



## Ardakani, Azadeh (2011) Analysis of the Canadian Mining Industry's Global Engagement Practices with Indigenous Peoples. [Dissertation (University of Nottingham only)] (Unpublished)

### Access from the University of Nottingham repository:

[http://eprints.nottingham.ac.uk/25347/1/Azadeh\\_Ardakani\\_Dissertation\\_Chap.1-8.pdf](http://eprints.nottingham.ac.uk/25347/1/Azadeh_Ardakani_Dissertation_Chap.1-8.pdf)

### Copyright and reuse:

The Nottingham ePrints service makes this work by researchers of the University of Nottingham available open access under the following conditions.

- Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners.
- To the extent reasonable and practicable the material made available in Nottingham ePrints has been checked for eligibility before being made available.
- Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.
- Quotations or similar reproductions must be sufficiently acknowledged.

Please see our full end user licence at:

[http://eprints.nottingham.ac.uk/end\\_user\\_agreement.pdf](http://eprints.nottingham.ac.uk/end_user_agreement.pdf)

### A note on versions:

The version presented here may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher's version. Please see the repository url above for details on accessing the published version and note that access may require a subscription.

For more information, please contact [eprints@nottingham.ac.uk](mailto:eprints@nottingham.ac.uk)

---

# Analysis of the Canadian Mining Industry's Global Engagement Practices with Indigenous Peoples

by

Azadeh Ardakani

2010

---

## ABSTRACT

The aim of this research is to give a summary of how mining companies address issues of Indigenous communities from a cultural and human rights perspective. In the last 10 to 15 years, coinciding with globalization (Murphy & Arenas, 2011), increased market demands, as a result of population and economic growth, resource extraction industries have been shifting their operations from developed to developing countries (Mining Journal, November 2001, p. 353). (Murphy & Arenas, 2011). As a result, Indigenous Peoples have suffered from development on their traditional lands, specifically from the implications of development on their cultures, economies and societies. There have been growing ethical concerns about the mining industry. Environmental and human rights disasters related to the mining sector have become high profile ethical issues in many countries and contributed to growing public and media concern. The "Management In Mining Report" has cited bribery, lack of community engagement, harmful affects on agricultural land, pollution and related health hazards, as reasons for criticism. Can Corporate Social Responsibility (CSR) cause a fundamental change in protecting the rights of these vulnerable communities, and contribute to a fair distribution of costs and benefits from this large-scale resource exploitation? If so, under what conditions can this occur? This research thesis aims to determine the enablers and barriers in this process for the sake of Indigenous empowerment, as opposed to management, based on a renewed understanding of the mechanisms at play. Furthermore, the literature review will look at the role of the state in community rights and corporate responsibility, corporate attempts to justify and regulate community efforts in local development, and the ways by which civil society and NGOs can work to ensure the social and ecological sustainability of mineral extraction.

## ACKNOWLEDGEMENTS

I would first like to express my deepest gratitude to Craig Benjamin, Campaigner for the Human Rights of Indigenous Peoples at Amnesty International Canada and his invaluable insight in this research process. I am particularly grateful to my supervisor, Dr. Wendy Chapple for her direction and guidance. This research is dedicated to my father and best friend Ahmad Ardakani. Thank you for always supporting my unconventional and daring dreams and pushing me to strive to be my best. Your hardships and life story is my inspiration and the foundation for believing the impossible is always possible.

## TABLE OF CONTENTS

<i>ACKNOWLEDGEMENTS</i> .....	<i>p.2</i>
<i>INTRODUCTION:</i> .....	<i>P5</i>
<b><i>CHAPTER 1: RESEARCH CONTEXT</i></b> .....	<b><i>p. 5</i></b>
<i>RESEARCH METHODOLOGY</i> .....	
<i>1.2 SOCIAL CONSTRUCTIVISM</i> .....	
<i>1.3 REFLEXIVITY</i> .....	
<i>1.4 INTERVIEWS</i> .....	
<i>1.5 STRENGTHS</i> .....	
<i>1.6 WEAKNESSES</i> .....	
<i>RESEARCH QUESTIONS</i> .....	
<b><i>CHAPTER 2: STAKEHOLDER ANALYSIS</i></b> .....	<b><i>p.10</i></b>
<i>CANADIAN MINING COMPANIES</i> .....	
<i>INDIGENOUS PEOPLES</i> .....	
<i>CORPORATE SOCIAL RESPONSIBILITY AND CIVIL REGULATION</i> .....	
<i>CIVIL SOCIETY AND NGOs</i> .....	
<b><i>CHAPTER 3: CHAPTER 3: REGIONAL AND INTERNATIONAL LEGAL AND VOLUNTARY FRAMEWORKS</i></b> .....	<b><i>p.16</i></b>
<i>IMPLEMENTATION OF THE CONVENTION NO. 169</i> .....	
<i>AMNESTY INTERNATIONAL: UN “Protect, Respect and Remedy” FRAMEWORK</i>	
<i>LEGAL FRAMEWORKS IN CANADA</i> .....	
<i>CSR REGULATORY INITIATIVES</i> .....	
<b><i>CHAPTER 4: ROLE OF THE STATE</i></b> .....	<b><i>P.24</i></b>
<i>REGULATORY BILLS</i> .....	
<i>ROLE OF MULTILATERAL FINANCIAL INSTITUTIONS</i> .....	
<b><i>CHAPTER 5: UNDERSTANDING SOCIAL LICENSE TO OPERATE</i></b> .....	<b><i>P.29</i></b>
<i>BARRICK GOLD CORP</i> .....	
<b><i>CHAPTER 6: DEFINING SUSTAINABLE DEVELOPMENT</i></b> .....	<b><i>p.35</i></b>
<i>COSTS AND BENEFITS</i> .....	
<b><i>CHAPTER 7: ENGAGEMENT AS EMPOWERMENT</i></b> .....	<b><i>p.38</i></b>
<b><i>CHAPTER 8: CHAPTER 8: CROSS SECTOR COLLABORATION</i></b> ....	<b><i>p.40</i></b>

## INTRODUCTION

Prime Minister Harper noted in 2007, the Canadian government encourages and expects Canadian companies to meet high standards of Corporate Social Responsibility. Canada is a strong player in the global mining sector. In 2008, over 75 percent of the world's exploration and mining companies were headquartered in Canada. These 1293 companies had an interest in some 7809 properties in Canada and in over 100 countries around the world.

The sector does face a number of challenges when operating in developing countries and that is why a number of Canadian companies are engaging in Corporate Social Responsibility (CSR) initiatives, generally defined as voluntary activities. The Government of Canada has already taken significant steps to support Corporate Social Responsibility by Canadian companies operating abroad. Canada has established a National Contact Point within the Department of Foreign Affairs and International Trade (DFAIT) and allocated \$170,000 CSR Fund to assist Canadian offices abroad and in Canada to engage in CSR related activities.

In Latin America, Canada has held discussions with free trade agreement (FTA) partners, including Colombia and Peru, on how best to address CSR in the context of negotiations. Additionally recently signed FTAs with both these countries which include CSR provisions that promote voluntary principles of responsible business.

In February 2007, Canada endorsed the Extractive Industries Transparency Initiative, to ensure revenue transparency in the extractive sector. However it can do more to improve the competitive advantage of Canadian international extractive sector (Building the Canadian Advantage Report, 2009).

## CHAPTER 1: RESEARCH CONTEXT

In this dissertation, mixed methods will be employed to examine what variables (internal and external stakeholder groups) affect Indigenous engagement and policies within the Canadian mining industry.

This study challenges the assumptions of why mining companies may engage in CSR practices, by assessing the impact of the domestic influences and Indigenous engagement considerations. Thus, the aim is to develop the ethical discussion by reframing it in the contexts of how the national contexts of operation, such as laws, stakeholder power, government, social norms, civil society and culture, affects community engagement. My aim in this research is to determine the stakeholders in the field and their decisive influence in CSR policies.

*Key words: enablers vs barriers, stakeholder empowerment vs management, motivations, incentives, has an impact on, implications, international laws, media, Indigenous power, social norms, civil society, culture and language.*

For this research project, I will follow document and secondary analysis, as social research methods to capture the big picture about CSR in the mining industry, and its engagement with the Indigenous Peoples. This first phase aims to objectively identify the *issues, actors and trends* in this field through literature review materials gathered from newspapers, media, civil society sites, articles in journals, published statistics, conference papers, company reports, organizations' internal reports, and government publications. Furthermore, this phase will explore what environmental factors influence companies to adopt different standards in different regions whilst engaging with Indigenous communities.

The findings from this phase will provide a base for in-depth interviews with Amnesty International Canada and the Canadian Business for Corporate Social Responsibility's extractive industry expert for future research. Keeping in mind the main research purpose of this masters thesis, the fundamentals of two dominant research philosophies will be briefly discussed. These two, sometimes conflicting research traditions, are positivism and interpretivism. The basic aim of the positivism is to uncover truth or an objective reality. The positivism phase will be based on document and secondary analysis in this research paper. Due to timing limitations, the second phase of the goal will be the interpretive research, based on the in depth interviews, which aims to understand the meanings and ideas used by social actors in real settings (Gephart, 2004).

