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MiningWatch Canada

"Canada is back."

BUT STILL FAR BEHIND

An Assessment of Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises

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ABOVE GROUND **aboveground.ngo**

Above Ground promotes respect for human rights. We encourage the Canadian government to fulfill its legal duty to protect against human rights abuse by the private sector and to provide access to justice for those who are harmed by Canadian companies overseas. Through research, analysis, collaboration and outreach, we're making the links between transnational business and human rights abuse, and are advancing solutions for corporate accountability in Canada. Above Ground is a project on Tides Canada's shared platform, which supports on-the-ground efforts to create uncommon solutions for the common good. Tides Canada is a national Canadian charity dedicated to a healthy environment, social equity, and economic prosperity.

MININGWATCH CANADA **miningwatch.ca**

MiningWatch Canada is a pan-Canadian initiative supported by environmental, social justice, Aboriginal and labour organisations from across the country. It addresses the urgent need for a co-ordinated public interest response to the threats to public health, water and air quality, fish and wildlife habitat and community interests posed by irresponsible mineral policies and practices in Canada and around the world.

OECD WATCH **oecdwatch.org**

OECD Watch is a global network with more than 100 members in 50 countries. Membership consists of a diverse range of civil society organisations bound together by their commitment to ensuring that victims of corporate misconduct have access to remedy, that business activity contributes to sustainable development and poverty eradication, and that corporations are held accountable for their actions around the globe.

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SUMMARY

Since 2000, Canada has maintained a National Contact Point (NCP) responsible for promoting multinational companies' adherence to guidelines for responsible business conduct developed by the Organisation for Economic Co-operation and Development (OECD). This document assesses the NCP's performance to date, particularly with regard to harm prevention and access to remedy. It examines the NCP's handling of five complaints concerning Canadian corporate misconduct abroad, all of which involved allegations of human rights violations and/or environmental harm associated with the extractive sector. While this report examines five cases, they are illustrative of the NCP's approach.

These case studies illustrate the ineffectiveness of the NCP grievance process. The analysis shows that:

- The NCP lacks independence.
- The NCP is opaque.
- The process involves unjustified delays.
- The NCP applies a high threshold for accepting complaints.
- The NCP does not make findings on whether companies have breached the Guidelines.
- The government penalty for companies that don't participate has proven to be ineffective in promoting compliance with the OECD Guidelines for Multinational Enterprises.
- The process rarely concludes with an agreement or recommendations and there are no effective follow-up procedures in place.
- In over fifteen years of existence, the NCP has consistently failed to provide complainants with effective remedy.

Canada's NCP is a central component of the Canadian government's Corporate Social Responsibility (CSR) Strategy for the extractive sector. While the strategy includes a second dispute resolution mechanism, the NCP is intended to address the most serious and protracted conflicts involving the oil, gas and mining sectors: "[f]or more complex or longstanding disputes, the Strategy recommends the use of the NCP's review process."[1]

However, the NCP is ill equipped to address such disputes, as it has acknowledged:"[i[t is not practical or realistic to expect these extensive and complex matters that involve many parties and entities to be adequately addressed or resolved by dialogue between NGOs and companies on a case-by-case basis."[2]

The NCP's failings, as documented here, underscore the need for Canada to move beyond voluntary grievance mechanisms and to create an independent, transparent office empowered to conduct investigations and order effective sanctions in cases of non-compliance with human rights and environmental standards.

With such a binding mechanism in place, a reformed NCP may prove to be effective in facilitating conflict resolution in cases involving less complex commercial sectors and scenarios, and grievances of a less urgent or serious nature.

1 Global Affairs Canada, "Minister's Response to Petition 377: Interpretation and Application of Canada's Corporate Social Responsibility Strategy" (2015), online: Office of the Auditor General of Canada <http://www.oag-bvg.gc.ca>

2 See Case IV. Global Affairs Canada, "National Contact Point for the OECD Guidelines for Multinational Enterprises Summary of Initial Assessment of Request for Review Oyu Tolgoi Mining Project" (3 May 2011), online: Global Affairs Canada: <http://www.international.gc.ca>

BACKGROUND

National Contact Points (NCPs) are government bodies that OECD countries are required to set up to oversee implementation of the OECD Guidelines for Multinational Enterprises. The Guidelines consist of non-binding standards for responsible business conduct. The core function of each NCP is to promote adherence to the Guidelines, both by disseminating information about the standards and by handling "specific instances" (hereinafter referred to as complaints) of alleged breaches, for the purpose of resolving disputes. NCPs are expected to operate in accordance with "core criteria of visibility, accessibility, transparency and accountability."[3]

According to OECD procedural guidance, any "interested party" can file a complaint against a company for alleged breaches of the Guidelines. These interested parties (hereinafter referred to as complainants) may be individuals such as members of a local community or a group of workers impacted by the enterprise's activities, a trade union or an NGO.[4] When a complaint is submitted to an NCP, the NCP must conduct an "initial assessment" to determine if the case merits further examination.[5] Once a case passes this threshold, NCPs are expected to offer "good offices to help the parties involved to resolve the issues."[6]

The Canadian NCP, which was created in 2000, is an interdepartmental committee chaired by Global Affairs Canada, a government department. The government describes the NCP as a "robust and proven dispute resolution mechanism."[7] It's a key element of the Government of Canada's Corporate Social Responsibility (CSR) Strategy for the extractive sector. In 2014 the government reviewed this strategy and made a much-touted improvement. It announced that companies that refuse to participate in an NCP mediation process would face the withdrawal of government trade advocacy support.[8]

Little information is made publicly available about the NCP's operations—including the number of complaints it receives. Estimates put the total at twenty-nine for the period between 2000 and 2016. The Canadian NCP took the lead in handling nineteen of these complaints and provided support to other NCPs in the remaining cases. Twenty-two of these complaints were related to extractive projects.[9]

3 OECD, "OECD Guidelines for Multinational Enterprises Procedural Guidance," (2011), online: OECD, <http://www.oecd.org> [OECD Guidelines]

4 The Canadian NCP is the only NCP that refers to the "interested party" as the "notifier." In this document, the term "complainant" is used to refer to both.

5 OECD Watch, "Eligibility of a complaint," online: OECD Watch <http://www.oecdwatch.org>

6 OECD Guidelines, *supra* note 3.

7 Global Affairs Canada "Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad" (14 November 2014), online: Global Affairs Canada, <http://www.international.gc.ca> [CSR Strategy]

8 *Ibid*. It should be noted that very few complaints have been filed since 2013. NGOs and unions working with communities affected by the activities of Canadian mining operation abroad have expressed a lack of trust in the mechanism resulting from the NCP's poor performance, limited mandate and constrained power.

