

An aerial photograph of a large-scale mining operation. The image shows extensive earthmoving, with large piles of sand and gravel, numerous roads, and several large, circular water reservoirs. The surrounding landscape is a mix of green fields and brown, excavated earth.

Canadian Mining Operations Around the World: Respecting People and the Environment



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Spelling:

Standard Canadian spelling is used in this document, for example labour vs. labor and centre vs. center.

List of Acronyms:

ABCG - Africa Biodiversity Collaborative Group

CAAI - Canadian Centre Against Impunity

CCSRC - Canadian Centre for the Study of Resource Conflict CIDA - Canadian International Development Agency

CN - Canadian National [Railway]

CNCA - Canadian Network on Corporate Accountability

CPR - Canadian Pacific Railway

CPP - Canada Pension Plan

CSR - Corporate Social Responsibility

DFAIT - Department of Foreign Affairs and International Trade DFATD - Department of Foreign Affairs, Trade and Development DRC – Democratic Republic of Congo

EDC - Export Development Canada

EITI - Extractive Industries Transparency Initiative

GDP - Gross Domestic Product

GRI - Global Reporting Initiative

IACHR – Inter-American Commission on Human Rights

IISD – International Institute for Sustainable Development ISGRAMR - International Study Group Report on Africa's Mineral Regimes

MNC – Multinational Corporation

NRCan – Natural Resources Canada

NSI - North-South Institute

OECD - Organization for Economic Co-Operation and Development

PDAC - Prospectors and Developers Association of Canada SCFAIT - Subcommittee of Foreign Affairs and International Trade SFW

TSX – Toronto Stock Exchange

Executive Summary

Canada's mining industry is a global powerhouse, engaging in thousands of extractive operations around the world. These operations have increasingly come under scrutiny from the international community, governments, civil society organizations, and the media for issues of transparency, corruption, human and labour rights and environmental practices. Given the large impact that Canadian mining companies have at home and abroad, it is vital that they consistently integrate social and environmental imperatives into their activities, a practice otherwise known as 'corporate social responsibility' (CSR).

While numerous voluntary toolkits and guidelines address best practices for CSR in the mining industry, the application of these practices, along with standards for self-reporting, are sporadic and inconsistent. There is also a lack of external monitoring to assess the effectiveness of these voluntary CSR practices in the industry.

The existing legislative framework -- variability in provincial standards, along with a lack of national legislation that sets out clear standards of practice for Canadian mining companies operating internationally -- permits companies to operate without being held sufficiently accountable for their harmful practices.

In too many instances, the wide disparity of regulations among international jurisdictions has allowed corporate practices to sink to the lowest common denominator. Mining companies can and do seek opportunities where nominal requirements and lax enforcement increase their profits and reduce their responsibilities.

Our primary purpose here is not to expose and criticize wrong-doers or engage in theoretical discussions about the benefits of CSR. A significant discourse exists around the important social and environmental responsibilities that comprise ethical business practices,

as well as their practical significance for business and society alike. Rather, this paper's intent is to amplify the numerous calls for regulatory reform from academia, media, NGOs, governments, consumers, and the mining sector itself. Moreover, it invites readers to join a campaign for Canada to elevate and standardize, if not regulate, the conduct of Canadian corporate behavior abroad.

Using case studies in Latin America and Africa, this report examines contemporary CSR practices of Canadian mining companies along with some of the failures caused by the current lack of effective regulation and monitoring. It then briefly discusses causes for these failures and concludes by making the following recommendations:

First, that all Canadian mining companies -- indeed all Canadian companies -- sign onto protocols where they commit to uphold Canadian standards of worker health and safety, community consultation, social development, labour rights, environmental protection and financial transparency in all of their operations worldwide.

Second, that the Canadian Government work with the mining industry and other stakeholders to develop and implement a system of arms-length monitoring done by a reputable third party to help ensure implementation of, and adherence to, these protocols.

Third, that given the limitations of voluntary practices and provincial regulations, the Canadian Government initiate a process for drafting legislation that would create legally binding standards, with monitoring and reporting arrangements for Canadian companies operating internationally. We believe that this process should include the provinces, industry and civil society in order to earn social license. Such legislation will level the playing field, reward good corporate behavior and exert pressure to bring laggards up to reasonable standards of performance.

Introduction

The products of Canadian mining can be found in almost every aspect of our daily lives. Mineral resources are used in the manufacture of virtually every product we use at home, at work, in schools and for recreation. For example, our automobiles on average contain more than one ton of iron and steel, 240 pounds of aluminum, 50 pounds of carbon, 42 pounds of copper, 41 pounds of silica, 22 pounds of zinc and more than 30 other metals, including titanium, platinum and gold, all of which come from mines across the globe (USGS, 2013). Domestically, Canadian mining operations play an important role in our economy, accounting for over a fifth of total domestic goods exported in 2010 (MAC, 2011). The mining industry in Canada provides an estimated 300,000 direct jobs, from coal mines in New Brunswick to high-rise office towers in Vancouver, and is responsible for the largest amount of material transported via CN and CPR freight services (CN, 2012). Internationally, 20% of Canada's direct foreign investment is in mining operations and over 50% of the mineral companies listed on the Toronto Stock Exchange (TSX) are based in Canada (MAC, 2011).

As Canadian companies seek to source these minerals, communities around the world -- primarily in the remote regions of developing nations -- are seeing their landscapes and lives transformed through extractive processes. In the best cases, mining operations are a source of revenue and employment for regions where poverty rates are often very high.

Too often, however, communities closest to mining operations bear the majority of social and environmental costs for the smallest economic benefit along the allocation chain. Over the past several decades, Canadian companies have come under increasing scrutiny for their connections to human rights and labour violations, social unrest, environmental degradation, and lack of transparent financial reporting and accountability.

