

Preface

This draft was prepared by members of the Federal inter-departmental National Roundtable Steering Committee acting in their expert capacity, with input from the National Roundtable Advisory Group. Given the broad range of views expressed throughout this drafting effort it is important to note that this Paper does not attempt to present a consensus view of all those who contributed to its development.

The objective of this Discussion Paper is to stimulate debate amongst the participants in this National Roundtable series. It does not attempt to reflect the policies of the Government of Canada or establish new policies for the Government.

Introduction

In June 2005, the 38th Parliament's Standing Committee on Foreign Affairs and International Trade (SCFAIT) issued its Report, **Mining in Developing Countries and Corporate Social Responsibility**. The Report argued that more should be done in order to ensure that Canadian mining companies operating in developing countries "conduct their activities in a socially and environmentally responsible manner and in conformity with international human rights standards."¹ The Report called on the Government to "put in place a process involving relevant industry associations, non-governmental organizations and experts, which will lead to the strengthening of existing programs and policies in this area and, where necessary, to the establishment of new ones."²

In response to this Parliamentary Report, the Government is hosting four **National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries** between June and November 2006 in Vancouver, Toronto, Calgary and Montreal. While there is no conclusive definition of corporate social responsibility (CSR), the term will be used here to refer to "the way firms integrate social, environmental and economic concerns into their values, culture, decision making, strategy and operations in a transparent and accountable manner and thereby establish better practices within the firm, create wealth and improve society."³ The objective of the National Roundtables is to generate a report back to Parliament, presenting "recommendations for government, NGOs, labour organizations, businesses and industry associations on ways to strengthen approaches to managing the external impacts of international business activities to benefit both businesses and the communities within which they work."⁴

¹ Standing Committee on Foreign Affairs and International Trade (SCFAIT), *Fourteenth Report: Mining in Developing Countries*, 38th Parliament, 1st Session, (June 2005), 2.

² Ibid.

³ See Industry Canada, *Corporate Social Responsibility: An Implementation Guide for Canadian Business*, (Government of Canada: 2006), 5. This definition notes that CSR "builds on a base of compliance with legislation and regulation, and typically includes "beyond law" commitments pertaining to a wide range of topics, including corporate governance and ethics; health and safety; environmental stewardship; human rights (including core labour rights); human resource management; community involvement development and investment; involvement of and respect for Aboriginal peoples; corporate philanthropy and employee volunteering; customer satisfaction and adherence to principles of fair competition; anti-bribery and anti-corruption measures; accountability, transparency and performance reporting, and supplier relations, for both domestic and international supply chains." Ibid.

⁴ Department of Foreign Affairs and International Trade, *Mining in Developing Countries – Corporate Social Responsibility: The Government's Response to the Report of the Standing Committee on Foreign Affairs and International Trade*, (October 2005), 4.

This Discussion Paper provides a brief overview of relevant issues raised by the SCFAIT Report as well as the Canadian and international context for the issues being addressed by the National Roundtables. The objective of this Discussion Paper is to stimulate debate amongst the participants in this National Roundtable series. It does not attempt to reflect the policies of the Government of Canada or establish new policies for the Government.

The initial draft was produced by Robert Dufresne, the 2005-2006 Cadieux-Léger Research Fellow with Foreign Affairs Canada. This draft was revised in light of comments provided by members of the National Roundtable Steering Committee acting in their expert capacity. It was revised again following another round of feedback provided by members of the National Roundtable Advisory Group. Given the broad range of views expressed throughout this drafting effort it is important to note that this Paper does not attempt to present a consensus view of all those who contributed to its development.

The Canadian extractive sector

The Canadian extractive industry includes companies that extract non-renewable resources that have been stored in the ground – more commonly known as the mining and petroleum sectors. Establishing the nationality of an extractive company is complex and often controversial. Natural Resources Canada has developed a typology of Canadian mining companies that relates the degree of identification with Canada (see Section 2.1). One end of the spectrum includes companies that are only registered on the Canadian stock exchanges, with no other demonstrable link to Canada. The other end of the spectrum encompasses companies that are headquartered in Canada, employing a majority of Canadian nationals as company officers and governed by a Board of Directors based in Canada. For the purposes of the National Roundtables, “Canadian extractive sector” will refer to all companies on that spectrum, given the fact that some of the most prominent recent issues associated with the sector have involved companies that have a minimal claim to Canadian nationality.

The Canadian mining sector is made up of exploration companies (many of which are small enterprises), some of which operate exclusively abroad; junior companies which operate or are developing one or two mines, often with no operations in Canada; and major companies which own and operate several mines, generally both within Canada and abroad.

The Canadian mining sector is active in every province and territory of Canada and makes a major contribution to the country's economy. In 2004, the mining and mineral processing industries contributed \$41.8 billion to the

Canadian economy, which represented 4.0% of the national Gross Domestic Product (GDP).⁵ Furthermore, in 2004, the industries directly employed 369,000 Canadians in over 200 producing mining establishments. Over the last five years, minerals and mineral projects have accounted for approximately 65% of the volume handled at Canada's ports and about 60% of rail revenue freight. Canadian stock exchanges are the world's largest source of equity capital for mining exploration and production both in Canada and abroad. At the same time, Canadian banks provide virtually no loan financing for mining projects abroad.

The Canadian petroleum industry is traditionally divided into three categories: upstream, midstream and downstream. The upstream industry involves the exploration for crude oil and natural gas. Canada also has midstream (processing, storage and transportation) and downstream (refining, marketing and distribution) industries. Most oil and natural gas deposits are found in the liquid or gaseous state,⁶ which necessitates large infrastructure for their transportation via pipelines, loading terminals, and specially designed vehicles (trucks, rail cars, and tanker boats).

Petroleum companies operate in 12 of the 13 provinces and territories of Canada. In 2004, the petroleum industry contributed \$27.4 billion to the Canadian economy, which represented 2.3% of the national GDP.⁷ The industry accounted for a total of 338,000 jobs (direct and indirect, including service stations) in 2004, 2.1% of all jobs in Canada. The upstream sector is the largest single private sector investor in Canada. Most of Canada's petroleum production is exported; in 2004, 1.62 million barrels per day of crude oil, 0.45 million barrels per day of refined petroleum products and 3.7 trillion cubic feet of natural gas were exported, mainly to the US.

The Canadian extractive sector abroad

Canadian extractive industries invested an estimated \$26.6 billion in foreign countries in 2004. Among Canada's goods-producing sectors, Canadian mining companies are the largest outward investors with activities in over 100 countries. Capital investments reached \$6.6 billion in 2004 and continue to rise.⁸ Exploration companies have approximately 2,800 properties in over 100 countries, while Canadian companies operate over 130 mines abroad.

⁵ See Natural Resources Canada, "Canadian Mining Factsheet," (February 2006), http://www.nrcan.gc.ca/mms/pdf/econo06_e.pdf (accessed June 8, 2006).

⁶ The oil sands deposits in the Athabasca region of northern Alberta are in a solid state and are extracted by either traditional open-mining techniques or liquefied in the ground.

⁷ An additional \$5.4 billion came from pipeline activity. See Natural Resources Canada, "Statistics and Facts on Energy," <http://www.nrcan.gc.ca/statistics/energy/default.html> (accessed June 8, 2006). An additional \$5.4 billion came from pipeline activity.

⁸ See "Canadian Mining Factsheet."

Canadian international mining investment supports more than 2,000 suppliers of equipment and services as well as a network of research and training institutions.

Extractive activities, by definition, are undertaken where the resources are found. Canadian extractive companies are therefore increasingly investing in developing countries, and this trend is being accelerated by the high price that all mineral and petroleum commodities currently command. Greater investment in developing countries presents a range of social and environmental challenges for Canadian companies, since many developing countries have weak or non-existent resource governance capacities, and many remote communities lack the resources and competencies to engage effectively with foreign extractive sector companies.

Given their economic size and potential environmental, social and human rights impacts, extractive sector activities must be implemented with a high degree of sensitivity to these potential impacts, as well as the legislative, regulatory and bureaucratic capacities of host governments. Issues related to the nature of the extractive industries as well as weak resource governance capacities of host countries include: environmental concerns; community relations; human rights and security; labour relations; indigenous peoples' rights issues; integration of resource development with national and local economic priorities; benefits to local communities; and the potential for corruption between the public and private sectors. In many countries, challenges associated with the lack of effective rights legislation or enforcement of this legislation may be heightened when dealing with the resettlement of populations, including artisanal or small-scale miners working on mining claims granted by the government to foreign companies.

Extractive projects are often the only significant economic activity in some countries or municipalities and companies are under pressure to provide many services, such as water, electricity, medical services and education services, to the local populations. Companies are also called upon to ensure that projects will not result in significant and lasting negative social and environmental effects.

Oil, natural gas and mining face the additional challenge of being seen by some as harmful to the environment. While the physical footprint of underground mining and oil and gas extraction can generally be totally reclaimed, there remains a large inventory of sites where reclamation has not been implemented. Furthermore, mines may not only leave behind physical legacy issues but also social legacy issues that may not have been fully addressed.

Some developing countries see oil and natural gas, in particular, as a strategic resource. This can sometimes lead to governments implementing restrictive measures on oil and gas projects, justifying these measures as a means of capturing the maximum benefit for the state, and preventing foreign dominance of such a vital part of the national economy. In some cases, non-energy minerals have similarly been viewed by governments as strategic resources, leading to a large state role in the industry.

By definition as depletable resources, mines, and oil and natural gas deposits, have limited lives. Every ore body, and oil and natural gas deposit, exploited will be depleted. This raises challenges for the industry in the distribution of benefits throughout the project's life, especially when the country's government has weak institutions. Further, there are issues of project closure and of assisting communities in preparing for the disappearance of the major economic activity.

The international context

The movement to enhance corporate social responsibility has generally arisen from a desire to positively affect the management and impact of business practices in an increasingly interconnected world. At the same time, it has also received impetus from a growing awareness of the risks associated with potential social, human rights or environmental impacts of corporate activities. When such issues arise, the first response is usually to look to the country in which the corporation is operating to see if the corporation has complied with all national, regional and local laws and if the government of that country is effectively enforcing those laws. This is because, in the first instance, it is the obligation of each sovereign state within the international system to establish and enforce the legal parameters for corporations that operate within its jurisdiction. This includes a responsibility to ensure domestic compliance with relevant international conventions or treaties which the country has signed or ratified.

