obligated to:
  - » Provide prompt compensation for loss of assets or access to equivalent assets;
  - » Compensate business owners for the cost of reestablishing commercial activities elsewhere, and the loss of net income during transition;
  - » Provide replacement property at equal or greater value, or cash compensation at full replacement cost, for those with legal rights or recognizable claims to the land;
  - » Compensate for lost assets other than land (i.e. crops, irrigation infrastructure, improvements);
  - » OR
  - » Provide opportunities to restore or improve income-earning capacity, production levels, and standards of living of economically displaced persons (for example, by providing credit facilities, training, and/or job opportunities).

## IFC Performance Standard 6

### *Biodiversity Conservation & Sustainable Natural Resource Management*

#### APPLICATION

This standard applies to the degree of ecological care that corporations should take with regards to different types of land.

#### DEFINITIONS

**Legally Protected Areas:** areas that the government has (or proposes to) designate as being important for the protection or conservation of biodiversity.

**Critical Habitats:** habitats that have high biodiversity value; are necessary for the survival of endangered species; or contain biological species that are important to the community for economic, social or cultural reasons.

**Natural Habitat:** habitat that has not yet been modified by human activity and which contains mostly native species.

**Defined Protected Area Management Plans:** Local government national land use or resource use plans and management criteria (including Protected Area Management Plans, National Biodiversity Action Plans or similar documents).

35

#### UNDER THIS PERFORMANCE STANDARD, A CORPORATION IS OBLIGATED

- In legally protected areas, to:
  - » Ensure its activities are inconsistent with defined protected area management plans;
  - » Communicate with protected area managers, local communities and other key stakeholders about how the corporation will affect that Area, and to consider the concerns that these groups communicate;
  - » Create programs that help advance the protection of the environment and biodiversity in the Area;
  - » Prevent reductions in the populations of endangered species in that Area; and
  - » Ensure that its activities do not change the habitat of the area so that it cannot support the most important plants, animals, and functions of the Area.
- In critical habitats, to:
  - » Ensure that the project does not reduce the populations of endangered species in that Area; and
  - » Ensure that its activities do not change the critical habitat so that it cannot support the most important plants, animals, and functions of the habitat.

- In natural habitats, to ensure that the project does not significantly change the land or the water use on the land, or significantly lower the ability of the land to provide for the native species that live on it.

**NOTE:** *After the project is over, the corporation should compensate individuals for loss of access to plant and animal resources and (if technically or financially possible), restore the land or create other habitats to replace the habitats they destroyed or degraded.*



# IFC Performance Standard 7

## Indigenous Peoples

### APPLICATION

This standard applies to relations between corporations and Indigenous Peoples, their lands, and their cultural resources, knowledge, innovations, and practices.

### DEFINITIONS

**Indigenous Group/Peoples:** as defined by the IFC, Indigenous groups are peoples with varying degrees of the following characteristics:

- » Self-identification as members of a distinct Indigenous cultural group and recognition of this identity by others;
- » Collective attachment to geographically distinct habitats or ancestral territories Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture; and
- » An Indigenous language, often different from the official language of the country or region.

**Good Faith Negotiation:** a willingness to engage in a process and share relevant information, change initial position and modify offers where possible, and meet at reasonable times and frequency.

**Customary Land Use:** patterns of long-standing community land and resource use in accordance with Indigenous Peoples' customary laws, values customs, and traditions, including seasonal or cyclical use, rather than formal legal title to land and resources issued by the state.

### UNDER THIS PERFORMANCE STANDARD A CORPORATION IS OBLIGATED TO:

- Conduct a social and environmental assessment to investigate all impacts on Indigenous Peoples and determine how to avoid adverse impacts if possible.
- Minimize and compensate for adverse impacts.
- Establish a relationship with the affected Indigenous Peoples, and ensure their free, prior and informed participation (including access to legal advice and full disclosure of information from the corporation).

**NOTE:** *This process must be culturally appropriate and adhere to the following steps:*

- » Involve Indigenous Peoples' representative bodies;
- » Be inclusive of men and women;
- » Provide sufficient time for Indigenous collective decision making processes;
- » Facilitate the Indigenous Peoples' expression of their views and proposals, in the language of their choice, and without interference or coercion; and
- » Ensure that a grievance mechanism is developed that is culturally appropriate and accessible as well as timely, fair and transparent.