The root of these incidents can be found in the weaknesses of current guidelines, regulations and enforcement mechanisms for Canadian mining companies operating internationally. While there is legislation for domestic mining practices, it is quite variable from province to province. There is no national legislation which sets out clear standards of practice for Canadian mining companies operating in Canada, let alone internationally. Despite numerous guidelines and toolkits articulating best practices for CSR in the global mining industry, the current voluntary and inconsistent nature of CSR enables some firms to operate with insufficient commitment to such codes of conduct, with the result of dragging industry standards down.

Negative exposure by the media and organizations concerned by social and environmental damage caused by the Canadian mining industry has harmed the overall reputation of Canada and its mining sector. A positive reputation for Canada and the future success of its mining sector depend upon a clear, comprehensive and binding set of protocols, established by legislation, along with adoption of appropriate reporting and enforcement mechanisms.

The first half of this report explains the concept of CSR as it applies to the mining industry, and the role of Canadian companies in the global mining industry. It uses case studies to show how the current system results in practices which are causing social and political conflict and environmental degradation, and are tarnishing Canada's reputation. The second half of the report addresses some of the regulatory problems that have led to these incidents and concludes with a discussion of the potential benefits offered by legislation that would set out legally binding standards of practice for Canadian mining companies operating abroad. Finally, the report makes three specific recommendations to improve the current system:

First, that all Canadian mining companies sign onto a protocol where they commit to uphold, in their operations abroad, the highest Canadian standards for worker health and safety, community consultation, social development, environmental protection and financial transparency. While these standards require upgrading, and would benefit from greater consistency across the provinces they are generally more rigorous than those of developing countries, where current practices too often generate social unrest and harm to environment, health and safety.

Second, that the Canadian Government work with the mining industry and other stakeholders to develop and implement a system of arms-length third party monitoring and reporting.

Third, that given the limitations of voluntary practices, such as the lack of penalties, the Canadian Government should immediately begin the process of convening stakeholders to draft legislation which would set up legally binding standards for Canada's international mining companies.

Brief Overview of CSR

One of the challenges in establishing international protocols on CSR is the elusiveness of the concept itself. However, although a single, universally accepted definition of CSR has not been reached, some common themes persist throughout the various attempts by scholars, industry leaders, governments and non-governmental organizations (NGOs) to define it. At its best, CSR occurs when business is managed to benefit society and protect the environment. At its worst, CSR is devalued to serve primarily public relations and image building. For the purpose of this paper, we will consider CSR to be:

“The responsibility of a company for the totality of its impact, with a need to embed society’s values into its core operations as well as into its treatment of the social and physical environment.

Responsibility is accepted as encompassing a spectrum – from the running of a profitable business to the health and safety of staff and the impact on the societies and environments in which a company operates” (EP, 2003).

Ultimately, meaningful CSR requires that the success of a business should be intrinsically linked to the long-term well-being of the communities, society and physical environments within which it operates.

CSR as a concept began in North America in the late 1980s as scandals on Wall Street and in the US defense industries eroded public trust, and scrutiny of corporate behavior worldwide forced companies to respond (Harmony Foundation, 2013). In the same way, from the end of the 19th century, the mining industry has been compelled to move toward self-regulation as practices harmful to workers, society and the environment became less and less acceptable to stakeholders, investors, and the public.

In the Canadian mining sector, CSR started to gain momentum in the early 1990s, with companies implementing voluntary CSR practices primarily in response to external calls by NGOs and faith-based civil society organizations concerned about the impacts of mining operations in developing countries (Tench et al., 2012). These initiatives include the Global Mining Initiative adopted by nine global mining giants, the two-year Mining, Minerals and Sustainable Development study by the International Institute for Environment and Development, and the International Council on Mining and Metals’ 10 Principles of Sustainable Development.

By the 21st century most major corporations had made some commitment to the principles of CSR in order to meet the increasing expectations of stakeholders (Azer, 2001). In 2004, the Conference Board of Canada released the first major CSR report on company best practices (CBC, 2004). Also in this decade, the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries were organized by the Canadian Government.

While the implementation of voluntary self-regulation and self-reporting marked a step toward responsible mining practices, we will see throughout this report that these measures alone have been inadequate. Although CSR best practices have been published for the mining industry, they have not been implemented consistently. Unfortunately, the emphasis of these practices has been more about brand and image and less about people and the planet (Azer, 2001). In addition, within the current system, CSR practices are not being assessed independently for their effectiveness and integrity.

Role of Canadian Mining Companies Internationally

Over the past few decades, Canadian mining companies have rapidly expanded their reach across the globe, spanning every continent except Antarctica with more than 8,000 operations in over 100 countries (DFATD, 2013). In 2012 alone, 70% of the world's mining equity financing was raised through the Toronto Stock Exchange where 57% of the world's mining companies were listed (TSX, 2013). Cities such as Vancouver, Calgary, and Toronto function as hubs for headquarters of multinational corporations (MNC's) involved in mining technology, exploration and extraction, managing operations in Africa, Asia, Europe and South America (Deloitte, 2009). In 2011, Canadian mining assets were \$42.1 billion in South America, \$7.9 billion in Central America, \$5.1 billion in Oceania, \$7.4 billion in Europe, \$31.6 billion in Africa, \$15.1 billion in Asia, and \$36.8 billion in North America (excluding Canada). Today, Canada's mining assets abroad are fully \$215.3 billion (NRCan, Jan 2013).

While Canadian companies have significantly extended their investments into the global market, the reverse is also evident as foreign investors have channeled billions of dollars into Canadian mining operations. Recently, additional foreign investment in the Canadian mining sector has come in the form of Sovereign Wealth Funds (SWF).

Mining in the Global South - The Social and Environmental Costs of Mineral Extraction

Much of the mining done today takes place in resource-rich developing nations of the global south. As a result, Canadian mining operations are playing an increasing role in the development of emerging economies (NRCan, 2013 & Zarsky & Stanley, 2013).

Positive development has occurred as a result of Canadian mining projects; however, there is a substantial history of corporate and political misconduct that has continued to today. Despite the existence of best practice frameworks, many Canadian companies are still failing to invest in adequate levels of community consultation and development or environmental protection, letting the ravages of boom and bust mining affect communities and their environments. In fact, Canada has the highest incidence of conflict, compared to its global competitors.

