

Subject: Response to CORE request for quarterly consultations

February 9, 2021

Dear Sharmala Naidoo and Sheri Meyerhoffer

We have received your request for quarterly meetings with Canadian civil society, including the Canadian Network on Corporate Accountability.

We appreciate that you are trying to set in place regular communication with Canadian civil society actors, and welcome the invitation.

Before considering the invitation, however, we would like to express our collective concern regarding recent developments, including actions by your office-holder, that call into question the CORE's commitment to transparency and meaningful engagement.

Concerns:

- 1. We are concerned that the CORE lacks independence, and that the office is sharing information with government departments that it is not sharing with Canadian civil society and rights holders.**

Canadian civil society has been making public their concerns about the CORE's lack of independence since the publication of the first order in council appointing the CORE in 2019.¹ Canadian civil society concerns about the CORE's lack of independence have been heightened by the fact that, on at least one occasion, the CORE disclosed to government officials housed within Canada's Trade Commissioner Service information that the CORE had classified as non-public.

Specifically, in the spring of 2021, CNCA learned that the CORE shared information with government officials in the trade department / at the National Contact Point (NCP)² about inquiries and complaints it had received but did not share that same information with civil society stakeholders. In May 2021, the CNCA requested that the CORE share information about the complaints it had received, but this request

¹ <https://www.business-humanrights.org/en/blog/canadas-toothless-new-corporate-watchdog-is-a-broken-promise-and-a-major-setback-for-human-rights/> "The CORE is not independent. Instead of operating independently, the CORE and her future staff have been appointed as public servants, reporting to the Minister of International Trade Diversification. Ministerial oversight opens the door to real, and perceived, government interference in everything from the complaints the CORE accepts, to her final reports and recommendations." The CORE's independence can only be fully assured via a new order in council or legislation.

² For concerns on potential conflict of interest at the NCP, see the end of country-visit [statement](#) of the United Nations Working Group on Business and Human Rights.

was denied on the grounds that the information would only be made available in the CORE's annual reports. It was only after the CNCA informed the CORE that we had knowledge that it had shared complaints data with the NCP that the CORE agreed to share with us some basic information on the inquiries / complaints. This situation raised concerns among CNCA members regarding the impartiality and independence of the CORE, the CORE's approach to transparency, and whether the CORE is not sharing other relevant information with Canadian civil society. Note, to our knowledge, the CORE has yet to ever publish an annual report.

Recommendation: The CORE should take steps to exert independence where it can within its existing mandate; advocate for the Government of Canada to make the CORE fully independent; and establish policies that preclude information-sharing with government departments, unless that information will also be shared with Canadian civil society and other stakeholders.

2. We are concerned that the CORE is not disclosing information about the inquiries / complaints it has received that it should be making publicly available. This includes information about claims of human rights violations linked to Canadian corporations and the CORE's reasons for determining that a complaint is inadmissible.

The CORE recently published very high-level information about the complaints and inquiries that the office has received to date. According to that publication, CORE determined that all but two complaints fail to meet the CORE's admissibility requirements, and that neither of the admissible cases was being examined by the CORE. The document explains that:

“From March 15, 2021 to December 31, 2021, the CORE received 46 inquiries and 5 complaints.

- Two of the complaints were admissible. One was referred to Canada's National Contact Point (NCP) with the agreement of the complainant who also wanted to raise bribery allegations. The other complaint did not proceed because the complainant did not respond to the CORE's request for additional information.
- Two complaints were inadmissible. In one complaint, the company was not a Canadian company. The other complaint did not raise allegations that were within the time frame prescribed by the CORE's Order-in-Council. It was referred to the NCP.
- The admissibility of the 5th complaint was unclear and required more information. The complainant elected to proceed with the company mechanism first and may return to the CORE.”

The document does not provide further information about how inquiries were treated, what the complaints were about, or how the CORE determined admissibility.

It is our view that, unless complainants request confidentiality, the CORE should be transparent about all complaints it receives and provide written reasons for its decisions, including the reasons for which a complaint has been judged inadmissible. We note that Canada's National Contact Point has been [criticized](#) for lacking transparency, yet it does have a [segment on its website](#) that shares basic information about all requests for review it receives [before](#) “undertaking an initial assessment to determine whether the case merits further investigation.” Even the first CSR Counsellor, Marketa Evans, provided [better transparency](#) than the CORE currently is, recording cases and their progress as they came in. We would expect that the CORE would at minimum publish a short summary of all filed complaints it receives even if some of those are ultimately deemed inadmissible. The current lack of transparency by the CORE may impact the civil society confidence that engaging with the CORE is a meaningful use of their time.

Recommendation: CORE should share information about all complaints it receives, as the complaints are processed, unless complainants request confidentiality. Current disclosure levels are inadequate.

3. We are concerned that Ms. Meyerhoffer has abandoned her efforts to seek the basic minimum powers required for the CORE to be effective.

Ms. Meyerhoffer is on the public record, and has shared in closed-door meetings with the CNCA, UN officials and others, that she wants the CORE to have the power to compel documents and testimony, that she believed the CORE would be more effective if it had these powers, and that she would be advocating for the Minister of International Trade to provide CORE with these powers. This is consistent with expert legal opinion, including the Government of Canada's own commissioned expert and the United Nations Working Group on Business and Human Rights, that powers to compel documents and testimony are necessary to ensure the CORE's effectiveness. However, in February 2021, while testifying at the International Human Rights Sub-Committee hearings on the powers and mandate of the CORE, Ms. Meyerhoffer testified that the CORE already has adequate powers to fulfill its mandate. The following week, the trade minister relied on Ms. Meyerhoffer's comments to justify the government's decision to renege on its commitment to provide the CORE with powers to compel saying that: "Ms. Meyerhoffer herself testified before this committee and stated that she had the necessary powers and resources and tools to be effective." Ms. Meyerhoffer has not provided an explanation as to why her position has changed, nor has she refuted the trade minister's claims.

Recommendation: Ms. Meyerhoffer should publicly confirm that the office of the CORE needs the power to compel documents and testimony in order to be effective.

4. We believe that being forthcoming about upcoming plans, and seeking early civil society input, is very helpful for fostering relationships of trust.

We were surprised by the CORE's announcement of a self-initiated study on the possible use of child labour in the supply chains of Canadian garment companies, including its stated aim to "gauge their (Canadian garment companies) progress in establishing human rights due diligence related to child rights." We expected that, prior to the CORE launching its first self-initiated review, it would have consulted with, or at least informed, civil society stakeholders. At the CORE's request, the CNCA met with the CORE in late October 2021, and several CNCA members met with the CORE in early December 2021. The day after one of those meetings, CORE announced its self-initiated study on child labour, human rights due diligence and the garment sector. During these multiple meetings, Ms. Meyerhoffer did not indicate that the study was imminent, nor request information about expertise within our network on the garment sector or child labour.

Recommendation: The CORE should proactively share information with civil society and seek their input.

For reasons outlined in our recent letter on CORE's draft country-visit risk-assessment guide, the CNCA will no longer engage with the CORE as a network. Until the CORE has the appropriate powers, only some members will engage with the CORE, but on an individual basis and not representing the network as a whole.

Should you wish to respond to the CNCA's concerns, please let us know as soon as possible.

Best,

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Accountability

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