

Archived Document

Information identified as archived on the Web is for reference, research or recordkeeping purposes. It has not been altered or updated since it was archived. Web pages that are archived on the Web are not subject to Government of Canada Web Standards; as per the [Communications Policy of the Government of Canada](#), you can request alternate formats by [contacting us](#).

Public Consultations Summary Report

*Building a review process for the Canadian international
extractive sector:*

A summary of public consultations held June – August 2010

Report prepared by:

The Office of the Extractive Sector Corporate Social Responsibility Counsellor
1 Front Street West
Suite 5110
Toronto, Ontario M5J 2X5 Canada

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

Views expressed herein are those of the Office of the Extractive Sector CSR Counsellor.

September 2010

Canada 

Executive Summary

The Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor was established in 2009 as part of the Government of Canada's CSR Strategy for the International Extractive Sector. Marketa Evans was appointed as the first Counsellor in October, 2009. The Office opened in Toronto in March 2010.

This report summarizes some key learnings from a period of public consultations conducted on the establishment of a dispute resolution process for the international operations of the Canadian extractive sectors. These consultations took place from 7 June until 13 August 2010. In order to frame the consultations, the Office provided two background documents: an issues paper and draft rules of procedure, both posted on the Office's website in advance of the launch of the consultation period.

The Office's mandate is to review CSR practices of Canadian companies operating outside of Canada, and advise stakeholders on the implementation of endorsed performance standards. In fulfilling the review portion of the mandate, the Office will be an impartial advisor and facilitator, an honest broker that brings parties together to help address problems and disputes. The Office will create space for constructive dialogue and problem solving. This approach is based on the view that a credible, impartial and transparent process with appropriate checks-and-balances may find win/win options to resolve disputes.

In designing the review process, the Office proactively sought input from a wide range of perspectives, in a variety of ways:

1. formal day long workshops in Canada (Calgary, Ottawa, Montreal, Vancouver, Toronto)
2. formal meetings with four groups of stakeholders (industry, civil society, host country governments and Canadian government officials) in Mexico, Mali and Senegal
3. a 90 minute webinar
4. an invitation to provide written submissions
5. three half day legal experts workshops held in Toronto on May, June and August

This report provides a high level brief on the consultations process; more detailed reports have been produced for each workshop and are available on the Office's website.

Over 300 people, from across a wide range of constituencies, directly participated in the public consultations. Overall, approximately 40% of total workshop participants were international. In Canada, over a third of participants came from industry, with another 20% from civil society. Overseas, industry and civil society participation was somewhat greater: over 45% from industry, more than 35% from civil society, with the balance in government or service sectors.

Four key themes emerged from our discussions: a strong interest in the Office; an endorsement of the participatory approach the Office has taken to date; a strong preference for prevention of conflicts; and an articulation of the value proposition for the Office.

Three initial outcomes have resulted from the public consultations process:

1. the Office has established its key Principles
2. the Office has significantly amended its proposed decision tree
3. the Office has finalized the rules of procedure for the dispute resolution process

Appendices

Appendix A: List of public consultations dates

Appendix B: List of written submissions received

Appendix C: Case Studies used during Canadian workshops

Introduction

The Office of the Extractive Sector CSR Counsellor was created as a component of the Canadian Government's CSR Strategy for the Extractive Sector, and was formally opened in early March 2010. The Office has a two-fold mandate – to review CSR practices and to advise stakeholders on endorsed performance standards. As part of the review portion of the mandate, a dispute resolution process is under construction.

This report summarizes some key learnings from a period of public consultations undertaken to inform the establishment of this dispute resolution mechanism for the Canadian extractive sector operating overseas. The purpose of such a process is to improve the CSR performance of Canadian mining, oil and gas companies and to deliver tangible results on the ground.

Why Consult?

