

SOMO submission for the consultation process of the Complaint and Consultation Mechanism for the Mining Industry and Mineral Value Chain, 22 December 2022

The Centre for Research on Multinational Corporations (SOMO) welcomes the commitment made by the China Chamber of Commerce of Metals, Mineral & Chemicals Importers & Exporters (CCCIM) to develop the draft Procedure Document (Draft Procedure) for the Complaint and Consultation Mechanism for the Mining Industry and Mineral Value Chain (Complaint Mechanism). The Draft Procedure open for consultations represents an encouraging step towards accountability in the mineral supply chain industry. An effective accountability mechanism is indeed a significant contribution to improving good governance and compliance with social and environmental by business enterprises headquartered in China and other countries. Towards this end, SOMO also encourages all companies along the global mineral supply chain - including upstream, midstream and downstream companies along the value chain of critical metals for manufacturing lithium-ion batteries – to adhere to Standard Instruments** referred to in the Draft Procedure document at the earliest.

SOMO is a Dutch-based NGO supporting and strengthening civil society movements in defending human rights and the environment and promoting public interests through research and analysis of the impacts of corporations. Through our expert networks, SOMO undertakes reviews of policy procedures of accountability mechanisms and supports communities affected by harmful investment projects to access and navigate these mechanisms' processes, including National Contact Points of the OECD and mechanisms of international financial institutions. With this submission, SOMO aims to provide recommendations for the Complaint Mechanism process to align with the effectiveness criteria of the *United Nations Guiding Principles on Business and Human Rights* and ensure that it is effective for communities negatively affected by companies' activities in the mineral supply chain.

The key recommendation regards the acknowledgement that many potential future complainants are persons or communities experiencing impacts or risks to their livelihoods, health, and environment from a mineral project and whose specific vulnerabilities, such as poverty, are exacerbated by the project impacts. Respondents to these communities' complaints are likely to be companies holding significantly more power in terms of the ability to address alleged social and environmental harms, financial resources, and influence over other project stakeholders. By recognizing this context, the mechanism should review relevant procedures focusing on **rectifying power imbalances** between these types of parties to a dispute and commit to **protecting the rights** of these complainants throughout the complaint-handling process. The objectives of the mechanism should therefore be improved towards offering an avenue for problem-solving and investigations that is accessible, predictable, transparent, and rights compatible.

While referring to SOMO's comments on the Draft Procedure for detailed inputs, SOMO recommends the Complaint Mechanism incorporates the following practical improvements to guarantee minimum standards of a fair process of complaint handling.

- **Clarify the governing body of the Complaint Committee and incorporate a multi-stakeholder governance structure:** The Draft Procedure is not clear about the governing body of the Complaint Committee and the criteria for serving in this functional body. While it is assumed that the CCCIM may hold a role as an office or secretariat for registration complaints, support processes, monitoring outcomes, etc., this should be clearly stated in the document. Furthermore, it is recommended the Complaint Mechanism incorporate a multi-stakeholder governance structure to guarantee an adequate representation of all interests at stake in the mineral supply chain and to improve the credibility of the offered services.
- **Review of the application requirements and eligibility criteria:** Application requirements related to "facts, claims and reasons for a specific dispute" as well as "basic evidence that can prove the existence of the dispute" represent a high threshold for affected communities and should be deleted. When filing a complaint, applicants should be simply required to outline how the alleged harm they are experiencing or anticipate is connected to a company's mineral operations. As a result, eligibility criteria related to "preliminary prove of existence of a dispute" should be edited because only allegations of harm are needed at the stage of application. Furthermore, including the admissibility criteria related to applicants' attempts to

directly raise an objection with the respondent risks ignoring that applicants in situations of vulnerability may have difficulties in doing so due to risks of retaliation. The admissibility rules should therefore be reviewed towards minimizing barriers to people's access to the Complaint Mechanism and acknowledge that the mentioned criteria also limit the mechanism's ability to accept allegations that may reveal legitimate concerns throughout the complaint process.

