

The Rosia Montana Gold Mine Proposal – How to Destroy a Community

**Submission to the National Roundtables on
Corporate Social Responsibility and the
Canadian Extractives Sector in Developing Countries**



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Preface

There is a need for the Canadian government to implement comprehensive legislation to regulate Canadian precious metal mining companies operating abroad.

The author knows that he is not alone in thinking so:

- Civil society organisations from Australia, Belgium, Canada, Chile, Ecuador, Germany, Ghana, Indonesia, Peru, Romania and the USA have repeatedly pointed to concrete case studies of human rights violations, intimidation, corruption and coercion practised by Canadian mining companies operating abroad
- The manifold concerns raised by governmental and non-governmental individuals and groups that have led to the National Roundtables on Corporate Social Responsibility and the Canadian Extractives Sector in Developing Countries
- Given the ongoing human rights violations, intimidation, corruption and coercion practised by Canadian mining companies operating abroad, the OECD guidelines which are but a remediation mechanism for irregularities already committed have proven to be an inefficient tool in solving abuses

Governments operating in and advocating a global economy are responsible for advocating and enforcing legal frameworks that reflect this new environment. This means for example that communities affected and grieved by the impact of a Canadian mining company operating in their country should be able to legally pursue that company under Canadian Federal Law as early as possible. If no action is taken this means that in light of the above the Canadian government is endorsing the abuses practiced by Canadian mining companies operating abroad.

Export Development Canada (EDC) effectively safeguards Canadian business interests that enjoy political support in risky environments and under risky conditions. Funding projects in such conditions tend to breed human rights violations, corruption, intimidation and coercion. There exist numerous such case studies related to EDC supported projects. EDC should be reformed and adopt an objective set of stringent conditions for financing. Last but not least given that the EDC uses taxpayer's money this institutions should be made more transparent and accountable to the public vis a vis its investments.

The OECD guidelines are as they say 'guide' 'lines' and a remediation mechanism. This means that any offence had to already be committed in order for the OECD to attempt to remediate. This is an unsustainable and unacceptable approach when left a void and uncoupled with legislation to avoid abuses in the first place. Last but not last, analysis into their effectiveness have proven the

OECD guidelines as inefficient in effectively resolving and thus reducing abuses committed by Canadian mining companies operating in a globalized environment.

If certain Canadian mining companies operating abroad in return claim to already respect certain standards pushed for by this initiative by adhering to voluntary codes, then surely they should welcome any proposal to codify these into law. Ultimately this would strengthen their commitment and reputation and therefore strengthen the reputation of Canada's gold mining sector as a whole.

In order to highlight need for the Canadian government to implement comprehensive legislation to regulate Canadian mining companies operating abroad the gold mine proposal by Canadian Gabriel Resources at Rosia Montana/Romania will serve as a pertinent case study. The gold mine proposal's social, environmental and cultural impact will be coupled with the struggle of a community organization working against the mine development. The paper will detail the mine proposals irregularities, unsustainability, Gabriel's practices, the public's reaction as well as that of governmental and non-governmental institutions to highlight the true impact that Canadian mining companies have been provoking in Transition Countries. The paper's final aim is to encourage change by listing some concrete suggestions drawn from the events at Rosia Montana.

Introduction

Location: 2,500 year old village in Transylvania/ Romania

Problem: Proposal to build Europe's largest open cast cyanide leach gold mine

Affected community: 2000 residents in the Rosa Montana and Corna Valley

Mining Company: Canadian mining company Gabriel Resources

At Rosia Montana, Gabriel Resources a Canadian mining junior (TSX:GBU) wishes to develop Europe's largest open cast cyanide leach gold/silver mine. Rosia Montana Gold Corporation (RMGC) is a joint venture between Gabriel Resources (80%) and Minvest S.A. (- 20%); Romania's state mining company. Gabriel Resources is a Barbados registered company.

Strong local opposition to Gabriel Resources ('Gabriel') Rosa Montana gold mining proposal emerged almost immediately in 2000 when Canadian mining junior, Gabriel Resources, announced its intentions to destroy the historic village of Rosia Montana by building the 13Mt/a open-cast gold mine. Resistance to the project has since spread across Romania and Europe. Gabriel Resources was founded for the sole purpose of developing this mining project. At full production, the mine will evacuate 500,000 tons of rock per week at four pits and use over 13 million kilograms of cyanide per year.