A report by the Canadian Centre for the Study of Resource Conflict – for the period of 1999 - 2009 -- stated that, relative to Australia, Canada was involved in three times as many incidents of conflict, ranging from inadequate local engagement to severe environmental degradation and human rights abuses (CCSRC, 2009). Specifically, 30% of documented cases of transgression involved environmental contamination or adversarial community relations. The result of the current system is that in many countries in the global south, local residents and leaders have the least influence on Canadian mining projects while bearing the greatest costs (Sagebien & Lindsay, 2011).



Canadian Mining Companies in Latin America

A significant amount of Canadian international mining takes place in Latin America (Sagebien & Lindsay, 2011). As of 2005, Canadian companies owned over 1300 mineral properties in Latin America and spent over 400 million dollars on exploration alone (Sagebien, 2008). While billions of dollars in foreign direct investment have poured into the region for mineral extraction, it has been accompanied by a growing number of conflicts. Many Latin American countries where these operations occur suffer from a severe case of the “resource curse”, a situation where despite a country’s wealth of resources, economic benefits fail to reach affected communities, which are unable to influence governments and companies, or to hold them accountable for the effects of their activities (Sagebien & Lindsay, 2011). Despite rising investment by Canadian companies in Latin America over the past decade, communities in rural areas have not seen the promised “trickle-down” benefits of economic growth (Sagebien & Lindsay, 2011). International mining companies and home governments are often quick to point fingers at the poor governance of host countries as the reason for these issues, but as Coumans (Chapter 7 in Sagebien & Lindsay, 2011) points out, there is little mention of the internal financial agreements, taxing mechanisms and other incentives, which lower costs for companies and reduce the amount of revenue going into communities. Even less is said about the vastly unequal political and economic influence that companies have over local communities and their governments around project approval, land acquisition and resource use, or about the lack of an adequate and legitimate forum for communities to address complaints against multinational corporations (MNCs) (Sagebien & Lindsay, 2011). Case study #1 exemplifies how failures such as these affect the lives of local people and entire communities, and the environment.



Case Study #1: Marlin Mine, Guatemala

The Marlin mine, owned by Canadian mining company Goldcorp, is the largest gold mine in Central America and the source of numerous conflicts with local communities. Located in the western highlands of Guatemala, the massive project straddles the two Mayan communities of San Miguel Ixtahuacan and Sipacapa and is operated locally by Montana Exploradora, a subsidiary of Goldcorp (Zarsky & Stanley, 2013). Conflict around the mine began in 1999, when Montana Exploradora bought an exploration license for the area. While local consultation is a constitutional requirement in Guatemala, residents of areas say they were never consulted about the prospective mine development (Zarsky & Stanley, 2013). The Mayor of Sipacapa was quoted in an interview saying that the local government had not been aware of the company's plan to extract minerals until construction started in 2004 (Nicoll, 2012). In addition, there have been conflicting stories about land acquisition for the mine. While the company claims they paid reasonable amounts to willing landowners, locals have said that they were pressured, and in some cases threatened, in order to get them to sell their land (Nicoll, 2012).

Of primary concern for local populations has been fresh water quality and supply (Zarsky & Stanley, 2013 & Basu et al., 2010). The mine uses a cyanide leaching technique that has been banned in several countries, including the Czech Republic, Greece, Turkey, Germany, Hungary, Costa Rica, Argentina and Ecuador, due to its potential to contaminate ecosystems and food chains as well as to damage air and water quality (Justice and Environment, 2011). For nearly the past decade, residents close to the mine have been sending urgent letters for help to the Archbishop of Guatemala, accompanied by photos of skin rashes, hair loss, and stories of respiratory and other illnesses that they say were not present before the mining operations began (Basu et al., 2010).

This type of open pit mining, particularly when using the cyanide lixiviation technique, too often results in a host of environmental and social impacts. Because the mine requires large volumes of water, estimated as high as 250,000 litres per hour of operation, one primary impact is the depletion of the surrounding water table. A secondary impact is the increased competition with local communities for water they require for agriculture, drinking and other daily needs (Basu et al., 2010). A potential tertiary impact is the economic and cultural effect on rural and traditional communities if agriculture struggles or fails (Basu et al. 2010).

Acid mine drainage is another major concern, contamination which occurs when toxins from either exposed rock in the open pit of a mine, or from rocks stored in tailings ponds leak into nearby waterways and soils (Basu et. al., 2010). A secondary impact of this process is the bioaccumulation of toxins in surrounding wildlife and plants, harming both and the health of people who depend upon them. Tertiary impacts include negative effects on the health of human communities who consume these food sources (Basu et al, 2010).

Community discontent has only increased over the mine's life-span, and locals have formed citizen action groups to create a protest movement alongside NGOs (Fulmer, 2011). Various acts of protest have occurred in reaction to the mine. In one such incident, on January 11, 2005, police officers and soldiers sent to dismantle a pedestrian bridge and escort equipment to the mine were met by protesters. Yagenova and Garcia (2009) note that "in the ensuing melee, one protester was killed, sixteen others seriously injured, and the leaders of the protest were arrested on charges of terrorism."

In reaction to the concerns of locals, both the International Labour Organization and Inter-American Commission on Human Rights have called for suspension of these mining activities, but they have been ignored (Zarsky & Stanley, 2013). Affected

communities have also brought complaints to the World Bank's Compliance Advisor Ombudsman as well as Canada's Department of Foreign Affairs and International Trade (DFAIT), which recommended that Goldcorp should "conduct focused and culturally appropriate consultations" and that they work with local representatives to "participate in a constructive dialogue" (Compliance Advisor Ombudsman Website & DFATD Website). However, the recommendations by both the Ombudsman and DFAIT are non-binding and so far have had minimal impact (Sagebien & Lindsay, 2011).

Social and environmental impacts of the types mentioned above have resulted in Latin American communities' increasingly opposing Canadian mining operations altogether (Sagebien & Lindsay, 2011).