## **1.1 RESEARCH METHODOLOGY**

Qualitative research is a rich and diverse approach with methodological options, including interviews, participant observation and documentary analysis (Cassell & Symon, 2004). It is difficult to provide a simple definition of qualitative research because it is informed by different paradigms (Cassell & Symon, 2004).

Qualitative data provides richness of detail, explanatory power, and intuitive 'undeniability' - but cannot be described as scientific research. Document analysis is a key research approach in historical findings. It is not a summary or description of what happened, but an analysis of the motivation, intent and framework for the research context within a particular historical context. Document analysis is valuable for collecting qualitative data due to the wide variation in documents. Document analysis is also helpful in analyzing all variables and uncovering any manipulated data. Although this is all within the researcher's interpretation.

According to Carroll (1991), CSR is a complex field which incorporates economic, legal, ethical and philanthropic responsibilities. Due to its

multifaceted and emerging nature, it is interesting to research. As described by Lockett et al(2006), CSR knowledge is in a 'continuing state of emergence' (p. 133).

## 1.2 SOCIAL CONSTRUCTIVISM

Social constructivism is one of the main positions associated with qualitative research (Flick, 2006). It claims that social realities are diverse and its constructs are linked to the circumstances within which they are produced' (Miller, 2004: 63). Constructivism views knowledge as 'constructed' by social processes. Narrative analysis is affected by the subjectivity of readers and the authors and explores how the narratives are shaped and stories are told. Furthermore, narratives are constructed through interactions between actors. (Creswell, 2007). The narrative approach improves our understanding of organizational stories and captures the power structure among stakeholders within the industry.

## 1.3 REFLEXIVITY

Researchers involved in narrative analysis must be aware of their own influence in the research process. This introspection enables transparency about the research process. However, reflexivity is more a critical self-reflection of one's research practice (Lynch, 2000). Cassell & Symon (2004) propose three domains questions of reflexivity: *How is research designed and conducted? What is the researcher's role? How does the paradigm chosen influence the findings?* Being aware of one's own bias strengthens the credibility and quality of the research.



#### **1.4 INTERVIEWS**

Interviews are associated with both the positivist and phenomenological methodologies. The method involves collecting data in which selected participants are asked questions to develop a better understanding of the respondent's world so the researcher may influence it either independently or collaboratively. Sometimes interviews contain highly confidential and sensitive materials and as such, the interviewee may be reluctant to be truthful about the issues at hand, unless there is confidentiality provided in a one to one situation (Collis, 2003). Interviews can be time consuming and expensive. I will be using content from semi structured and unstructured interviews in this research paper, as the issues discussed and the matters explored will change from interview to interview, as various aspects of the topics are revealed.

#### **1.5 STRENGTHS**

In depth interviews enable respondents to express general attitudes and opinions that can help the researcher interpret their responses to structured questions (Malhotra, 2007). These findings may provide a list of conclusions, which results in richer and deeper explanations. One-on-one interviews are a free exchange of information and would not be possible in focus groups because there is no social pressure to conform to group response (Van Maanen, 1998) As such, interviews are vital for a more detailed understanding of the complex dynamics of stakeholders in an industry.

#### **1.6 WEAKNESSES**

Respondents may or may not be able to answer a particular question because the situation or context may not seem appropriate for disclosure, or the information requested is sensitive. Furthermore, interviewee may have certain expectations about the interview and therefore give what is considered to be 'correct' or an 'acceptable' response.

## 1.7 BROAD RESEARCH QUESTIONS

- I. What are the political, social, legal and cultural mechanisms in this research context?*
- II. How do they have an impact on the Corporate Social Responsibility initiatives and Indigenous engagements?*
- III. Who are the stakeholders in this field? How do they interface? What are their power differentials and why?*
- IV. What are the mechanisms at play between Indigenous management versus empowerment?*
- V. How can Corporate Social Responsibility programs be effectively deployed as a remedy to address the social and political vulnerability of Indigenous communities and in what conditions is this possible?*
- VI. What conditions are required for sustainable development and Indigenous empowerment?*

In summary, my goal is to understand what the barriers and enablers are in Indigenous engagement within the mining industry and I will use both document analysis and secondary sources to analyze the legitimacy of these arguments related to the Canadian mining companies. This process will lead me to better understand the justification processes involved in developing and strengthening CSR within the Canadian mining industry, which will be addressed in the interview phase in a following paper.

## CHAPTER 2: STAKEHOLDERS ANALYSIS

In contrast to 'shareholder theory', 'stakeholder theory' takes into account the individuals or groups that have a 'stake' in a company, rather than a 'share' in a company.' Stakeholders are the groups of people that may be affected through harms and or benefits by corporate actions. Freeman and Liedtka (1999), whom defend the stakeholder approach suggest corporations have responsibility to all parties affected by business activity (Crane et al. 2008). The stakeholder literature points out three key attributes which pertain to stakeholders. First is power, that is the *power* to carry out one's own will despite resistance. Second is *legitimacy*, of socially accepted structures and behaviors, and third is *urgency*, where the claim is time sensitive and important to the stakeholder. According to Donaldson and Dunfee (1999), community norms and laws provide guidance on who may be considered a stakeholder, but there is an apparent large domain of discretion, and it falls largely under the discretion of managers within the corporations.

### 2.1 CANADIAN MINING COMPANIES

Canadian mining companies are global leaders in the mineral exploration sector representing approximately 43% of mineral expenditures worldwide in 2008. 19 of the 'top 100' mining companies are Canadian, followed by China (17), Australia (11), the U.S. (11) and South Africa (9). The mining industry contributed \$32 billion to Canada's GDP in 2009 and is considered to be the economic backbone of Canada's regional and rural economies (Members of Mining Association of British Columbia, 2011). At first glance, companies seem the same, but they are complex. Their intricate characters affect how community pressures are perceived and how CSR is taken up by the individual companies. Although economists view companies as profit maximizing entities, we must remember that companies are made up of human beings, and as such,

naturally hold ethics and morals formulated by the individuals within the company (Korten, 2011). However, from a legal perspective, let us remember that they are considered artificial entities (White, 1999).

Canadian companies have been at the forefront of the global expansion of mining activity, especially in Latin America. There are differences in power among the actors involved in mining projects due to the decline of state intervention and the era of neoliberal structural adjustment policies, which have created a void between economic production and community development collaborations. From the traditional corporate perspective, the corporations' sole priority is profitability and the maximization of shareholder value. Considering mining operations' implications are increasingly on the rise with issues of resistance and conflicts from local communities, it becomes apparent that development needs Corporate Social Responsibility as a viable and "balanced approach for corporations to address economic, social and environmental issues in a way that aims to benefit the environment, people, communities and society" (International Institute for Sustainable Development, 2004).

## **2.2 INDIGENOUS PEOPLES**

Indigenous Peoples have suffered from the ongoing impact of development on traditional lands and its consequences on their cultures, economies and societies. The United Nations estimates approximately up to five hundred million Indigenous People worldwide, consisting of over five thousand distinct groups (Whiteman and Cooper, 2000).

The definition proposed by the International Labour Organization in the Indigenous and Tribal Peoples Convention No. 169 defines Indigenous and tribal Peoples as: "(a) tribal Peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their

own customs or traditions or by special laws or (b) Peoples in independent countries who are regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions” (International Labour Organization, 2011).

Indigenous Peoples have been marginalized by society and are often excluded from political and economic institutions. In consequence of land rights issues associated with mining activities, Indigenous Peoples have been displaced, deprived of their ancestral land and the resources they require for survival. This is unfortunate, as Indigenous People are valuable members of our global community because their in-depth traditional knowledge about biodiversity can potentially play an instrumental role in our understanding, designing and approach to sustainable development (UN Permanent Forum of Indigenous Peoples, 2006).

### **2.3 CORPORATE SOCIAL RESPONSIBILITY as CIVIL REGULATION**

Canadian mining companies take their CSR duties very seriously, but CSR is a moving target. The definitions and measurements are changing as the discipline evolves. There is no standard rating by which to say a company "is" or "is not" meeting the goals of CSR (Scales, 2010).

In *Earth Matters* by Ciaran O’Faircheallaigh and Saleem Ali, (2009), the notion of democracy is explored among Indigenous Peoples, the Extractive Industries and Corporate Social Responsibility. Corporate responsiveness to community pressure presents an opportunity for Indigenous Peoples to express themselves beyond formal political structures, using ‘extra parliamentary’ means including physical protest, shareholder activism and reputation assaults and tactical use of

legislation (Trebeck, 2005). This section is drawn from empirical evidence research into the dynamics between mining companies and Indigenous Australians. The research used 120 semi structured interviews between 2002 to 2005 from all levels of mining personnel, industry, observers, bureaucrats, stock market participants, environmental and community activists and academics.