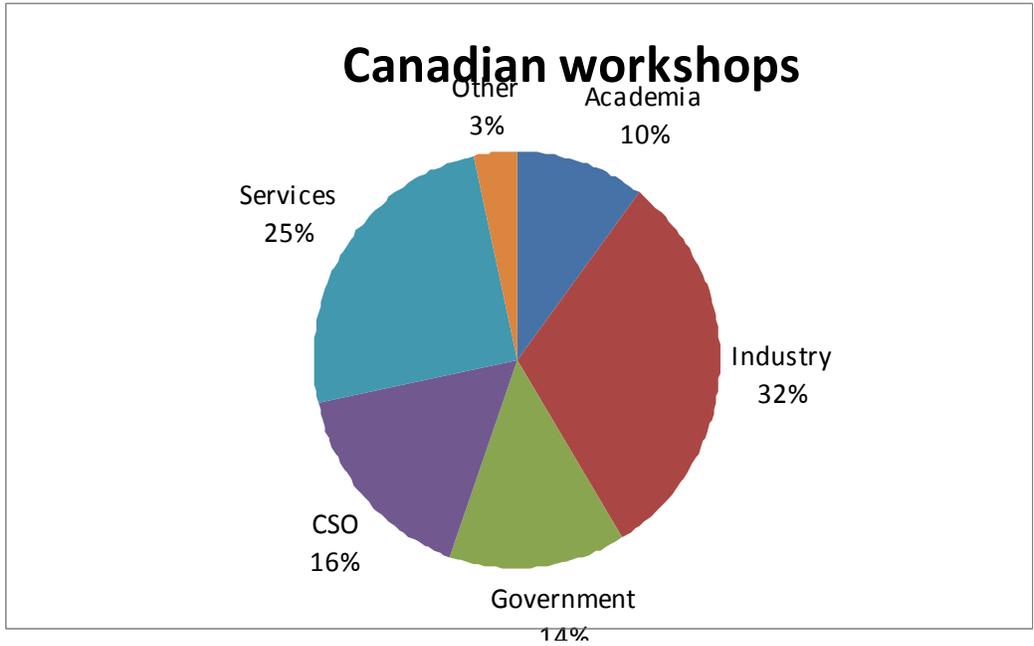
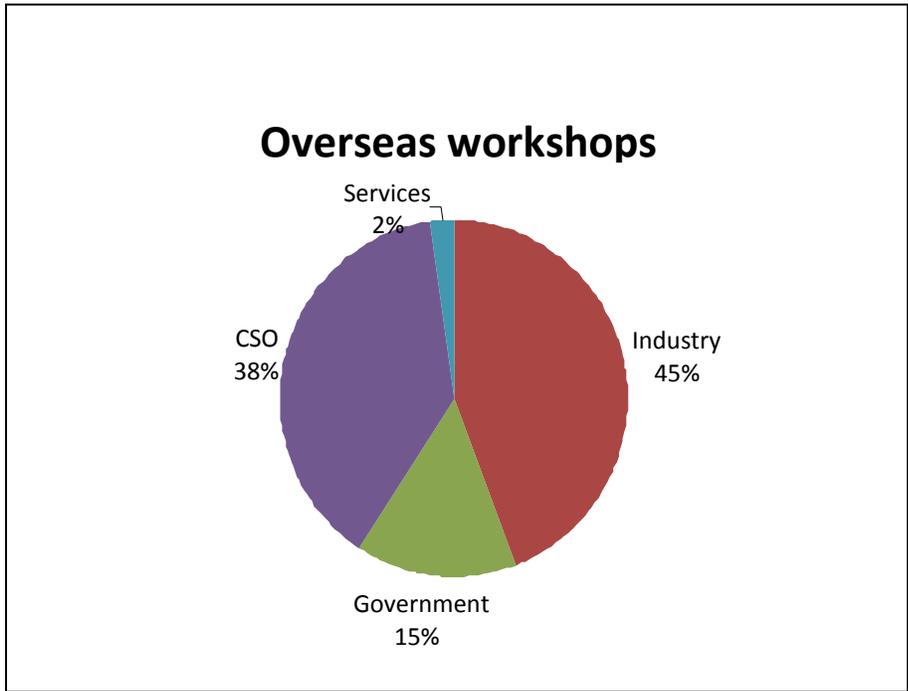
There are two main reasons these consultations were undertaken. First, this process will have potentially significant impacts on some core constituencies. As such, it is appropriate to listen and respond to the issues and concerns raised by those it is likely to affect. In the construction of such a novel mechanism, taking into account the views of key stakeholder groups – particularly the end users of this mechanism – was deemed to be of key importance. And, in designing a dispute resolution system that must be adaptable to diverse cultural, social, economic and political realities, the views from international stakeholders were considered particularly critical. More than one-third of the stakeholder input came from international participants. Second, input from such conversations yields a better result – our consultations generated numerous options and ideas, many of which are reflected both in this document and in the revised rules of procedure which have been recommended to the Minister of International Trade. Many other suggestions will be reflected in the forthcoming users' guide. We believe we have built a better, more useful and usable process as a result of these consultations, but this is just the beginning: the Office is committed to keeping the conversation going and to continuous engagement and learning.

It is important to note that not everyone agrees with the mandate of the Office. While some discussion did take place about the mandate itself, such conversations were not a focal point of our dialogue, simply because the Counsellor is implementing a mandate which has been set out in an Order in Council. Changes to this mandate are within the purview of the Government of Canada only.