Coumans notes that:

"Fifteen years ago communities were more likely to be receptive, or at least resigned, to the prospect of hosting a large-scale mine, only starting to protest when unanticipated impacts became overwhelming. Now, potentially affected community members, even in remote locations, are increasingly opposing mining before it starts" (pg. 141).

In other cases, countries frustrated with the actions of MNCs are looking to nationalize their extractive sectors (Sagebien & Lindsay, 2011). Without serious changes to current mining practices, Canadian mining companies may find themselves increasingly unwelcome -- a situation that could have significant negative implications for Canada's mining industry and its national economy as a whole.

Canadian Mining Companies in Africa

In recent decades, Africa has seen enormous growth in investment by Canadian mining companies (NRCan, 2013). These investments occur in 34 countries in Africa with \$31.6 billion in mining assets as of 2011 (NRCan, 2013). Canadian companies have some 155 mining operations throughout Africa -- more than those in Central America, Asia, and Oceania combined. Some of the most prominent Canadian companies in the region include the African Metals Corporation, First Quantum Minerals, Anvil Mining Ltd. and Africo Resources. While investment in and revenue from Africa has continued to grow, so too has conflict within the mining industry. Canadian mining companies have increasingly become the subject of allegations of corporate misconduct.

Case Study # 2: Canadian Operations in the Democratic of Republic of the Congo

Ruling the poorest country in the world, the DRC government describes poverty alleviation as its primary focus. Unfortunately, when an eagerness to create an attractive environment for foreign investment is combined with a limited capacity for governmental oversight, it is easy for corporate and political misconduct to slip through the cracks. For instance, the Africa Biodiversity Collaborative Group -- a collection of U.S.-based NGOs that explore conservation issues in Africa -- has discovered that several Canadian mining permits overlap established conservation areas. Some of these protected areas include Maiko National Park, Sankuru Nature Reserve, Upemba Park and Okapi Reserve (ABCG, 2013). In clear violation of DRC laws, these operations also would be unacceptable in Canada. Concerned groups report that corruption and corporate power have enabled industry to circumvent the domestic legislation on environmental protection.

Along with issues of environmental degradation, citizens of the DRC have not been able to find a forum for justice in instances of human rights violations. In November of 2010, the Canadian Centre Against Impunity (CAAI) sought action in both the DRC and Canada against Anvil Mining Ltd. for the company's involvement in civil violence in the DRC. It was reported that "in October 2004, the Congolese Armed Forces (FARDC) committed widespread atrocities in crushing a small-scale uprising in Kilwa, a port town critical to Anvil's operations. After shelling the town, Congolese soldiers reportedly carried out extra-judicial executions, torture, rape, illegal detentions and looting" (CCIJ, 2013). United Nations reports confirmed that at least 70 people were killed. Not long after the incident, the company admitted to providing vehicles and airplane support to the forces during the conflict.

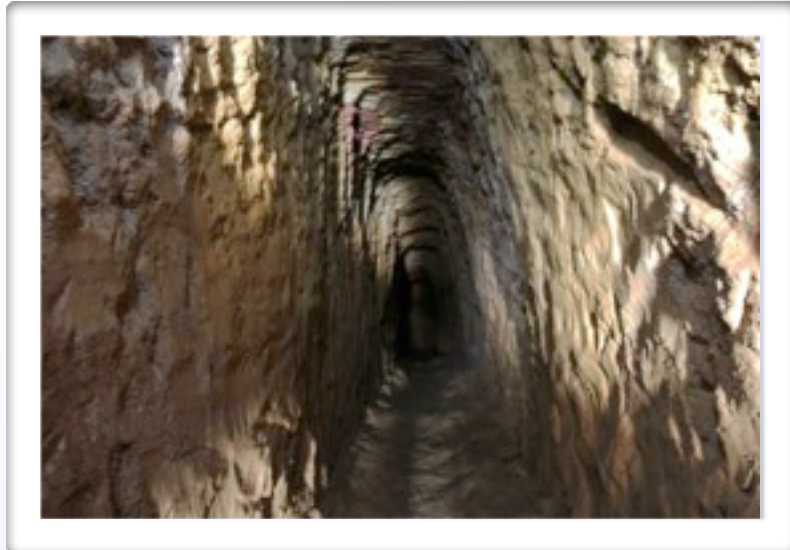
The UN also released a report in 2010 that named Anvil as an example of how justice is not met in the DRC (UN Security Council, 2010). In the DRC, the case against Anvil was dismissed. However in 2011, Québec Judge Benoît Emery accepted the case to be heard in the province. At the dawn of 2012, Anvil brought the case to the Court of Appeals, which then overturned the decision by the Superior Court of Québec (CCIJ, 2013). The case was then brought to the Supreme Court of Canada, but in the fall of 2012 the allegations were rejected on a technical issue, and Anvil's alleged wrongdoing was never brought to justice (Global Witness, 2012). Understandably, the verdict has left the families of the Kilwa massacre's victims, and the CAAI (which represented the relatives of the victims of the 2004 massacre) distressed and discouraged with the legal system.

Because of transgressions around financial reporting, the DRC has been suspended as a candidate country with the Extractive Industries Transparency Initiative (EITI), a global initiative that seeks to ensure transparency in financial disclosure. Reports have shown that one of the DRC's tax agencies was unable to account for \$88 million in royalties and taxes that had accrued (EITI, 2013). In response, the DRC's EITI division pointed out in a report that there are discrepancies with the financial figures reported by the mineral companies, and the amount received by the Government. Although Canadian mining companies are not responsible for the way their tax contributions are spent in foreign countries, it should be of concern to the companies, their investors and the Canadian Government that such a large portion of those contributions is going missing. Moreover, the average Canadian citizen has a stake in Canada's mining operations in this nation. In 2011, the earnings accrued by the Canada Pension Plan amounted to \$62.5 million (Imperial Canada, 2011). These investments were not limited to Canadian companies but also included mining giants owned by other developed countries, all

with different foreign policies on mining. With or without official guilty verdicts, this story again casts Canada and Canadian mining in an unfavorable light. The Canadian government and all citizens bear responsibility too.