9 There is no public registry of complaints on the NCP website. The 29 complaints mentioned here were found in databases maintained by OECD Watch and the Trade Union Advisory Committee to the OECD. OECD Watch, Case database, online: OECD Watch <www.oecdwatch.org>; TUAC, "Trade Union Cases," online: TUAC <www.tuacoecdmneguidelines.org>

METHODOLOGY

While this report examines five cases, they are illustrative of the NCP's approach. The cases examined in this document meet one or more of the following criteria:

- The complaint included allegations of irreparable environmental harm or human rights violations.
- The Canadian NCP took the lead on the case and reports that agreement was reached between the parties.
- The complaint is relatively recent and follows the adoption of the government's revised CSR strategy.

Above Ground and MiningWatch Canada provided the Canadian NCP with an opportunity to provide input for this paper through a set of written questions about the NCP's procedures and its handling of the cases examined. The Canadian NCP did not respond to these questions, instead referring the organizations to the websites and case database of OECD Watch and the OECD.[10]

10 Email exchange between Above Ground, MiningWatch Canada and Ms. Francine Noftle, Director, Canadian National Contact Point, 13 July 2016.

THE CASES

I. CHINA GOLD'S GYAMA COPPER POLYMETALLIC MINE, *TIBET AUTONOMOUS REGION*[11]

This case concerns the operations of China Gold International Resources Corp. Ltd. (China Gold), a Canadian-based gold and copper producer. Chinese state-owned company China National Gold, the largest gold producer in China, owns a controlling interest in China Gold.[12] China Gold owns and operates the Gyama copper polymetallic mine in the Tibet Autonomous Region.

In March 2013, Chinese state media reported that a major landslide at the Gyama mine killed 83 miners. The workers were reportedly asleep in their tents when they were buried by a mass of mud, rock and debris. The camp where the workers were buried belongs to a wholly owned subsidiary of China Gold. Although both the Chinese government and the company assert that the landslide was a natural disaster, the NGO Canada Tibet Committee (CTC) points to documented evidence that it was caused by

Environment & Development Desk, Tibet Policy Institute

11 This case study draws on information provided by the Canada Tibet Committee ("Government of Canada NCP releases final statement on China Gold International Resources in Tibet's Gyama Valley" (9 April 2015), online: Canada Tibet Committee <http://tibet.ca>) and OECD Watch (Canada Tibet Committee vs. China Gold Int. Resources, online: OECD Watch <http://www.oecdwatch.org>)

12 China Gold International Resources Corp., "Company overview," online: China Gold International Resources Corp. <www.chinagoldintl.com>

irresponsible mining practices. At the time of the disaster, the mine had been the subject of numerous unresolved disputes with local communities related to labour rights, forced evictions and environmental damage, among other issues.

The CTC filed a complaint with the NCP in January 2014 on behalf of affected communities. Fifteen months later, the NCP released a final statement. It informed the CTC that despite multiple requests on the part of the NCP, China Gold was unwilling to engage in facilitated dialogue. The NCP statement concluded that China Gold had not demonstrated that "it was operating in a manner that can be considered to be consistent" with the OECD Guidelines, but failed to specify which provisions the company had breached. The NCP recommended that China Gold address the environmental, human rights, labour, and health and safety issues raised by the complainants, and that the company " align its operations with local and international CSR standards."[13] The NCP further recommended that the company undertake and disclose human rights impact assessments for any planned activities.

Finally, in alignment with the government's revised CSR Strategy, the NCP recommended that Canada's Trade Commissioner Service[14] and its export credit agency, Export Development Canada (EDC), take into consideration the company's refusal to participate in dialogue when evaluating future support. It stated that should the company wish to access future support of this type, it would need to submit a Request for Review to the NCP, or show the Government of Canada it had engaged in good-faith dialogue with the complainant.[15]

Ironically, the day the NCP released its statement on China Gold, the company participated in a trade mission to Indonesia and China organized by the provincial government of British Columbia.[16]

According to the CTC, China Gold has failed to act on any of the NCP's recommendations.[17] Moreover, there is no indication that the NCP is monitoring the company to assess implementation. Local communities, fearing further environmental damage and human rights abuse, continue to protest against the mine.[18] The company is now expanding the project, aiming to increase capacity from 6,000 tons of ore per day to 50,000 in 2016.[19]

Although the CTC reports that the NCP office was responsive and helpful throughout the complaint process, this case illustrates the significant limitations of voluntary grievance mechanisms. The NCP was unable to persuade China Gold to take even modest steps to address community grievances or prevent future harm. The prospect of being cut off from federal government support did not compel the company to engage in dialogue. The process resulted in no demonstrable benefit for communities affected by the disaster or those still at risk in Tibet's Gyama Valley.

13 Global Affairs Canada, "Final Statement on the Request for Review regarding the Operations of China Gold International Resources Corp. Ltd., at the Copper Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region" (8 April 2015), online: Global Affairs Canada <http://www.international.gc.ca> [NCP Final Statement China Gold case]

14 The Trade Commissioner Service (TCS) supports extractive companies through trade missions and company-specific engagement with governments and key business leaders in foreign markets. This includes assistance with qualified contacts, market potential assessment, preparation for international markets and problem solving. Source: Email and phone exchanges between the Canadian Labour Congress and Alain Gendron, Director, Systems and Analysis Division, Trade Commissioner Service – Operations, May 2016.