This study argues that CSR, as a tool for 'civil regulation,' can lead to democratization. The extent to which a decision is democratically legitimate depend on the extent to which decision making includes those which are affected by outcomes (Young, 2000). So with relation to mining, the where, how and when of mining decisions should reflect the wishes of those affected by the mining operations. Minority interests are often at a disadvantage by formal democratic processes, threatening democratic ideals of citizens. This is partially because the government is not reflecting the values held by a majority of citizens, let alone minorities, as this research case pertains to the rights of the Indigenous Peoples. Furthermore, the lack of access to formal political processes reinforces these social and economic qualities (Young, 2000, p.17). This where the corporations can play a powerful role as "institutional anchors of the industrial economy and share with the state, for better or worse, the rule and direction of social development"(quoted in Galligan, 1989).

Corporate Social Responsibility in this research context refers to and describes the activities beyond what is required by the law. The stakeholders are considered anyone or any organization affected by or able to affect a particular entity, including regulatory bodies, unions, NGOS, international bodies, shareholder activists and local communities Stakeholder concerns are important are important as the prerequisites for profit making has broadened (Moon, 1995; Warburton et al, 2004). When these key stakeholders collaborate and set standards, we can attain desired corporate behavior for compliance.

## 2.4 CIVIL SOCIETY / NGOs

Indigenous Peoples have attempted to have their rights recognized in the international realm through national and state legislation, litigation in courts, and directly aimed political campaigns in alliance with non-governmental organizations (NGOs). The increased involvement of NGOs, social movements and the Indigenous People's rights movement has made engagement with the Indigenous groups a political imperative and a viability for the corporations social license to operate (Kapelus, 2002).

Catherine Coumans, a leading NGO authority on corporate accountability abroad at Mining Watch Canada explains in an interview, that a barrier with current Corporate Social Responsibility (CSR) codes is that they "do not address the need for sanction and remedy, guarantee respect for human rights, and do not support and promote establishment and development of community organizations which protect social, economic, and environmental values."

She urges the need for effective state regulation and improved access to the legal system as opposed to CSR programs. The basis for Mrs Couman's position is a report which reveals 171 cases of CSR violations between 1999 and 2009 by Canadian mining companies. This report was commissioned by the Prospectors and Developers Association of Canada in 2009. However it was never released to the public. This is precisely why MiningWatch Canada firmly supports the passage of Bill C-300 in Canada, an [Act Respecting Corporate Accountability for Mining, Oil and Gas Corporations in Developing Countries](#), which is currently before the House of Commons.

Confronting companies requires the participation and support of civil society organizations. Negotiations and meetings are both time consuming and resource intensive for civil society organizations. Corporate decisions through civil society organizations can also be limiting for the Indigenous seeking to gain influence over the mining companies decision making processes, as often NGOs

are appealing to 'mainstream sensitivities', such as human rights issues and the environment (Ballard and Banks, 2003).

In "Indigenous People and Neoliberal Privatization in Canada: Opportunities, Cautions and Constraints" (MacDonald, 2011), the impact of the current neoliberal political context for Indigenous Peoples in Canada has been examined. The article highlights that Indigenous cultures and identities are being increasingly threatened by commodification and proposes cultural revival through self-government, as the key to the future for Indigenous empowerment.

This type of self government occurs by giving the Indigenous access to gain influence over central institutions. An approach of empowerment in communities to identify and implement their own solutions would benefit from cross sector collaboration between civil society groups and mining corporations.

NGOs often develop long term relationships with Indigenous communities and facilitate meetings and information sharing among mining affected Indigenous Peoples. NGOs can also serve as powerful stakeholders in lobbying governments and exposing the role of government in mining.

Not to mention, NGOs are powerful stakeholders in facilitating relationships at international forums, such as the World Bank and the United Nations, where standards which have an impact on Indigenous People are being developed. NGO activities continue to evolve at both local and international levels to the challenges that come with global mineral exploration development and production. Civil society engagements serve to deepen the understanding of power relations in the complex political contexts in which mining operations take place (Coumans, 2004). Civil society plays a crucial role in pressing companies to consider community demands (Trebeck et al, 2005). Without the power of the NGOs and civil society groups, the incentives to alter corporate behavior and performance diminishes. In CSR, civil society has a serious duty of obligation to perform the watchdog role. In regions where there are limited government structures, Indigenous communities turn to local companies for



delivery of adequate community needs, but at best CSR as a form of civil regulation is empowerment with many inconsistencies (Tebeck et al, 2005).

## **CHAPTER 3: REGIONAL AND INTERNATIONAL LEGAL & VOLUNTARY FRAMEWORKS**

The consequences of colonialism have resulted in the dominance of western legal procedures in natural resource development. Many Indigenous Peoples actively seek to have their traditional land rights recognized by national or international legal frameworks. Numerous international law conventions explicitly recognize the traditional land rights of Indigenous Peoples (Whiteman and Mamen, 2002) and some countries have national regulations mandating meaningful consultation (e.g. the Delgamuukw decision in Canada).

However, there are examples of meaningful consultation in both developed and developing countries regardless of regulatory framework. The International Labour Organization (ILO) Convention 169, which deals with the rights of the Indigenous People and tribal peoples and calls for specified measures to safeguard the persons, institutions, property, labour and culture of these people.

This is the strongest international convention for mandatory consultation, participation, and consent to natural resource development. The Convention No. 169 (1989) has been ratified by 22 countries, although the biggest players in the mining industry, such as the USA, China, Australia, and Canada have not ratified the convention as of yet.

### **3.1 IMPLEMENTATION OF THE CONVENTION NO. 169**

Since its adoption, Convention No. 169 (International Labour Organization, 2011) has gained much recognition and influenced many policies, debates and legal decisions at both regional and international levels. The Provisions of Convention No. 169 are compatible with the United Nations Declaration on the Rights of Indigenous Peoples, and the adoption of the Declaration requires the broader acceptance of the principles of Convention No. 169. The Convention No.169 prescribes governments the responsibility for protecting the rights of Indigenous and tribal Peoples (Article 3) and the provision of the means available to do so (Article 33). With a focus on consultation and participation, Convention No. 169 is meant to be a tool to create dialogue between governments and the Indigenous for development processes, conflict prevention and resolution.

Although considerable progress has been made concerning the implementation of the convention in the countries that have ratified, the challenges of implementation are apparent and highlight the need for a framework which supports the participation of Indigenous Peoples to be active in making decisions that affect them.

At the country-level, it has become evident that a focus on good practices and lessons learned from practical implementation is required for constructive dialogue. The ILO is gradually making a series of good practice studies available, related to the main provisions of Convention No. 169.

### **3.2 AMNESTY INTERNATIONAL: UN “Protect, Respect and Remedy” FRAMEWORK**

In 2005, UN Secretary-General Kofi Annan appointed Professor John Ruggie as the Special Representative of on human rights and transnational corporations. The “Protect, Respect and Remedy” Framework rests on three principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and greater access by victims to effective remedy.

Amnesty International’s ongoing work calls for action and urges UN member states to support a Special Procedure with mandate on business and human rights. Amnesty supports the “Protect, Respect and Remedy” Framework and Guiding Principles developed by the Special Representative of the UN Secretary-General on human rights and transnational corporations, however points out that Professor John Ruggie’s framework relating to business and human rights is not adequately covered. Amnesty International remains concerned that the draft resolution continues to fall short of addressing a way to advance the rights of those affected by business -related human rights abuses without provision of the outlined elements below, the effectiveness of the resolution is weak and limited.

The resolution must expressly integrate throughout its text the 2008 UN “Protect, Respect and Remedy” Framework as the reference point for moving forward; this is especially important in the operative paragraphs that constitute the mandate of the Working Group.

The current draft resolution requires that both the Framework and the Guiding Principles be explicitly referenced together throughout the draft resolution’s provisions to adequately reflect the established business and human rights framework. The effectiveness of it must be tested in practice. Amnesty International is not calling for a re-opening of the principles, but for the UN and others to build on them in a meaningful way based on experience with real life situations.

The resolution must establish the ability of the Working Group to seek, receive and exchange information from all relevant stakeholders on all issues and alleged abuses within the Working Group's mandate. Additionally, it must establish a process for analyzing gaps in the legal protection of business related human rights abuses with a long-term view of developing an international legal instrument to meet these gaps.

In summary the main areas in which Amnesty International believes the Guiding Principles remain insufficient include: (1) Extraterritoriality: The Guiding Principles do not require States to put in place effective regulatory measures to prevent and punish their companies from abusing the rights of individuals and communities in other countries; (2) Due diligence: The Guiding Principles do not specify that States should require companies to undertake human rights due diligence; (3) Right to remedy as a human right: principles fail to explicitly recognize the right to remedy as a human right.

Amnesty International provided detailed comments on an outline of the Guiding Principles in October 2010. The comments are available at: <http://www.amnesty.org/en/library/info/IO50/001/2010/en>.