However, while many developing countries do have laws and regulations established to govern the extractive sector, they face real challenges associated with the lack of financial and institutional capacities to ensure monitoring and compliance of these existing measures. CSR challenges in developing countries may also be related to the absence of resource governance regulations, political tensions between the government and those communities located in the area of resources development, or complicating issues such as corruption.

Faced with weak resource governance capacities in some developing countries, a secondary set of CSR responses can be found within the emerging sets of legally-binding norms and voluntary international CSR standards and best practices adopted by international institutions or the extractive sector itself. Properly constituted voluntary international CSR instruments can be applied by extractive sector ventures in response to market, community or other pressures without contravening the principles of national sovereignty. This having been said, the proliferation of codes and standards at the international level presents its own challenges, as does the fact that there is no agreement on how to define CSR nor a single accepted methodology with which to measure CSR performance. While efforts are underway to clarify international CSR standards, the development of a robust, comprehensive and widely supported international regime addressing the full range of social, human rights and environmental issues facing the extractive sector at a global level probably remains a longer term goal.⁹

Questions arise, therefore, as to what the Canadian government, the Canadian extractive sector, and civil society actors can and should do in the shorter term to improve the CSR performance of the Canadian extractive sector. Thus, the objective of the National Roundtables will be to examine measures that could be taken over the next 1-3 years to enable Canadian extractive sector companies operating in developing countries to meet or exceed leading international CSR standards and best practices. Specifically, the Roundtables will explore five themes:

- **Canadian and International CSR Standards and Best Practices**
- **Incentives Supportive of the Implementation of CSR Standards**
- **Assistance to Companies to Implement CSR Standards and Best Practices**
- **CSR Monitoring and Dispute Resolution Mechanisms**
- **Capacity Building for Resource Governance in Developing Countries**

⁹ The mandate of the Special Representative of the United Nations Secretary General on Business and Human Rights, Mr. John Ruggie, includes the identification and clarification of "standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights." Ruggie issued an Interim Report on 22 February 2006 and will submit a final report in 2007.

As noted above, this Discussion Paper provides a brief overview of the issues at the heart of these five themes. It examines relevant issues raised by the SCFAIT Report as well as the Canadian and international contexts for each of these themes. Each section concludes with a short set of questions designed to stimulate discussion.

Canadian and International CSR Standards and Best Practices

The SCFAIT Report recommended efforts to clarify the standards of conduct expected of Canadian extractive companies doing business in developing countries with specific attention to the environmental and human rights impacts of their operations.¹⁰ The Report also recommended the development of specific rules for companies operating in conflict zones and stressed the need for particular attention to the rights of indigenous peoples.¹¹

The Canadian context

In general terms, there are currently three potential sources of Canadian CSR standards and best practices:

- Legal instruments
- Policies and practices adopted by the Government and
- Policies and practices adopted by Canadian extractive industries themselves

Legal instruments

A significant piece of legislation that applies to the conduct of Canadian corporations operating abroad is the Corruption of Foreign Public Officials Act (1999), which was enacted to implement the Organization for Economic Co-operation and Development (OECD) Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions. Aside from this, there is a general absence of Canadian legal standards governing the social, human rights and environmental performance of Canadian corporations operating abroad. This situation can be traced to three factors:

- First, the current Canadian legal framework that governs the conduct of corporations is generally only applicable within Canada itself. Canadian companies, including extractive companies, must comply with the laws and rules of the states within which they conduct operations;

¹⁰ Standing Committee on Foreign Affairs and International Trade (SCFAIT), *Fourteenth Report: Mining in Developing Countries*, 38th Parliament, 1st Session, (June 2005), 2-3.

¹¹ *Ibid.*

- Second, the Canadian legislation that currently applies extra-territorially targets very specific types of conduct, for example, certain sexual offences committed abroad or offences addressed by the Canadian *Crimes Against Humanity and War Crimes Act*;
- Third, while Canadian courts can, in theory, address civil litigation related to events that have taken place in another state, they can refuse to do so if they conclude that the courts of that state would be better able to handle such litigation. For example, Canadian courts may determine that the host state has better access to witnesses and evidence.

Government policies and practices

The policies and administrative practices of the Government provide another possible source of Canadian CSR standards and best practices for the extractive industry. For example, a policy decision by Canada to adopt an international instrument (such as the OECD Guidelines for Multinational Enterprises, discussed below) establishes a set of non-binding CSR standards and practices for Canadian companies operating abroad. Likewise, the World Bank's adoption of the International Finance Corporation (IFC) Performance Standards – for which Canada voted – establishes a set of CSR norms for any Canadian company operating abroad that has IFC project financing or political risk insurance from the Multilateral Investment Guarantee Agency (MIGA), as well as by virtue of the Equator Principles loan financing from major Canadian banks.

Similarly, the day-to-day trade finance and risk management functions of Export Development Canada (EDC) integrate CSR standards into public administration, which in turn establishes a set of CSR practices. For example, EDC's methodology to deal with political violence as part of risk assessments, its *Environmental Review Directive*, as well as the harmonization of its practices with the OECD Common Approaches on Environment and Officially Supported Export Credits establish CSR practices.¹²

Voluntary policies and practices adopted by Canadian extractive industries

Canadian extractive companies have been proactive in developing and implementing CSR policies and practices, particularly in the areas of

¹² See EDC, *Corporate Social Responsibility Report 2004*, http://www.edc.ca/english/docs/2004_annualreport_e.pdf (accessed June 8, 2006).

environmental stewardship, health and safety, community engagement, habitat conservation, education and training of local populations and financial contributions.¹³ Examples of specific policy initiatives include:

- In 2004, the Mining Association of Canada adopted Guiding Principles, as part of its Towards Sustainable Mining initiative, which seek to cover the activities of its members worldwide. The Guiding Principles are supplemented by performance indicators on tailings management, energy and greenhouse gas emissions management, external outreach and crisis management planning.¹⁴
- The Canadian Association of Petroleum Producers has set up a Stewardship Initiative that states broad commitments in terms of responsible resource development, valuing communities and the environment. An annual reporting system on benchmarking data verified by an audit firm has been set up to buttress these commitments.
- The Environmental Excellence in Exploration (E3) Guidelines were created in 2003 by a group of mining companies concerned about the environmental practices of exploration operators.¹⁵ The Guidelines are freely accessible as an e-manual, which is managed by the Prospectors and Developers Association of Canada (PDAC). The E3 initiative focuses on the multi-dimensional environmental impact of exploration and the Guidelines also outline principles and tools for constructive community engagement. Exploration companies are typically the first point of contact between communities and the mining industry, and the PDAC strongly encourages Canadian junior companies to adopt these standards when conducting their explorations abroad.

Some companies in the Canadian extractive industry have also engaged in a variety of voluntary CSR practices in their operations in Canada and abroad. While there has been a distinct emphasis on minimizing the negative environmental impacts of mining, in recent years the mining industry has turned towards social issues and a number of companies have started referring to their need for a “social licence” to operate.

¹³ For more information see Natural Resources Canada, http://www.nrcan.gc.ca/mms/wildlife/wildlife_e.htm (accessed June 8, 2006). See also Natural Resources Canada, *The Social Dimension of Sustainable Development and the Mining Industry*, (Minister of Public Works and Government Services Canada: November 2003), http://www.nrcan.gc.ca/mms/poli/sust_e.htm#soc (accessed June 8, 2006).

¹⁴ For more information see Mining Association of Canada, http://www.mining.ca/www/Towards_Sustaining_Mining/index.php (accessed June 8, 2006).

¹⁵ For more information see <http://www.e3mining.com/> (accessed June 8, 2006). While registration is required to access the text of the E3 Guidelines, the process is free and available to everyone.

To this end, some companies have adopted consultative processes that allow affected communities to voice their questions and concerns regarding the extractive projects, while enabling the company to demonstrate its commitment to sound social practices. Other examples of CSR practices include the building of schools and health facilities, the development of environmental monitoring reports in conjunction with local populations, the implementation of programmes to improve community governance, and the provision of economic opportunities for women.¹⁶

It is increasingly the case that the extractive industry needs to demonstrate good corporate conduct in order to obtain access to resources.¹⁷ Moreover, the reputation of meeting or even exceeding CSR standards can offer extractive companies a competitive advantage and increase their overall economic success.¹⁸ The social and environmental performance of Canadian extractive companies can also reflect positively on the long term success of Canadian business as a whole.¹⁹

The international context

Several efforts to codify CSR standards and best practices have been undertaken over the last decade. Some studies identify more than 200 CSR initiatives of various scopes undertaken by a variety of actors.²⁰ By way of example, Table 1 below illustrates a number of prominent international CSR standards and best practices that refer to at least one of the six major CSR challenges associated with the activities of the extractive sector: environmental impacts; community engagement; indigenous rights; human rights; security; and human resource and labour relations.²¹

¹⁶ See Natural Resources Canada, *Sustainable Development and the Mining Industry*, 22-23.

¹⁷ *Ibid.*, 27. Many civil society organizations believe that such a demonstration must be made before the Government supports a corporation through financing, insurance or diplomacy.

¹⁸ *Ibid.*, 25-26.

¹⁹ See Department of Foreign Affairs and International Trade, *Mining in Developing Countries – Corporate Social Responsibility: The Government's Response to the Report of the Standing Committee on Foreign Affairs and International Trade*, (October 2005), 1.

²⁰ Commission on Human Rights, *Report of the United Nations High Commissioner on Human Rights on the Responsibilities of Transnational Corporations and Related Business Enterprises with regard to Human Rights*, Document E/CN.4/2005/91 (15 February 2005), paragraph 7.

²¹ The challenges presented here are meant to roughly categorize the types of issues extractive sector companies often face in developing countries and should not be taken as an exhaustive list. For information on specific challenges faced by the mining industry in particular see for example the Final Report of the Mining, Minerals and Sustainable Development Project, <http://www.iied.org/mmsd/finalreport/> (accessed June 8, 2006).

Table 1. Prominent international CSR standards and principles²²

CSR Challenge Int'l Standard or Principle	Environmental Impacts	Community Engagement	Indigenous Rights	Human Rights	Security	Human Resource and Labour Relations
IFC Performance Standards	Yes	Yes	Yes	Yes	Yes	Yes
OECD Guidelines	Yes	-	-	Yes	-	Yes
Voluntary Principles	-	-	-	Yes	Yes	-
UN Global Compact	Yes	-	-	Yes	-	Yes
The Norms on the Responsibilities of Transnational Corporations	Yes	Yes	Yes	Yes	Yes	Yes

Environmental impacts

CSR standards and best practices dealing with the impact of business operations on the environment are some of the most common instruments which define CSR expectations and are relevant to the activities of extractive industries.

