

OSGOODE HALL LAW SCHOOL

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Sent by email: COREreview-revueOCRE@international.gc.ca

October 29, 2024

Re: Government of Canada review of the office of the Canadian Ombudsperson for Responsible Enterprise (CORE)

To Whom It May Concern:

The Justice and Corporate Accountability Project (JCAP) is a volunteer-driven transnational, collaborative, community-based legal clinic. JCAP assists in holding corporations and states to account by offering legal knowledge to communities that are negatively affected by natural resource extraction, especially at the hands of Canadian companies. JCAP has cultivated specific expertise in supporting Indigenous and Campesino communities in the Americas and is now expanding its support to local communities in Africa.

Given JCAP's extensive involvement in assisting extractive affected communities, we find it crucial to address several limitations within the CORE's framework that hinder its effectiveness. We submit this letter in response to the Government of Canada's review of the CORE, which it committed to undertake in its Government Response to the tenth report of the House of Commons Standing Committee on International Trade entitled *Canadian Mining and Mineral Exploration Firms Operating Abroad: Impacts on the Natural Environment and Human Rights*. JCAP echoes the longstanding call of Canadian civil society organizations, such as the Canadian Network on Corporate Accountability and Above Ground, to empower the CORE since its inception in 2019.

The Government of Canada has framed the CORE as its non-judicial approach to dispute resolution, reflecting the objectives in Pillar Three of the *UN Guiding Principles on Business and Human Rights* (UNGPs). Principle 31 of the UNGPs outlines seven effectiveness criteria for state-based non-judicial grievance mechanisms. JCAP urges the Canadian government to better align CORE with these criteria. In particular:

Independence

Currently, the ombudsperson and their staff are civil servants reporting to the Minister of Export Promotion, International Trade and Economic Development. Subjecting CORE to ministerial oversight creates opportunities for real or perceived government interference, which could undermine its legitimacy and may discourage complainants from coming forward to use the office. Ensuring the CORE's independence is vital to its credibility and the trust of the communities it serves.

Power to investigate

Without the authority to compel companies to participate in or disclose evidence for investigations, the CORE remains an inequitable body that denies complainants access to information relevant to their complaints. This lack of investigative power could exacerbate harm experienced by complainants and prevents the CORE from fulfilling its mandate in a rights-compatible manner that advances internationally recognized human rights. We feel that the government should restore the powers of investigation that were first granted to CORE when it was first announced in January 2018. We feel that extensive lobbying from the mining industry stripped CORE of these powers, even though the government's own internal legal review found that the powers were constitutional.

Retaliation and reprisal framework

Communities and human rights defenders may face reprisal and retaliation when they seek access to remedy by submitting a complaint through a grievance mechanism. Implementing an effective framework to prevent and address retaliation is essential to ensure complainants feel safe participating in the CORE's grievance process. JCAP suggests adopting strong internationally recognized frameworks and providing specific protections to safeguard complainants against retaliation.

Power to issue binding remedy

Without the ability to issue binding remedies, the CORE remains limited in its capacity to enforce accountability. As one of the two non-judicial grievance mechanisms available in Canada, the CORE has fewer obstacles to access than judicial mechanisms. However, it lacks the power to impose binding remedies that deter future rights violations and provide restorative relief to complainants. In addition to making the CORE's current non-binding recommendations enforceable, the CORE should also be granted the authority to issue binding financial reparations and other remedies aligned with fair compensation principles.

In conclusion, JCAP welcomes the Government of Canada's review of the Canadian Ombudsperson for Responsible Enterprise. The CORE serves a critical purpose in promoting corporate accountability and responsible business conduct of Canadian extractive companies operating abroad. JCAP urges the Government of Canada to strengthen CORE's mandate through binding legislation, such as Bill C-263 introduced in Parliament in March 2022. Empowering CORE in this way is essential to ensuring its independence, strengthening its investigative powers, and granting it the authority to issue binding remedies.

Sincerely,



Sara Ghebremusse

Board Member, Justice and Corporate Accountability Project

Assistant Professor and Cassels Chair in Mining Law and Finance, University of Western Ontario
Faculty of Law