Azadeh Ardakani  
Today, 4:28 AM  
Added Text

### 3.3 LEGAL FRAMEWORK IN CANADA

In this section I aim to cover the legal frameworks which pertain to Canada. 'Counterfactual' is a situation where there are no contractual agreements between Aboriginal Peoples, mining companies and governments about a mining project. In theory Canadian aboriginal groups have access to both legal and political strategies to influence decisions regarding development on their traditional lands, however they are constrained of financial resources and expertise.

Research exposes that political strategies and use of legal rights are generally more effective at minimizing harmful environmental and cultural impacts (O'Faircheallaigh, 2009: p.69). Aboriginal people can seek support through media, building political alliances with NGOS, which can then exert pressure on corporations, their shareholders and local and national governments

Furthermore, Aboriginal access to components of judicial and regulatory systems can exert influence if organized on legal and political strategies. Another limitation is that Aboriginals have little direct involvement with managing environmental and other aspects of mining projects of which they are affected by (O'Faircheallaigh, 2009).

Indigenous Peoples have attempted to challenge corporate representations of 'community consent' and to represent their concerns over natural resource development to external audiences (e.g. Wheeler et al. 2002). Indigenous Peoples have also used coercive means to stop projects. This is why it is vital for international laws, legal agreements and implementation processes to play an imperative role in Indigenous engagement.

B.C. Mining Association of Canada President Pierre Gratton stated in a recent issue of The Hill Times that Mining should not come ahead of clean water, that Canada needs to get their priorities straight and establish partnership based

recognition of constitutional rights and the international commitments that both Canada and the mining industry have made.

In resource-rich British Columbia, the situation is worsening. Unproductive confrontation have prevailed over positive engagement, despite that various court rulings recognizing the rights of First Nations. Mining interests seem to have more rights than anyone else. The current British Columbia environmental assessment process supports all mining initiatives, dismisses environmental concerns, and ignores First Nations rights.

In British Columbia, two-thirds of the 1,800, non-producing mines are still polluting our lands and waters. Reforms for responsible mining are needed and these reforms should speak to the kind of mining that the First Nations communities would like to see.

Bev Sellars, chief of the Xat'sull (Soda Creek) and chair of B.C.'s First Nations Women Advocating Responsible Mining (FNWARM) explains in an interview the need for partnership-based recognition on constitutional rights. "We have to talk about an exploration system that prevents millions of investor and taxpayer dollars being wasted on divisive, destructive projects that should never have been proposed. Then we just might have a chance to produce a mining sector of which we really can be proud."

### **3.4 VOLUNTARY CSR INITIATIVES**

In the mining industry, there are a number of initiatives that bring together the world's largest companies to focus on sustainable development in the industry, such as the Global Mining Initiative (GMI). Alongside this, a number of CSR principles, codes of conduct and reporting guidelines have been developed, and companies are signing up to meet certain standards and principles, from global multi-stakeholder codes to country level, to single-issue codes (Worrall et al., 2009). Increasingly, investors have shown a growing interest in investigating the social, environmental and ethical dimensions of mining companies before investing. Therefore, disclosure of social and environmental information has become a critical element for attracting investors (Jenkins and Yakovleva, 2005).

Recent developments in regulation have also shown an impact to reporting and corporate practices. According to a recent KPMG Report, 100% of mining companies from Australia, Canada, South Africa, US and the UK reported information on their company's practices compared to 50% of companies from 'other' countries.

As the pressure for reporting transparency has grown, reporting guidelines and assurance standards, such as the AA1000 Assurance Standard and the Global Reporting Initiative (GRI) have been developed. Below are some of the most prominent CSR initiatives and related organizations within the industry:

- I. International Council on Mining & Metals (ICMM) Sustainable Development principles – where members developed a sustainable development framework and set of principles that seek 'continual improvement in performance and contribution to sustainable development'. It brings together 21 mining and metals companies as well as 32 national and regional mining associations and global commodity associations.

II. The Extractive Industries Transparency Initiative – the campaign aims to help citizens of resource-rich developing countries hold their governments accountable for the management of revenues from the oil, gas and mining industries.

III. Mining Association of British Columbia (MABC) is one of the oldest industry associations in the BC. MABC represents the collective needs and interests of operating coal, metal and industrial mineral mining companies and is regarded as the voice of mining in British Columbia.

## **CHAPTER 4: ROLE OF THE STATE**



While the Canadian government has acknowledged that states are primary responsible for the promotion and protection of the human rights and the environment, there are no Canadian laws that provide for “extraterritorial application”(Seck, 2008 p.1-4), except foreign corrupt practice types acts do.

Nonetheless, as for proactive measures, the Canadian government has joined the Extractive Industries Initiative as a supporting member. Additionally, there is a private member’s bill that allows for private lawsuits to be brought in Canadian Federal courts for compensation regarding universal human rights, as well as environmental and labour rights (Press Release, Department of Finances Canada, 2007).

#### **4.1 REGULATORY BILLS**

Embassy - Canada's Foreign Policy Newspaper reviewed the current issues of “Mining for Human Rights in Latin America” and the Canadian regulatory bills involved. Latin America has been declared a priority interest by the Canadian Government and many believe this is because of the country’s large resources of precious metals. The article states Bill of C300 which seeks to regulate Canadian mining capacities overseas has been put before Canada's parliament. However the Bill of C-300 has been defeated all three times, regardless of it’s appeal among circles of governments and celebrities.

In the Canadian Mining Journal, PDAC President for Aboriginal Communities Are Natural Partners with Mineral Industry executive director Tony Andrews stated Bill C-300 was misguided from the beginning. Happy to note its defeat, he mentioned PDAC is taking steps to help its members reach their CSR goals.

"We are going to continue as we have all along with our e3 Plus initiative," he said. "The next step is to create the accountability section with guidelines on how to report and how to verify CSR actions." The second part is the creation of highly qualified people to examine the subject, identifying gaps in CSR

knowledge and improving companies performance. The final step in going forward with the mining industry's CSR establishment of a communications initiative with lawmakers, NGOs and the public. Many avenues of communication were opened as the industry fought C-300, but the interaction must continue.

In the United States, the Dodd Frank Act, a financial reform bill passed into law one year ago, which requires energy and mining companies that file reports with the securities and exchange commission to publicly report payments to foreign governments. Naturally, the extraction industry executives have expressed discomfort about the disclosure of fees paid to foreign governments, as the disclosure of fees might be seen as a deal-breaker by the foreign governments involved (Securities Exchange Commission website, 2011).

Increasingly, local communities and Latin American civil society are pressing their governments for a fairer share of their resource profits and stronger environmental regulations. The disclosure of fees to foreign governments is a critical transparency step for determining the allocation of profits between the Canadian mining industry and foreign government. However it is important to note that the Dodd Frank Act only applies to these Canadian mining companies have securities registered in the United States, thus it is only shareholder base.

Bill C-323, The International Protection & Promotion of Human Rights Act, an act to amend the Federal Courts Act (international promotion and protection of human rights) is under review at parliament on. The bill has been endorsed by the Canadian Association of Labour Lawyers and many other civil society groups, experts and concerned Canadians.

The bill 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. It would allow lawsuits in Canada for a host of universal human rights

violations, such as genocide and torture, as well as activities that significantly destroy the environment or violate key international labour rights.

Canada's judicial system protects Canadians from abusive conduct by corporations or individuals and should no longer permit some Canadian corporations to violate human rights abroad. These continue to be committed abroad with impunity by some bad apples, some Canadian mining companies and other companies. This has an impact and, as a result, we need to ensure that we have a court system that responds to the needs of these foreign nationals.

The bill is an important step in expanding the jurisprudence to protect citizens living abroad from human rights abuses that take place. I hope the bill will get broad support from all members of Parliament.

#### **4.2 ROLE OF MULTILATERAL FINANCIAL INSTITUTIONS**

Additionally, the literature reviews highlight that quality of state governance is key to development outcomes. If the aim is sustainable development, then not only the role of the private sector, but also the role of bilateral and multilateral financial institutions need to also be examined. "International Governance" and the processes of reform under the World Bank have surged in liberalization of the mining sector.

One might naturally ask what role do states play in this realm of regulation? In a paper titled "Factoring in Governance is not Enough: Mining Codes in Africa, Policy Reform and Corporate Responsibility, particular attention is drawn to the importance of 'international state governance,' (Campbell, 2003), as the quality of governance within a country is a key determinant for the development outcomes of the extractive industries." This research proposes a close look at the process of reform under the World Bank (Campbell, 2003, p.1). Over the last two decades, regulatory and legal frameworks have favored the stability of the mining sector. The research raises questions regarding the conditions

necessary to meet development goal agendas: what roles are being assigned to states, by whom, in what context, and with what social, environmental and economic affects? (Campbell, 2003, p.3).

The article highlights that the role of states have been reduced by structural adjustment policies and thus the state role and ability to mediate between industry and workforce has also been hindered (Campbell, 2003, p. 4).