- A new set of **Policy and Performance Standards on Social & Environmental Sustainability** were adopted by the World Bank's International Finance Corporation (IFC) in April 2006, following approval of the full Board of the World Bank.²³ These standards set expectations of

²² It should be noted that the norms mentioned here illustrate considerable variability in their intention and legal status. In general terms, the IFC Performance Standards are a prescriptive instrument, the OECD Guidelines and the Voluntary Principles are reference points, the principles of the UN Global Compact are aspirational, and the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights are a discussion document entailing principles rooted in existing international human rights treaties. The table merely denotes the presence or absence of a reference to the specific CSR challenge within the international standard or principle; the nature and adequacy of the reference remain a matter of debate.

²³ The Performance Standards update and expand the IFC's previous Safeguard Policies. A group of major banks and lending institutions called the Equator Principles Financial Institutions (EPFI) are

conduct for corporations and investors that desire to access the funding offered by the IFC or political risk insurance from the MIGA and provide fairly specific guidance on a comprehensive range of issues. Relevant Performance Standards deal with environmental assessment and management systems, pollution prevention and abatement, biodiversity conservation and sustainable natural resource management. The Performance Standards have a follow-up mechanism for projects connected to the World Bank in the event of allegations of non-compliance, namely the Office of the Compliance Advisor/Ombudsman, which is discussed further under Theme 4.

- The **OECD Guidelines for Multinational Enterprises**, revised in 2000, provide CSR recommendations from governments to multinational corporations. They are significant because they are the only international CSR standard endorsed by a broad range of governments and they have a follow-up mechanism to deal with issues that arise. The Guidelines address issues relevant to the environment such as information disclosure, impact assessments and environmental management systems.
- The **Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights** were developed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights.²⁴ The Norms contain a provision dealing with environmental protection. The Norms themselves currently serve only as a discussion document and have also been the subject of considerable controversy, since they purport to attribute international legal obligations to corporations.²⁵
- The **UN Global Compact** is a CSR initiative focused upon stakeholder participation in the shared learning and dissemination of best practices. Drafted under UN auspices with governmental input, the Global Compact involves labour organizations, NGOs and corporations, with

likely to align themselves on the Performance Standards, as they had done in relation to the IFC's Safeguard Policies. See www.equator-principles.com (accessed June 8, 2006).

²⁴ The UN Sub-Commission on the Promotion and Protection of Human Rights approved the Norms on 13 August 2003. However, the UN Commission on Human Rights, to which the Norms were referred, has not adopted the Norms and has stated that the proposal has no legal standing. See *Report of the Sub-Commission on the Promotion and Protection of Human Rights* (16 April 2004), E/CN.4/2004/L.73/Rev.1.

²⁵ It is relevant to note that the UK-based Business Leaders' Initiative on Human Rights is currently attempting to operationalize the Norms with companies in different sectors with the objective of developing practical tools and methodologies for businesses to implement human rights. The appointment by the UN Secretary General of John Ruggie as Special Representative on business and human rights will build on the Norms to clarify the human rights standards and responsibilities of business and of states with regard to human rights abuses committed by non-state actors.

more than 2500 participating companies so far.²⁶ It is structured by ten broad principles, three of which address environmental issues: support for a precautionary approach; promotion of greater environmental responsibility; and development and diffusion of environmentally friendly technologies.

Community engagement

Standards and best practices related to community engagement focus on the interaction of corporations with affected populations during all stages of a project and tend to address both the form and content of consultations with communities regarding decision-making, land acquisition and resettlement - often with a focus on the specific roles of indigenous peoples. These instruments are highly relevant to extractive industries, since they can have a significant impact on land use considerations, a core concern for extractive industries.

- The **IFC Performance Standards** offer guidance on social assessment and management systems, community health, safety and security, land acquisition and involuntary resettlement, indigenous peoples, as well as cultural heritage issues.

Indigenous rights

Achieving a 'social licence' has become particularly critical with regard to the involvement of aboriginal peoples. Nonetheless, there are very few broadly-accepted legal instruments that deal specifically with indigenous rights. Many of the standards and best practices related to indigenous rights attempt to address how the policies, programmes and practices of development projects, including extractive sector operations, can respond more effectively to the practices, politics, even learning styles, of Aboriginal communities.

- The **International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries**, adopted in 1989, is an instrument that provides guidance on land and natural resources development (Articles 13-19). While Canada has not ratified it, 17 countries have done so, particularly developing countries. This convention contains guidance with respect to accessing and developing natural resources in the traditional areas of indigenous

²⁶ See <http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html> (accessed June 8, 2006).

- peoples. Extractive sector companies operating in countries that have ratified the Convention must comply with its provisions, and some companies have attempted to apply the provisions even in countries where the Convention has not yet been ratified.
- The “Draft United Nations Declaration on the Rights of Indigenous Peoples” is a draft UN resolution that has been referred to the Human Rights Council for possible adoption in 2006.²⁷ If it is subsequently adopted by the United Nations General Assembly, it would be a non-legally binding instrument.²⁸ Significantly, the Draft United Nations Declaration on the Rights of Indigenous Peoples includes references to free, prior and informed consent in relation to development projects.²⁹
 - Specific standards related to the concerns of indigenous peoples can be found within the **World Bank’s Indigenous Peoples Operational Directive 4.10**. The **Operational Policy / Bank Policy 4.12** fulfills a similar role for projects involving involuntary resettlement.³⁰

Human rights

CSR standards and best practices relevant to human rights address a set of core concerns related to the physical integrity, dignity, health and safety of affected populations.

- While there is no specific chapter devoted to human rights in the OECD Guidelines, the OECD Investment Committee recently developed a “Risk Assessment Tool for Investors in Weak Governance Zones” as a follow-up to the **OECD Guidelines for Multinational Enterprises**.

²⁷ A previous version of the draft text has been referred to in Supreme Court of Canada decisions.

²⁸ Declarations are generally considered to be “soft law” at the international level; that is, they may have some influence, but do not have the same legal force as international treaties.

²⁹ See for instance the World Bank Extractive Industries Review Final Report, 2003, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/0,,contentMDK:20306686~menuPK:336936~pagePK:148956~piPK:216618~theSitePK:336930,00.html> (accessed June 8, 2006) and the World Commission on Dams Report, 2000, <http://www.dams.org/> (accessed June 8, 2006). Other parties have proposed the free, prior and informed consultation of affected communities by engaging them in a consultative process about the implications of extractive projects that may not achieve the consent of all parties. This standard of acceptance may be appropriate where multiple stakeholders have conflicting interests in land and resources.

³⁰ The Operational Policy/Bank Policy 4.10 replaces Operational Directive 4.20, whereas Operational Policy/Bank Policy 4.12 replaces Operational Directive 4.30. It should be noted that these Operational Directives and Policies only apply to the activities of the World Bank and are not intended to affect the activities of companies.

- The **Voluntary Principles on Security and Human Rights** for the Extractive and Energy Sectors are a mixed private-public initiative that explicitly acknowledges “the importance of the promotion and protection of human rights throughout the world.”³¹ The Voluntary Principles were developed under the leadership of the UK and US governments, with the active involvement of major oil and mining corporations as well as some of the largest human rights NGOs. The Netherlands and Norway have since signed on to the Voluntary Principles.³²
- The first two principles of the **UN Global Compact** deal with human rights, although in extremely general terms. They state that “[b]usinesses should support and respect the protection of internationally proclaimed human rights; and [...] make sure that they are not complicit in human rights abuses.”³³
- The **Norms on the Responsibilities of Transnational Corporations** also contain standards related to human rights in general and to the interactions of business and security. While the Norms are currently a discussion document, they draw upon a number of legally binding international instruments. Specifically, they state that “transnational corporations and other business enterprises shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization [...], and shall refrain from actions which obstruct or impede the realization of those rights.”³⁴

Security

Companies may face a variety of security concerns in developing countries, particularly in areas prone to conflict. To this end, several CSR standards include guidelines on the management of security issues in a business context.

- The **IFC Performance Standards** address a broad set of considerations in Performance Standard 4, “Community Health, Safety and Security.”

³¹ See Voluntary Principles on Security and Human Rights, Introduction, <http://www.voluntaryprinciples.org> (accessed June 8, 2006).

³² It should be noted that companies can now sign on to the Voluntary Principles independent of their governments and several Canadian extractive sector companies have endorsed these Principles.

³³ See UN Global Compact, “The Ten Principles,” <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> (accessed June 8, 2006).

³⁴ See *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*, 26 August 2003, Paragraph 12, E/CN.4/Sub.2/2003/12/Rev.2.

- The **Voluntary Principles on Security and Human Rights** provide a set of principles that address violence-related risk assessment and relations between extractive industries and security providers, both governmental and private (security firms).
- The **Norms on the Responsibilities of Transnational Corporations** contain standards related to the interactions of business and security.

Human resource and labour relations

CSR standards and best practices that address human resource and labour relations are perhaps the most comprehensive category. This is largely due to the existence of a large multilateral organization focused on such issues – the International Labour Organization (ILO). CSR standards regarding human resource and labour relations address conditions of work issues, prohibited forms of labour such as forced labour or child labour, as well as issues associated with organized labour.

- One of the best-known instruments on labour relations is the **ILO Tripartite Declaration** of Principles Concerning Multinational Enterprises and Social Policy, which was revised in 2000. The ILO has also produced other relevant instruments such as its 1998 Declaration on Fundamental Principles and Rights at Work.
- The second standard under the **IFC Performance Standards** deals with labour and working conditions. It tackles three main elements under that heading, i.e. working conditions and management of worker relationships, protecting the workforce and occupational health and safety, in addition to dealing briefly with non-employee workers and supply chains.
- The **OECD Guidelines** address the issue of employment and industrial relations, dealing with trade unions, elimination of forced and child labour, non-discrimination, work conditions, etc.
- The **UN Global Compact** devotes four of its ten principles to labour standards, expressing support for upholding the freedom of association and the right to collective bargaining, abolishing child labour, and eliminating forced labour and discrimination.

- The ***Norms on the Responsibilities of Transnational Corporations*** contain six provisions dealing with non-discrimination and the rights of workers.