15 NCP Final Statement China Gold case, *supra* note 13.

16 Government of British Columbia, "Spring trade missions showcase B.C.'s diverse export market in Asia" (19 March 2015), online: BC Gov News, <https://news.gov.bc.ca>

17 As of September 2016.

18 Thubten Sangye, "Tibetans Fear New Mine is Planned for Polluted Gyama Valley" (5 August 2015), *Radio Free Asia*, online: Radio Free Asia <www.rfa.org>

19 China Gold International Resources Corp, "Jiama Copper Gold Polymetallic Mine," online: China Gold International Resources Corp. <www.chinagoldintl.com>

II. CORRIENTE-CRCC'S MIRADOR COPPER MINING PROJECT, *ECUADOR*

On July 25, 2013, FIDH (International Federation for Human Rights), CEDHU (Comisión Ecuménica de Derechos Humanos) and MiningWatch Canada filed a complaint[20] with the Canadian NCP denouncing the actual and potential human rights violations and environmental harm associated with the Mirador copper project, the first large-scale open-pit mining project in the Ecuadorian Amazon. The project is owned by Chinese companies but is operated by the subsidiary of a company registered in Canada.[21]

INREDH

20 Mining Watch Canada, "Canadian Complaints Office Should Investigate Destructive Large-Scale Mining Project in the Ecuadorian Amazon" (25 July 2013), online: MiningWatch Canada <http://miningwatch.ca>

21 Two massive Chinese companies, China Railway Construction Corporation and Tongling Nonferrous Metals Group Co. Ltd (CRCC-Tongguan) own the project. Ecuadorian company EcuaCorriente S.A. (ECSA) operates the project. CRCC-Tongguan acquired ECSA and all other holdings belonging to British Columbia-registered Corriente Resources in 2010. CRCC-Tongguan continues to have two subsidiaries in Canada: Corriente Resources and CRCC-Tongguan Investment (Canada) Co. These connections to Canada justified the presentation of the complaint in Ottawa. The complaint was brought against both of CRCC-Tongguan's Canadian subsidiaries, referred to together as Corriente-CRCC.

The complainants allege that the Mirador project led to the forced displacement of a dozen families from their homes and land, including through violent eviction. They argue that the project violated local people's property rights and the right to freedom of movement. The complaint further argues that legal provisions governing prior consultation in Ecuador were breached, as was the right of indigenous peoples to free, prior and informed consent regarding the use of their lands and territories.[22]

The complaint warns that the project will likely generate significant environmental impacts in the ecologically sensitive area. It highlights the company's failure to undertake human rights due diligence or implement remedial measures. It concludes that the mine poses a serious threat to local communities' access to water, land, livelihoods and way of life. The complainants further emphasize that the company fostered social divisions within local communities, selectively entering into agreements with indigenous groups and participating in state repression of those defending their lands and territories from large-scale mining.[23]

In the absence of a response from the NCP, the complainants pressured the office to issue an initial assessment.[24] The NCP did so after thirteen months, a delay that far exceeded the three-month period that is recommended by the OECD and which the Canadian NCP has incorporated in its stated procedures. The NCP justified the delay by referring to the "time needed to obtain translations, to conduct legal research on the status of the Company, undertake appropriate outreach, and allow for fulsome responses and engagement by all Parties."[25]

In a draft initial statement that it sent to the complainants, the NCP recognized that their allegations were partially substantiated and merited further investigation. However, the NCP subsequently changed its analysis, asserting in its final statement that "the issues raised in the Request for Review covered a range of topics that the NCP did not find merited and substantiated," without specifying which topics lacked substance.[26] The NCP did not request additional material from the complainants following the release of its draft nor did it provide a rationale for the abrupt change.

Moreover, this case reveals a unique shortcoming with the Canadian NCP. As with other NCPs, the guidelines for the Canadian NCP call for the office to review the documentation and supporting material it receives and to make an initial assessment on whether the issues raised merit further examination. If the NCP determines that the issues raised do not merit further consideration, the NCP is instructed to issue a public statement and to close the case. If the issues raised do merit further examination, the NCP will offer its good offices to help the parties involved to resolve the issues. The idea is that the NCP first makes a determination about the case and only then does it offer to facilitate dialogue.

22 FIDH, "Request for review to Canada's National Contact Point under the OECD Guidelines for Multinational Enterprises: Regarding mining activities by Corriente Resources Inc. and CRCC-Tongguan Investment (Canada) Co. Ltd. (Corriente-CRCC) in the province of Zamora Chinchipe, Ecuador" (Paris: FIDH, 25 July 2013), online: FIDH <https://www.fidh.org>

23 Allegations were based on an in-depth community-based human rights impact assessment, carried out by FIDH and CEHDU in collaboration with Rights & Democracy. See FIDH and CEDHU, *Large-scale Mining in Ecuador and Human Rights Abuses: The Case of Corriente Resources Inc.* (Paris, Quito: FIDH, CEDHU, 12 January 2011), online: FIDH <https://www.fidh.org>

24 MiningWatch Canada, FIDH and CEDHU, "Human Rights Organizations Urge Canada to Take Action Against Corporate Abuses in Ecuador" (27 June 2014), online: MiningWatch Canada <http://miningwatch.ca>

25 Global Affairs Canada, "Initial Assessment of the Specific Instance under the OECD Guidelines for Multinational Enterprises relating to Corriente Resources' Mirador Mine in Ecuador" (July 2014), online: Global Affairs Canada <http://www.international.gc.ca> [NCP Initial Assessment Mirador case]

26 *Ibid.*

In a departure from standard NCP practice, the Canadian NCP applies two criteria not found in the OECD's list when making an initial assessment about case eligibility. One of these novel criteria is: "what the notifier(s) have indicated about their willingness or unwillingness to participate in a facilitated dialogue with a view to resolving the matter." This criterion undermines the order of operations described above, foreclosing the possibility that a company reconsider the possibility of mediation following the release of an initial assessment.

In the Mirador case, the NCP approached the company to assess its interest in dialogue before issuing an initial assessment regarding the merit of the issues raised. The NCP asserts that the company's refusal to participate in dialogue did not affect its assessment that the case lacked merit. However, the NCP's engagement with the company prior to issuing an initial assessment, in combination with the significant and unjustified alteration it made to its draft assessment, cast doubt on that assertion.

The situation on the ground has since deteriorated. A total of 30 families have been forcibly evicted from their homes and land to make way for the Mirador project.[27] In December 2014, the body of José Tendetza, an indigenous leader who opposed the project, was found tied up in a river. He was the third vocal critic of the Mirador mine to be killed,[28] and one of the many activists opposing extractive projects to be criminalized, attacked or killed in Ecuador in recent years.[29] Two former employees of the company that operates the Mirador project have been charged with Tendetza's killing.[30]

In April 2016, workers at the mine site organized a protest and halted operations, denouncing late payments and precarious working conditions. Approximately twenty workers who took part in the protest were subsequently dismissed.[31]

27 See FIDH, "Ecuador: desalojos ilegales y derrocamientos de viviendas en Tundayme son un atropello a los derechos humanos" (5 December 2015), <www.fidh.org>. For a chronology of events related to the evictions, see INREDH, "Desalojados de sus territorios, Cronología del proyecto minero Mirador en la Cordillera del Cóndor," online: INREDH <http://www.inredh.org>