What we did

Public consultations consisted of five separate but complementary activities: 1) a series of full day, professionally facilitated workshops in 5 cities across Canada; 2) a 90 minute interactive webinar; 3) formal and informal interviews and dialogue sessions with international stakeholders in Mexico, Mali and Senegal; 4) an invitation to provide written feedback on the draft rules of procedures and 5) three legal experts workshops. The international locations were selected using a combination of criteria: a significant and

growing presence of Canadian extractive sector companies, geographic diversity, a mission able to assist with outreach to multiple stakeholders and convene meetings and logistics, and coordination of schedules. In total, we conducted 15 formal sessions, plus a webinar, with over 300 people participating directly, representing a wide variety of organizations and interests. The Appendix provides further details. Since these participants are all self-selected, it is not possible to conclude that they represent any particular organizational views. Therefore comments were taken as points of reference from experts or potential users.



The main objectives of the public consultations were:

- 1) to raise awareness of the Office, its role and mandate;
- 2) to give a wide range of affected stakeholders a voice in the design and development of the review process and the rules of procedure;
- 3) to identify potential challenges and risks for the Office and areas where further guidelines, policies, and/or procedures may be required;
- 4) to identify the interests of different stakeholders of participating in a voluntary process;
- 5) to raise awareness of Canada's new CSR Strategy and of the endorsed CSR performance standards (the IFC Performance Standards, the Voluntary Principles on Security and Human Rights, the Global Reporting Initiative and the OECD Guidelines for Multinational Enterprises).

The total expenditures on the consultations process were approximately \$58,000 including all travel expenses to all workshops and meetings for the Counsellor, the Counsellor's advisor and the external facilitator, webinar, consultant fees, fees for professional facilitation, all hospitality and room rental charges, and drafting of twelve reports.

Four Key Themes Emerged from Consultations

1. Interest in the Office is high

Interest in the Office, both at home and abroad, is significant, in part due to its relative novelty. Many participants endorsed the broad objectives of the Canadian government's CSR strategy for the extractive sector. To our knowledge, such a strategy is breaking new ground, and others are watching to see how it unfolds.

We were especially encouraged by the significant and balanced turnout at workshops and meetings overseas, demonstrating the strong convening power of Canadian missions, their engagement on these issues and the very high level of overseas stakeholder awareness of CSR issues.

Stakeholders overwhelmingly expressed their interest in seeing the Office succeed in carrying out its mandate, but tempered their comments with the reality of the complexity of the mandate.

Civil society organizations in particular expressed a hope that the CSR Counsellor's Office would help to make some real progress on the ground in affected communities outside Canada. Industry expressed a desire for the Office to help resolve conflicts and create a neutral space for constructive engagement between interested parties.

2. The participatory approach of the Office resonates with key constituencies

During the public consultations, many appreciated the frank and open tenor of the discussions and expressed a desire to have that participatory approach continue. Stakeholders want a mechanism which is responsive, taking their concerns, ideas and suggestions on board. The Office must be seen as a willing listener, and one that takes a balanced approach to stakeholder needs and perspectives.

“The office should be as participatory as possible rather than taking a top-down approach – avoid being prescriptive.”

Many noted that they wanted to continue to be part of the creation of the Office and its processes as it goes forward. It was generally agreed that as we embark on this innovative undertaking, mutual learning opportunities exist. There was a clearly expressed demand for “lively discussion and interaction with stakeholders” on an on-going basis – both online and in-person. Regardless of the selected means, the message is clear - stakeholders want the Office to maintain contact with them. Therefore, the construction of the review process in a participatory and open fashion is just the beginning of a dialogue. The Office will look for opportunities to stay connected with stakeholders.

3. Strong focus on, and preference for, prevention of conflict

In the overseas consultations in particular, prevention of conflict was noted as the number one priority. Time and again we heard that many conflicts are the result of misunderstandings, miscommunications or lack of information. Communities, for example, may not fully understand the mine life cycle, or may overestimate the capacity of a company, particularly a junior company, to bring jobs and social programs. Companies, for their part, may not fully appreciate local contexts or operating environments, or, in focusing on securing a legal license to operate, may miss the very real benefits of community consultations even if not required by law.

Some three dozen civil society organizations (CSOs) participated in our overseas consultations, from a wide range of interest areas – human rights, development, the environment. Importantly, CSOs in developing countries see themselves as critical interlocutors for community voices, and expressed a desire to find a role within the Canadian CSR strategy. They offered to assist in connections with communities, to ensure that a higher degree of understanding and dialogue was fostered, all in an attempt to reduce disputes from the outset. This suggests significant opportunities for the Office to foster dialogue and interaction between the sectors.

4. Articulation of value proposition

The Office is one of numerous existing review and redress mechanisms – some judicial, some non-judicial. While the creation of such a Canadian-based process provides a new avenue for resolving disputes, it does not preclude any party from accessing legal recourse at any time.