Questions for Discussion

- **What are the key challenges, related to CSR standards and best practices, faced by government, civil society and industry stakeholders associated with the activities of the Canadian extractive industry operating in developing countries?**
- **What are some of the possible responses that could be undertaken to address these challenges, for example, drawing upon experiences from other issue areas or other countries?**
- **What specific actions should be undertaken by Canadian government, civil society and industry stakeholders to address these challenges?**

Notes

Notes

Incentives Supportive of the Implementation of CSR Standards

The SCFAIT Report urged the government to “put in place stronger incentives to encourage Canadian mining companies to conduct their activities outside Canada in a socially and environmentally responsible manner and in conformity with international human rights standards.”³⁵ The Report also recommended “making Canadian government support [...] conditional on companies meeting clearly defined corporate social responsibility and human rights standards, particularly through the mechanism of human rights impact assessments.”³⁶

The Report identified three broad categories of incentives supportive of the implementation of CSR standards by Canadian extractive industry companies.³⁷ These are:

- Conditions for access to credit, insurance and other financial services
- Market-based incentives
- Legal norms and liability

The Canadian context

The ability of the Government of Canada to provide incentives to the Canadian extractive sector for the implementation of CSR standards is limited by the fact that companies may have a very weak association with Canada. As illustrated in Table 2 below, there is a broad range of companies considered to be Canadian; yet the actual affiliation with Canada varies considerably across companies. Most importantly, there are a large number of extractive companies that fall into the Type 4 category, that is, companies with very few ties to Canada but which are nonetheless generally identified as Canadian. Currently, the Government of Canada has developed few, if any, tools or levers with which to influence the activities of these particular companies.

³⁵ Standing Committee on Foreign Affairs and International Trade (SCFAIT), *Fourteenth Report: Mining in Developing Countries*, 38th Parliament, 1st Session, (June 2005), 2.

³⁶ *Ibid.*

³⁷ Incentives are understood here to include measures that reward compliance and discourage non-compliance with standards. The three categories listed here have been drawn to facilitate a structured debate on current and potential incentives. These categories are by no means exhaustive and we welcome discussion on incentives that may fall outside their boundaries.

Table 2. Typology of Canadian Mining Companies³⁸

	Type 1	Type 2	Type 3	Type 4	Type 5
Head office location	CDA	CDA	Foreign	Foreign	Foreign
Mailing address	CDA	CDA/ Foreign	Foreign	Foreign	Foreign
Governing jurisdiction	CDA	CDA	CDA	Foreign	Foreign
Canadian company officers	Yes	Yes/No	Minimum	No	Yes
Mining in Canada	Yes/No	No	No	No	Yes
Mining abroad	Yes/No	Yes	Yes	Yes	Yes
Officers can be prosecuted under Canadian laws	Yes, in most cases	Yes, in some cases	No, in most cases	No, in most cases	Yes, in some cases
Canadian Exchanges listings	Yes	Yes	Yes	Yes	No

Conditions for access to government credit, insurance and other services

One type of incentive for corporations is to condition access to loans or other services on meeting CSR standards and leading practices – e.g. good performers have access to credit, whereas bad performers do not. However, there are two key limitations to the effectiveness of incentives on conditionality for the Canadian extractive sector, namely, the absence of a set of clearly defined standards, and the fact that the Government does not provide financial assistance to the majority of Canadian investment abroad.³⁹ The Government provides non-financial assistance to Canadian companies, including extractive companies, in the form of Trade Commissioner support through Canada's Missions abroad.

Within these constraints, Canada does currently use this type of incentive to encourage CSR performance. The Canadian International Development

³⁸ This table was developed by Natural Resources Canada.

³⁹ See Department of Foreign Affairs and International Trade, *Mining in Developing Countries – Corporate Social Responsibility: The Government's Response to the Report of the Standing Committee on Foreign Affairs and International Trade*, (October 2005), 6.

Agency (CIDA) may reduce funding to a project where there is a demonstrable risk of an adverse developmental impact. Export Development Canada (EDC) considers the potential environmental and project-related social effects of proposed projects for which EDC's financing and risk management services are being sought. The Export Development Act requires EDC to review the potential adverse environmental effects of proposed projects before committing its support. EDC's *Environmental Review Directive*, in turn, also requires an examination of any potential negative project-related social effects as part of EDC's environmental reviews. When proposed projects are located in markets with human rights sensitivities, EDC also undertakes a more detailed human rights assessment. EDC's due diligence with respect to potential environmental, social and human rights effects is performed before it agrees to provide its services to a project.⁴⁰

Some Canadian private sector financial service providers also apply CSR criteria in relation to project finance. For example, four of Canada's five major banks are signatories to the Equator Principles (see Section 2.2.). It should be noted that whenever EDC is part of a syndicated project loan in partnership with one or more Equator Principle banks, it will be jointly obliged to apply the IFC Performance Standards to the recipient of the loan (EDC regularly applies those international standards most relevant to the proposed project, among them the standards of the World Bank Group and the European Bank for Reconstruction and Development).

Market-based incentives – Transparency and disclosure

Investors, insurers, consumers and other market actors are increasingly seeking reliable information on how companies manage their environmental and social impacts. This suggests that some segments of the market are willing to reward good CSR performers and/or are concerned about the risks associated with poor CSR practices. This is particularly relevant to the extractive sector which faces significant challenges associated with managing the social, human rights and environmental impacts of resource extraction activities. The effectiveness of CSR-oriented transparency and disclosure practices is hampered by the lack of a commonly accepted standard for what, or how, CSR information is to be disclosed. However, evidence suggests that disclosure can help companies, including extractive sector companies, understand the value of CSR to their business and to

⁴⁰ Note that a second-level incentive for compliance with CSR standards linked to the provision of support to Canadian corporations by governmental agencies relates to disclosure of information on projects having received assistance. The extent of disclosure of information on projects funded by EDC can be found in the *EDC Disclosure Policy*, and it is limited by considerations of confidentiality and competitiveness.

manage CSR issues more openly and systematically.⁴¹ Several of the approaches that Canada currently pursues have consequences for the extractive sector:

- **Pollution Release:** As an incentive for the adoption of pollution prevention measures, Canada's National Pollutant Release Inventory (NPRI) requires companies, including extractive companies, to publicly disclose data on their emissions of specified environmental pollutants. Thus, "the NPRI is a major starting point for identifying and monitoring sources of pollution in Canada."⁴²
- **Securities Legislation:** In Canada, all provincial securities legislation contains both general and specific provisions that require public companies to disclose CSR related information to their shareholders when that information is considered "material" – i.e. when "reasonable investors would find it relevant to their investment decisions".⁴³ All material activities, no matter where they occur, must be reported to stakeholders. Thus far, however, these requirements appear to have had a limited impact upon the disclosure of CSR-relevant information to shareholders.⁴⁴ Of much greater impact on Canadian companies whose shares also trade in the US is the application of the Sarbanes-Oxley disclosure requirement.⁴⁵
- **Voluntary Reporting:** Leading extractive sector companies were some of the first companies to voluntarily report on their CSR practices and performance. Canada has developed tools to assist companies in their voluntary sustainability reporting practices.⁴⁶ Approximately 114 Canadian companies, including 26 extractive companies, reported at least some information on their CSR practices and performance in 2005 (double the number than existed in 2001).⁴⁷ While the extent and quality of disclosure continues to vary greatly, Canada's top reporters compare favourably with the best in the world.⁴⁸

⁴¹ See Stratos Inc., *Gaining Momentum: Corporate Sustainability Reporting in Canada*, 2005.

⁴² See the NPRI website of Environment Canada, http://www.ec.gc.ca/pdb/npri/npri_about_e.cfm (accessed June 8, 2006).

⁴³ Robert Repetto, *Silence is Golden, Leaden, and Copper: Disclosure of Material Environmental Information in the Hard Rock Mining Industry*, July 2004. It is important to note that in Canada, securities legislation is a matter under provincial jurisdiction.

⁴⁴ A recent report states that in Canada, only one case dealing with environmental disclosure was brought by securities regulators within a period of 25 years. *Ibid.*, 21.

⁴⁵ For more information on the Sarbanes-Oxley Act, see for example <http://www.paynefirm.com/html/SarbanesOxleyIntro.html> (accessed June 8, 2006) and <http://library.findlaw.com/2003/Sep/17/133167.html> (accessed June 8, 2006).

⁴⁶ See <http://www.sustainabilityreporting.ca/> (accessed June 8, 2006).

⁴⁷ See Stratos Inc., *Gaining Momentum*.

⁴⁸ See for example Stratos Inc., December 16, 2003 Press Release, <http://www.csrwire.com/article.cgi/2340.html> (accessed June 8, 2006).

- **Black / White Lists:** The publication of “best” or “worst” lists of countries, companies, and products have played an important role in recognising and rewarding CSR performance. Several Canadian academics, NGOs and research institutions publish information on the CSR practices of Canadian extractive companies.⁴⁹ Jantzi Research has contributed to the development of socially responsible investing in Canada with the creation of the Jantzi Social Index, which serves as a benchmark in evaluating the “performance of socially screened portfolios.”⁵⁰ In January 2006, Corporate Knights and Innovest Strategic Value Advisors published its second annual “Global 100 Most Sustainable Companies” list, which featured five extractive companies, including two Canadian companies.⁵¹ Report on Business Magazine issues an annual consumer-focused “CSR Ranking of Canadian Companies,” of which the first two rankings included a sector focus on the extractive industry.

Market-based incentives – Responsible investment

Responsible investment (RI) refers to the integration of CSR considerations into traditional investment decision-making and ownership processes. It may be motivated by strict financial reasons (to reduce financial risk and enhance profits) or by moral considerations (for example, in the case of ethical funds). RI is becoming a common practice for large institutional investors such as pension funds that account for over one-third of the world's invested assets. Pension funds are often major owners of the companies in which they invest, including extractive sector companies, and can therefore play a strong role in influencing corporate direction through shareholder resolutions and engagement. A number of pension funds have formed coalitions around specific issues, such as climate change, to pressure companies (including extractive sector companies) to identify, manage and report the risks associated with their operations and performance.

Some of Canada's largest pension funds have taken an interest in RI approaches. For example, the Canada Pension Plan Investment Board (CPPIB) recently released a Policy on Responsible Investment and supported the development of the April 2006 Principles for Responsible Investment (PRI).

⁴⁹ See for example Stratos Inc., <http://www.stratos-sts.com/pages/publica011.htm> (accessed June 8, 2006).

