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## Appendix 1      CORE must avoid exacerbating harm to complainants

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Non-judicial grievance mechanisms will exacerbate harm experienced by complainants if this potential is not clearly understood and steps are not taken proactively, at **each stage** of the grievance process, to avoid deepening harm. All aspects of the Standard Operating Procedure (SOP) should be interrogated in regard to the question – “**how may this requirement, or process, disadvantage, or be unnecessarily onerous on, the complainant?**”

Any grievance mechanism that does not have the capacity to level the playing field for complainants, by being empowered to compel evidence, runs a very high risk of deepening harm. In this case, complainants are at an inherent disadvantage as they are expected to put all the relevant information they have on the table, while the company may select to withhold relevant information from the process. Furthermore, because the CORE must rely on the good will of companies in order to access necessary information, the process may be unduly influenced by the company.

As the CORE now closely resembles the Canadian National Contact Point (NCP) in its powers and procedures, the risk is great that the CORE will exacerbate harm experienced by complainants in the same ways that the NCP does. We therefore strongly suggest that the CORE examines feedback provided to the NCP in this regard, including MiningWatch Canada’s 2020 submission to the Canadian NCP consultations,<sup>1</sup> submissions from MiningWatch Canada<sup>2</sup> and the Canadian Labour Congress<sup>3</sup> to the 2018 Peer Review of the Canadian NCP, a joint review of the Canadian NCP authored by OECD Watch, Above Ground, and MiningWatch Canada<sup>4</sup> and OECD Watch’s 15 year review of the OECD NCP system.<sup>5</sup>

For example (this list is by no means exhaustive):

- **The CORE should not require a “Request to file a complaint” stage, emulating the NCP, nor maintain discretion to reject legitimate complaints, but simply accept any complaints that meet the Admissibility Criteria (5.6).** The requirements, or standard of proof, placed on “notifiers” in order to have a “Request for Review” accepted by the NCP have been too high. Notifiers to the Canadian NCP have had to resort to seeking pro bono legal help (Centerra case)<sup>6</sup> just to get through the hurdles to have their complaint accepted for mediation by the NCP (the case was still rejected). This reflects a critical lack of understanding of the costs faced by many complainants who seek the help of a non-judicial grievance mechanism in terms of time and effort required from them to file a

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<sup>1</sup> Coumans, Catherine. 2020. [Canada’s National Contact Point: Long Overdue for an Overhaul](#). Prepared in the context of 2020-2021 NCP consultations. MiningWatch Canada, October.

<sup>2</sup> MiningWatch Canada. 2018. [Peer Review of the Canadian National Contact Point on the OECD Guidelines for Multinational Enterprises](#). Submitted January 23.

<sup>3</sup> Canadian Labour Congress. 2018. [CLC submission to the 2018 NCP Peer review](#)

<sup>4</sup> OECD Watch, Above Ground and MiningWatch Canada. 2016. [Canada is back.” But Still Far Behind: An Assessment of Canada’s National Contact Point for the OECD Guidelines for Multinational Enterprises](#).

<sup>5</sup> OECD Watch. 2015. [Remedy Remains Rare: an analysis of 15 years of NCP cases and their contribution to improve access to remedy for victims of corporate misconduct](#).

<sup>6</sup> [Peer Review of the Canadian National Contact Point on the OECD Guidelines for Multinational Enterprises](#). Submitted January 23.

complaint (let alone participate in the further process) in addition to daily pressures of securing food and often protracted human rights and environmental struggles against the company in question.

- **The CORE should not reject a complaint on the basis of parallel proceedings (6.1.3).** To do so disadvantages the complainant. It is also not best practice or in accordance with the OECD Guidelines, which indicate that complaints subject to parallel proceedings should only be rejected where the complaint will not contribute to resolution of the issues and cause “serious harm” to one party or another.<sup>7</sup>
- **The CORE should not function as an intelligence gathering body for the company in question, or any related government agency.** In situations where there is commonly already a great imbalance in the ability of complainants to access relevant information regarding their complaint, no information provided by complainants should be shared with the company, or any related government agency or others, without the explicit agreement of the complainant, regardless of whether or not the complainant is named (6.4). Sharing of information from complainants without their explicit consent, at any stage of the process including during independent fact finding (12.9) regardless of whether the complainants are named or not, may put them at risk and may make their effort to gain access to justice or remedy even more difficult.
- **The CORE should not make any public statements that may disadvantage the complainant’s efforts to gain access to justice or remedy.** The Canadian NCP has repeatedly harmed the interests of “notifiers” (complainants) by issuing statements that could be interpreted as a finding of fact (without investigation) that the complaint itself had no validity (see Centerra case)<sup>8</sup>, or that directed accusations at the complainants themselves (see Sakto case<sup>9</sup> and Porgera case<sup>10</sup>). The CORE should not issue public statements (e.g. 12.10) without consultation with and, by default, the explicit agreement on the text from the complainants.

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<sup>7</sup> See Procedural Guidance, para. 26: <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>8</sup> *Peer Review of the Canadian National Contact Point on the OECD Guidelines for Multinational Enterprises*. Submitted January 23.

<sup>9</sup> Coumans, Catherine. 2020. *Canada’s National Contact Point: Long Overdue for an Overhaul*. Prepared in the context of 2020-2021 NCP consultations. MiningWatch Canada, October.

<sup>10</sup> *Peer Review of the Canadian National Contact Point on the OECD Guidelines for Multinational Enterprises*. Submitted January 23.