Interestingly enough, 'development' documents assign the private sector as 'owner and operator' and government as 'regular and promoter'. Nothing is said regarding the role of government as supervisor to bring cohesion and aligned results (Campbell, 2003, p. 9). While these regulatory policies attract foreign investment in developing countries rich with mineral resources, they fall short in meeting sustainable development norms and standards (Campbell, 2003, p. 14).

Often governments are seen to side with mining companies rather than meeting their obligations to the rights of Indigenous people. Thus, the role of national, regional, and local government is seen as an important function to promoting and protecting Indigenous rights, and the oversight of the negotiations process. This requires sufficient levels of funding to strengthen the institutions working with Indigenous Peoples. To highlight an example, in Guyana, the government has been very resistant to recognize Indigenous Peoples territorial rights, and furthermore there is an absence of any type of Ministry of Mines or Ministry of the Environment types of institutions critical for negotiation and regulation enforcement with miners.

Indigenous organizations need negotiation tactics and capacity-building concerning national and international Indigenous rights (Weitzner, 2002, p. 39-41). Corporations can empower Indigenous communities by adopting international regulatory frameworks and more importantly implementing those

rights through capacity building for Indigenous rights, especially in developing countries that have minimal state power and lack necessary institutions that are required in the regulatory frameworks.

In summary, the IMF programmes undermine the legitimacy of the state itself. Infrastructure, political stability, investment policies, and institutional frameworks are all determinants of the mining industry's investment decisions. Finally, the article proposes the following solutions in absence of an international regulatory framework: Firstly, the adoption of a business protocol, and rules for enforcement that is binding on both states and business enterprises. Furthermore, the mining companies operating internationally need to develop corporate social responsibilities, such "Guidelines for Multinational Enterprises," with powers for monitoring and enforcement (Campbell, 2003).

In conclusion, considering the minimal power of the state, government should implement and strengthen legal and regulatory mechanisms that allow for corporate accountability and liability of abuses abroad. Civil society organizations and citizens should advocate for legislation in their home countries to create such mechanisms, in the name of human rights and energy security (Seck, 2008).

## **CHAPTER 5: UNDERSTANDING SOCIAL LICENSE TO OPERATE**

## **MARKET AND NONE MARKET ENVIRONMENTS**

Many believe existing market mechanisms (such as spot markets) and current governance systems motivate actors to maximize their short term profitability and overexploit natural resources, simply because the additional costs of over exploitation are not included in the market price. Often the business practices of corporations are hidden behind market mechanisms. With removal of trade barriers, multinationals became part of large complex business networks and thus the oversight of their social consequences became less transparent (Vogel and Levine, 2010). The challenges of the multinational firms in developing countries are recognizing the upstream problem downstream, involving others in CSR, creating appropriate sustainable market mechanisms and implementing the mechanisms (Vogel and Levine, 2010, p.227).

To build a sustainable market mechanism, the corporate strategy must be aligned with a firm's capabilities and the characteristic of its market and non market environment. Baron (2008) defines the market environment by the primarily voluntary and economic interactions, involving economic transactions and the exchange of property.

He goes on to define that the non-market environment by the interactions between the public, stakeholders, government, the media, and public institutions. While market strategies primarily improve the economic performance of a firm, the non-market strategies benefit the overall performance of the firm. The non-market environment is characterized by the four I's: issue, institution, interests and information. Issues are what non-market strategies address. Many non-market issues are domestic and with multinational mining firms operating abroad require a multi-domestic strategy. Interests are the individuals and groups that have a stake in the issue.

In this case we are focusing on Indigenous Peoples. Institutions are organisational bodies and regulatory agencies that make decision about issues, and serve as the platform in which firms compete over issues. The institutions in

this case would be the outlined regulatory frameworks and CSR initiatives. And finally, information is what the interested parties know or believe about the issue, and the forces which have an impact on its development.

Baron argues that, “Successful companies must understand that if they do not manage their non-market environment, it will manage them,” which links to an aspect of Burke and Logsdon’s model – proactivity. Proactivity refers to the degree, in which behavior is planned, in anticipation of emerging trends, and not having crisis conditions (1996, p498). Proactivity minimizes risk and optimizes opportunities.

“Social license to operate” is a compelling concept, suggesting that a firm’s legitimacy depends on a varied and complex web of actors. The idea has wide appeal among practitioners with an interest in issues such as stakeholder engagement, social responsibility and public policy.

Social license to operate is an idea closely associated with the mining industry. The nature of the mining industry poses complex challenges which have affect on the environment and surrounding communities.

Although the industry is regulated in most countries, regulatory compliance tends to not be enforced and as such often falls below a standard level of stakeholder expectations. Watson (2008) describes “social license to operate” as ...the global pressure imposed on multinational companies to meet at least minimum standards in their operations around the world.” Responsible mining companies meet these pressures through strategies such as good community relations, water management, energy use, waste management, and reclamation.

Gunningham, Kagan and Thorton (2004) emphasize “going beyond compliance” as firms consider the extent and nature of their social obligations. They interviewed managers in fourteen paper mill/pulp processing facilities (U.S., Canada and Australia/New Zealand), asking them about how a social license creates a margin of safety for their firms, how the terms of such a

license are established, and how the process interacts with legal and regulatory compliance. Going beyond compliance can be an advantageous posture in a number of ways, in particular as part of risk management strategies. Firms that effectively listen, engage and respond to community concerns are less likely to meet expensive and more hostile constituents.

## **5.1 THE CASE OF BARRICK GOLD CORP**

In this chapter I will use document and discourse analysis from media research to highlight the operations of one Canadian mining company that is under media and NGO scrutiny and can be used as a case study to better understand the CSR idea of social license to operate.

Barrick Gold Corporation is the largest gold producer in the world and operates mines in North America, South America, Australia and Africa. According to its website its vision is ...”to be the world’s best gold company by finding acquiring, developing and producing quality reserves in a safe, profitable and socially responsible manner.” In 2009 the Dow Jones included Barrick in its Sustainability World Index for a second consecutive year. The company provides an extensive list of reports and other disclosures according to the Global Reporting Initiative’s G3 standards.

Barrick has been a member of the U. N. Global Compact since 2005. Cases of the power imbalance of the company and its engagement with Indigenous communities are headlined in the media, and their North Mara gold mine in Tanzania is an inflicted regions. The world’s top gold producer Barrick Gold Corp’s has claimed that corporate citizenship is a “calling card that precedes us wherever we go.” The contradictory portrayal of Barrick is one created by watchdog activists. In this contradictory image Barrick mines are filled with violence, pollution and sexual assaults. Barrick is currently targeted by activists



worldwide, and recent police shootings on its Tanzania mines have further implicated its credibility and social license to operate. It is important to highlight that the conflict is also implicated with regional issues of poverty and an unstable political climate. Tanzania is an underdeveloped region, but rich in gold wealth. Today Tanzania's gold sector is its most valuable export, accounting for 40% of export earnings.

Up to 1992, Tanzania as a socialist state banned foreign development in the mining industry. The country opened its borders to mining in the 1990's and since then became dependent on mining, which forced many communities to give up their livelihood. About 10,000 families have been displaced since 1997 and the only compensation they have received is for building and crops; not land and not on the full market value of their homes. "The Tanzania mines are a salutary lesson in how not to establish a mine within or near to an existing community," said a report last year by the South African Institute of International Affairs, an independent think tank affiliated with the University of the Witwatersrand and funded by the United Nations.

"There is constant and persistent anecdotal evidence that the way in which the mine was established was neither transparent, nor did it secure the support of the local community," the report said. Barrick's mistakes have included an acidic water spill and the mine's storage in 2009. The report concluded that Barrick may have a legal license to operate at North Mara but it lacks a "social license to operate." The company has confirmed that it does not enjoy a social license, but furthermore, that its viability of operations in the North Mara mine is under threat from local and public and media scrutiny.

Regardless, the company is still fully committed to continuing mining in the region. "We think shutting down a mine that provides employment and other meaningful benefits to thousands is not a good solution," Barrick president Aaron Regent wrote on The Globe and Mail website recently. (Read Mr.

Regent's column: [Barrick Gold and North Mara: the search for common ground](#)).

North Mara employs about 700 Tanzanians, along with another 900 on contracts. The jobs are far from enough for the community of about 70,000 villagers around the mine, and the high unemployment rate has added to their alienation and anger. Half of the Tanzanian population earns less than \$2 a day.

When Barrick acquired the mine, it knew that North Mara would be a difficult and sensitive challenge. Shooting deaths have been documented at the mine site for at least the past six years. By last year, the company was claiming progress in reducing the violence. Then the deaths began again: five villagers were shot dead by Tanzanian police on May 16 at North Mara. The Tanzanian government and the company both launched investigations into the shootings, but it wasn't enough to stop bad publicity. The mine is further implicated by land and compensation disputes, environmental problems, arguments over economic benefits and, lately, allegations of sexual assault by police and security guards at the mine.

Tanzanian and Canadian activists have united in an intense campaign against Barrick, using everything from street protests to YouTube and other viral videos. Barrick has responded with an array of tactics, ranging from transparency to threats of legal action.