⁵⁰ See <http://www.jantzisocialindex.com/> (accessed June 8, 2006).

⁵¹ For more information see <http://www.global100.org/> (accessed June 8, 2006). Report on Business Magazine issues an annual consumer-focused “CSR Ranking of Canadian Companies,” of which the first two rankings included a sector focus on the extractive industry. Corporate Knights also publishes an annual ranking of the “50 Best Corporate Citizens” which focuses on Canadian companies. In 2005, the list included a total of ten companies from the extractive sector. For more information see <http://www.corporateknights.ca/reports/best50/> (accessed June 8, 2006).

Signatories to the PRI include four Canadian pension funds and account for almost \$2 trillion in assets under management.⁵² The CPPIB has also become a signatory to the Enhanced Analytics Initiative, an international collaboration encouraging better investment research, which helps investors identify sectors and companies whose performance will be affected by CSR considerations.

Legal liability

A third category of incentives includes penalties that impose costs for conduct that falls below norms established in national and international law. The potential application of these incentives by the Government of Canada is constrained by international law governing extraterritoriality and by Canada's Constitution, which grants jurisdiction over certain key areas relevant to CSR to the provinces.

- *Extraterritoriality*: While states generally have full jurisdiction to make and enforce laws within their own territory, international law imposes certain limitations on their extraterritorial application. Broadly speaking, states are empowered to pass laws to exercise prescriptive jurisdiction over all persons and events within their sovereign territory and, extraterritorially, over their nationals (natural persons or corporations). However, the enforcement of such laws is generally limited to persons or entities within the sovereign territory of the state that has prescribed the rule, unless there is an international agreement or other arrangement in place to allow for enforcement jurisdiction over entities in other states.
- *Criminal Responsibility*: Corporations can be held criminally responsible for offences committed in Canada. Corporations can also be held criminally responsible for offences committed outside Canada when there is a "real and substantial link" between Canada and the offence. In addition, for certain serious offences recognized as crimes under international law that entail universal jurisdiction, such as those reflected in the *Crimes Against Humanity and War Crimes Act*, a "real and substantial link" is not required. In view of the universal jurisdiction recognized in respect of these offences, prosecution can take place in any state.

⁵² By signing on to the PRI signatories recognise their fiduciary duty to consider environmental, social and governance issues in making investment decisions. However, even where pension funds have adopted RI policies, some critics argue that they fail to set clear criteria for divestment in companies with poor CSR performance.

- *Civil Responsibility*: In principle, civil responsibility of a corporation in connection with deeds committed abroad is also possible. Domicile or doing business in Canada usually suffices for Canadian courts to have jurisdiction in civil matters. However, while Canadian courts may have jurisdiction to hear the matter, arguments are very likely to be made that the Canadian court is not the most appropriate forum in cases where there are factors – such as the location of evidence, of damages, of the commission of harmful deeds, of the victims, or the governing law – that point to the host state court as the most appropriate forum. It should also be noted that civil responsibility is, generally speaking, a matter within provincial jurisdiction.

The international context

Conditions for access to credit, insurance and other services

The World Bank and its agencies, particularly the International Finance Corporation (IFC), require compliance with a wide range of internal policies, including the IFC Performance Standards, before project finance for development projects is approved.⁵³ Also, the IFC and the World Bank require borrowers to meet certain quantitative performance measures and standards (collectively known as “conditionality”) before negotiated instalments (which are set out in the loan agreement) are issued to the borrower. The IFC Sustainability Policy includes specific provisions for projects in the extractive sector. The Environmental Health and Safety Guidelines, which will replace the Bank’s Pollution Prevention and Abatement Handbook, will also provide technical requirements related to extractive sector companies.

The influence of the IFC Performance Standards is enhanced by the Equator Principles (EP), a voluntary framework through which other financial institutions agree to adopt policies consistent with IFC Performance Standards for their investments in projects that exceed \$10 million.⁵⁴ Together, the 41 signatories to the Equator Principles (including four Canadian Banks) represent more than 80% of global project finance. While the IFC standards are not specific to the extractive sector, a significant proportion of global project finance is directed to it, which makes the IFC Standards and the Equator Principles of particular relevance.⁵⁵

⁵³ For more information on the IFC Performance Standards see the IFC website, <http://www.ifc.org/ifcext/enviro.nsf/Content/EnvSocStandards> (accessed June 8, 2006).

⁵⁴ For more information see <http://www.equator-principles.com/> (accessed June 8, 2006).

⁵⁵ It should be noted that the Equator Principle banks have not adopted the IFC Sustainability Policy, which applies exclusively to the IFC.

The World Bank Group is also actively exploring its involvement in the oil, gas and mining sectors within the context of its overall mission of poverty reduction and the promotion of sustainable development through the Extractive Industries Review. The Extractive Industries Review (EIR) is the most comprehensive investigation undertaken to date on extractive industries investments. Although the World Bank issued its response to the EIR in 2004, the recommendations of the EIR could lead to further environmental, social and governance conditions for World Bank Group interactions with extractive companies and with host country governments in the future.⁵⁶

Some national export credit agencies make a link between the promotion of the OECD Guidelines and the provision of export financing.⁵⁷ In the Netherlands, export credit and investment guarantee applicants receive copies of the Guidelines. In order to qualify, companies must state that they are aware of the OECD Guidelines and that they will endeavour to comply with them. At the UK Export Credit Guarantee Department, internal procedures check on the consistency of the operations of its customers with the OECD Guidelines.

In the US, the assistance policy of the Overseas Private Investment Corporation requires compliance with criteria pertaining to development impact, environmental protection, international labour rights, and human rights. Requirements are integrated into contracts and extend to the subcontract level.⁵⁸

All officially supported export credit agencies (OECD export credit agencies) require the submission of an environmental impact assessment for the projects identified as potentially having significant adverse social and environmental impacts, and at least a third of these export credit agencies stipulate disclosure of environmental information prior to the approval of export credit.

Market-based incentives – Transparency and disclosure

There are several international initiatives that encourage extractive sector companies to be more transparent about their CSR policies, practices and performance, including:

⁵⁶ For more information on the Extractive Industries Review see the World Bank Group's EIR website, <http://ifcln1.ifc.org/ifcext/eir.nsf/Content/Home> (accessed June 8, 2006).

⁵⁷ See AccountAbility, *Promoting Responsible Competitiveness: Benchmarking Study for the Government of Canada*, (2006), 27.

⁵⁸ *Ibid.*, 24-25.

- The Global Reporting Initiative (GRI) is a framework for sustainability reporting developed in 1997 that targets all industries while including industry-specific guidance in the form of technical protocols and sector supplements.⁵⁹ Central to the GRI framework are the Guidelines, a set of principles that address reporting requirements. Of particular relevance is the *Mining and Metals Supplement* of the GRI, which was developed jointly by the ICMM and GRI through a multi-stakeholder consultation.
- The Carbon Disclosure Project (CDP) was launched in 2000, when a group of institutional investors sent requests to the Financial Times 500 largest companies in the world to disclose their greenhouse gas emissions. Since then, three further requests for information have been sent out.⁶⁰ The CDP website publishes the responses and commissioned reports, and has since become the "largest registry of greenhouse gas emissions in the world."⁶¹
- The Extractives Industries Transparency Initiative (EITI) supports the full disclosure and verification of the government revenue and company payments associated with extractive sector operations.⁶² The initiative, which was launched by the UK in 2002, includes a reference guide for companies and governments, and formulates underlying principles and criteria for successful implementation.
- The International Council on Mining and Metals (ICMM) has adopted a Framework of ten comprehensive CSR Principles derived from the Final Report of the Mining, Minerals and Sustainable Development Project.⁶³ These Framework Principles address priority issues within the economic, social, environmental and governance spheres. ICMM members have committed to reporting on operational performance against Framework Principles beginning in 2006, using the core indicators of the GRI and the GRI *Mining and Metals Sector Supplement*. ICMM members have also agreed that their reporting on CSR performance will be subject to independent external verification.
- The Council for Responsible Jewellery Practices (CRJP), which was founded in May 2005 with members from a cross section of the diamond and gold jewellery supply chain, is committed to promoting responsible

⁵⁹ For more information see <http://www.grig3.org/index.html> (accessed June 8, 2006).

⁶⁰ For more information see <http://www.cdproject.net/index.asp> (accessed June 8, 2006).

⁶¹ See <http://www.cdproject.net/aboutus.asp> (accessed June 8, 2006).

⁶² For more information see <http://www.eitransparency.org/index.htm> (accessed May 16, 2006).

⁶³ For more information on the ICMM see <http://www.icmm.com/> (accessed June 8, 2006). For more information on the Final Report of the Mining, Minerals and Sustainable Development Project see <http://www.iied.org/mmsd/finalreport/> (accessed June 8, 2006).

business practices in a transparent and accountable manner throughout the industry from mine to retail. The Council is developing a "Responsible Practices Framework," in consultation with key stakeholder groups, which will define the ethical, social and environmental standards according to which all members commit to conduct their business.

- The Sarbanes-Oxley Act (2002) imposes strict risk assessment and disclosure requirements on any company whose shares trade in the US. Given the number of major Canadian extractive sector companies (as well as those based in other countries) that trade in the US, this law has almost international status.

A number of jurisdictions have also included CSR-related disclosure requirements in company law. For example, France's Corporations Act requires all publicly quoted companies to issue social and environmental reports.⁶⁴

Market-based incentives - Responsible investment

Uptake of CSR considerations by pension managers has been impeded by concerns that to do so would be a breach of their fiduciary duty to maximize financial return for beneficiaries. In response, some countries (e.g. Australia and the UK) have created legislative frameworks explicitly allowing pension managers to adopt responsible investment policies.⁶⁵ In Germany, Belgium and the UK, pension funds are required to disclose the extent to which (if at all) social and environmental considerations are taken into account in their investment policies. In Norway, pension fund investments are screened by an ethics commission. This commission may, and has, removed companies from the pension fund investment portfolio for environmental or social reasons, and makes these decisions public.⁶⁶ The recently released international Principles for Responsible Investment provide a framework for investors to appropriately consider CSR issues in their investment policies and practices.⁶⁷

⁶⁴ Similar legislation exists in Canada, but only in relation to financial institutions, not extractive sector or other companies.

⁶⁵ MiningWatch Canada, *A Policy Framework for Regulating Mining Companies Operating Internationally*, (October 2005), 13.