In the DRC, and Africa as a whole, poverty alleviation is at the forefront of the UN's agenda. In the year 2000, the establishment of the Millennium Development Goals was seen as a visionary action and the keystone to meeting objectives of economic development in a sustainable manner. These principles, amplified in the International Study Group Report on Africa's Mineral Regimes, seek a vehicle through which the purpose of the Millennium Development Goals can be actualized -- that is, to "eradicate poverty and underpin sustainable growth and development", which requires "a strategy ... rooted in the utilization of Africa's significant resource assets" (ISGRAMR, 2012). The Study Group calls for a structural transformation of the mineral extraction industry in Africa. As a strategic plan, the group sees this change involving the incorporation of profit-sharing with the exportation of raw materials. In order for this to happen, Canadian companies need to be adopting best practices of transparency, environmental protection and social development through their own policies and actions.

The next section addresses some of the regulatory gaps which have led to a system where contentious incidents and serious issues can occur around mining activities.



Addressing Regulatory Gaps to Improve CSR in Canada's Mining Industry

Instances of company misconduct and negligence such as those described above are far too commonplace. Too many Canadian companies have taken advantage of regulatory and enforcement gaps, failing to provide safe and healthy conditions for their workers as well as neglecting the welfare of communities and environments within which they operate and for which they have responsibility.

We see these failures as the result of four key weaknesses:

Weakness #1: The lack of mandatory international CSR standards.

While compromised by provincial variability, we do have legislation within Canada which articulates the responsibilities of mining companies operating domestically. However, the closest that Canada comes to mandatory international CSR standards for mining consists of regulations on occupational health and safety, and laws against corruption (CCOHS, 2013 & JLW, 2013). Without mandatory international standards for CSR practices in the mining industry companies are free to take advantage of the weak regulatory and enforcement systems present in many developing nations. While existing voluntary standards can provide some measure of alignment between social responsibility initiatives and global standards, they lack enforceable consequences when CSR promises are not honoured. Additionally, the uneven rates of participation in said practices create gaps in CSR implementation that allow social and environmental harm to occur unchecked, and provoke suspicion, protests, strikes and other forms of social conflict. Moreover, the absence of a level playing field favours laggards and puts more responsible companies at an economic disadvantage.

Weakness #2: CSR policies are typically developed internally, without stakeholder involvement.

Currently, most policies regarding CSR are developed internally in a way that prioritizes business interests, emphasizing marketing, public relations and profit. Many companies only adopt these policies in the face of external pressure or to placate investors and shareholders. They do not adequately engage local communities and groups impacted by the company's operations. Policies developed without meaningful stakeholder engagement tend to be unbalanced and likely will fail to address societal and environmental needs effectively.

Weakness #3: The lack of monitoring and reporting on the implementation and effectiveness of company CSR policies.

For those companies that do develop a CSR policy, there is no requirement for independent audits of CSR programs and their effectiveness, or public reporting on labour and environmental practices, social development investment, or financial transactions abroad. One recognizable area where Canada demands consistency at home and abroad is in our adherence to conventions against bribery and corruption with the Corruption of Foreign Public Officials Act (JLW, 2013). Such consistency needs to be applied to labour, human rights, and environmental practices as well.

Weakness #4: The lack of mechanisms to hold companies legally accountable for misconduct.

Currently there are no structures in place to hold mining companies legally accountable for harmful practices abroad. The closest mechanism is the Office of the Extractive Sector Counselor. It was created by the Canadian Government in 2009, to provide a forum where resource conflicts can be resolved among stakeholders.

The mandate of this intermediary is to engage corporate representatives and project-affected community members in dispute resolution that takes the form of interest-based mutual gains (Office, 2012). However, it is not within the legal power of the office to ensure that workable solutions are achieved between the stakeholders. This weakness was highlighted with the first case presented to the Office since its debut, a case brought by the United Steelworkers Union (USW, 2012). It came to light that the Canadian mining company Excellon had refused to negotiate with Los Mineros - the National Miners and Metalworkers Union of Mexico. This refusal to negotiate is in clear violation of the right to collective bargaining. The resolution process went ahead but USW noted that, “when Excellon decided that it was no longer interested in participating in the CSR Counsellor’s mediation efforts, it simply walked away and there was nothing the Counsellor could do about it. Worker and community complaints were not resolved” (USW, 2012).

The Role of CIDA

A recent and large source of controversy concerning the mining industry and its CSR practices has been the role of the Canadian International Development Agency (CIDA) in development projects abroad. CIDA’s founding purpose was to administer foreign aid in developing countries to meet Canada’s goals and commitments for a more secure, equitable, and healthier world. For 45 years, CIDA administered aid to various countries around the world, largely through NGOs (CIDA, 2007). As of March 2013, however, the Canadian Government announced that CIDA would merge with the Department of Foreign Affairs and International Trade (DFAIT) to create the Department of Foreign Affairs Trade and Development (DFATD).

While this merger could represent an opportunity for more efficient and effective delivery of foreign aid, it is of great concern to many that DFATD’s development mission is disproportionately focused on Canadian business and commercial interests at the expense of

Canada’s social and environmental responsibilities. Various academics and public service organizations including MiningWatch Canada, and the North-South Institute (NSI), have criticized the department as subsidizing the CSR responsibilities of mining companies (NSI, 2013).