In 2002, the International Finance Corporation, part of the World Bank Group, turned down Gabriel Resources' application for financing, explaining that "there were significant environmental and

social issues connected with the project."¹ In 2003, the country's highest scientific body, the Romanian Academy, stated its opposition to the project, a position it re-affirmed in February 2006, after finding that the mine would not bring sustainable development or solve the area's social and economic problems, and would have negative effects on the environment. ICOMOS², the archaeological consultant of UNESCO has passed several resolutions warning against the destruction posed by Gabriel's development to Rosia Montana's unique archaeological treasures dating from Roman and pre-Roman times. The Orthodox Church, Romania's largest, owns cemeteries, forest, arable land and historic monuments at Rosia Montana and refuses to sell its properties. On March 23, 2006, the CEO of Gabriel Resources, Alan Hill, confirmed in an interview³ that his company intends to expropriate anyone refusing to leave peacefully. "There is forced unemployment or forced expropriation. Which one do you want?" he asked. A poll conducted by Romania's 'Ziua' daily newspaper on April 4, 2004 showed that 92% of its readers oppose Gabriel's project. The widespread public opinion is that this development embodies the worst corruption of the political class.⁴ In December 2004, the European Parliament adopted a resolution expressing "its deep concern about the long transitional periods agreed regarding the environment chapter, particularly regarding the Rosia Montana mine development, which poses a serious environmental threat to the whole region."⁵ Romania will join the European Union in 2007.

The mine poses wider regional environmental threats in the event of any spills. A representative of the Hungarian government declared during an official visit to Bucharest in October 2005, "It is of the highest priority for the Hungarian Government that the Rosia Montana gold mine investment is never realized....The Rosia Montana project given its sheer size could not only affect the immediate area, but, in the event of a spill, would also affect the Tisza Basin." The Hungarian government concerns have been heightened due to a January 2000 cyanide spill at a different gold operation in northern Romania that released some 100,000 tons of contaminated wastewater into the Tisza River, and eventually into the Danube -destroying 1,240 tons of fish and polluting the drinking water supplies of 2.5 million people.⁶ After releasing its expert assessment of Gabriel Resource's Environmental Impact Assessment (EIA) report in October 2006, the Hungarian „ministry for the Environment has asked the Romanian authorities not to endorse the Environmental Impact Assessment (EIA) Report for the proposed Rosia Montana gold/silver mine. According to the experts involved in the analysis, the document contains significant deficiencies and false basic conclusions."⁷

1 *Wall Street Journal*, October 11, 2002, *Romanian Gold-Mine Loan Blocked by World Bank Chief*.
Bloomberg News, 11. October 2002, World Bank halts on Gabriel Resource's Romanian Mine.

2 International Council on Monuments and Sites at www.icomos.org

3 http://www.daily-n.hu/news.ro/article_detail.php?idarticle=24246

4 <http://www.rosiamontana.org>

5 http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+TA+P6-TA-2004_0111+0+DOC+XML+V0//EN&LEVEL=3&NAV=X

6 http://www.miningwatch.ca/index.php?/Gabriel_Resources/AMjan06

7 <http://www.kvvm.hu>

According to an opinion poll carried out by a Deputy Commission of the Romanian parliament inviting Romania's public to comment on the Rosia Montana mine proposal as of 10. November 2006, 93% explicitly voted against Gabriel's Rosia Montana gold mine proposal.⁸

"The destruction of the Rosia Montana community - with a history of well over 2,000 years – by resettling the population, demolishing houses (including historical monuments) and churches, as well as resettling cemeteries, is unacceptable and is reminiscent of a period everybody thinks is over."

Romanian Academy of Sciences, February 2006⁹

The Rosia Montana case: politique du "fait accompli"