28 OECD Watch, *Remedy Remains Rare* (Amsterdam: OECD Watch, June 2015), at p. 9, online: OECD Watch <http://www.oecdwatch.org> [Remedy Remains Rare]

29 FIDH, "Ecuador: Increase of the criminalisation of social protest in the context of extraction plans" (10 December 2015), online: FIDH <www.fidh.org>

30 The case is before Ecuador's highest court. Phone interview and written exchanges with INREDEH staff, September 2016.

31 INREDH, "Trabajadores de ECSA denuncian despedidos de transportistas en Tundayme" (8 April 2016), online: INREDEH <www.inredh.org>

III. BARRICK GOLD CORPORATION'S PORGERA JOINT VENTURE MINE, *PAPUA NEW GUINEA*

On March 1, 2011, two indigenous Ipili organizations from Porgera, Papua New Guinea, the Akali Tange Association and the Porgera Landowners Association, joined MiningWatch Canada in filing a complaint[32] with the Canadian NCP regarding Barrick Gold Corporation's Porgera Joint Venture (PJV) gold mine.[33] The complaint was supported by U.K.-based Rights and Accountability in Development (RAID) and U.S.-based EarthRights International (ERI).

The issues raised in the complaint include:

- wide-ranging, harmful impacts associated with the uncontained riverine dumping of the mine's tailings and waste rock;[34]
- forced evictions, house burnings and associated human rights abuses carried out by mobile police forces with logistical support from the company in villages near the mine and inside the mine's lease area;[35]
- excessive use of force—including rapes, gang rapes, assaults and killings—by security personnel and police guarding the mine under an agreement between the company and the state;[36] and
- a long-standing request by villagers inside the mine's lease area to be relocated away from the mine's operations and waste flows.[37]

The complaint included recommendations for remedy in regard to each issue.

On August 19, 2011, the NCP indicated that the "issues raised merit further examination" while emphasizing that this initial assessment "should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines and should not be equated with a determination on the merits of the issues raised in the submission."[38] A mediator was finally chosen on July 5, 2012.

32 MiningWatch Canada, "Request for Review Submitted to the Canadian National Contact Point Pursuant to the OECD Guidelines for Multinational Enterprises, Specific Instance Regarding: The Operations of Barrick Gold Corp. at the Porgera Joint Venture Mine on the Land of the Indigenous Ipili of Porgera, Enga Province, Papua New Guinea" (1 March 2011), online: MiningWatch Canada <http://miningwatch.ca> [Request for Review Porgera Joint Venture Mine]

33 In 2006, Barrick assumed 95% ownership and management control of the Porgera mine with its acquisition of another Canadian gold mining company, Placer Dome. Barrick's stake in the mine was held through its wholly-owned subsidiary Barrick Niugini Ltd. The remaining 5% is held by Mineral Resources Enga, of which 2.5% is owned by the Enga provincial government and 2.5% by Porgera landowners. In 2015, Barrick sold 50% of its share in Barrick Niugini Ltd. to Chinese-owned Zijin Mining Group.

34 This practice caused the Norwegian Government Pension Fund to sell roughly $230 million worth of shares in the company in 2008. Request for Review Porgera Joint Venture Mine, *supra* note 32, at p.26.

35 Amnesty International, *Papua New Guinea: Undermining Rights: Forced Evictions And Police Brutality Around The Porgera Gold Mine, Papua New Guinea*, (London: Amnesty International, 2010), at p.14.

36 Akali Tange Association, *The Shooting Fields of Porgera Joint Venture: Now a Case to Compensate and Justice to Prevail*, (Akali Tanga: April 2005), online: MiningWatch <http://miningwatch.ca>; International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law, "Legal Brief", at p.2, online: Business and Human Rights Resource Centre <https://business-humanrights.org>

37 In a 2007 study, consulting firm URS found that "SML communities are currently living in over-crowded, unsanitary and potentially dangerous conditions, and have limited available land for family subsistence." Request for Review Porgera Joint Venture Mine, *supra* note 32, at p.5-6.

38 Global Affairs Canada, "Final Statement of the Canadian National Contact Point on the Notification dated March 1, 2011, concerning the Porgera Joint Venture Mine in Papua New Guinea, pursuant to the OECD Guidelines for Multinational Enterprises" (Ottawa, Global Affairs Canada: March 2011), online: Global Affairs Canada <http://www.international.gc.ca> [NCP Final Statement Porgera Joint Venture Mine]

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The NCP offered to pay for the mediator, but said that it could not cover the expenses associated with bringing the parties together. Ultimately, the complainants could only afford two meetings with the mediator and Barrick. These meetings took place in Sydney, Australia in November 2012 and April 2013.

During the same period that the NCP was engaging the complainants and Barrick regarding mediation (2011-2012), Barrick undertook consultations to create its own non-judicial project-level grievance mechanism to handle claims from women who had been raped by PJV security guards.[39] Barrick did not consult the complainants on the development of this "Porgera Joint Venture Remedy Framework," despite the fact that it sought to address issues raised in their complaint. By the time the first NCP mediation meeting took place, Barrick's grievance remedy framework for rape victims was already in place and starting to process claims. Just prior to the NCP mediation, the complainants obtained a copy of Barrick's remedy framework and were deeply concerned that aspects of the framework would impose further harm on rape victims.

39 OECD Watch, Case database, "MiningWatch Canada et al vs. Barrick Gold Corporation," online: OECD Watch <http://www.oecdwatch.org>

The complainants felt compelled to publicly share their concerns regarding the remedy program and its implications for victims' right to a remedy. According to academics, the negative impacts they anticipated would later be confirmed.[40] Although their public statements did not violate any confidentiality clauses and were issued after consultation with the NCP mediator, removal of related documents from MiningWatch's website became a condition that Barrick placed on the continued participation of MiningWatch, RAID and ERI in the mediation process.

The NCP process resumed without these organizations. In the final meeting, a confidential list of action items was agreed to by the parties. The list did not cover all issues raised in the complaint.[41] The company took action on two items related to remedy (albeit through its flawed remedy program). No progress has been made on the remaining eight items.[42] There is no public information available on the NCP website regarding the implementation of agreed action items by the parties.