As a result, we examined issues related to the relationship between this process and judicial processes both at home and abroad. Overseas conversations indicated most appetite for a Canadian process that did not supplant or undermine domestic legal or regulatory mechanisms but demonstrated a keen interest in constructive support and recommendations to buttress host country institutions. Legal experts (and others) suggested that if the Office was positioned as adjudicatory or investigative, resulting in rulings or judgments issued by the Counsellor, the parties would then demand very high levels of evidence and rigorous investigation procedures which would begin to mirror legal mechanisms. If such a role assumed quasi-judicial rules of evidence, it would likely not encourage people to participate. While validation of any particular situation may be necessary, there was significant caution against the Office getting into a position of deciding on 'the truth' in circumstances where multiple truths may exist. Different cultures bring different world views and empirical metrics. In some instances, it was pointed out to us, 'fact' and 'truth' matter less than belief.

In addition to the legal and regulatory statutes and mechanisms of host countries, many other non-judicial mechanisms of redress and review currently exist, all with slightly different remits and areas of work. For instance, borrowers of the IFC are subject to review under the mandate of the Compliance Advisor Ombudsman; borrowers of the InterAmerican Development Bank are subject to the Independent Consultation and Investigation Mechanism (ICIM) and so on. Our international consultations revealed a wealth of existing dispute resolution and redress mechanisms at the local or host country level, from the Special Committee to Monitor Mining Conflicts in Mexico, to the Mediator of the Republic of Mali. Baseswiki, a project of Harvard University's Kennedy School of Government, currently lists over 300 such mechanisms, at global, sectoral, national and local levels.

It is critical, then, that the Office of the Extractive Sector CSR Counsellor develops and articulates its unique value proposition. Where can we add the most value? Where can we make the most positive difference? Where is our best fit within the constellation of existing processes and mechanisms?

The answers to these questions became clearer as we moved through the workshops. A mandate grounded in soft law instruments, as this Office's mandate is, is best suited for fostering dialogue and generating options for constructive problem solving. In general, stakeholders felt that the Office could play an important role in providing a place for parties to engage with each other in order to depolarize disputes and to lay the groundwork to create win-win situations for both Canadian extractive sector companies and the affected communities in which they operate.

The Office would offer the potential to improve the practical situation on the ground in the near term. Nevertheless, we fully acknowledge that a review mechanism based on fostering dialogue and constructive problem solving cannot solve all difficulties all of the time. It is simply one avenue that might make a tangible difference, in a timely, cost-effective, balanced and de-politicized fashion.

The Office will strive to be *balanced, pragmatic, flexible and solutions-oriented*.

Seven Key Messages from Stakeholders

1. There is space for this Office

Notwithstanding the constellation of existing mechanisms, there is plenty of room for this Office to add value if it focuses on informal mediation, on engaging players in constructive dialogue and problem solving and on concrete improvement on the ground. Stakeholders flagged that mechanisms to foster dialogue are in more limited supply. The Office will also welcome joint requests for review – to assist parties who wish to resolve their disputes in a timely and constructive fashion, improve on-the-ground circumstances, and advance CSR performance and practice.

2. The mandate is acknowledged to be complex

Overseas stakeholders in particular noted what they see as significant complexities in operationalizing the mandate of this Office, given its Canadian roots but its external remit. Complexities highlighted ranged from the extent of host government involvement in projects to the realities of community accessibility. In West Africa, for instance, government is usually a direct shareholder in mining projects – receiving a “free carried interest” of some 10-15%. Further, many communities do not have internet access, some may be illiterate. The implications of such complexities, stakeholders told us, need to be explicitly recognized, better understood and mitigated to the greatest extent possible. Some of the pressing challenges are further explored in our summary reports from Mexico, Mali and Senegal.

The Office was advised to “walk a fine line” when operating outside Canada so that it can support local processes, regulations or grievance mechanisms to the greatest extent possible. The Office will want to ensure that it is not impinging on the authority of other bodies or agencies in the host country. To avoid this, stakeholders thought that the Office should keep the local government informed of any of its activities inside their jurisdiction and be sure to consider aspects of international comity so as not to act in a way that demeans the jurisdiction, laws or judicial decisions of a host country.

Some stakeholders also cautioned against getting involved in local politics – although this may be unavoidable depending on the nature of the request for review. Others suggested that no matter how the Office decided to engage, it should seek to develop local capacity and ownership of the dispute resolution process.

3. Explicitly recognize and work to address barriers to entry

The issue of resource constraints was brought forward as a concern of many NGOs and junior companies. In designing the dispute resolution mechanism, the Office was urged to be sensitive to the significant costs that such a process could entail. It must, at least initially, be low-cost, low barrier to entry, and designed to deliver real value in fairly short time horizons. Specifically this might mean:

- no exclusions for communities who do not cite specific standards
- a need to bring the Office closer to the ground, using country-based networks

- the fostering of an enhanced understanding of the various barriers to entry (linguistic, cultural, geographic etc.)