Activists claim pollution from the mine operation has caused the deaths of dozens of people and hundreds of farm animals. These allegations seem to be false. The spill from the storage ponds into a small river in 2009 involved only acidic water, which damaged the local wetlands. Barrick has provided testimony from medical experts. However there are still unresolved environmental issues, as Norwegian scientists, sampling the soil and water around North Mara in 2009 reported high levels of arsenic near the site. Barrick has disputed the research.

Barrick tried to distance itself from its North Mara by renaming North Mara operations under their African Barrick Gold. Nevertheless, it sees expansion in the future. Greg Hawkins, the CEO of African Barrick, says the company invested \$100 million in capital in North Mara this year. “We believe quite strongly in the asset,” he said in an interview. “We’ve stepped up the investment because we see much productivity there. We could be on the ground there for a lot longer than just the 10 years that the reserve life tells us.”

Barrick has expressed concerns about the police shootings, “We are investigating whether employees and police have participated in a fraudulent scheme of accepting money for access to the site by illegal miners,” the company said in a statement to *The Globe and Mail*. “We have also provided these allegations to the police.” A researcher at the Legal and Human Rights Centre says the shootings cannot be justified by calling the villagers “illegal trespassers” if the police have given them access to the mine. “If they’ve made a deal to collect rocks from the mine, how can you call them intruders?” A report this year by the Legal and Human Rights Centre concluded that 19 villagers were killed by police and security guards at North Mara from January, 2009, to June, 2010. The company employs more than 300 security staff and contractors to protect the mine site. Barrick spent more than \$20 million on security last year.

Chris Albin-Lackey, a senior researcher at Human Rights Watch believes that ultimately the North Mara situation will require government oversight. Given the weakness of governments in the developing world, only the Canadian government can provide any oversight over Barrick’s activities at North Mara. Legitimacy, again, is a central construct in stakeholder relationships (Mitchell, Agle and Wood, 1997).

Barrick was among the leaders of the lobbying battle against C-300 and claimed the bill was “punitive” to the reputation of Canadian companies, and damaged Canada’s position as a global leader in the mining industry. Barrick claims many community benefits of its Tanzanian mining operations, including health clinics, scholarships, water and electricity projects, malaria and AIDS initiatives, training and income-generating programs. At North Mara, the company doubled its community program budget to \$2 million and increased its community relations team to 50 employees. It also partnered with a credible civil society organization called Common Ground to train the police in human rights and “conflict minimization.”

## **CHAPTER 6: SUSTAINABLE DEVELOPMENT**

The mining industry perspective highlights that mineral resource extractors contributes to local communities by providing a generation of new wealth, as useful lasting capital, which directly benefits present and future generations of surrounding communities. Furthermore, it is argued that the three dimensions of sustainability can be achieved in the industry, through revenue generation to ensure future development; by way of minimal natural resource exploitation of environment; and limited social and cultural disruption in communities, through stakeholder dialogue and transparency of operations (Jenkins & Yakovleva, 2006, p. 271-284).

Community participation, engagement and development in the mining sector is a development case, human rights case, and a business case. Of this, the human rights case is not trivial.

The International Council on Mining and Metals notes that the duty of the mining industry is to ‘uphold fundamental human rights and respect cultures, customs, and values in dealings with all those who are affected by mining activities’ (ICMM, 2003).

By pointing out the mutual benefits of engagement, they also make the business case aspect of engagement, and by invoking the overall sustainable development framework, they build the development case and push for deeper, meaningful and longer term engagement process.

Developing resilient communities, long term benefits, and shared decision-making processes are not easy, but research indicates that the diverse needs and requirements of communities are critical in the long term sustainability of the industry. Although the concept of sustainable development receives much attention in management literature; limited attention has been given to the role of Indigenous Peoples and their relationship with resource industries in the context of sustainable development. Perspectives of Indigenous Peoples, cultural values, and traditional knowledge are a vital resource in informing ethical engagement policies and without these protocols, agreements are methodologically (and ethically) invalid. Furthermore, the literature highlights that the social institutions of Indigenous communities are a vital element of the CO-management of natural resources (Lertzman and Vredenburg, 2005).

To strengthen engagement in a the sustainable development context, the literature suggests an approach to community relations where local people make decisions about what benefits they would like to see, and that those benefits align with their cultural needs and physical requirements. (Veiga et al, 2001). The research in this area places emphasis on empowering these stakeholders to make community decisions that empower their communities; recalling that for Indigenous people land is not a possession and a means of production, rather a place where sacred memories, stories and archaeological sites are held as part of their identity. Thus, environmental impacts not only affect people's means of sustenance; but also their ability to maintain their own identity and customs (Martínez, 1987).

## CHAPTER 7: ENGAGEMENT AS EMPOWERMENT

Companies often justify and emphasize the benefits of economically driven benefits of natural resource development (Cragg and Greenbaum 2002; Whiteman and Mamen 2002b). Benefit sharing agreements have attempted to fairly distribute the costs and benefits between companies, governments, and Indigenous Peoples (Whiteman, 2004). Corporations have also established social development programs for community-initiated economic development projects. While these programs have much appeal in principle, they often fail to deliver a sustainable economic development approach, as Indigenous community needs or culture are not adequately considered in such programs (Whiteman and Mamen 2002).

In summary, all the CSR literature highlights the need for a comprehensive, meaningful discussion and involvement that covers the things that matter to local communities, including valuing culture and traditional knowledge and finding ways for these factors to truly influence environmental decisions and resource-based negotiations. Ultimately, a goal of all good community-based decision making is to allow people to voice and represent their concerns, to convey what matters, and to express their views in a manner that renders them understandable to decision makers (Battiste and Henderson, 2000). Therefore, to begin to address this important barriers of engagement within the literature review, I will highlight some key points from one of the few research contributions I could find from the perspective of the Indigenous: “Through Indigenous Eyes,” a key research paper which examines perspectives of these Indigenous communities within the Latin American and Caribbean context; a region that has seen a dramatic increase in Canadian mining projects . The fieldwork in Guyana and Colombia was guided by National Indigenous Advisory Committees.

### I. Diversity of Indigenous Communities Factor

The research highlights how diverse Indigenous groups are within each region, as well as from country to country. For instance, in Colombia the Indigenous life ranges from traditional and spiritual Koggi shifting agriculturalists, to goat-herding Wayu living in desert region of La Guajira and are organized along a decentralized clan system, to Chimila People, whom have been forcefully removed from their traditional territory and are severely affected by the armed conflict.

### II. Geopolitical Context & Indigenous Power

This is yet another complex factor that needs to be considered as situations from country to country are different. The legal muscle of indigenous rights is government specific. For example, Colombia is a very progressive Latin American country when it comes to Indigenous rights. It has ratified ILO Convention 169 and has also recognized Indigenous title to 25 per cent of the lands in the country. In comparison, titled lands have been de-reserved in Guyana to allow mining activities, and Guyana has not ratified ILO Convention 169.

### III. "Consultation"

The term "consultation" was strongly debated in the workshops and focus groups. From an Indigenous perspective, "consultation" falls into two main categories: external (governments, companies and communities) and internal (those within the community, spirit world and local ecology). Indigenous Peoples are at a disadvantage when they try to articulate these concepts into the dominant language and have them protected in law. As a result, it becomes apparent that dialogue, reflection and decision-making can only be achieved within a framework of cultural context, and the development and implementation of intercultural processes, without one dominant culture, being imposed on another.

In summary, the Indigenous Evaluations of Experiences with Mining Sector were described as “an unequal dialogue” with a general lack of consideration for history, indigenous self-governance structures, representatives and processes of Indigenous Peoples; and incorporation of Indigenous knowledge. The implied benefits of the mining companies were described as “Short Term.” Thus, Indigenous Peoples request a pre-consultation process and a right to say “no” to projects on their ancestral lands. Additionally, if projects move ahead on ancestral land, Indigenous Peoples want to be “project partners” rather than “beneficiaries”.

A shift to a cash-based economy from a traditional subsistence based economies comes with many implications. The environmental affects of natural resource development vary, but include loss of habitat, vegetation, biodiversity, disruption of water systems and purity, destruction of aquatic life, and pollution. Indigenous Peoples prefer a traditional ways of life (e.g. hunting, trapping, fishing, and agriculture), and have a history of sustainable natural resource management over the long term (Wood and Dewhurst 1998). A common implication of development on traditional lands is modification of the Indigenous social structure. This includes the shift towards individualism from a communal structured society, shift to a class based society, family division and the alteration of traditional power structures. Which thereby directly and indirectly results in increases in malaria and HIV/AIDS, increases in violence, human rights abuses, and sexual assault (Whiteman and Mamen, 2002). Resettlement from traditional land has either voluntary or forced the above negative implications (Widener 2007). Finally, ecological deterioration has been linked to damage to cultural identity (Cragg and Schwarz 1996; Northrup 1989).