⁶⁶ See the Advisory Council on Ethics, The Norwegian Government Petroleum Fund, <http://odin.dep.no/etikkradet/english/bn.html> (accessed June 8, 2006).

⁶⁷ See for example McGeachie et al., *Finance and the Environment in North America*.

Legal liability

A recent study conducted by FAFO and the International Peace Academy compared regimes of corporate criminal responsibility in Canada, France, Norway, the UK and the US.⁶⁸ The study concluded that the notion of corporate criminal responsibility exists in all of those jurisdictions, but that there are often obstacles to prosecuting corporations for international law crimes.

In the realm of civil litigation, the most famous opening towards corporate liability is created by the US **Alien Torts Claims Act** (ATCA), under which federal courts are given jurisdiction for civil wrongs committed in violation of international law. The ATCA has been used to bring lawsuits against non-US corporations for acts or omissions committed outside of the US. While a flurry of litigation under the ATCA since the 1980s has, to date, not found a corporation liable under this statute, the increasing use of the ATCA is an indication of a growing interest in holding corporations legally to account for violations of international law.⁶⁹

There is currently no comprehensive international binding agreement dealing with norms associated with corporate social responsibility. The Secretary General of the United Nations has appointed a Special Representative to provide advice on a number of issues regarding corporate social responsibility.

Questions for Discussion

- **What are the key challenges, related to incentives supportive of the implementation of CSR standards, faced by government, civil society and industry stakeholders associated with the activities of the Canadian extractive industry operating in developing countries?**
- **What are some of the possible responses that could be undertaken to address these challenges, for example, drawing upon experiences from other issue areas or other countries?**

⁶⁸ See *Business and International Crimes: Assessing the Liability of Business Entities for Grave Violations of International Law*, FAFO Report 467 (2004), <http://www.faf.no/liabilities/467.pdf> (accessed June 8, 2006).

⁶⁹ To date, thirteen cases are ongoing, three have been settled, and 20 have been dismissed.

- **What specific actions should be undertaken by Canadian government, civil society and industry stakeholders to address these challenges?**

Notes

Notes

Assistance to Companies to Implement CSR Standards and Best Practices

The SCFAIT Report recommended the “increase and improve[ment of] services offered to Canadian mining companies operating in developing countries,” with a view to ensuring three objectives: awareness of their obligations, awareness of the local context in which they intend to operate, and possession of the capacity to conduct their activities in a socially and environmentally responsible manner.⁷⁰ In connection with the last objective, the Report proposed the development and promotion of a “specific toolkit to help Canadian companies evaluate the social, environmental and human rights impact of their operations.”⁷¹

The Canadian context

In order to be truly effective, CSR standards and best practices must be integrated into the daily operations and decision-making processes of Canadian extractive companies. However, mining companies are often unable to implement CSR practices on their own. For example, many junior companies do not have the resources (either in human or in financial terms) to deal with CSR issues in the same way that the majors do. Of concern therefore throughout this process is the need to accommodate factors such as enterprise size (major/junior), nature of the activity (exploration/extraction/refining) and type of resources exploited (mining/oil and gas).

The Canadian government's role in supporting implementation is twofold. First, in-house expertise on the implementation of CSR standards and best practices is used to provide assistance to Canadian corporations, including mining and petroleum companies, on concrete investment projects:

- Through its team of environmental advisors, **Export Development Canada** (EDC) reviews environmental impact assessment reports submitted by project proponents/sponsors, and helps to identify “appropriate mitigation measures related to transactions for which EDC may extend

⁷⁰ Standing Committee on Foreign Affairs and International Trade (SCFAIT), *Fourteenth Report: Mining in Developing Countries*, 38th Parliament, 1st Session, (June 2005), 3.

⁷¹ *Ibid.*

insurance or financial coverage."⁷² In 2004, EDC signed on eleven projects compliant with its *Environmental Review Directive*, four of which pertained to the extractive sector.⁷³

- The **Trade Commissioner Service** (TCS) incorporates CSR-relevant information and material in the briefings it gives to its Canadian clients, communicates the Government of Canada's commitment to CSR to both Canadian and local business audiences, and makes sure that host governments are aware of Canadian CSR initiatives.⁷⁴ In order to better serve its clients, the TCS is currently developing a plan to increase training of DFAIT staff, develop new CSR tools for companies operating abroad, and promote CSR concepts more systematically in Canada and abroad.
- The Operations Division of the TCS, which provides training to trade promotion staff in Canada and abroad, has developed stand-alone material designed to illustrate how the promotion of CSR should be integrated into the delivery of the six core services that are provided to Canadian companies operating abroad.⁷⁵ This initiative forms part of the Government of Canada's commitment to "develop further guidelines and training to help staff at Canada's missions abroad."⁷⁶

Second, the Canadian government can assist implementation by identifying, developing and disseminating adequate implementation tools. Initiatives in this regard include:

- With a view to promoting CSR and supporting businesses in integrating CSR standards and best practices in their operations, the Government of Canada has recently published ***Corporate Social Responsibility: An Implementation Guide for Canadian Business***. The Guide features relevant initiatives undertaken by Canadian companies, including examples from the extractive industry.⁷⁷

⁷² Export Development Canada, *Chief Environmental Advisor's Annual Report 2004*, 3, http://www.edc.ca/english/docs/2004_Chief_Enviro_Adv_Report_e.pdf (accessed June 8, 2006).

⁷³ *Ibid.*, 6.

⁷⁴ For more information on the Trade Commissioner Service see <http://www.infoexport.gc.ca/ie-en/MarketReportsAndServices.jsp> (accessed June 8, 2006).

⁷⁵ Canadian Missions receive many inquiries from Canadian companies seeking to expand their international business operations and thus constitute a useful resource in the promotion and implementation of Canadian-supported CSR initiatives abroad. For example, in March 2004, the Department of Foreign Affairs and International Trade organized a pilot training course on CSR at the Canadian Embassy in Manila, Philippines.

⁷⁶ See Department of Foreign Affairs and International Trade, *Mining in Developing Countries – Corporate Social Responsibility: The Government's Response to the Report of the Standing Committee on Foreign Affairs and International Trade*, (October 2005), 6.

⁷⁷ See <http://www.strategis.ic.gc.ca/csr> (accessed June 8, 2006).

- In 2000-2001, Natural Resources Canada listed examples of the activities of some Canadian mining companies that behave in a socially responsible manner in a **Catalogue of Social Practices in the Canadian Minerals and Mining Industry**.⁷⁸
- In response to an industry-identified need for more information and advice on practices related to corporate sustainability reporting, the Government of Canada and Stratos Inc. have developed the **Sustainability Reporting Toolkit**, which contains information relevant to the extractive sector.⁷⁹

The private sector can also serve as an information resource on how to assess the environmental, social and political impacts of a given project, or on how to implement CSR standards. Examples of private sector support include:

- **Environmental Excellence in Exploration (E3)** is an internet toolkit developed by a network of mining industry companies and managed by the Prospectors and Developers Association of Canada (PDAC). It is meant to facilitate implementation of CSR standards and best practices in the mining exploration industry.⁸⁰
- The Conference Board of Canada and Imagine Canada have developed the **Corporate Responsibility Assessment Tool**, a Web-based instrument that companies can consult to manage, measure, and improve their CSR performance.⁸¹ It is applicable to all types and sizes of industries and helps companies pinpoint where progress is being made and where improvement is required.
- For-profit consulting services can also facilitate the translation of CSR standards into corporate operations and management. Canadian extractive companies are prominent among the clientele of consulting

⁷⁸ Natural Resources Canada, *Catalogue of Social Practices in the Canadian Minerals and Mining Industry*, http://www.nrcan.gc.ca/mms/sociprac/intro_e.htm (accessed June 8, 2006).

⁷⁹ The Toolkit is designed to provide basic guidance on how to develop a report and is largely compatible with the Global Reporting Initiative, which offers a much more detailed framework. For more information see <http://www.sustainabilityreporting.ca> (accessed June 8, 2006) and <http://www.globalreporting.org/index.asp> (accessed June 8, 2006).

⁸⁰ See <http://www.e3mining.com/> (accessed June 8, 2006). There are many detailed guidelines or toolkits tailored to particular aspects of the activities of extractive industries (e.g. exploration, drilling, field trips, tailings facilities, etc.). For a listing of other instruments meant to assist extractive companies on how to proceed operation-wise, see <http://www.pdac.ca/pdac/good-practices.html> (accessed June 8, 2006).

⁸¹ For more information see http://www.conferenceboard.ca/GCSR/CR_AT/default.htm (accessed June 8, 2006).

firms that offer guidance on risk management and the implementation of CSR and sustainability practices into business operations.⁸²

Another avenue for assistance is the contribution and expertise of civil society and NGOs. There are many NGO campaigns, projects and initiatives that seek to improve corporate conduct. Some of these projects are undertaken in partnership with the Canadian extractive industry, whereas others seek to improve corporate conduct by reporting on and publicizing evidence of poor CSR performance.

The international context

The **International Finance Corporation** (IFC) provides multi-dimensional institutional support to implementation of CSR activities by Canadian extractive companies:

- First, the IFC offers client support services that may include assistance for small and medium-sized enterprises, help with improving social and environmental outcomes and project performance, communication with relevant agencies on project-specific issues, and involvement of the IFC's external network of consultants.⁸³ The IFC also supports training programs for its clients.
- Second, the IFC may fund its clients' social and environmental initiatives and programs, helping them to exceed the requirements of the IFC's Performance Standards.
- Third, the IFC can liaise with the various public and private stakeholders.

In addition to such institutional support, there are accessible tools that can be of assistance to Canadian extractive industries:

- The International Council on Mining and Metals (ICMM) has developed a Community Development Toolkit in collaboration with the World Bank which provides 17 tools for use throughout the project cycle, covering the

⁸² See for instance http://www.fivewinds.com/services/services_SustainabilityCSR.cfm (accessed June 8, 2006).

⁸³ International Finance Corporation, *Policy on Social and Environmental Sustainability*, (April 30, 2006), 7-8, [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/\\$FILE/SustainabilityPolicy.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/$FILE/SustainabilityPolicy.pdf) (accessed June 8, 2006).

assessment, planning, management and evaluation phases of community development as well as stakeholder relationships.