- If it is developing a project on land subject to customary land use by the Indigenous Peoples, the corporation is obligated to:
  - » Document efforts to minimize the amount of land use by the proposed project.
  - » Have Indigenous Peoples' land use documented by independent experts.
  - » Inform Indigenous People of their rights with respect to the lands under national laws.
  - » Offer affected communities compensation and due process for those with full legal title to land (offering land based compensation whenever feasible).
  - » Enter into good faith negotiation with the affected communities and document their informed participation and successful outcome of the negotiation.
  - » Offer at least the same level of compensation and due process it will offer to those with full legal title under national laws – regardless of whether full legal title is retained by Indigenous Peoples.
  - » When relocation is unavoidable, the relocation process must accord with Standard 5.

## IFC Performance Standard 8

### *Cultural Heritage*

#### APPLICATION

This standard applies to and aims to protect irreplaceable cultural heritage and to guide corporations on protecting cultural heritage during the operation of their business.

#### DEFINITIONS

**Cultural Heritage:** Cultural heritage can be both tangible and intangible. Examples of tangible aspects of cultural heritage include: real property and sites having archaeological (prehistoric), historical, cultural, and religious value, as well as unique natural environmental features that embody cultural values, such as sacred groves. Examples of intangible forms of culture include: cultural knowledge, innovations, and practices.

**Critical Cultural Heritage:** Cultural heritage is critical when it is used by a people for long-standing cultural purposes. It also signifies legally protected cultural heritage areas, or areas proposed by host governments as legally protected heritage sites.

#### UNDER THIS PERFORMANCE STANDARD, A CORPORATION IS OBLIGATED TO:

- Hire a specialist to complete an assessment when cultural heritage is found during the operation or construction of their project's site.
- Consult the community about the importance of the cultural heritage.
- Avoid significantly altering, damaging, or removing any critical cultural heritage where the damage may endanger the cultural or economic survival of communities.
- Conduct a good faith negotiation with the affected communities and document the informed participation of those communities and the successful outcome of the negotiation.

# Voluntary Principles on Security and Human Rights

## *Security and Human Rights Risk Assessment*

### APPLICATION

This section summarizes the Voluntary Principles on Security and Human Rights (VPSHR) requirements for risk assessment in order to suggest standards that, if not met, could suggest that the company in question has not adequately implemented the VPSHR into their operations.

### PRINCIPLES

- Risk assessments must:
  - » Include the impact of company operations on the community, not just risks to the company itself;
  - » Incorporate extensive consultations with the community in question;
  - » Be “regularly updated,” which implies an ongoing process rather than a one-time analysis.
  - » Define “Security risks” identified by the company broadly to include political, economic, civil, and social elements in addition to more ‘traditional’ security threats;
  - » Take into account a variety of potential sources of violence: violence within the workforce; violence between community and government forces; community violence caused by economic change.
- Corporations must show due diligence in investigating the human rights records of both government forces and private security forces.
- Corporations must identify potential causes of conflict and the nature of conflict presented by those risks.

# Voluntary Principles

## *Public and Private Security*

### APPLICATION

This section summarizes the VPSHR requirements regarding the employment of public or private security in order to suggest standards that, if not met, could suggest that the company in question has not adequately implemented the VPSHR into their operations

### PRINCIPLES

- In the case of public forces, security arrangements must include:
  - » Consulting with host governments and local communities;
  - » Communicating policies of human rights to the security forces; and
  - » Encouraging host governments to make security agreements transparent and accessible to the public.
- In the retention of either public or private security, the corporation must encourage security forces to:
  - » Deploy competent and appropriate forces;
  - » Use force only when necessary and ensuring it is proportionate;
  - » Ensure rights of individuals are not violated;
  - » Ensure those implicated in past human rights abuses will not provide security for the company;
  - » Mitigate foreseeable risks when supplying equipment to public security forces; and
  - » Report all incidents of physical force being used.
- With regards to both private or public security, corporations are required to:
  - » Report human rights abuses by security forces to host governments;
  - » Urge investigation and for action to be taken;
  - » Monitor the status of investigations;
  - » Monitor the use of equipment that companies provided to security forces; and
  - » Ensure information and evidence related to allegations of human rights abuses is credible.
- With regards to private security specifically, companies are required to
  - » Ensure that private security firms provide only defensive and preventative services;
  - » Ensure that medical aid be provided to all injured persons;
  - » Ensure the security force displays high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms;
  - » Ensure that rights of individuals are respected such as the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of company employees; and
  - » Report and investigate incidents of physical force used by private security.



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