In Canada’s Economic Action Plan for 2013 the stated purpose for the merger is that “the new Department of Foreign Affairs, Trade and Development will facilitate a more coherent approach to Canadian international policy, support the achievement of Canada’s international goals, as well as provide improved outcomes for Canadians through more efficient, effective and targeted programming” (DFATD, 2013). However, it was brought to light by the North-South Institute that since the merger, no clarification has been made in the policy of DFATD’s development mandate (Beyond Aid, 2013). The group also points out that there is no single overarching policy framework or document directing development to issues or jurisdictions where they are most needed. If aid is being targeted at issues of poverty alleviation and environmental protection, then why aren’t the world’s eight poorest countries - all in Africa - listed as part of the “countries of focus”? (Global Finance, 2013 & DFATD, 2013). If the purpose is to meet Canada’s international aid commitments then why transfer the funds to private businesses, which should be spending their own funds -- not tax dollars -- to meet their CSR responsibilities? Until the department clarifies its development vision and puts to rest criticism about the lack of a strategic plan developed in full consultation with all stakeholders, it will continue to be the subject of criticism and suspicion for *ad hoc* decisions that seem more concerned about aiding business and less focused on serving people in need.

The Business Case for CSR

Over the past decade, the business case for companies to pursue CSR has become clearer. Without adequately engaging the parties who are affected by their activities, companies prompt negative reactions from a host of stakeholders, encounter costly delays and compromise their own ability to create wealth (IISD, 2007). In a speech that John Baird, President of Petroleum Developers Association Canada (PDAC), gave to the Economic Club of Canada in 2009, he said that while CSR was no guarantee that problems would not arise, it did “reduce the impact of problems should they occur.” He acknowledged that “lack of adequate social performance can lead to unexpected and potentially avoidable costs, delays, negative relationships and impacts on local communities” (PDAC, 2009). Moreover, he noted, failing to behave with integrity regardless of location opens companies to suspicion, opposition and further negative consequences imposed by customers, investors and regulators.

Beyond simply reducing or avoiding social backlash, strong CSR policies create numerous benefits for a company. These include better management of risk and reputation, more successful employee recruitment and retention, and an increased ability to adapt to social and environmental changes as they occur (IISD, 2007). Other benefits include better relationships with supply chain actors, regulators and local communities (IISD, 2007). Strong CSR policies help firms to anticipate and prevent issues that could hinder their own performance, while at the same time creating an environment which fosters cooperation and success. The International Institute for Sustainable Development (IISD) notes that growing investor recognition of these benefits of CSR has led to increased disclosure of company CSR practices to “mutual funds, private equity funds, venture capital funds, commercial banks and other financial market investors” (IISD, 2007). The result is that the caliber of a company’s CSR policies also

influences the firm’s access to capital as well as customer and investor loyalty.

Because of these benefits, the international mining industry itself has begun to develop increasingly comprehensive frameworks for CSR that could inform legislated best practices for companies operating abroad. For example, the Prospectors and Developers Association of Canada (PDAC) has devised the E3 Plus program as a comprehensive voluntary framework for “responsible exploration” (PDAC Website). There are three main parts to this framework: Environmental Stewardship, Health and Safety, and Social Responsibility. E3 Plus includes eight principles for responsible exploration, guidance notes on implementing the principles, and three internet-based toolkits in the areas of social responsibility, environmental stewardship, and health and safety (PDAC Website). These types of industry-produced frameworks contain valuable and pragmatic insights around the practical application of good CSR practices on the ground. The question remains: how can they be made consistent, international and enforceable so as to level the playing field?

Calling for Protocols to Regulate Canadian International Mining Operations

Despite the efforts of individual companies and leaders in the mining industry to create and implement best practices, there remain too many companies who are still not meeting what could be considered minimum standards of socially and environmentally ethical conduct internationally. Nicole Marie Lindsay (2012), a Ph.D. candidate in business ethics, provided an aptly articulated insight on the state of CSR regulation with Canadian mining operations:

“Although rigid government command-and-control approaches to regulating business are clearly outdated, laissez-faire market solutions that have allowed corporations to define what constitutes ‘responsibility’ and encouraged them to monitor themselves have obvious limitations in an economic context defined by the imperative to maximize profit and investor return in a competitive global marketplace.”

Moreover, when voluntary codes of conduct, such as the UN Global Compact and ILO Performance Standards, are not legally enforceable and promises are withdrawn with impunity, communities have no guarantee of protection from corruption, manipulation, human rights abuses, environmental degradation and associated livelihood and health impacts. While a company’s public commitments to CSR can provide some leverage for NGOs and civil society to hold them accountable, it produces a system of ‘reactive’ CSR instead of ‘proactive’ CSR. It also reinforces a culture of doing the minimum required, and only when compelled.

A stronger system would be one where core responsibilities were committed to from the beginning and companies were encouraged to strive to integrate further the health and sustainability of the surrounding physical and social environments into their business plans. Therefore, we are calling on Canadian mining companies, indeed all Canadian companies, to sign onto protocols where they commit to uphold, as a minimum,

the highest Canadian standards of worker health and safety, community consultation, social development, labour rights, environmental protection and financial transparency.

The Importance of Third Party Auditing of Mining Practices

With the current reliance on voluntary CSR practices and self-reporting, neither the Canadian Government nor the public receive independent assessments of the effectiveness and reliability of company CSR initiatives or compliance. The use of independent third party monitoring seeks to eliminate these problems through the following:

- (A) Arms-length monitoring where the assessor has full liberty to be frank about the effectiveness and reliability of a company’s CSR practices. (Conflicts of interest, perceived or real, between the assessor and the company being assessed must be avoided.)
- (B) Comparing stated goals against measurable targets, including the extent of implementation, follow-through and observed effects.
- (C) Showing companies their CSR strengths and weaknesses, and how to make meaningful improvements on social and environmental spending.

Currently, Industry Canada endorses assessment mechanisms that are too lenient and predisposed towards business. Firms are advised that they “should tailor their approach to verification to suit their corporate culture, and the context for and objectives and content of their CSR strategy and commitments” (Industry Canada, 2013). One can easily interpret such language as a green light not only to put economic interests first but to subordinate social and environmental responsibilities to the imperative of profit.

However, as described above, auditing processes that 16

are external and impartial best ensure that promised investments in community development, and environment, health and safety are indeed carried out, and are verified as effective.