- The Human Rights and Business Project of the Danish Institute for Human Rights offers a wide range of services to the business community, including a business training course, code of conduct screenings, a human rights hotline, and an NGO partnership service in addition to general consultancy work.⁸⁴ The Project also offers an online-diagnostic tool, the “Human Rights Compliance Assessment,” which allows companies to identify potential violations caused by the operations.⁸⁵
- In 2005, International Alert published “Conflict-Sensitive Business Practice: Guidance for Extractive Industries,” a set of risk and impact assessment tools for extractive companies working or planning to work in environments affected by conflict.⁸⁶ A number of NGOs have also published materials that business might find useful in this regard.⁸⁷
- The Energy and Biodiversity Initiative (EBI) has brought together major energy companies and conservation organizations to develop and foster the integration of biodiversity conservation into the exploration phase of oil and gas development. The members are currently testing and improving upon the guidelines and recommendations that emerged from the EBI report.⁸⁸

Questions for Discussion

- **What are the key challenges, related to assistance for companies to implement CSR standards and best practices, faced by government, civil society and industry stakeholders associated with the activities of the Canadian extractive industry operating in developing countries?**

⁸⁴ For more information see <http://www.humanrightsbusiness.org/index.htm> (accessed June 8, 2006).

⁸⁵ A similar project is being spearheaded in Canada by Rights & Democracy, Canada's parliamentary-funded international human rights organization.

⁸⁶ The document is available at <http://www.international-alert.org/publications/234.php> (accessed June 8, 2006).

⁸⁷ See for example Amnesty International, <http://www.amnesty.org/> (accessed June 8, 2006) and the International Business Leaders Forum, <http://www.iblf.org/> (accessed June 8, 2006).

⁸⁸ For more information and access to the EBI Report see <http://www.theebi.org/> (accessed June 8, 2006).

- **What are some of the possible responses that could be undertaken to address these challenges, for example, drawing upon experiences from other issue areas or other countries?**
- **What specific actions should be undertaken by Canadian government, civil society and industry stakeholders to address these challenges?**

Notes

Notes

CSR Monitoring and Dispute Resolution Mechanisms

The SCFAIT Report recommended the strengthening or development of "mechanisms for monitoring the activities of Canadian mining companies in developing countries and for dealing with complaints alleging socially and environmentally irresponsible conduct and human rights violations."⁸⁹ In particular, the Report called for a revision of the Canadian National Contact Point's mandate to enable the investigation of companies found in violation of the OECD Guidelines for Multinational Enterprises.⁹⁰

The Canadian context

In Canada, there are currently two main initiatives that allow for inquiry and dispute resolution in a CSR context that apply to the extractive sector: the National Contact Point for the OECD Guidelines and Export Development Canada's Compliance Officer.

Canada's National Contact Point

The National Contact Point (NCP) for the OECD Guidelines is the mechanism through which a country adhering to the OECD Guidelines for Multinational Enterprises ensures their adequate implementation and promotion.⁹¹ The 'core criteria' guiding the operation of all NCPs are visibility, accessibility, transparency, and accountability.⁹² A case, or 'specific instance,' of business conduct can be raised by several parties, including NGOs, the public, the business community, and non-OECD States. In response, the NCP evaluates whether the issue merits further attention and offers to help facilitate a

⁸⁹ Standing Committee on Foreign Affairs and International Trade (SCFAIT), *Fourteenth Report: Mining in Developing Countries*, 38th Parliament, 1st Session, (June 2005), 2.

⁹⁰ *Ibid.*, 2-3.

⁹¹ For more information see "Canada and the OECD Guideline for Multinational Enterprises," <http://www.ncp-pcn.gc.ca/multinational-en.asp> (accessed June 8, 2006); "Annual Report 2005: Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises," http://www.ncp-pcn.gc.ca/annual_2005-en.asp (accessed June 8, 2006).

⁹² See Fanny Calder and Malaika Culverwell, *Following up the World Summit on Sustainable Development Commitments on Corporate Social Responsibility: Options for Action by Governments*, Chatham House Final Report, February 2005, 44-49, <http://www.chathamhouse.org.uk/viewdocument.php?documentid=5503> (accessed June 8, 2006).

resolution where appropriate. Recommendations by the NCP are non-binding.

The Canadian NCP is an interdepartmental committee chaired by International Trade Canada. Its main tasks are to promote the OECD Guidelines, handle inquiries, assist in the resolution of issues related to the Guidelines, liaise with other NCPs, and submit annual reports to the OECD. Since 2000, it has received seven submissions, five of which concern extractive companies.⁹³ The four submissions which have been considered as specific instances under the OECD Guidelines have all pertained to extractive companies.

The Government understands that the drafters of the OECD Guidelines for Multinational Enterprises did not intend for the NCP to play an investigative or quasi-judicial role in settling disputes. Rather, the intention was to establish an NCP-led process to facilitate a positive and constructive dialogue between multinational enterprises (MNEs) and those affected by their operations with a view to finding solutions to problems. The Government considers the non-binding, voluntary nature of the OECD Guidelines to have significantly increased the ability of like-minded governments to build greater international support than would have been possible had the intention been to build an instrument that was binding.⁹⁴

Export Development Canada (EDC) Compliance Advisor

The position of EDC Compliance Advisor was created in 2001.⁹⁵ The Compliance Officer can recommend a compliance audit on EDC's own activities, to be conducted internally or externally, and oversees and monitors these audits. While the Compliance Officer's recommendations are non-binding, the EDC is committed to taking them seriously and acting on them where possible.⁹⁶

As well, the Compliance Officer can receive complaints related to EDC's CSR policies and initiatives and assist EDC in dealing with complaints. Complaints can be filed by any affected or likely to be affected individual, group or entity. Where appropriate, the Compliance Officer will, as an independent broker, promote settlement of these complaints, including promoting

⁹³ See OECD, "Summary Report of the 2005 Annual Meeting of NCPs," 14, <http://www.oecd.org/dataoecd/20/13/35387363.pdf> (accessed June 8, 2006).

⁹⁴ See Department of Foreign Affairs and International Trade, *Mining in Developing Countries – Corporate Social Responsibility: The Government's Response to the Report of the Standing Committee on Foreign Affairs and International Trade*, (October 2005), 7.

⁹⁵ For more information see http://www.edc.ca/english/compliance_office.htm (accessed June 8, 2006).

⁹⁶ See http://www.edc.ca/english/compliance_office.htm

dialogue or recommending dispute resolution. Since its inception in 2002, seven complaints have been received, although only one has fallen within the mandate of the Compliance Officer.⁹⁷ Of these seven inquiries, two related to the provision of information on extractive sector projects.

Third-party monitoring

In addition to these governmental processes, civil society and NGOs are active in gathering information, articulating claims and channelling complaints – three steps necessary for effective verification and dispute resolution. NGOs acting collectively can also provide external monitoring of the CSR performance of extractive companies. In addition to a set of generalist NGOs, there are others specifically devoted to monitoring Canadian mining activities abroad.

The international context

The OECD countries' **National Contact Points** provide for an interesting comparative analysis. The composition of the NCP varies greatly across countries, notably in their inclusion of non-governmental representatives. According to OECD Watch, "21 NCPs consist of a single government department, 6 NCP's consist of multiple governmental departments, 8 are tripartite and 2 are quadripartite."⁹⁸ Notably, the Swedish National Contact Point is a tripartite entity that includes members of the Swedish government, as well as representatives from business and labour.⁹⁹

The handling of confidentiality and transparency issues by individual NCPs are informed by the procedural guidance provided in the OECD Guidelines for Multinational Enterprises: Decision of the Council. Within these set parameters there is some scope for flexibility for individual NCP approaches in certain circumstances. For example, the OECD website contains links to public statements by eight National Contact Points on specific instances, in which the identity of the company is disclosed.¹⁰⁰ Some civil society organizations have expressed their dissatisfaction with the NCP response to allegations of

⁹⁷ See Export Development Canada, "2004 Annual Compliance Program Activities Report," http://www.edc.ca/english/docs/2004_actreport_e.pdf (accessed June 8, 2006).

⁹⁸ See <http://www.oecdwatch.org> (accessed June 8, 2006).

⁹⁹ See AccountAbility, *Promoting Responsible Competitiveness: Benchmarking Study for the Government of Canada*, April 2006, 36.

¹⁰⁰ See http://www.oecd.org/document/59/0,2340,fr_2649_37461_2489211_1_1_1_37461,00.html (accessed May 5, 2006).

business misconduct.¹⁰¹ The Summary Report of the 2005 Annual Meeting of NCPs acknowledged the need for continuing efforts to improve the institutions of the OECD Guidelines but also noted the prevalence of “unrealistic expectations” regarding the outcomes of the specific instance procedures.¹⁰²

Prominent examples of compliance mechanisms through supervision found in international lending agencies and relevant to the extractive sector include:

The **Office of Compliance Advisor/Ombudsman** (CAO) established by The World Bank Group is an independent body that supervises the activities of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) and reports directly to the president of the World Bank.¹⁰³ The three functions of the CAO are assessing compliance, providing advice, and complaint resolution.¹⁰⁴ It also oversees the auditing process of the IFC's social and environmental performance.¹⁰⁵ Annual reports and materials relating to complaints received by the CAO are available on its website.

The **Independent Recourse Mechanism** (IRM) set up by the European Bank for Reconstruction and Development in 2004 is designed to enhance the transparency of the Bank's decisions and allow affected communities to express their grievances.¹⁰⁶ Once an eligible complaint has been registered with the Chief Compliance Officer, a compliance review or a problem-solving initiative will be recommended. The IRM's decisions and associated reports will then be made public on the IRM website.¹⁰⁷ According to the Compliance Officer's first annual report, one of the two registrable complaints pertained to an oil and gas offshore development in Russia.¹⁰⁸

¹⁰¹ See for instance OECD Watch, *Five Years On: A Review of the OECD Guidelines and National Contact Points*, September 2005, 7,

http://www.oecdwatch.org/docs/OECD_Watch_5_years_on.pdf (accessed June 8, 2006).

¹⁰² OECD, “Summary Report 2005,” 22.

¹⁰³ See http://www.cao-ombudsman.org/html-english/about_terms.htm (accessed June 8, 2006)

¹⁰⁴ For more information on the CAO see also <http://www.cao-ombudsman.org/> (accessed June 8, 2006).

¹⁰⁵ *Ibid.*

¹⁰⁶ For more information see <http://www.ebrd.com/about/irm/about/index.htm> (accessed June 8, 2006).

¹⁰⁷ See European Bank for Reconstruction and Development, “Independent Recourse Mechanism: Rules for Procedure,” April 2004, 16, 19, <http://www.ebrd.com/about/irm/about/procedur.pdf> (accessed June 8, 2006).