- **Avoid providing an avenue for companies' "two-way complaints":** The Mechanism's function to allow companies to complain over alleged inadequate perceptions of their operations or due diligence performances risks being dangerously manipulated towards companies' desires to avoid transparency and reputational harm and to intimidate community defenders. The Draft Procedure should acknowledge that public concerns expressed by groups at risk and their representatives, including supporting NGOs and the media, over a company's mineral activities, often represent the only way for speaking out their concerns. By recognizing this context, the complaint mechanism should instead adopt strong rules favouring and protecting free speech.
- **Incorporate an adequate compliance review function, to also address the risk that complaint processes stop with companies' refusal to engage:** The Complaint Mechanism should develop adequate provisions to also open investigations on respondents' adherence to relevant standards and issue a public report of the findings, similar to the compliance review functions offered by many other accountability mechanisms. This investigative function should be made directly available to applicants seeking fact-based evaluations by experts over a company's operations and also be undertaken as an alternative complaint process route in cases where a company is unwilling to engage in and commit to dispute resolution.
- **Provide one type of professional mediation services only:** Regarding the processing routes, the difference between "complaint mediation" and "expert mediation" is unclear, giving the impression that "complaint mediation" is served by less qualified personnel. All types of mediation processes indeed require an adequate set of facilitation skills owned by professional mediators. The Draft Procedure is also not clear on who decides whether a dispute is "large in scope and involves complicated issues" or "large in scope and serious in impact, with unclear applicable standards" etc. and who holds the consequent power of deciding the type of mediation offered. It is recommended that the Complaint Mechanism offers only professional mediation services and avoids creating a hierarchy between less and more qualified mediation processes.
- **Address the prospect of putting financial burdens on communities at risk:** It is concerningly noted that the Draft Procedure expects parties to the dispute to negotiate and bear all costs related to services offered under the Complaint Mechanism, with no stated distinction on the types of stakeholders that could afford these fees. When applicants are impoverished individuals, workers or communities risking increased vulnerability due to mineral projects' impacts, the prospect of them covering professional service fees involves the risk of a severe restraint on their ability to access the Complaint Mechanism. Whereas seeking additional ad-hoc funding support from external stakeholders might, to some extent, be understandable for supporting specific complaint-handling activities, the mechanism should at least ensure funds to cover its daily operations costs and strive to raise financial resources for services offered by itself.
- **Increase transparency about the cases database and the 'expert network members':** Although the document's commitment to disclose key steps of complaint processes in a database is laudable, the Draft Procedure does not provide indications about tools designed to share relevant information publicly. In addition, the Committee's ability to delegate the complaint-handling process to ad-hoc working groups of experts within "its network" is not accompanied by clarity about this intended network and access to information about experts' profiles. It is, therefore, recommended that the Mechanism embraces the highest standards of transparency about the complaint-handling process, case documents and the members of its network.
- **Focus on protecting personal safety in confidentiality requests, and substantiate "free from retaliation, prosecution and threat":** Whereas the Draft Procedure's undertaking of allowing confidentiality of information is also remarkable, the Mechanism should differentiate and prioritize applicants' requests for anonymity based on personal safety issues over business risks, such as reputational risks, and commit to protecting the security of individuals and groups whose identity revelation may put them in danger. Similarly, it is also commendable the provision aimed at offering a complaint avenue free from intimidation and

retaliation, however, the draft document should add concrete steps that the Complaint Mechanism will undertake to address allegations of retaliation related to a complaint process.

*** Standard Instruments refer to the “United Nations Guiding Principles on Business and Human Rights”; the “ILO Tripartite Declaration of Principles Concerning Multinational Enterprises; the “OECD Guidelines for Multinational Enterprises”; the “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas”; the “ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy”; the standard frameworks led by CCCMC “Guidelines for Social Responsibility in Outbound Mining Investments” and the “Chinese Due Diligence Guidelines for Mineral Supply Chain”, as well as other standards supported under CCCMC partnerships, such as the “Cobalt Refiner Supply Chain Due Diligence Standard”*