While internal incentives for good CSR practices are discussed above, we believe that it is important for companies to be engaged, challenged, and aided by third party monitors to pursue best practices. This role is currently being filled by NGOs that use high quality research, rational persuasion, and moral argument to urge companies to perform in an ethical manner (Winston, 2002). In effect, public advocacy groups continue to bring important information about the mining industry to public attention. For example, Mining Watch Canada exposed a suppressed report on CSR by the Canadian Centre for the Study of Resource Conflict. The report informs the public about systematic malpractice in the extractive industries (Mining Watch Canada, 2010). Even with such efforts by NGOs like Mining Watch Canada, the public is often forced to rely on incomplete, censored or self-serving information presented by the mining industry.

This situation leads to unnecessary misunderstanding and conflict. As well, Noth and Young (2013) emphasize the important role that NGOs play in providing support to communities that have been harmed and are seeking justice. The authors note that many legal cases of mine-affected community members “would not have reached the courts without the support from a broad range of Canadian civic organizations and their partners abroad” (Noth & Young 2013). This perspective is not anti-business, but rather, it advocates for good governance, public health, worker safety and environmental stewardship, all of which should be priorities for responsible businesses too. As well, increasing partnerships between companies and NGO’s on improving community relations will benefit business and society alike.

Looking forward: The Value of Legislation on CSR in the Mining Industry

A privileged, prosperous and well respected country like Canada can and should adopt a leadership role in pursuit of meaningful CSR. It is not only the morally appropriate course of action; it will be the most beneficial for our foreign relations and trade ambitions as well. Canada’s good reputation has been tarnished and future international opportunities compromised by questionable corporate conduct. A significant step toward improvement would be for Canadian companies to sign onto a protocol which commits them to abide at least by the highest Canadian standards of practice wherever they operate in the world. Why should we enrich ourselves by damaging the livelihoods, communities, and environments that other people and their children depend upon?

Due to the inherent limitations of voluntary programs, in order to become a true leader in responsible resource development, Canada should develop legislation which creates legally binding standards of practice for the operations of Canadian mining companies internationally. In the process of creating new legislation, some reconciliation will need to take place around the varying standards among the provinces, including such stipulations as those in BC which make nearly all mining laws subject to the discretion of the Chief Inspector of Mines.

The past decade has produced numerous domestic calls for Canada to improve the CSR policies and practices of the extractive industry through legislation. For example, recommendations by the Canadian Network on Corporate Accountability (CNCA) included “The adoption of legally-binding provisions that make the receipt of government support by extractive companies contingent on continued compliance with robust corporate accountability standards” (CNCA). In 2007, the final report on Corporate Social Responsibility and

Roundtable on Environment and Economy also recommended that the Canadian Government work towards creating mandatory Canadian standards based on existing international standards, and suggested that the Government increase revenue transparency, advance the rights of indigenous peoples, assist in judicial system improvements and assist host state governments in policy and regulatory development (National Round Tables, 2007).

Furthermore, within the past 10 years, at least three significant attempts have been made in Parliament to strengthen Canada's ability to protect human rights in foreign countries. Two of the three initiatives were private members bills. They were C-300: Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act, and C-323: An Act to Amend the Federal Courts Act (International Protection and Promotion of Human Rights). The third attempt came from the results of a report by the Subcommittee of Foreign Affairs and International Trade (SCFAIT). Bill C-300 built upon the SCFAIT report to include measures of regulatory and financial intervention. However, in October of 2010 the bill was defeated in Parliament (Simons & Macklin 2010). Bill C-323 "calls for extending the authority of the Federal Court system to protect foreign citizens against a broad range of human rights violations committed by Canadian and non-Canadian corporations, and persons operating outside Canada" (Fraser Institute, 2012).

Among these three efforts, a few common links can be found. For one, the intention is to place legal obligations for human rights directly onto Canadian companies. Second, as a means of applying sanctions, all three resolutions propose the withdrawal of financial support in the form of loans or market investments if the terms are breached. However, for companies worth billions of dollars, simply withdrawing support by the CPP, EDC or other government funders may not be sufficient to motivate correction of violations (Simons

& Macklin 2010). As for Bill C-323, it is currently in its first reading in Parliament. If this motion shares the same fate as Bill C-300 and is defeated, we hope that, at the very least, the Bill's content and purpose will influence the drafting of the upcoming transparency legislation that has been announced by the Canadian Government.

Opponents of legally binding legislation are concerned that it would result in inflexible, inefficient bureaucratic processes, which would come at a high administrative cost for governments and companies alike. In addition, some have argued that creating minimum acceptable standards will keep practices at the lowest level, with company CSR policies meeting legal requirements and nothing more (PDAC, 2009). But these 'race to the bottom' arguments are not reflective of current business trends or rising public expectations. On one hand, there is considerable research showing the benefit that companies and society receive from good CSR practices, and on the other, there is a range of corporate characteristics that affect investor and consumer decisions, and this trend in decision-making is broadening to include social and environmental criteria (IISD, 2007).

At the same time as firms benefit from strengthening their CSR policies, there are more and more incentives for companies acting responsibly. Increasing global recognition for the most sustainable and responsible companies, such as the annual "100 Most Sustainable Companies in the World" list at the World Economic Forum, can be seen as the beginning of a 'race to the top', where companies strive to exceed existing CSR norms for both economic and ethical reasons (IISD, 2007). At their best, companies recognize that healthy, peaceful, well-educated and sustainable societies are the best places to do business and to live and work.

Alongside industry-developed CSR frameworks such as PDAC's E3 Plus discussed above, we can look to

current legislation governing Canada's domestic mining activities. The Government of Canada has a set of enforceable environmental and social regulations for mining companies operating domestically. For example, the Fisheries Act and the Metal, Mines, and Effluent Regulations specify certain controls over waste matter and tailings that result from mining operations. Canada also has legislation regarding the duty to consult local communities and a specific constitutional obligation to consult and accommodate local Aboriginal communities. While critics argue that domestic legislation related to mining in Canada can be improved, we suggest that similar commitments for international mining operations would mark a significant improvement to current practices. In any case, ongoing improvements must be sought in order for Canadian mining companies to remain competitive and respectable.