Rosia Montana is Romania's oldest documented mining settlement and much of the valley is protected as cultural patrimony of national interest under Romanian legislation (L5/2000). Attested 1872 years ago (then known by its Roman name 'Alburnus Maior') the area has been continuously inhabited. It still contains ample remains dating from Roman and Pre-Roman times and further historic monuments dating from the Austro-Hungarian period. Rosia Montana's archaeological remains are unique and world renowned – for example in this very area were discovered in Roman mine galleries waxen tablets dating from Roman times which essentially record the world's oldest bank transaction and shed to life how the Romans administered Alburnus Maior. Many of the tablets were published in the nineteenth century by the German historian Theodor Mommsen as an important source of information about Roman law. Despite considerable reworkings of the mining site over centuries, important remains of Roman mining equipment have recently been uncovered. There are also surface remains such as baths, official buildings, temples, sanctuaries with votive altars, burial places, etc. Rosia Montana's Roman mine galleries. are unique given their craftsmanship and state of preservation. From Gabriel's project maps one can see that these are to be turned into open pits. As mitigation measure for this destruction the project owner is proposing "a series of replicas that would consist of a construction either located above ground, in a backfilled feature of the proposal¹⁰." From an archaeological point of view much of the area still is unexplored this despite the company-sponsored archaeological research carried at Rosia Montana in recent years. If developed Gabriel's mine proposal will destroy the majority of Rosia Montana's archaeological remains.

Also known as the Golden Quadrilateral the area has been known since ancient times as Europe's biggest gold producer. Exploited continuously in galleries since pre-Roman times, the gold has remained only in scarce quantities. At Rosia Montana the average grade is 1.53 – this is extremely low particularly in light of European legislation regulating mine developments. The exploitation of the remaining gold implies the destruction of Rosia Montana as an inhabited settlement and the relocation of the population; this in addition to the environmental and cultural destruction. Part of

8 http://www.cdep.ro/informatii_publice/forum.dispPost?subid=1

9 http://www.daily-news.ro/article_detail.php?idarticle=23297

10 *Cultural heritage management plan, Part III, page VI*

the population refuses to sell or leave. Many of them are represented by 'Alburnus Maior', a Rosia Montana-based community association consisting of property owners objecting to Gabriel's proposal on social, environmental, cultural and economic grounds.

Gabriel Resources obtained its concession in 1997 and initially announced a first gold-pour for 2004. Then it was 2006 and now it is 2009. To date the company has just gone through the public consultation procedure for the mine proposal and still has to secure a host of permits in addition to the environmental permit and construction permit for the mine. Gabriel also needs to secure ownership for all the properties under the projects footprint.

In 2002 Gabriel signed an agreement with Rosia Montana's local administration which changed Rosia Montana's territorial denomination from an inhabited area into an industrial area exclusively reserved for Gabriel's mine proposal. This means that since 2002 no new constructions are allowed and local business initiatives thus have been not approved. Given the mine's size the interdiction affects the majority of Rosia Montana's surface. Whilst a free economic initiative is a right guaranteed by Romania's constitution, local property owners wishing to construct a new business at Rosia Montana can not obtain a construction permit since 2002.

Gabriel does not have any prior informed consent from the affected population. In breach of the World Bank Involuntary Resettlement Directive the company started the involuntary resettlement of the population in May 2002.¹¹ Despite the opposition from the part of local property owners, the resettlement program has been slowly dismantling the town including its social fabric. Given the above mentioned construction interdiction Gabriel essentially controls the area and gives priority in employing locals agreeing with the mine development and hence resettlement. Thus there has been tremendous pressure upon the population to coerce them to leave. As a result there have been incidences where offspring sold their elder parents' home without telling them beforehand. There have been several cases of suicides and increases in cardiac and cerebral attacks amongst Rosia Montana's population. According to the EIA report as of March 2006 Gabriel has secured 17.9% of the properties under the proposal's footprint.

Gabriel claims to respect World Bank guidelines and negotiations with the Bank's private lending arm the International Finance Corporation were aborted in 2002; precisely due to social and environmental concerns. Gabriel also claims to respect the voluntary OECD guidelines, but this only since September 2006 – a bit late for Rosia Montana's community.

The Rosia Montana mine proposal has another important aspect. If developed it will be a catalyst for several further open cast cyanide gold mine developments in the Apuseni area. Other junior miners (Carpathian Gold, European Goldfields, etc.) wish to exploit similar low-grade deposits in the Golden Quadrilateral. Given that the area is heavily populated around the historic mining areas, it is likely that these developments may also imply the uprooting of communities to make place for large scale open cast cyanide leach mining. Overall, five percent of Romania's surface of has been concessioned for exploration. In October 1999 Rosia Montana was declared "under-developed",

¹¹ See <http://www.rosiamontana.org>

this after the area had been concessioned to Gabriel. This status however brings considerable tax exemptions and other benefits. Please find attached an excerpt from an investigative paper for reference.

Due to lack of law enforcement and low labour costs more Canadian mining companies see their futures inextricably linked to Eastern Europe, Africa, Latin America, Southeast Asia and other “new frontier” regions. Thus the most urgent necessity to regulate mining abroad.