## **CHAPTER 8: CROSS SECTOR COLLABORATION**



The literature review highlights the importance of cross cultural bridge building and cross sector collaborations as an ethical approach to sustainable development (Murphy and Daniels, 2011). The article points to misappropriation of traditional knowledge and emphasizes the importance of engagement with Indigenous Peoples, as they inherently own the wisdom and the ability to control resources on which businesses are dependent.

From the perspective of business the Indigenous Peoples are considered 'fringe' stakeholders. This term refers to those who are typically "disconnected from or invisible to firm because they are remote, weak, poor, disinterested, isolated, non-legitimate, or non human" (Hart and Sharma, 2004, p.10). Advocates of sustainable development argue that collaborate relationships with fringe stakeholder groups, such as Indigenous communities, may result in shared benefits including improved management of disruptive change and planning of ecosystem based collaborations. The emphasis is placed on the importance of collaborations between CSOs ( Civil society Organization) and Indigenous communities for the purpose to create social value and value creation.

The article highlights that although businesses have made attempts to engage and partner with Indigenous populations through established CSR programs, these examples have often served as a way to depoliticize and neutralize Indigenous territories. Hence they have served as stakeholder 'management' versus a mechanism for 'empowerment'. The mistake is that the programs are often launched with a mindset that presupposes the superiority of the corporation and dismisses the value of Indigenous knowledge, as western rationality and science are assumed as the more advanced or the norm. Such views of cultural superiority and development are in direct opposition of sustainable development.

Finally to conclude this section, cross-cultural bridge building between businesses and fringe stakeholders requires calls for more independent third party facilitation and collaboration. Multinational mining cases such as Barrick

Gold case study outlined in the previous chapter are prime examples of cases where the fringe stakeholders have initially been perceived as powerless, but in time became powerful stakeholders that demand to be dealt with.

## **CHAPTER 9: CONCLUSION**

Canadian mining multinationals face a range of environmental, social and governance challenges. This paper gives a detailed summary of the challenges that Canadian mining companies face in Canada and abroad while engaging with Indigenous Peoples. The research gives a detailed description of the power differentials (both internal and external stakeholder groups) within the context of Indigenous engagement and the Canadian mining industry. By using a wide and diverse range of research sources, which have all been cited, but not included in the reference section due to time constraints, the paper provides an analysis of the motivation, intent and framework of the thesis within a particular historical context. It employs the positivism research tradition to uncover truth or an objective reality.

It also lays out a strong foundational research framework for the second phase and research paper, which will be the interpretive research, based on the in depth interviews with the CSR industry experts in the Canadian mining industry. The paper justifies Corporate Social Responsibility as a voluntary, viable and balanced approach for corporations to address economic, social and environmental issues and civil regulation. Furthermore, it addresses the role of civil society as crucial in pressing mining companies to consider community demands, especially in regions where there are limited state power.

Furthermore, the research highlights how Indigenous Peoples have been marginalized by society and are excluded from political and economic

institutions, but that contrarily they can be valuable stakeholders due to their rich in-depth knowledge about biodiversity. It demonstrates that the Indigenous People could be a strong form of social capital as to playing an instrumental role in the corporations's understanding, design and approach to sustainable development.

Finally, the research gives an summary of existing CSR voluntary initiatives, as well as regional and international regulatory frameworks. Additionally, considering minimal power of the state in developing countries, the research addresses the need for implementation and strengthening of existing legal, regulatory and voluntary mechanisms for corporate accountability and liability of abuses abroad.

## **GAPS & FUTURE RESEARCH**

This paper establishes that the mining industry requires deep industry expertise to ensure the appropriate response for addressing barriers within the Canadian Mining Indigenous Engagement context. Which is why I will be continuing the research with an in depth interview of the Canadian mining expert at the Canadian Business for Social Responsibility (CBSR). CBSR has over 13 years of experience, a dedicated team of advisors and a strong network of partners and associates to tailor CSR solution to many of the outlined research gaps. In an upcoming interview with the Canadian Business for Social Responsibility scheduled for next week, I'll be asking their mining industry expert the following questions to address the research gaps in this thesis.

(CBSR) is a non-profit, member-led organization that mobilizes Canadian companies to make powerful business decisions that improve performance and

contribute to a better world. Below are the questions that I will be asking the expert:

- I. Who are the leaders and laggards in CSR within the Canadian Mining Industry? (Please choose one leader and one laggard and use them as case examples for all questions.)
- II. What are their considered barriers and enablers in CSR efforts regarding to Indigenous engagement?
- III. In the specified locality of operation, which stakeholders (Government, Media, Civil Society, Investors, CSR Industry Associations, International Law) do Canadian mining companies consider barrier, enabler, supporter, Neutral in the process of Indigenous consultation?
- IV. In which regions do Canadian mining companies have the highest level of Indigenous engagement and conflict now and why?
- V. What are primary motivations for Canadian Mining companies Indigenous engagement?
- VI. Which international voluntary / mandatory codes of conducts or associations have they joined and why?
- VII. How have they had an impact on their CSR engagement policies?
- VIII. Do they employ a cultural sensitivity context framework when developing your programs for engaging with local Indigenous communities?
- IX. How is cultural loss remedied in the CSR engagement policy?
- X. What civil society organizations have they partnered with to build capacity for understanding/empowering Indigenous engagement?

## REFERENCES

Azer, A. (2001). The ethics of corporate social responsibility: Management trend of the new millennium? Retrieved Feb 12, 2011 from <http://www.chumirethicsfoundation.ca/files/pdf/azeralison1.pdf>

Battiste, M., and J. S. Youngblood Henderson. (2000). Protecting indigenous knowledge and heritage. Purich Publishing, Saskatoon, Saskatchewan, Canada.

Carroll, A. B. (1991). The Pyramid of Corporate Social Responsibility – Toward the Moral Management of Organizational Stakeholders. *Business Horizons*, 34: 39-48.

Carroll, A.B. (1999). Corporate social responsibility. Evolution of a definitional construct. *Business and Society*, 38(3): 268-295.

Caruana, A., & Crane, A. (2008). Constructing consumer responsibility: Exploring the role of corporate communication. *Organization Studies*, 29(12): 1495-1519.

Creskey, J. , 2011. Mining for human rights in Latin America, [online] Available at:<<http://www.embassymag.ca/page/view/mining-08-31-2011>> [Saturday, September 17, 2011].

Collis, J. (1997) *Business Research*, Bristol: Palgrave, p.195-250.

Foreign Affairs International Canada (2011) Corporate Social Responsibility Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector , [online] Available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx?view=d> [Accessed: 25th Sep 2011].

Lee, N. and Lings, I. (2011) *Doing Business Research*, Various: Sage, p. 205-259.

O'Faircheallaigh, C. and Ali, S. (2008) *Earth Matters: Indigenous Peoples, The Extractive Industry and Corporate Social Responsibility*, Sheffield: Greenleaf Publishing.

Emmett, T. (2000). Beyond community participation? Alternative routes to civil engagement and development in South Africa. *Developmental Southern Africa*, 14 (4), 501-518.

Eisenhardt, K. M. (1989). Building Theories from Case Study Research. *Academy of Management Review*, 14(4): 532–550.

Hamann, R. (2003). Mining companies' role in sustainable development: The "why" and "how" of corporate social responsibility from a business perspective. *Development Southern Africa*, 20 (2), 237-255.

Hamel, J. & Dufour, S. (1993). *Case study methods*. Newbury Park, CA: Sage.

Hardy, C. & Palmer, I. (1999). *Discourse as a Strategic Resource*. Paper presented at the Critical Management Studies Conference (Strategy Stream), Manchester, UK. July 14-16.

Hassanein, A., Lundholm, G., Willis, G., & Young, C. (2006). *Corporate social responsibility and the Canadian international extractive sector: A survey*. Retrieved Feb 18, 2011 from [http://www.resourceconflict.org/ccsrc\\_report\\_0906.pdf](http://www.resourceconflict.org/ccsrc_report_0906.pdf)

Hilson, G. (2002) "An overview of land use conflicts in mining communities" *Land Use Policy* 19 (2002) 65–73

UNPFII- United Nations Permanent Forum on Indigenous Issues (2007)  
UNITED NATIONS DECLARATION ON THE RIGHTS OF  
INDIGENOUS PEOPLES Adopted by the General Assembly 13 September  
2007 , [online] Available at: <http://www.un.org/esa/socdev/unpfi/en/declaration.html> [Accessed: 10th Aug 2011].

Hohn, M. (2009) Investing in community : Canadian junior mining companies, corporate social responsibility, and the communication gap. Royal Roads University

International Council on Mining and Metals (2003) Sustainable Development Framework: The 10 Principles, [online] Available at: <http://www.icmm.com/our-work/sustainable-development-framework/10-principles> [Accessed: 10th Aug, 2011].

Kapelus, P. (2002). Mining, corporate social responsibility and the “community”: The case of Rio Tinto, Richards Bay Minerals and the Mbonambi, *Journal of Business Ethics*, 39(3), 275-296.