40 See for example Knuckey, S. and E. Jenkin, "Company-created remedy mechanisms for serious human rights abuses: a promising new frontier for the right to remedy?" *The International Journal of Human Rights*, Volume 19, no. 6 (20 August 2015), at p.801-827; Columbia Law School Human Rights Clinic & Harvard Law School International Human Rights Clinic, "Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons Learned" (2015), online: IHRC <http://hrp.law.harvard.edu>

41 For a summary of this list see NCP final statement Porgera Joint Venture Mine, *supra* note 38.

42 Personal communication between MiningWatch and complainants in Porgera (5 September 2016).

IV. IVANHOE MINES' AND RIO TINTO'S OYU TOLGOI COPPER-GOLD-SILVER MINE, *MONGOLIA*[43]

On April 1, 2010, the Mongolia-based organization Oyu Tolgoi Watch (OT Watch)[44] filed a complaint with the Canadian and British NCPs[45] regarding Canadian company Ivanhoe Mines, UK-based Rio Tinto International Holdings Limited and the planned Oyu Tolgoi open-pit, copper-gold-silver mine in the South Gobi Desert of Mongolia. The project is a joint venture between Ivanhoe (now Turquoise Hill Resources Ltd.) and the Mongolian government. Rio Tinto holds a majority interest in Turquoise Hill and manages the project.[46] MiningWatch Canada and UK-based Rights and Accountability in Development (RAID) supported the complaint.[47] On April 15, 2010 the Canadian NCP took the lead on the complaint with the agreement of OT Watch.[48]

OT Watch [Animals going into OT mine license territory. OT sits on Khanbogd herding community's summer pasture, the key water source – Bor-Ovoo spring.]

43 OECD Watch, Case database, "OT Watch vs. Ivanhoe Mines Ltd." (1 April 2010), online: OECD Watch <http://www.oecdwatch.org>

44 OT Watch is the lead Mongolian complainant acting on behalf of the Centre for Citizens' Alliance, the Centre for Human Rights and Development, Steppes without Borders, Drastic Change Movement and National Soyombo Movement. See MiningWatch Canada, "OECD complaint filed against Rio Tinto and Ivanhoe Mines in Mongolia" (18 July 2010), online: MiningWatch Canada <http://miningwatch.ca>

45 An additional complaint was submitted to the US NCP because Ivanhoe Mines is listed on the New York and NASDAQ stock exchanges. See OECD Watch, Case database, "OT Watch vs. Rio Tinto International Holdings Ltd," online: OECD Watch <http://www.oecdwatch.org>

46 Oyu Tolgoi LLC, Oyu Tolgoi shareholders, online: Oyu Tolgoi LLC <http://ot.mn>

47 MiningWatch Canada, "Mining Mongolia: Ivanhoe, T-Shirts, NGOs and Wikileaks" (5 June 2011), online: <http://miningwatch.ca> [Blog: Ivanhoe Mines]

48 OECD Watch, Case database, "OT Watch vs. Rio Tinto International Holdings Ltd," online: OECD Watch <http://www.oecdwatch.org>

The complaint focuses on key shortcomings in the project's environmental impact assessment and on the absence of a crucial water study for the proposed mine, a massive undertaking in a fragile desert ecosystem. The Mongolian civil society groups behind the complaint express concern that mining would dramatically reduce the quality and availability of water resources (including through the diversion of rivers), threaten Mongolia's wildlife and biodiversity, and limit the availability of pasture land on which the country's traditional nomadic population depends for its survival.[49] The complaint also raises concern about the impact that the transportation of project materials will have on a protected area. To support their concerns, the complainants referenced Ivanhoe's Technical and Economic Feasibility Study (2009)[50] and a World Bank-funded regional environmental assessment (2010),[51] among other sources.

The initial assessment phase for the complaint lasted eight months, during which time the Canadian NCP requested additional documents from the parties. On May 3, 2011, the Canadian NCP issued a final statement declaring the complaint to be closed. The statement was remarkable in a number of ways.[52]

The Canadian NCP determined that the company's environmental assessments were "complete and of a high quality."[53] This finding contradicts credible information provided by the complainants, such as the Mongolian government's recommendation that the company undertake additional studies regarding water use.[54] It is also at odds with the position of the United States government, which raised serious concerns about the company's environmental assessments when asked to approve financing for the project through the World Bank's International Finance Corporation (IFC). The US government did not support the financing.[55]

Perhaps most remarkably, the NCP acknowledged that "[i]t is not practical or realistic to expect these extensive and complex matters that involve many parties and entities to be adequately addressed or resolved by dialogue between NGOs and companies on a case-by-case basis."[56]

49 Blog: Ivanhoe Mines, *supra* note 47; Global Affairs Canada, "National Contact Point for the OECD Guidelines for Multinational Entreprises: Summary of Initial Assessment of Request for Review Oyu Tolgoi Mining Project" (3 May 2011), online: Global Affairs Canada <http://www.international.gc.ca>

50 Ministry of Mineral and Energy Resources of Mongolia, "Response to Inquiry" (10 February 2010), <http://miningwatch.ca>

51 World Bank, Working Paper, "Mongolia – Southern Gobi regional environmental assessment" (1 January 2010), online: World Bank <http://documents.worldbank.org>

52 See Catherine Coumans, "Mining and Access to Justice: From Sanction and Remedy to Weak Non-Judicial Grievance Mechanisms," *UBC Law Review*, Volume 45, Number 3 (October 2012), at pp.683-686.

53 *Ibid.* at p.684. Note that in other cases the Canadian NCP had been explicit that its mandate "is limited to the provision of good offices to help the parties resolve the issues through facilitated dialogue" and not to such functions as the assessment of project documentation (*Ibid.*, at p.685).

54 *Ibid.*, at pp. 685-686.