Social Costs

In order to realise the proposal the local population needs to be resettled/relocated. All in all this accounts for over 2.000 people. In addition to the buildings, the project owner needs to acquire all properties under the project foot print (arable lands, forests etc.). Gabriel started its involuntary resettlement and relocation programme in May 2002; this in absence of an EIA. As of March 2006, 49,1% is under private and 2,3% under Church ownership. Gabriel’s ownership is at 17,8%. According to Gabriel’s EIA report, “The Historic Churches and their locations that will be adversely affected by the Project will be architecturally investigated and recorded prior to any damage.” 410 known graves will have to be removed and resettled. The Romanian Orthodox Church and the Historic Hungarian Churches (Roman-Catholic, Protestant, Unitarian, Calvinist) have all officially declared that their properties at Rosia Montana are not for sale.

Gabriel’s Resettlement and Relocation Action Plan (RAP) states that: “the company will minimize expropriation as much as possible”. Law 33/1994 stipulates that where expropriation would affect historic monuments and churches, it has to be approved by a Law or Governmental Decision. The Rosia Montana proposal is not a public utility but a private project financed with private funds and of private ownership. This means that any expropriation measures initiated by the Romanian government would breach article 44 of Romania’s constitution and article 8 paragraph 2 of the European Convention of Human Rights.¹²

Sustainable development

The Rosia Montana area has been declared “under-developed” by the Romanian government; presumably to encourage investment in the area (this status brings many fiscal advantages for companies doing business in the area). However, as mentioned above, the Rosia Montana local administration signed an agreement with Gabriel to the effect that that no construction permits for enterprises in the town are granted if incompatible with Gabriel’s mine development. Given the size of Gabriel’s mine proposal this essentially covers the Rosia Montana and the Corna valleys.

¹² See p.24-26 of *The Compatibility of the Rosia Montana mining project in Romania with the principles and Norms of the EU EC legislation* by O.Univ.Prof.Dr. Peter Fischer and Univ. Ass. Dr. Alina Lengauer, L.L.M., Vienna, October 2002

There were indeed investors that wanted to start a business at Rosia Montana but were denied a construction permit by the local administration; quoting the agreement with Gabriel.

In practice, this agreement suffocates the region and this since 2002. The agreement also presents a serious violation of Romania's constitutional right to a free economic initiative (article 45).

Obviously, if locals and investors were left free to invest in the area, they would make it more prosperous and increase prices; including property prices. This on the other hand would dramatically increase project costs for Gabriel and this is thus the true reason behind the agreement between Gabriel and the local administration. In return for the destruction of Rosia Montana's social fabric and in return for the involuntary resettlement of 2000 people Gabriel claims that the mine will create 700 jobs¹³.

Transitory effects

According to a Gabriel Vice-president: "The negative impacts of a major open pit operation, such as planned for the Rosia Montana Project, are primarily in terms of landscape change and the occupation of land for the term of the mine related activities... These impacts are transitory".

"We will de- pollute the area"

Gold has been mined in galleries at Rosia Montana since 2000 years. In the seventies a small open cast state owned mine started operation (400000 t/a). The mine did not use cyanide; however, due to the fact that the soil is sulphide-rich (1.9%), acid rock drainage (ARD) was generated. It was closed in summer 2006. Since 2000 it operated under a license owned by RMGC and in absence of an environmental permit

Gabriel claims that the current pollution at Rosia Montana is due the ARD generated by Roman and pre-Roman galleries as well as the mine closed in 2006. Gabriel also claims that their mine operation, which will be roughly fifty times larger than the previous operation, will clean up Rosia Montana's historic ARD pollution.

However, the previous mine was operated by the same entity that now wishes to develop Europe's largest open cast mine – operated without a environmental permit for years and created significant pollution at Rosia Montana.

¹³ Maximum 330 according to the feasibility study.

Best available practices - as affordable by us

Given the low grade of the deposit Gabriel aims to externalize as many of the costs as possible; this also includes environmental costs. Quoting the submitted EIA documentation: "The process selected is therefore confirmed to be BAT (Best Available Techniques) and is also considered to be the only viable option having regard to the ore type and fundamental Project economics. It is not appropriate to undertake comparative environmental impact assessment of options that are non-viable."