Kriegman, O. (2006) Dawn of the Cosmopolitan: The Hope of a Global Citizens Movement. Retrieved March 14, 2011 from [http://www.allacademic.com/meta/p\\_mla\\_apa\\_research\\_citation/1/5/3/5/1/pages153519/](http://www.allacademic.com/meta/p_mla_apa_research_citation/1/5/3/5/1/pages153519/)

Kirmayer, L. J., G. M. Brass, and C. L. Tait. 2000. The mental health of Aboriginal peoples: transformations of identity and community. *Canadian Journal of Psychiatry* 45(7):607-616.

Lisa J. Laplante & Suzanne A. Spears. (2008) “Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector” (2008) 11 *Yale Human Rights & Development Law Journal* 69 at 104

Lertzman, David A., and harrie Vredenburg. 2005. Indigenous Peoples, Resource Extraction and Sustainable Development: An Ethical Approach. *Journal of Business Ethics* 56. 239–54.

Lucas, S. (2008, June). Minerals, metals and sustainable development. Paper presented at the World Mining Investment Congress, London, England.

Martínez Cobo, J. R. (1987). Study of the problem of discrimination against indig- enous populations. Volume V. Conclusions, proposals and recommendations. United Nations publication (Sales No. E.86.XIV.3). New York: United Nations.

Porter, M., & Kramer, M. (2006). Strategy & society: The link between competitive advantage and corporate social responsibility. *Harvard Business Review*, December, 1-15.

Scherer, A., & Palazzo, G. (2007). Toward a political conception of corporate responsibility: Business and society seen from a Habermasian perspective. *Academy of Management Review*, 32 (4), 1096-1120.

Veiga MM, Scoble M, McAllister ML. Mining with communities. *Natural Resources Forum* 2001;25:192–202.

Yin, R.K. (2003). Applications of case study research. (2nd ed.) Thousand Oaks, CA: Sage.

Brockwell, P. J., and Davis, R. A. (2009). *Time Series: Theory and Methods*. New York: Springer science.

Carroll, A. B. 1991. The Pyramid of Corporate Social Responsibility – Toward the Moral Management of Organizational Stakeholders. *Business Horizons*, 34: 39-48.



Crane, A., McWilliams, A., Matten, D., Moon, J. & Siegel, D. Eds. (2008a). The Oxford Handbook of Corporate Social Responsibility. Oxford: Oxford University Press.

Creswell, J. W., Hanson, W. E., Plano, V. L. C. and Morales, J. (2007). Qualitative Research Designs: Selection and Implementation. The Counseling Psychologist. Vol. 35 (March), pp: 236-64.

Denzin, N. K. and Lincoln, Y. S. (2000). Introduction: The discipline and practice of qualitative research. In Denzin, N. K. and Lincoln, Y. S. (Eds.), Handbook of qualitative research (2nd ed.): 1–28. Thousand Oaks, CA: Sage.

Eisenhardt, K. M. (1989). Building Theories from Case Study Research. The Academy of Management Review, Vol. 14 (4), pp: 532-50.

Friedman, M. (1970). The Social Responsibility of Business is to Increase its Profits. New York Times. 13th September.

Gephart, R. (1999). Paradigms and research methods. Internet source: [http://division.aomonline.org/rm/1999\\_RMD\\_Forum\\_Paradigms\\_and\\_Research\\_Methods.htm](http://division.aomonline.org/rm/1999_RMD_Forum_Paradigms_and_Research_Methods.htm) (accessed on September, the 7th 2008).

Gephart, R. (2004). From the editors: Qualitative Research and the academy of management journal. Academy of Management Journal. Vol. 47 (4): 454-62.

Gersick, C. (1988). Time and transition In work teams: Toward a new model of group development. Academy of Management Journal. Vol. 31, pp: 9-41.

Glaser, B., & Strauss, A. (1967). *The discovery of grounded theory: Strategies of qualitative research*. London: Wledenfeld and Nicholson.

Guba, E. G. And Lincoln, Y. S. (1994). Competing paradigms in qualitative research. In Denzin, N. K. and Lincoln, Y. S. „*Handbook of qualitative research* (2nd ed.)“. Thousand Oaks, CA: Sage. pp: 105–117 Gujarati, D. (2003). *Basic Econometrics* (4th ed). New York: McGraw Hill.

Hanson, W. E., Creswell, J. W., Plano Clark, V. L., Petska, K. S. and Creswell, J. D. (2005). Mixed methods research desings in counselling psychology. *Journal of Counseling Psychology*. Vol. 25(2), pp: 224-235.

Harris, S., and Sutton, R. (1986). Functions of parting ceremonies in dying organizations. *Academy of Management Journal*. Vol. 29, pp: 5-30.

Hesse-Biber, S. N (2010). *Mixed methods research: merging theory with practice*. The Guilford Press: New York, NY.

International Labour Organization, ILO, 2011.

Kidder, T. (1982). *Soul of a new machine*. New York: Avon.

Lincoln, Y. S., & Guba, E. G. 2000. Paradigmatic controversies, contradictions and emerging confluences. In Denzin, N. K. and Lincoln, Y. S. “*Handbook of qualitative research* (2nd ed.)“. Thousand Oaks, CA: Sage. pp: 163–188.

Lusch, R. F. and Vargo, S. L. (2008). The Service-Dominant Mindset. *Service Science, Management and Engineering*. Vol. 1, pp: 89-96.

Malhotra, N.K. (2007). *Marketing Research: An applied orientation*. Upper Saddle River: Pearson Prentice Hall.

Miles, M. B. and Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook* (2nd ed.). Thousand Oaks, USA: Sage publications.

Miles, J. and Shevlin, M. (2001). *Applying Regression and Correlation: A guide for students and Researchers*. Thousand Oaks, CA: Sage publications.

Natural Resources Canada in Members of Mining Association of British Columbia (2011) Facts, [online] Available at: [http://www.mining.bc.ca/facts\\_canada.htm](http://www.mining.bc.ca/facts_canada.htm) [Accessed: 10th Aug 2011].

Newman, I. and Benz, C. R. (1998). *Qualitative and quantitative approaches* (4th ed). Boston: Allyn and Bacon.

HS Evidence, 2003. National Library of Guidelines. [online] Available at: <http://www.library.nhs.uk/guidelinesFinder> [Accessed 10 October 2009].

Pinfield, L. (1986). A field evaluation of perspectives on organizational decision making, *Administrative science quarterly*. Vol. 31, pp: 365-88.

Ruggie, J. G. (2008). *Protect, Respect and Remedy: A Framework for Business and Human Rights*. 3rd Report of the Special Representative of the Secretary-General on the Issue of Human rights and Transnational Corporation and Other Business Enterprises.

Stangor, C. (2006). *Research methods for the behavioural sciences* (3rd ed). Boston: Houghton Mifflin.

Stevens, J. (1996). *Applied multivariate statistics for the social sciences* (3rd ed). Mahwah, NJ: Lawrence Erlbaum.

Tabachnick, B. G. and Fidell, L. S. (2007). Using multivariate statistics (5th ed). Boston: Pearson Education.

Thorpe, R. and Holt, R. (2008). The SAGE dictionary of qualitative management research. London: SAGE.

Urdan, T. C. (2010). Statistics in plain English. New Jersey: Lawrence Erlbaum Associates.

Van Maanen, J. (1998). Different strokes: Qualitative research in the Administrative Science Quarterly from 1956 to 1996. In J. Van Maanen (Ed.), Qualitative studies of organizations: ix–xxxii. Thousand Oaks, CA: Sage.

Vargo, S.L. and R.F. Lusch (2008). Service-dominant logic: continuing the evolution. *Journal of the Academy of Marketing Science*. Vol. 36, pp: 1–10.

Vargo, S.L. and R.F. Lusch (2004). Evolving to a New Dominant Logic for Marketing. *Journal of Marketing*. Vol. 68 (January), pp: 1-17.

Vargo, S. L., and Lusch, R. F. (2006). Service-dominant logic: What it is, what it is not, what it might be. in R. F. Lusch, & S. L. Vargo (Eds.), *The service-dominant logic of marketing: Dialog, debate, and directions* (pp. 43–56). Armonk, NY: ME Sharpe.

Vargo, S. L., Maglio, P. P. and Akaka M. A. (2008). On value and value co-creation: A service systems and service logic perspective. *European Management Journal*. Vol. 26, pp: 145–52.

Vogel, D. and Levine, D. (2010) *Global Challenges In Responsible Business*, New York: Cambridge University Press, p.217-241.

Wegner, D. M. (2002). *The illusion of conscious will*. Cambridge, MA: Bradford Books, MIT Press.

Woodside, A. (2010). *Case Study Research: Theory, Methods and Practice*. Bingley: Emerald Group Publishing Limited

Yin, R. (1984). *Case study research*. Beverly Hills, CA: Sage Publications.

Zaltman, G. (2003). *How customers think: Essential insights into the mind of the markets*. Boston: Harvard Business School Press.