4. Concern about co-option

Despite the support for the Office's openness, there was unease expressed about the independence of the Office. In particular, some stakeholders were concerned that the Counsellor reports directly to Minister of International Trade instead of to Parliament as a whole. Again, since this is an issue related to the mandate, the concern was noted but not extensively discussed. The Counsellor will deliver an annual report to the Parliament of Canada.

"While the Office may strive to maintain a degree of independence on paper, it runs the risk of being beholden to its political masters in practice."

Interestingly, stakeholders also expressed concern that the Office might be co-opted or unduly influenced by others (not within their own stakeholder group). Civil society in Canada was concerned about Canadian government influence or of industry interests dominating; overseas, both industry and civil society noted potential host country interference. Canadian industry tended to comment more on the potential of the Office to be used as a headline grabber, or by organizations wishing to inflict reputational damage without any meaningful interest in a solution to the perceived problem.

The Office recognizes these concerns and will begin to address them in communications about user expectations and responsibilities.

5. Prioritization of Requests for Review

The mandate calls for screening of requests for review based on several criteria listed in the Order in Council which establishes the Counsellor's position. The clear message from the consultations was that the Office must ensure such criteria not be used as a way to keep people out of the process or as an excuse to get away from difficult issues.

Extensive discussion, both in Canada and overseas, centred on the related issues of screening and prioritization. Should this be a mechanism of "first resort" or "last resort"? The strong consensus on this point was to ensure it was positioned somewhere in between. Participants should be expected to have done something to address their concerns but need not have exhausted every other available avenue. Although Ottawa workshop participants were in favour of a 'first come first served' approach, all other workshops took a different view – that given resource constraints, the existence of other processes (some potentially better positioned to add value) and accountability to Canadian taxpayers, the Office would need to prioritize work, or risk creating a years-long waiting list. The general conclusion then, was that it would be good practice to prioritize and screen requests for review, **but** to ensure strong communications about the process and about any requests that were eventually deemed ineligible.

6. User guidance to explain parties' roles and responsibilities

As a direct result of our consultations, the Office has decided to produce a users' guide to accompany the rules of procedure. Such a guide will give parties a good sense of 'what to expect' from the process, both in terms of possible outcomes and timelines, and what sorts of responsibilities they take on when accessing this process. In listening to stakeholders' concerns about others potentially misusing the Office or not acting in good faith, a key conclusion from the workshops was to build intake thresholds for participants. These would not be hurdles to keep parties out, but rather reasonable measures to enhance the chances for a productive process. Guidance material will clearly spell out the objectives of the Office, of each stage in the process, and essential requirements to access it. Nothing is more frustrating for communities, we were told, than to expend valuable and scarce resources to access a process and then be advised vital information is missing from their submission or that their request is ineligible due to a technicality.

The Guide will be ready before the launch of the review process.

7. Remember that voluntary standards are not compliance tools

The standards selected by the government under the CSR Strategy generated significant discussion by stakeholders, who noted, for instance, that while the Government of Canada has endorsed these generally accepted international standards, other stakeholders may not have. Given that the standards 'belong' to other agencies and organizations, and go through occasional updates, the Office must clarify which versions will be used and *how they will be interpreted*. Voluntary standards, by their nature, are designed to be applied selectively and subjectively, not to apply to all projects in all circumstances. The International Finance Corporation, for instance, determines which of the IFC Performance Standards apply to any particular project. Since other recognized standards exist, the nature of integration with other generally accepted standards also arose.

We also heard issues related to the mandate, which we were not able to directly take on: for instance, that the omission of a human rights standard is a serious oversight and that, given GRI is a reporting standard, not a performance standard, the 'fit' is lacking.

Most participants, across all stakeholder groups, urged the Office to be flexible as these voluntary standards are not designed as compliance tools. As such, there was a preference to see them as 'guidance' reference tools. For instance, a community's inability to show a direct link between a request for review and a specific standard should not be used explicitly to prevent individuals or groups from accessing the Office.

The Office was urged to undertake work to understand the implications of the performance standards in practice, in the real world. The Office will look for ways to enhance understanding of these issues in coming months.