Gabriel presents its project as being according to BAT and thus as being able to meet the strictest European environmental regulations, although presently there is no mine in Europe able to meet those very same regulations. Interestingly, the Aurul Mine which caused the Baia Mare cyanide spill in 2000 equally claimed to meet BAT and below I will comment on a few of Gabriel's proposed practices by raising just one single issue; that of the tailings pond.

Gabriel will not line the tailings pond facility. Lining the pond is the best available practice but moderate liner costs are at \$131.0001 per acre¹⁴. Gabriel's 'pond' will cover a surface of 363,12 ha (equal to roughly 454 football pits) and you may want to do a simple calculation to learn Gabriel's true motive for not lining the tailings pond.

In addition, an overall mean sulfur grade of 1.9%_s has been calculated for the ore coming from the deposits. Material with sulfur grades greater than 1% can be expected to produce metals as a result of Acid Mine Drainage (AMD). The tailings will contain about 4% sulfide minerals and will have a net acid producing potential which could last for decades, perhaps centuries.

Gabriel claims that it will separate sulphide minerals but they are later mixed back into the tailings before disposal. This is bad practice. Sulphides should be treated separately and disposed into a special lined tailings dam.

AMD can cause severe impacts to aquatic life in surface waters, through impacts from heavy metals and can also impact human health – primary through mercury, lead and cadmium contamination.

Water from the TMF will be recovered for recycling to the process by pumps mounted on a barge floating on the tailings pond. Such arrangements can cause serious operational problems in stormy weather or icy conditions. If the barge should sink, or otherwise become inoperable, then all pumping capacity will be lost.

The massive surface area of the TMF will likely lead to significant dust in dry weather. This is a serious problem particularly given that the area is densely inhabited.

All in all this huge construction is sited immediately above the town of Abrud – potential for

¹⁴ *Costs of Remediation at Mine Sites*, US. Environmental Protection Agency, January 1997.

catastrophic consequences in the event of a failure.” Approximately 10,000 people live in Abrud.

Closure Costs – True impact and intention

Over four decades the Giant mine in Canada has created a massive environmental liability, a problem which the mine's previous owners left to the Canadian and Northwest Territories governments to sort out. The Giant mine contains 237,000 tones of arsenic trioxide dust. Taxpayers will have to pay at least \$200 million¹⁵ for remediation.

At Rosia Montana estimated total costs for mine closure (tailings, waste dumps, processing plant, roads, pits etc.) are according to Gabriel's EIA report at \$ 70.789.884. This is an extremely unrealistic figure. According to the USEPA estimated costs for composite soil cover for AMD waste rock piles are between \$ 0,83 and \$ 1,01 per ton of waste¹⁶. At the end of mine life the AMD-generating Cetate and Carnic waste dumps would hold 130,691 Mt of waste. Costs for covering this waste volume with composite soil thus are between \$108,5 million and \$132 million. Remediation costs for the waste dumps alone exceed the estimate of total cost for mine closure indicated by the project owner. As for the remediation for AMD generating tailings, remediation costs are according to the USEPA between \$ 48.000 and \$ 877.000 per acre of tailings footprint.¹⁷ The tailings pond is to cover a surface of 363,12ha or 897 acres. This means that remediation costs of the AMD tailings are between \$ 43,1 million and \$ 786,7 million. These are costs for a 'normal' remediation scenario. An unanticipated acid drainage from spent ore (2,7 Mt) at the Richmond Hill LAC Minerals Mine in Lead, South Dakota added an extra \$ 8,5 million to remediation costs.¹⁸ Moreover, water containing cyanide seepage from the tailings dam was detected in a nearby alluvial aquifer at the Dee Gold Mining Newmont Mine in Elko, Nevada. Costs for this event were at \$ 2 million.¹⁹

On the implication of the Canadian government in the project

Theoretically the Canadian government is neutral and leaves the decision fully in the hands of the Romanian government. Practically however, a group of roughly a dozen of Canadian officials are in active support of Gabriel to “refine our key messages and make sure that they are getting to the right people” (quoting a Canadian official).

Decision making needs relevant, accurate and objective information. However, the above mentioned officials instead filter information relayed into official documents as to reflect entirely the viewpoint of the company. For instance the official brief document²⁰ on Rosia Montana mentions at

15 http://nwt-tno.inac-ainc.gc.ca/giant/index_e.html

16 *Costs of Remediation at Mine Sites*, US. Environmental Protection Agency, January 1997.