Historically, corporate head offices of mining companies have successfully claimed they could not be held legally responsible for the misconduct of their subsidiaries. The result of this was that communities affected by Canadian mining operations outside of Canada have been limited to seeking redress in their home countries, often undemocratic and plagued by corruption. However, in a recent precedent-setting decision (2013), Ontario Superior Court Justice Carole Brown has ruled that a Guatemalan community's claims of murder and gang rape by a subsidiary of the company Hudbay Minerals, which is headquartered in Toronto, could not be dismissed and that the case could proceed to trial in Canada (Collenette, 2013). This decision should stand as a strong warning for Canadian mining companies to be more vigilant in the oversight of their international operations, subsidiaries and partners and to assume responsibility for law-abiding and ethical behaviour. While this case has not been resolved yet, the Superior Court's decision is a harbinger of what lies ahead. In order to improve the

benefits of CSR for both business and society, it is time for a standardized and verifiable approach.

This need not be an adversarial process. The Canadian Government can use its good offices to bring together business, the provinces, NGOs and civil society to develop a protocol that includes standards for indigenous rights, worker health and safety, local consultation, environmental protection and reclamation, and financial transparency

A Step in the Right Direction: Upcoming Legislation on Transparency in the Canadian Extractive Sector

At the 39th G8 Summit in Northern Ireland in date, the EU released a commitment to create legislation requiring mining, petroleum, and logging companies to disclose payments to foreign governments if they exceed 100,000 euros. Pressure from the G8 Chair, UK Prime Minister David Cameron, as well other G8 countries, persuaded Canada to give assurances that new legislation on financial reporting would be adopted. The effect of such legislation will be that citizens of resource-rich countries will have access to information about revenue flows in the extractives sector in order to limit bribery, corruption, and money laundering. Currently, both the US and the UK have legislation requiring mining companies to submit mandatory financial reporting.

While it is encouraging that Prime Minister Harper has engaged with the EU in discussing how to strengthen our financial transparency, such legislation confronts only a fraction of the issues facing Canadian extractive industries abroad. As seen by the profound environmental damage in Guatemala, and the misconduct in the Democratic Republic of the Congo in the case studies shared above, financial reporting is far from the only concern. Many of the conflicts occurring

around Canadian international mining operations have been the result of serious environmental damage, inadequate consultation with affected parties, unfair benefits distribution, and failure to observe basic human and labour rights.

The upcoming transparency legislation can be seen as evidence that the Government is willing to develop legally binding standards of practice for Canadian mining operations abroad. The time is now for the Government of Canada to call upon civil society, NGOs, community leaders, provincial governments and parliamentarians to work together to contribute to the drafting of a new comprehensive policy governing corporate behaviour internationally.

Conclusion

Today, too many governments and businesses encourage, support, and participate in practices that are wasteful, harmful, and unfair. Too often, investors and customers have ignored or have been willfully unaware of such practices. That is changing. Our best prospects now and for the future depend upon prosperity derived from socially just and environmentally responsible endeavors that instill a sense of pride in Canadians and bring people together to create social, educational, and economic opportunity accessible to all.

Until now, industry norms in CSR have been developed by individual companies or industries with a clear tilt towards convenience, and with loose requirements providing ample room for the avoidance of responsibility. While numerous problems have resulted from these conditions, the clear opportunity still lies before us to create new standards of practice for CSR, and to enjoy the benefits that will result.

In this report we have presented arguments for the development of a 'made-in-Canada' protocol for Canadian companies to adopt and observe that would

include environmental, social and labour standards. Applied around the world wherever they operate, these measures will be a source of national pride and competitive advantage.

Specifically, we have recommended:

First, that all Canadian mining companies, indeed all Canadian companies, sign onto protocols where they commit to uphold no less than the best of Canadian standards of worker health and safety, community consultation, social development, labour and human rights, environmental protection and financial transparency wherever they operate around the world.

Second, that the Canadian Government work with the mining industry and all other stakeholders to develop and implement a system of arms-length monitoring, executed by reputable third parties, to ensure adherence to, and implementation of, these protocols.

And third, that given the limitations of voluntary practices, the Government of Canada convene a process for drafting legislation which would create legally binding standards for Canadian companies operating internationally, perhaps beginning with the mining industry because of its impact and significance. We believe that this process should include the provinces, industry and civil society in order to earn social license. Such legislation also will level the playing field, rewarding good corporate behavior and bringing laggards up to reasonable standards of performance.

Laws can be evaded, of course, and some of those who oppose legislated standards have argued that creating minimum practices will keep practices at the minimum level. This concern can be addressed through incentives and disincentives for good and bad behavior. With corporate irresponsibility, everyone loses. In the developing regions that host the majority of Canadian mining activity, such as Latin America and Africa,

stark wealth disparities and income inequality make it all the more vital that CSR policies are strategically targeted at poverty reduction, social development, labour and human rights and environmental protection, as well as prioritizing the fair and equitable distribution of benefits throughout communities. The alternative is the all-too-common story of corruption, environmental and health disasters, and human rights violations with the social, legal and economic destruction that often follow.

Improvements in the CSR practices of Canadian mining companies need to come from both sides: protocols and legislation which set the minimum standard of operations to prevent inadequate or harmful conduct on the one hand, and on the other hand a culture of progressive competition where individual companies, appreciating the benefits of good CSR practices, will continually raise the bar of excellence and challenge each other to be accountable. Canada can make a decisive and positive contribution to global society through truly responsible corporate performance that fosters economic success while safeguarding society and the environment.

Canada is a country with many blessings, a peaceful well-educated population, with tremendous natural, cultural, economic and social capital that are the envy of many nations. We do not need to harm the health and well-being of other peoples or the environments within which they live to increase our wealth or profits. Nor do we need to compromise opportunities for future generations or squeeze other species to extinction. What we do need is a robust set of principles and practices which ensure the safeguarding of the physical and social environments affected by the extractive sector and other business activities globally.

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