¹⁰⁸ The Independent Recourse Mechanism of the European Bank for Reconstruction and Development, *Report of the Chief Compliance Officer*, July 2004 – October 2005, <http://www.ebrd.com/about/irm/report.pdf> (accessed June 8, 2006). See also <http://www.ebrd.com/country/sector/natural/projects/sakhalin/facts.htm> for more information on the Sakhalin Project (accessed June 8, 2006).

An innovative mechanism for strengthening verification and dispute resolution is the "mining ombudsman." A model of this sort was developed by Oxfam Australia in 2000.¹⁰⁹ The Oxfam **Mining Ombudsman** (MO) receives complaints through the NGO's networks wherever the Australian mining industry is active. After assessing the initial claim, the MO conducts an on-site investigation and consults with local stakeholders before contacting the mining company. While it continues to monitor the process, the MO publishes both community and company responses and may engage in popular campaigning to bring attention to the situation. It is this advocacy role that has garnered criticism from some people, who argue that the Oxfam MO lacks the objectivity to function as an effective mediator.¹¹⁰

¹⁰⁹ See Oxfam, *Mining Ombudsman Annual Report 2004*, 4, <http://www.oxfam.org.au/campaigns/mining/ombudsman/2004/pdf/section1.pdf> (accessed June 8, 2006).

¹¹⁰ AccountAbility, *Benchmarking Study*, 36.

Table 3. Prominent verification mechanisms

Body	Mechanism	Monitoring	Possible Responses	Advisory Role	Leverage
	National Contact Point for the OECD Guidelines	Reactive	Facilitation, mediation (offer of 'good offices')	Not project-specific	Recommendations non-binding
	IFC Compliance Officer	Ongoing supervision of IFC / MIGA project reviews	Facilitation, mediation, investigation	Not project-specific	Recommendations non-binding, leverage through IFC/MIGA
	Oxfam Mining Ombudsman	Reactive	Facilitation, mediation, investigation, popular campaigning	Not project-specific	Recommendations non-binding

Questions for Discussion

- **What are the key challenges, related to the CSR monitoring and dispute resolution mechanisms, faced by government, civil society and industry stakeholders associated with the activities of the Canadian extractive industry operating in developing countries?**
- **What are some of the possible responses that could be undertaken to address these challenges, for example, drawing upon experiences from other issue areas or other countries?**
- **What specific actions should be undertaken by Canadian government, civil society and industry stakeholders to address these challenges?**

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Capacity Building for Resource Governance in Developing Countries

The SCFAIT Report recommended that priority be given to building “governance capacity” in the field of CSR as part of the government’s “efforts to promote good governance and private-sector development in developing countries.”¹¹¹ It also recommended working towards the integration and mainstreaming of international human rights standards in the work of international financial institutions to ensure that funded projects and investments are in accordance with accepted social and environmental standards, as part of an international framework to build and reinforce good natural resource governance through high standards of CSR performance.¹¹²

The Canadian context

The Canadian government recognizes that weak governance capacities is a primary obstacle to the maximization of positive development impacts and the mitigation of negative ones for business operations, including extractive sector operations, in developing countries.¹¹³ In order to adequately promote international standards and regulations, it is important to seek long term solutions to strengthening the legitimacy and capacity of weak governments to apply existing regulations and monitor compliance with them through cooperation with local governments and other stakeholders (multilateral institutions, private enterprises, NGOs or other entities).¹¹⁴

Extractive sector investment is generally large, risky, and if not properly managed, it can be disruptive to host societies and their environment. Governments of developing and fragile states may lack the resources and capability to prevent long term environmental degradation or to address environmental emergencies that may result from industrial accidents associated with extractive sector operations. One complicating factor is that some developing country governments acquire an equity stake in foreign-

¹¹¹ Standing Committee on Foreign Affairs and International Trade (SCFAIT), *Fourteenth Report: Mining in Developing Countries*, 38th Parliament, 1st Session, (June 2005), 3.

¹¹² *Ibid.*

¹¹³ See Department of Foreign Affairs and International Trade, *Mining in Developing Countries – Corporate Social Responsibility: The Government’s Response to the Report of the Standing Committee on Foreign Affairs and International Trade*, (October 2005), 13.

¹¹⁴ See Groupe de recherche sur les activités minières en Afrique (GRAMA), *The Regulation of Mining Activities in Africa: A Shared Responsibility*. A brief submitted as part of the public hearings of the Standing Committee on Foreign Affairs and International Trade, (November 4, 2005), 6.

operated extractive sector projects, which may severely compromise their ability to impose demanding regulations on such projects.

Resource governance capacity has direct bearing on the impact of extractive sector operations on local communities. In many cases, international extractive industries are required to provide basic services that would normally fall under the responsibility of host governments. These services may include access to water, power, communications and infrastructure. In many cases, issues surrounding the access of local communities to these services, in particular access to safe water, have complicated relationships with local communities. By taking on responsibilities that primarily belong to the public sector, extractive sector companies are sometimes viewed as surrogate governments in the eyes of the local population. This practice often has the effect of weakening government capacity to deliver public goods and services. Moreover, when the extractive sector operation closes, the local communities, by virtue of losing the main provider of goods and services, may become worse off than before.

In areas prone to conflict and characterized by weak and ineffective governments, security and access to natural resources represent one of the most important flashpoints for abuses and violations of human rights. Extractive sector operations face difficult choices regarding the security of their people and installations. These challenges run the gamut from bribery and corruption of local officials and official security sector actors, to provision of security services by private companies, whose standards of practice must meet international human rights norms, and for which the company is responsible. Governments unable to provide secure and stable environments or that are dependent upon the illicit exploitation of resources represent risks for extractive sector operations that may lead them into complicity in violations of human rights.

Domestically, Canada's extractive sector is governed by a sophisticated regulatory regime that operates at both the federal and provincial levels. It includes a number of policies to address issues related to sustainable resource management, community and Aboriginal engagement, employment, health and safety, environmental protection, revenue management and project closure that could provide examples and models for many developing countries struggling to manage their natural resources and the impacts of foreign investment.

The Canadian International Development Agency (CIDA) is Canada's primary vehicle to promote and implement Canada's policy on human rights and good governance. Through the Department of Foreign Affairs and

International Trade, Canada has played a role in establishing global mechanisms to prevent corruption; and through Natural Resources Canada (NRCan), Canada has engaged in a number of regional and international processes to advance strong natural resource governance capacity. Among these initiatives are:

- Engagement in on-going efforts taking place through the United Nations and the World Bank, including anti-corruption mechanisms and poverty reduction strategies, NEPAD etc;
- The Supreme Audit Institutions Building Program, which provides support to enhance the capacity of supreme internal audit institutions to instill transparency and accountability in the management of public funds in Sub-Saharan Africa;
- The focus of the African Mining Partnership, established in 2004 and comprising 26 governments, is to advance governance regimes in their respective jurisdictions (Canada is the only non-African nation invited to participate in the meetings);
- The Mines Ministries of the Americas Conference: NRCan helped establish this group with funding from CIDA. Canada and other member countries in this mineral-rich area cooperate on governance issues which are becoming increasingly important given the growing significance of Canadian mining investment in this region.
- Canada has signed MOUs with China's Ministry of Land and Resources and with China's National Development and Reform Commission. These MOUs will be the vehicle for work under the Canada-China Strategic Working Group on mining and metals issues.
- CIDA/NRCan joint action to improve government capacity for environmental management in Guyana;
- CIDA shares technologies and approaches to mine site rehabilitation in Brazil through its Dissemination, Replication Information and Knowledge Fund (DRINK).

The International context

On the international stage, concerted efforts have been made to support and encourage the establishment of stable, efficient and transparent modes of governance and natural resource management for the protection of human rights and the environment. These constitute examples of ways through which knowledge and best practice can be disseminated and applied; including innovative tripartite partnerships to control resources derived from natural resource extraction. They include:

- **Intergovernmental Forum on Mining, Minerals and Metals and Sustainable Development.** The objective of the 35-member forum is "to enhance and promote the contribution of the mining, minerals and metals sector to sustainable development." It works on a voluntary basis and has consultative and advisory functions, and may make non-binding recommendations to governments. Canada played a lead role in establishing this initiative.
- **The World Bank's Extractive Industries Review.** Canada was an active participant in the review, undertaken by the World Bank Group (WBG) from 2001-2003. The aim of the independent review was to produce a set of recommendations to guide the involvement of the WBG in the oil, gas and mining sectors. The initial report of the process, "Striking a Better Balance" was subject to a consultative process and constituted the basis of the final report from the World Bank Management group.¹¹⁵
- **The Kimberley Process Certification Scheme (KPCS)** was established in 2003 as an international process of certification to control the import and export of rough diamonds. By requiring proof of the origin of all stones traded between member states, the mechanism seeks to prevent illicit transaction in rough diamonds to fund armed conflict, and constitutes a measure to support compliance with the economic sanctions imposed by the UN Security Council. The KPCS relies heavily upon the engagement of civil society and the compliance of and partnership with industry and industry associations.
- **The Extractive Industries Transparency Initiative (EITI)** seeks to ensure that the proceeds from resource exploitation, particularly oil and gas, are accurately accounted for. It encourages the channelling of such resources into poverty reduction and improvement in local standards of living. Endorsed by both states and industry, the EITI requires disclosure by

¹¹⁵ See Extractive Industries Review, *Striking a Better Balance: The Final Report of the Extractive Industries Review*, (December 2003).

extractive sector industries of the sums paid to governments in order to reduce misappropriation and corruption, facilitate the tracing of national revenues, and clarify all fees and costs paid by companies. The EITI is endorsed or actively implemented by 20 states. Canada is not currently an adherent.

- **The International Metal Study Groups on copper, nickel, lead and zinc.** These groups were created under the auspices of the UN in large part as a result of Canadian efforts. These are the key fora for maintaining global views of the impact of regulatory developments and for predicting global metal supply/demand imbalances. Such information is essential in making production decisions and therefore has environmental implications.

Questions for Discussion

- **What are the key challenges, related to capacity building for resource governance in developing countries, faced by government, civil society and industry stakeholders associated with the activities of the Canadian extractive industry operating in developing countries?**
- **What are some of the possible responses that could be undertaken to address these challenges, for example, drawing upon experiences from other issue areas or other countries?**
- **What specific actions should be undertaken by Canadian government, civil society and industry stakeholders to address these challenges?**

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