55 "First, the United States believes the ESIA has gaps in critically important information, particularly related to the operations phase of the project and mine closure. Specifically, the Boards of the IFC and EBRD are being asked to make a decision on this project without seeing the agreed commitments contained in the forthcoming Operations Phase Environmental Management Plans." Source: "United States Position: Mongolia – Oyu Tolgoi Mining Project," online: US Department of the Treasury <https://www.treasury.gov>

56 Global Affairs Canada, "National Contact Point for the OECD Guidelines for Multinational Enterprises Summary of Initial Assessment of Request for Review Oyu Tolgoi Mining Project" (3 May 2011), online: Global Affairs Canada <http://www.international.gc.ca>

As the project moves into phase two, Mongolian and international civil society groups continue to raise serious concerns about the irreparable damage they fear the project will cause to the environment, threatening access to drinking water and putting affected communities' livelihoods at risk. Recent technical reports published by the Southwest Research and Information Center once again raise the issue of the company's inadequate environmental and social impact assessment, which fails to cover the project's full life cycle or to address project impacts on water resources accessed by herders. The reports also critique the use of a "block cave" mining method and draw attention to the company's reliance on energy derived from a coal-fired plant.[57]

Complaints before the IFC's Compliance Advisor Ombudsman (CAO) and the European Bank for Reconstruction and Development's Project Complaint Mechanism are in process. As part of the CAO process, a tripartite council composed of representatives from the company, local authorities and affected herders has been set up. NGOs assisting affected communities have expressed concerns about the council, such as the lack of technical and administrative resources necessary for the herders to meaningfully participate in the process.[58]

57 Paul Robinson, Research Director, Southwest Research and Information Center, in phone interview (September 2016). See also Paul Robinson, Southwest Research and Information Center, "Oyu Tolgoi Phase 2: Plans, Issues and Risks: An overview of Oyu Tolgoi Phase 2 Mining Plans and some of the issues and risks associated with block cave underground mining, international metal price uncertainty, project power supply and impacts on water resources used by herders," prepared for CEE Bankwatch Network and OT Watch, (10 January 2016), online: BankWatch <http://bankwatch.org>

58 Footnote: Phone interview with Paul Robinson, Research Director, Southwest Research and Information Center, (September 2016). See also Accountability Counsel, "Mongolia: Mining in the South Gobi," online: Accountability Counsel <http://www.accountabilitycounsel.org> BankWatch, "Mining boom in Mongolia", online: BankWatch <http://bankwatch.org>

V. MOPANI COPPER MINES, *ZAMBIA*

In July 2001, Oxfam Canada and DECOP, a Zambian NGO, lodged a complaint against Mopani Copper Mines. Mopani Copper Mines is a Zambian-registered company owned by Swiss-based commodity trading and mining company Glencore Plc (73.1%), Canadian-based mining company First Quantum Minerals Ltd (16.9%) and Zambia-based ZCCM-Investment Holdings (10%).[59]

The complaint alleges that Mopani Copper Mines forcibly evicted communities from land they had long occupied, but which the company had acquired. Most of the people evicted were former miners.[60]

In October 2001, the Canadian NCP facilitated meetings with the parties. An agreement was reached that included three key commitments: First, all evictions would stop. Second, Mopani would cooperate with DECOP and the local council to work towards the resettlement of those already displaced. Third, there would be continued dialogue between civil society and Mopani.[61] The Canadian NCP sent a final communication to the parties stating it welcomed the spirit of cooperation, and encouraging the company to maintain an open line of communication with the Canadian NGO and other groups concerned about the welfare of people affected by its operations.[62] The NCP's final statement has not been made public.

Nkana mine Open Pit and Head Gear, Per Arne Wilson – Own work CC BY-SA 3.0

59 ZCMM-Investments Holdings PLC, "Mopani Copper Mines PLC," online: ZCMM-Investments Holdings PLC <http://www.zccm-ih.com.zm>. At the time of the complaint, the mine was jointly owned by First Quantum Minerals and Glencore Plc.

60 The complaint was based on two reports: Oxfam GB in Zambia, *Land Tenure Insecurity on Zambia's Copperbelt* (Oxfam GB in Zambia: 1998) and a confidential briefing by the Zambian National Land Alliance concerning the tense situation of "squatters" on mine land in Mufulira, Copperbelt Province. See OECD Watch, Database, "Oxfam Canada vs. First Quantum Mining," online: OECD Watch <http://www.oecdwatch.org>

61 OECD Watch, Database, "Oxfam Canada vs. First Quantum Mining", online: OECD Watch <http://www.oecdwatch.org>

62 *Ibid.*

The Canadian NCP and the OECD have referred to this case as an example of successful conflict resolution through the NCP mechanism. However, more than a decade after agreement was reached, local people remain vulnerable, their situation having worsened in some respects.

A 2007 report by the Canada-based Umuchinshi Initiative documented the company's failure to respect its agreement with DECOP. The authors report that Mopani resumed evictions in 2006 and that the situation remained insecure for farmers living in other areas, where evictions had not yet occurred. The parties were no longer in dialogue and no plans had been made to work towards a long-term, sustainable solution consistent with the OECD Guidelines.[63] In September 2015, NGO ActionAid denounced the negative and disproportionate impact of the mining industry on women in Zambia, including those living near the Mopani mine.[64] In 2016, Glencore announced an investment of $950 million over three years to expand operations at Mopani Copper.[65] In August 2016, the company temporarily suspended its operations following the deaths of four workers in separate accidents.[66]

63 Umuchinshi Initiative, *Can The OECD Guidelines Protect Human Rights On The Ground? A Case Study: The Evictions at Mufulira by First Quantum Minerals / Mopani Copper Mines* (Toronto: Umuchinshi Initiative, 2007), online: University of Toronto <http://ihrp.law.utoronto.ca>

64 Action Aid, "Impact of the Mining Industry on Women in Zambia" (15 September 2015), online: Action Aid <http://www.actionaid.org>

65 Mining Technology, "Glencore to invest $1.1bn to develop Mopani mine shafts in Zambia" (31 March 2016), online: Mining Technology <http://www.mining-technology.com>. The company also claims to have invested over USD$250 million in health, education, infrastructure, water and sanitation, agriculture and sport in the country. Glencore, "Public positions: Supporting Development in Zambia," online: Glencore <http://www.glencore.com>

66 Lusaka Times, "Mopani suspends copper production after mine deaths" (6 August 2016), online: Lusaka Times <https://www.lusakatimes.com>

ANALYSIS OF THE NCP'S PERFORMANCE

The five cases examined here demonstrate that the Canadian NCP is failing both to prevent harm and to facilitate access to remedy for those who are affected by Canadian companies' overseas operations. The cases highlight significant weaknesses in the NCP's structure, procedures and performance.

» The NCP lacks independence

The Canadian NCP is a committee with representatives from seven Government of Canada departments: Foreign Affairs, Trade and Development Canada, National Resources Canada, Finance, Environment Canada, Industry Canada, Employment and Social Development Canada, and Aboriginal Affairs and Northern Development Canada.[67] Unlike other National Contact Points,[68] the Canadian NCP lacks an independent board, decision-making authority or multi-stakeholder oversight committee.[69] Instead, the NCP is chaired by Global Affairs Canada, a government department whose mandate includes "expanding and deepening trade and investment relationships," including by providing support to "natural resources" as a "key sector."[70] This institutional arrangement raises questions about the NCP's impartiality—as does the low threshold applied by the NCP for dismissing cases, which is discussed further below.