17 *Ibid.*

18 *Ibid.*

19 *Ibid.*

20 Document REC-3863-7

points 3 and 4 that a Parliamentary Commission lead by A. Sassu found the project conforming to relevant environmental standards and that project is beneficial to Romania. It fails to note that a) A. Sassu has been for a period of time on the payroll of the company and b) the report has never been debated in Parliament since its submission (2003).

The same persons regularly relay Gabriel Resources material to other Canadian officials and forward Canadian internal reports to Gabriel representatives.

This group of Canadian officials also pressure their official peers to accompany Gabriel executives to meetings with important political decision makers because “in light of the controversy, it might be useful to you”. They also pressured the Canadian High Commission in London to facilitate a meeting between company representatives and HRH. The Prince of Wales for Gabriel to “present their side of the story.”

Officially, the role of the officials is to facilitate contact and not to advocate one way or another on the specific merits of the project²¹. However, it is current that officials express contempt for opinions going against project. For instance the commercial attaché of the Canadian Embassy in Bucharest wrote that “modern mining techniques used by Canadian miners worldwide do not produce this [noise, pollution and possible cyanide spill]”. The same person claimed good knowledge of mining operations in Peru. Maybe he should have started by visiting the Giant mine in Canada or the Yanacocha Mine in Peru.

This same group of persons use their official position to “advance specific business issues”²² by inquiring with Romanian government officials on “the probability of this project coming to fruition” and whether “Romanian authorities have sufficient information.”

This clearly is beyond neutrality but it gets better still; the group does not fail to report back to the outcomes and results of their unofficially official inquiries.

Last but not least; Raphael Girard was Canadian Ambassador to Romania from June 1, 2000 to August 31, 2003. He has since been employed by Gabriel Resources serving on the company's Board of Directors. Girard also holds shares in Gabriel Resources. According to Alan Hill, Gabriel's CEO “Mr. Girard, with his knowledge, experience and relationships, has been invaluable during the short time he has been on the Board of the Company.”

Export Development Canada

Insurance policy offered by major insurer usually covering "traditional" political risks - expropriation, currency inconvertibility, war, etc.

²¹ Ibid.

²² Canada-Romania Bilateral Trade/Economic Consultations, 2005

EDC has historically played an important role in financing mining companies to operate abroad and some of the so financed projects have been at least controversial. EDC offers financial instruments that are outright damaging for communities. For instance, EDC for example financed the controversial Bulynahulu mine in Tanzania.

EDC also offers warranties against forced relocation (which implies expropriation).

EDC should be mandated to operate in a more responsible way:

- renounce offering some of its financial instruments such as the above mentioned insurance for forced expropriation.
- include in its due diligence direct and extensive feedback from affected communities, especially from local groups opposing the mining projects; and not just feedback through elected representatives as these have been usually found to be sympathetic with miners' objectives; presently EDC takes its funding decisions based only on companies' compliance to some vague form of public consultation.
- greater transparency on who is funded by EDC and how are funds utilized by companies.
- access to information for projects funded with public money. Assess whether historically, public money has been used to fund the most controversial and risky projects and why.
- set up mechanisms to allow affected communities to be actively and directly informed on status of EDC funding for projects affecting them, and this not by just displaying information on their web site - this is a passive form of communication and not all communities have access to Internet.

More generally, the recommendation regarding due diligence is to be extended to all public financial sources that are used to mine abroad. I refuse for my money to be used to forcefully evict persons.

Conclusions

From the above case study the following minimum requirements should in their entity be made mandatory for regulating Canadian precious metal mining companies operating abroad:

- Government via its embassies should insist on stringent law enforcement in countries hosting Canadian mining companies; this in the interest of the affected population, human rights, environmental - , cultural protection etc.

- Communities and individuals grieved by the impact of a Canadian mining company operating in their country should be able to legally pursue that company under Canadian Federal Law as early as possible. Affected individuals and communities should be given financial support to pay for such litigation cases.