Three immediate outcomes of our consultations process:

Outcome #1: Guiding principles for Office established

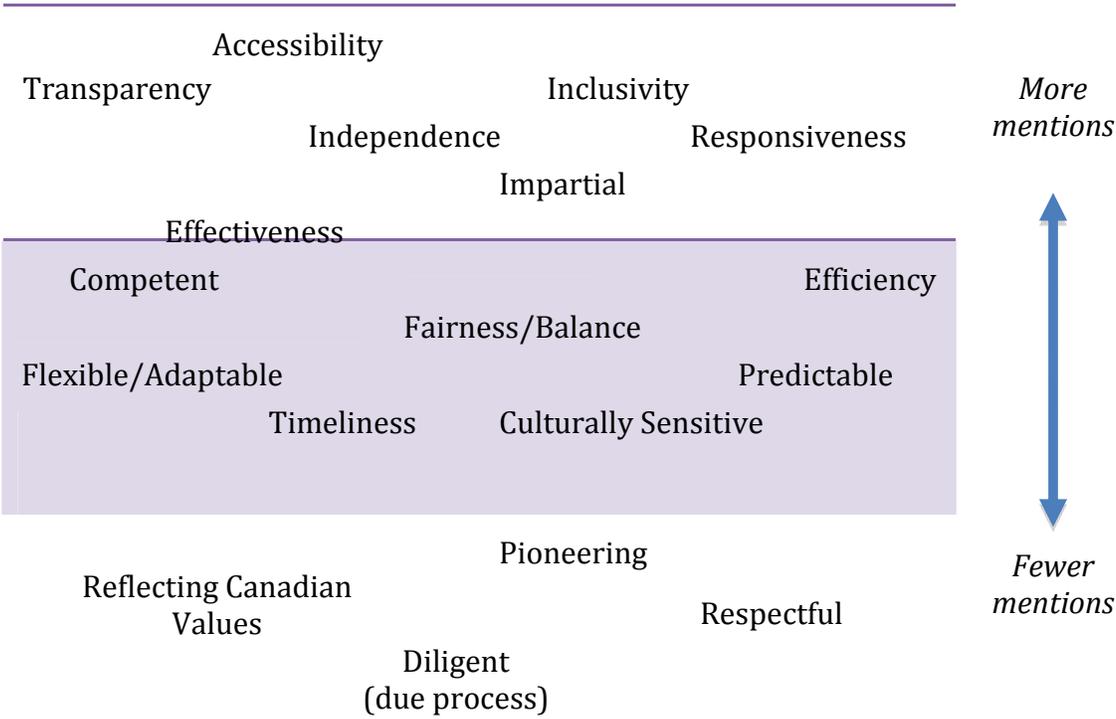
As a new undertaking, the Office will need to prove itself over the coming years as an honest broker and trusted convenor. In the absence of an established track record, its approach to the interpretation of the mandate, and to external stakeholders, will be signaled by its underlying principles.

As a result of what we heard during this consultation period, we have established key guiding principles for the Office. Importantly, and again as a result of the stakeholder input, we also explicitly recognize two important caveats to these principles. The first is that these principles are always in tension. Participants continually noted this tension, particularly during their case study work (cases are available as Appendix C). Enhancing transparency may, for instance, compromise effectiveness or accessibility. The second caveat is that these principles must not be static. The Office therefore commits to seeing its principles as a work in progress and will seek to improve their functionality over time.

Our consultations framework requested comment on a shortlist of proposed principles contained in our original issues paper *'Building a review mechanism for the Canadian international extractive sector.'* The shortlist of principles contained in that paper was the distillation of four principles now universally cited for non-judicial mechanisms: accessibility, transparency, independence and effectiveness. This emerging global consensus on guiding principles for review mechanisms we reasoned, could well inform our own review mechanism.¹

¹ More detail is contained in the issues paper "Building a review process for the Canadian international extractive sector" (June 2010) available at http://www.international.gc.ca/csr_counsellor-conseiller_rse/

What we heard about guiding principles



As a result of the public consultations, we have established the Key Guiding Principles for the Office, in alphabetical order:

Accessibility, Effectiveness, Independence, Predictability, Responsiveness, Transparency.

Below we elaborate a bit on each.

Accessibility

The process must keep “users” squarely in mind, and must aim to be as clear and straight forward as possible to allow accessibility for community members regardless of level of education, social standing, etc. Affected communities should not be expected to have familiarity with global standards, specific corporate policies and procedures, or equivalent technical knowhow.

While participants accepted that lawyers may consulted by parties engaging in the process, they generally felt that the emphasis of the Office’s activities should be on creating a process that does not require them. A constant need to “lawyer up” signals that this process has failed to meet its accessibility principle.

Accessibility also extends to recognizing and addressing power imbalances to the greatest extent possible, without compromising the Office’s impartiality.

Pro-active outreach is directly linked to accessibility – you can't use a process you don't know about. Stakeholders underlined the importance of continuing the Office's outreach activities to raise awareness of its existence especially to those outside of Canada.

"It is not enough for the Office to just wait for the phone to ring... it has to get out there and make the Office known and as accessible as possible to those in the communities."