» The NCP is opaque

The Canadian NCP's website does not provide a complete registry of complaints submitted, nor does it contain comprehensive information regarding the implementation of agreements reached and recommendations issued.[71] When researchers from Above Ground and MiningWatch approached the secretariat of the Canadian NCP seeking such information, they were referred to the websites of the OECD and the NGO coalition OECD Watch. On the former, information about NCP complaints is limited to short summaries that are based entirely on information provided by NCPs. This website lacks a complete list of all cases available.[72] Moreover, the Canadian NCP neglected to provide answers to written questions submitted during the preparation of this document.

67 Minister's Response to Petition 377, *supra* note 1.

68 For example, the Norwegian NCP is an independent expert advisory body comprised of four independent experts. See National Contact Point Norway, "About us," online: NCP Norway <http://nettsteder.regjeringen.no>. The French NCP is composed of representatives from several ministries, trade unions and an employers' federation. See OECD, "France: National Contact Point," online: OECD <https://mneguidelines.oecd.org>

69 OECD, "Canada - National Contact Point," <http://mneguidelines.oecd.org>

70 Global Affairs Canada, "Our priorities," online: Global Affairs Canada <http://www.international.gc.ca>

71 Some initial assessments and final statements are made public in the NCP's annual reports, while others are not. Often, the countries and companies involved are not disclosed.

72 OECD, "Database of specific instances," online: OECD <http://mneguidelines.oecd.org>

The NCP does not provide justifications for its findings. For example, it concluded that China Gold's operations are inconsistent with the OECD Guidelines but failed to provide any information regarding the basis for this finding. Likewise, the NCP made significant modifications to its draft assessment in the Mirador case, but offered no explanation to the complainants regarding the change.

» The NCP process involves unjustified delays

The OECD Investment Committee recommends that NCPs provide an initial assessment within three months of receiving a complaint. This timeframe is explicitly acknowledged in the Canadian NCP's procedures guide.[73] In each of the cases analysed here,[74] the Canadian NCP took three to four times longer than the prescribed period to provide an initial assessment. The NCP does not provide public explanations for the majority of its delays.

» The NCP applies a high threshold for accepting complaints

After an initial finding that the case merited further examination, the Canadian NCP inexplicably dismissed the Mirador case. Likewise, despite the complexity of the matters raised in the Oyu Tolgoi case and credible opinions to the contrary, the NCP determined that the environmental assessments for this mega-project were complete and of a high quality. It dismissed the case.

The OECD procedural guidance for NCPs includes a list of criteria to guide decision-making regarding case admissibility. The Canadian NCP applies two additional criteria not found in the OECD's list. The NCP considers: "the request(s) and solution(s) that the notifier(s) is seeking and whether these are possible within the mandate of the NCP; and what the notifier(s) have indicated about their willingness or unwillingness to participate in a facilitated dialogue with a view to resolving the matter." Inclusion of these factors at the admissibility stage forecloses the possibility that a complainant modify his or her request or that a company reconsider the possibility of mediation following the release of an initial assessment. This practice greatly diminishes the NCP's accessibility.

73 Global Affairs Canada, "Procedures Guide for Canada's National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises," online: Global Affairs Canada <http://www.international.gc.ca>

74 It took between six and thirteen months for initial assessments to be released in these cases. The Mopani case appears to lack an initial assessment. On both the Canadian NCP and OECD websites, only short summaries of the case can be found, without any mention of an initial assessment.

» The NCP does not make findings on whether companies have breached the Guidelines

The Canadian NCP does not publish assessments of whether companies that are the subject of complaints have breached any specific OECD Guidelines, regardless of whether or not they participate in mediation.[75] This is despite evidence that "an NCP's willingness to issue determinations of non-compliance with the Guidelines in final statements makes dispute resolution more likely."[76]

» The parties must assume costs

The parties to a complaint are expected to assume some of the associated costs. When the parties are unable or unwilling to incur these expenses, the quality of the NCP review and mediation processes is impacted. For example, the parties are required to assume the cost of translating key documentation into English or French for review by the NCP. In the Mirador case, "not all materials were fully translated."[77] Likewise, the mediation process in the Porgera case was constrained by the complainants' inability to cover their travel expenses.

» The process rarely concludes with an agreement or recommendations, and there are no effective follow-up procedures in place

The Canadian NCP process rarely results in agreement between the parties or the issuance of recommendations. Moreover, when such outcomes are achieved, the NCP lacks transparent follow-up procedures to ensure that commitments are fulfilled, recommendations are followed and grievances are resolved. In at least one case (Porgera mine), the NCP requested that complainants provide updates within twelve months and organized a follow-up meeting with them. However, these updates are not made public and it's unclear what measures, if any, the NCP took to address the complainants' concerns that Barrick had not followed through on its commitments. When it closed the case, the NCP recommended that the parties undertake regular and systematic joint follow-up to ensure better implementation of the OECD Guidelines. This approach lacks credibility. Given the gravity and complexity of the issues in play, the acute power imbalance that exists between the parties and the complainants' relative lack of resources, it is highly unrealistic that this strategy will facilitate compliance with the OECD Guidelines.

75 Other NCPs do provide such an analysis. See for example National Contact Point Norway, "Norwegian Bank Investment Management violates OECD Guidelines," online: NCP Norway <http://nettsteder.regjeringen.no>; UK National Contact Point, Department for Business, Innovation and Skills, "UK NCP final statement: complaint by Lawyers for Palestinian Human Rights against G4S" (9 June 2015), online: UK NCP <https://www.gov.uk>; UK National Contact Point, Department for Business, Innovation and Skills, "Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Complaint from Survival International Against Vedanta Resources plc," online: UK NCP <http://www.berr.gov.uk>

76 Norwegian Peer Review Final Report (2012), p.26, cited in OECD Watch, "A 4x10 plan for why and how to unlock the potential of the OECD Guidelines" (June 2016), online: OECD Watch <http://www.oecdwatch.org>

77 NCP Initial Assessment Mirador case, *supra* note 25.

» The government penalty is ineffective in promoting compliance with the OECD Guidelines

The Canadian government asserts that it now applies sanctions when companies refuse to participate in the NCP process. This policy, which had no effect on corporate behaviour in the case of China Gold, suffers from significant limitations:

- A penalty is not applied for companies' non-compliance with the OECD Guidelines, but merely for their refusal to participate in the NCP process. Consequently, a company that agrees to participate in the NCP process but fails to comply with the Guidelines would avoid a penalty by the government.
- While a company's failure to participate in the NCP process appears to result in its ineligibility for trade advocacy support, Export Development Canada continues to exercise discretion regarding its services. EDC may take NCP conclusions "into account,"[78] however the Crown corporation "will ultimately provide or decline support based on its own due diligence."[79]
- The penalty affects very few government services. For instance, it does not include the removal of protections offered via Canada's trade and investment treaties or equity ownership by the Canada Pension Plan Investment Board (CPPIB). Nor does it affect the provision of trade promotion services by Canada's provincial governments, as seen in the China Gold case.