- Project development and project lending should be conditioned to having obtained a free, prior and informed consent by the affected population. An independent body agreed by all stakeholders should carry out this consultation during which the affected population is to be given access to all relevant and pertinent information; including project proposal, licenses, agreements etc.
- Companies should not adopt policies that create or intensify divisions in communities, including hiring traditional enemies of the local community or one faction of an internal division in the community as security guards.
- Precious metal mining should not be permitted when it destroys communities and/or historical monuments (including churches, cemeteries, sacred grounds) and/or archaeological vestiges and/or areas of high biodiversity.
- Government should not financially support or guarantee private precious metals mine developments that foresee expropriation.
- Stakeholders should be given adequate notification, time, financial support to pay for technical resources, and access to supporting information, so that participation in the EIA process is effective.
- Establishing an accurate estimate of the costs of mine development is necessary to assess whether environmentally sound mine closure is technically feasible and economically viable. [These costs should include detailed cost calculations of (1) contingency; (2) mobilization and demobilization; (3) engineering redesign; (3) engineering, procurement; (4) construction management; (5) contractor overhead; (6) contractor profit, agency administration; (7) inflation.]
- A qualified professional should certify that water treatment, or groundwater pumping, will not be required in perpetuity to meet surface or groundwater quality standards beyond the boundary of the mine
- Companies should make discharge reports of contaminants to surface and ground waters publicly available.
- Companies should develop a reclamation plan before operations begin that includes detailed cost estimates. The plan should be periodically revised to update reclamation practices and costs.
- Financial sureties should be reviewed and upgraded on a regular basis by the permitting agency, and the results of the review should be publicly disclosed.
- The public should have the right to comment on the adequacy of the reclamation and closure plan, the adequacy of the financial surety, and completion of reclamation activities prior to release of the financial surety.

- Financial surety instruments should be independently guaranteed, reliable, and readily liquid. Sureties should be regularly evaluated by independent analysts using accepted accounting methods. Self-bonding or corporate guarantees should not be permitted.

- Financial sureties should not be released until reclamation and closure are complete, all impacts have been mitigated, and cleanup has been shown to be effective for a sufficient period of time after mine closure.

- Financial institutions should report the environmental and social risks associated with their lending in the mining sector. The information should be made publicly available on the financial institution's website.

- Companies should report payments made to central governments, state or regional governments, and local government and authorities, and these payments should be compared to revenues governments receive, as well as to government budgets. The information should be made publicly available on the company's website.

Why voluntary codes do not and will not work

Peoples or organizations having principles do act based on principles all the time and not just that part of the day when acting on principles produces profits. Clearly, acting on principles is not a matter of the region of the world where you do business either – acting responsibly in Canada and irresponsibly abroad implies that persons living in Canada are of superior human breed that those living abroad, since those living abroad do not deserve the same respect/standards/values as Canadians do.

The industry has the viewpoint that meeting voluntary standards is a form a business security²³. This is partially true but precisely the problem with voluntary standards: as soon as respecting these standards will actually hinder business, the few companies that do respect the voluntary standards will stop to do so. There is no policing mechanism with 'voluntary' standards which is why they are abused and why they are thus ineffective. Most notably and evident is the fact that voluntary codes have had little or no impact in combating incidences of corruption.

Those pushing for voluntary codes claim that voluntarily respect by the industry has been a source of growth in economics and cite the growth of ethical funds as being a result of the miners acting responsibly. In fact, this is just a plain logical fallacy – confusing the cause with the effect; and the opposite is true: the Canadian middle class has been taking conscience of the negative effects of mining abroad and started pressuring financial institutions into using their money in a responsible manner; in order to tap into the \$50 billions or so of the ethical funds, Canadian miners have at

²³ Diana Aloï, CSR Calgary

least to mimic acting responsibly; miners are just reacting to a trend and not driving it. Respect of those voluntary standards by miners will go away as soon as public pressure on ethical funding will disappear – and the respect of voluntary standards appears to be presently just about a public relation exercise anyway.

But the public pressure by the civil society, to regulate mining, will continue to grow as this pressure is being fuelled by the global awareness brought by the new information medias.

It is not a coincidence and certainly a powerful indicator that civil society organisations from Australia, Belgium, Canada, Chile, Ecuador, Germany, Ghana, Indonesia, Peru, Romania and the USA have repeatedly pointed to human rights violations, intimidation, corruption and coercion practised by Canadian mining companies operating abroad.

Communities therefore need a legal framework to hold accountable Canadian mining companies operating in a globalised world. Certain legal frameworks already exist in other countries; most notably the Alien Tort Claims Act in the United States.

The Canadian government should amongst others establish, respect and enforce the right to free prior informed consent for all communities potentially affected by Canadian mining companies, including their right to reject a project. This consent needs to be sought as early as possible; for example prior to securing exploration permits.