Effectiveness

An effective mechanism fosters the conditions for solutions, builds trust between the users (company, local communities) and creates lasting, fair outcomes. It makes choices about resource allocations. It must also make explicit the distinction between effectiveness (the achievement of the desired outcome) and efficacy (the resources needed to get us to that outcome). Not in every case would the Office's involvement be an efficient use of its resources.

"One can kill a fly with a bomb or a fly swatter – both achieve the same result, only one is efficient."

Independence

The issues surrounding extractive industries are often controversial and deeply polarizing. Positions harden and become entrenched. In this environment, the Office must stake out a balanced approach, being open to different perspectives on the problem without taking sides or pushing particular agendas. The Office and its staff must not be perceived as favouring any interest over another, or be influenced by any key stakeholder groups. Its independence and impartiality will build its credibility and legitimacy. The Office staff must avoid relationships that may be or may be seen to be compromising the Office's ability to bring a balanced view to the situation.

Independence is also a matter of governance protocols, related to relationships between the Office, the Department of Foreign Affairs and International Trade, and the Minister of International Trade. An administrative arrangement will clarify some of these issues. Decision making authority, stakeholders told us, must clearly rest with the Counsellor.

Under the terms of her mandate, the Counsellor is a Designated Public Office Holder and is subject to the terms of the Canadian Government's *Conflict of Interest Act*. Proactive disclosure of all travel and hospitality expenses is posted each quarter on the Office's website.

Predictability

Participants urged the Office to develop a process with clear timelines, predictable stages and milestones, while accepting that it would face many different situations and circumstances and that flexibility would also be critical.

The process will be clearly articulated in the rules of procedure and in the accompanying user guide. A web registry will also be created to keep the public informed of new requests for review and progress on existing requests.

Responsiveness

Under the mandate governed by the Order in Council, the Counsellor is directly accountable to the Minister of International Trade. The Counsellor must however, be responsive to the many other stakeholders with an interest in these issues, and to changing needs, circumstances and the evolution of the external environment.

Participants offered a number of tangible suggestions on this principle: an annual stakeholder meeting, an advisory panel, proactive dialogue, workshops, and outreach activities. Significant discussions centred on the possible role for a volunteer advisory stakeholder panel made up of a cross section of key constituents. Such a panel would have no formal governance power, but would serve as a constructive way to keep the Office connected and responsive.

Transparency

Participants generally concurred with a distinction between transparency of process and outcomes, which is to be encouraged and is deemed critical for the Office, and transparency of information, some of which may well need to be kept confidential in order to have the work proceed in practical terms. Conversations between parties may suffer if they are fully transparent. Given that the Office is funded by Canadian taxpayers and is bound by the Government of Canada's Access to Information and Privacy legislation, the Office will elaborate on the implications of these legal requirements in the forthcoming user guide.

Outcome #2: A revised decision tree

As a result of stakeholder feedback, and discussions during the workshops, we have significantly revised our original decision tree. One noteworthy change is in the longer time frame allocated to informal dialogue at the front end of the process. We are recommending that the required formal request for written permission from parties be sought only after the trust building stage has been allowed to unfold. In helping to address power imbalances, the Office may need to devote some of its efforts to building capacity among parties to ensure that they are sufficiently prepared to engage with one another and enter into a fruitful dispute resolution process. Only publicly available information would be shared during these early stages of the process.

The express written consent of parties to participate in a more structured dialogue would only be sought if conditions indicated that there was a reasonable prospect of constructive problem solving and of the continued need and value added for the Office's involvement. Such written consent might define a way forward for the parties, for instance, on the parameters of information sharing beyond publicly available documents, timelines and milestones, possible cost sharing of technical reports, selection of formal mediators, public reporting, etc.

Outcome #3: Rules of procedure amended

As a direct result of the consultations, including the three workshops with a cross section of legal experts held in May, June and August, we have revised the draft rules of procedure document. We have further opted to flesh out the rules framework in a user guidance document to be finalized shortly. At the urging of many stakeholders, multi-perspective guidance on the user document will be sought.

The rules of procedure have been approved, subject to review after two years, coinciding with the end of the current Counsellor's appointment. At that time, it may also be appropriate to conduct an evaluation of the mechanism.

What Next?

Based on the input received during this period of public consultations, the Office revised and finalized its recommendations on the rules of procedure for the review mechanism, which have now been approved.

The review process will be officially launched on October 20, 2010.

The benchmarking exercise we conducted suggests that our delivery timelines compare favourably to the creation of other such review mechanisms; typically even revisions to existing rules of procedure take 14-18 months to complete.

Currently, our implementation plan calls for the development of a users' guide, and selected outreach activities, as well as creating opportunities to foster dialogue and knowledge sharing on the endorsed performance standards.

We thank all those who participated in our consultations, and we encourage you to visit our website at http://www.international.gc.ca/csr_counsellor-conseiller_rse/ for further information.