Moreover, credible complaints before the NCP are not a deterrent for government agencies unaffected by the penalty. Despite facing serious allegations of human rights abuse and environmental harm, companies involved in three of the five complaints analysed here continue to receive substantial financial support from government agencies. As of March 2016, CPPIB held $60 million in equity in Barrick Gold, $27 million in Turquoise Hill Resources Ltd. and $34 million in First Quantum Minerals Ltd.[80] In December 2015, EDC announced its decision to provide Oyu Tolgoi LLC with over $1 billion in financing to support its investment in Mongolia.[81] In 2014 and 2016, EDC provided First Quantum Minerals Ltd. with financing for its operations in Zambia, with the first loan valued at between $100 and $250 million, and the second between $50 and $100 million.[82]

» The NCP has failed to improve conditions for complainants

The NCP failed to facilitate positive outcomes regarding the issues raised by the complainants in the cases described here. In none of the cases have the victims received full reparation, and in some cases conditions have actually worsened for the affected communities since the conclusion of the NCP complaint process.

78 Global Affairs Canada, "Government of Canada's response to Environmental Petition no. 0377-B: Follow-up Petition to 'Petition 0377L Interpretation and Application of Canada's Corporate Social Responsibility Strategy" (2016), online: Global Affairs Canada <http://www.oag-bvg.gc.ca>

79 Minister's Response to Petition 377, *supra* note 1.

80 CPPIB, "Canadian Publicly-Traded Equity Holdings As of March 31, 2016," online: CPPIB <http://www.cppib.com>

81 EDC, "Individual transactions information," online: EDC <https://www19.edc.ca> This funding is part of a USD$4.4-billion project financing facility obtained by Turquoise Hill Resources. See Turquoise Hill Resources Ltd, "Oyu Tolgoi signs $4.4 billion project finance marking historic milestone toward recommencement of underground development" (14 December 2015), online: Turquoise Hill Resources Ltd. <http://www.turquoisehill.com>

82 EDC, "Individual transactions information," online: EDC <https://www19.edc.ca>

CONCLUSION: MOVING BEYOND THE NCP

The serious and persistent shortcomings of the Canadian NCP have eroded its credibility.[83]

In its fifteen years of existence, the Canadian NCP has not ensured the provision of remedy or made any significant changes on the ground for affected communities.

As documented by OECD Watch in a report reviewing the performance of NCPs over the last fifteen years, "the overwhelming majority of complaints have failed to bring an end to corporate misconduct or provide remedy for past or on-going abuses, leaving complainants in the same or worse position as they were in before they filed their complaint."[84]

In its fifteen years of existence, the Canadian NCP has not ensured the provision of remedy or made any significant changes on the ground for affected communities.

It is time for Canada to step up its efforts on corporate accountability.

UN treaty monitoring bodies continue to express concern regarding the lack of access to remedies in Canada for the victims of corporate-related human rights abuses. They have called for an "effective independent mechanism with powers to investigate complaints alleging abuses by such corporations that adversely affect the enjoyment of the human rights of victims, and of a legal framework that would facilitate such complaints."[85]

Civil society organisations are proposing substantial reforms of both judicial and non-judicial mechanisms in Canada to effectively deal with human rights abuses involving Canadian companies operating abroad.[86] Such action should **start with the creation of an independent ombudsperson office for the extractive industries**[87]—as committed to by Canada's Liberal, New Democratic, Green and the Bloc Québécois parties. In contrast to the NCP, an ombudsperson office would be independent, transparent and credible. It would have the power to undertake investigations, to assess if harm has been caused and to apply effective sanctions in cases of non-compliance with human rights and environmental standards.

83 This explains the very low number of complaints submitted to the NCP, despite a rise in social conflicts involving Canadian companies operating abroad. This rise in conflicts has been documented by the Canadian Centre for the Study of Resource Conflict in Corporate Social Responsibility: *Movements and Footprints of Canadian Mining and Exploration Firms in the Developing World* (2009), online: MiningWatch <http://miningwatch.ca>, by ICMM in *Research on company-community conflict* (March 2015), online: <http://hub.icmm.com/document/8515> and by the Justice and Corporate Accountability Project (JCAP), *The "Canada Brand": Violence and Canadian Mining Companies in Latin America* (Toronto, JCAP, 2016), online: JCAP <https://justice-project.org>

84 Of the 250 community complaints made to NCPs worldwide over the last 15 years and reviewed by OECD Watch, only one percent (3 complaints, none of them handled by the Canadian NCP) have resulted in an outcome that directly improved conditions for the victims of corporate abuse. See OECD Watch, Remedy Remains Rare, *supra* note 28.

85 UN Human Rights Committee, "Concluding observations on the sixth periodic report of Canada" CCPR/C/CAN/CO/6. (13 August 2015), at para.6; UN CESCR, "Concluding observations on the sixth periodic report of Canada," advanced unedited version, E/C.12/CAN/CO/6 (4 March 2016), at para.16.

86 For recommended reforms to improve the NCPs, see OECD-Watch, OECD Watch, "A 4x10 plan for why and how to unlock the potential of the OECD Guidelines" (June 2016), online: OECD Watch <http://www.oecdwatch.org>

87 See model legislation proposed by the Canadian Network on Corporate Accountability (CNCA). CNCA, "The Global Leadership in Business and Human Rights Act – An act to create an independent human rights ombudsperson for the international extractive sector", 2 November 2016, online CNCA : <http://cnca-rcrce.ca>. See also CNCA, "Talk is not enough : Why Canada needs an extractive-sector ombudsperson" (September 2016), online : CNCA <http://cnca-rcrce.ca>

ABOVE GROUND

OECD Watch

MiningWatch Canada