Appendices

Appendix A: List of public consultations dates

June 7	Calgary Workshop
June 17/18	consultations with stakeholders in Mexico
June 21	Ottawa Workshop
June 23	Legal experts workshop
July 6	90 minute webinar
July 8	Montreal Workshop
July 11-16	consultations with stakeholders in Mali and Senegal
July 20	Vancouver Workshop
August 5	Toronto Workshop
August 13	last date for written submissions

Appendix B: List of written submissions received

Written submissions received from

- Industries Chimiques du Sénégal (ICS)
- Former Minister of Mines of Mali
- Committee for Human Rights in Latin America (CDHAL)
- Proyesti de Derechos Económicos, Sociales y Culturales (PRODESC) Mexico
- Inmet Mining Corporation
- Joint industry submission signed by Barrick Gold Corporation, Kinross Gold Corporation, Inmet Mining Corporation, IAMGOLD Corporation, Mining Association of Canada, Prospectors and Developers Association of Canada, Goldcorp Inc., Centerra Gold Inc., Hudbay Minerals Inc., Teck Resources, Vale, Xstrata Nickel
- MiningWatch Canada
- Pacific Rim Mining Corporation
- Canadian Network for Corporate Accountability *On behalf of:* Amnesty International Canada, Friends of the Earth Canada, Halifax Initiative Coalition, KAIROS: Canadian Ecumenical Justice Initiatives, Mennonite Central Committee Canada, MiningWatch Canada, Publish What You Pay – Canada, Steelworkers Humanity Fund, United Church of Canada

Appendix C: Case Studies used during Canadian workshops

During the Canadian workshops, we used structured case studies to engage participants in a discussion of the challenges the Office might face and how they might respond or advise the Office to respond. The case studies were developed based on a composite of several real world examples.

Case Study #1

In November 2009, a Canadian multinational mining company (Minexo) bought controlling interest in SUMANGA Inc. (a company previously owned and operated by the Australian mining company ABC Resources Inc.) SUMANGA was granted a licence by the Government of Bowatsu to prospect for minerals over a wide area of land which includes some sensitive environmental habitat and the ancestral home of the Sumanagara people. In early 2008, the company developed a mine in Sulaka.

Last week the CSR Counsellor's Office received a request to review the corporate actions of the Minexo company in Bowatsu from an organization called the "Sumanagara People's Front (SPF). The SPF outlines 3 major issues in their request for a review:

- 1) During the implementation and development phases of the mining project, consideration was not given to the ecological value and the sensitive nature of the ecosystem.
- 2) Following a decision to expand the mine in January of this year, the mine has engaged in a relocation and resettlement plan. However indigenous organizations and populations living in the area affected have not been properly consulted nor provided with information in a timely and adequate manner. There have been no Indigenous People's Development Plans (IPDPs), and compensation measures for the social and environmental impact of the project have only been made to a selected few in the affected area.
- 3) Some of the members of the community have reported escalating confrontations with the security forces engaged by SUMANGA including at least two cases of alleged sexual assault and rape in the surrounding community.

Case Study #2

The CSR Counsellor's Office has just received a request from the Canadian Mining Company Inc. (CMC) for the Office to carry out a review against a Canadian-based NGO - "The Voice of the Voiceless" - (VOTV) who has continued to post 'unfounded' allegations on its website (and in other media) about CMC's corporate conduct in South-east Asian island state of Dilangua.

VOTV has accused CMC of being complicit in human rights abuses at the Dilo-Dilo mine site. The Dilo-Dilo mine is a 50/50 joint venture between CMC and the Government of Dilangua. The VOTV allegations stem from an incident going back to the late 1990's when according

to them government paramilitary members forcibly removed local villagers from the area and burnt their houses to the ground. While no documented evidence has been provided, VOTV insist that they have collected numerous anonymous accounts from villagers, although no one from the village has stepped forward to lodge an official complaint because they are reportedly afraid of retribution from government officials. This frustrates the company officials because these charges stem from 'phantom sources' and cannot be substantiated.

VOTV continues to allege human rights abuses committed by the paramilitary forces who they allege are supported by the mining company. The company refutes VOTV's allegations, and denies that they have any relationship with the government's paramilitary forces (contractual and otherwise). They are also frustrated by these repeated claims because the charges stem from 'phantom sources' and cannot be substantiated. At the same time the allegations are starting to gain traction because they have been repeated so often and company officials are starting to worry that some institutional investors may be 'spooked' by these charges.

The company's lawyers are chomping at the bit to send a "cease and desist" letter to VOTV and to seek redress through the courts, however the company's CEO worries about the optics of a large mining company taking on a small mission-based non-profit. At the same time she has a duty to protect the interests of her company, her employees and those of her board and other shareholders.