Canadian mining companies operating abroad should be held responsible via a legal frame work for the damage caused to the environment and social systems by their operations. Under international human rights law governments are obliged to protect the right to social security and the right to health. The Canadian government should regulate mining activities accordingly. This should include obligatory and comprehensive risk insurance extending also to long-term environmental damages years after a project has closed.

Mining companies are bottom-line oriented. Hence the only way to have mining companies treat communities abroad with dignity and respect is to quantify this into law. From a moral point of view this is an efficient manner to enforce 'mutal respect'. If on the other hand Canadian mining companies operating abroad claim to respect such standards by voluntary codes, then surely they should welcome any proposal to codify these into law.

The true bottom-line of such action would be that it would make Canada's mining sector more respectable, sustainable, responsible and thus more competitive. Ultimately this would also encourage law enforcement in host countries; including on issues such as corruption.

Annex: They should move out the mountains

http://www.crji.org/arhiva/e_040302.htm

Friday, March 05 2004: **Masters of Gold**

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[...] They should dig abysses in the Apuseni Mountains. Moreover, they should use a gold separation method based on cyanides which would lead to the storage of poisonous substances in the Apuseni Mountains. But they have neither the desire nor the material possibilities towards the fulfillment of such titanic undertaking. But see, for some years now, some people showed up in this area planning the exploitation of the Romanian Gold and which under the cover of an international corporation have concessioned a large surface of Transylvania. These people now are the masters of the Romanian gold. MASTERS OF GOLD European Goldfields Topographic maps unroll on the desks of Deva Gold company from Certej, Hunedoarea county. In one of the offices placed at the first floor of the building built in the Communist years, the company engineers meter for a future exploitation in the Certej-Sacaramb area. Equally to other situations, the deal in Certej represents few grams of gold per tone. The company hasn't moved one grain of gold just yet; this even although they were handed the golden ores exploitation license by the National Agency of Mineral Resources. At the ground floor of the same building is located a pub with a suggestive name, 'El Dorado'. This is for now the only place in the Apuseni Mountains where the gold drunkenness can be felt. Particularly after the alcohol bubbles down the throats of the locals. The pub is for many of the area's poor an ever-fantasized land of gold, a place where they forget about un-employment, family, challenges. Behind the Deva Gold Company there is as main share-holder European Goldfields (EG), a company created by Vasile Frank Timis of Romanian-Canadian descent who has formally been president of the firm and who stills owns an important stock of shares. Among European Goldfields managers and share-holders can be found former and actual business partners of the controversial Vasile Frank Timis. EG has recently extended its activities range to Greece, again through the intermediary liaison of "Global Mineral Resources", a firm controlled by Frank Timis. In Romania, EG has concessioned large surfaces of land in the Bolcana, Certej, Baita-Craciunesti and Zlatna areas. According to the company officials, Certej area is subject of highest interest. This area would be a new "Rosia Montana" kind of area - a further amongst Europe's largest gold mines. International Goldfields An exploitation license was grated for gold through rather extraordinary means back in 1998. ANMR practically granted in exchange of a couple of million ROL, an exploitation license covering an area over 2,500 square kilometers, among the towns of Deva, Lugoj and Otelul Rosu. In this context it must be indicated that for one sq km concession the payment ranges from 20,000 to 100,000 ROL. The area concessioned by the Canadian Company - International Goldfields is ten times larger than the surface of Bucharest including its suburbs. The surface was reduced to 1,200 sq km. This impressive surface is mentioned in the most recent International Goldfields reports, but Radu Claudius, ANRM Director told us that IG presently has a concession for only 400 sq km. Vasile Frank Timis is behind IG; this through his Australian business partners, just as he is behind European Goldfields. International Goldfield was actually born out of an Australian firm called Carpathian Investment PTY Limited

several years ago; a firm owned by Frank Timis and his sibling, Ioana Majdik. International Goldfields representatives could not be found at their addresses in Romania. Gabriel Resources A third firm that is trying to exploit Apuseni's gold; more specifically in Rosia Montana and adjacent areas; is Rosia Montana Gold Corporation (RMGC). Again Frank Vasile Timis is behind this company. Just as in the case of Deva Gold-European Goldfields, RMGC is a firm where the majority of shares are owned by a Canadian firm, the Romanian state holding a minor position. We shall not expand on the Rosia Montana case since it is being highly subjected to public attention. On more than one occasions, Frank Timis said that the investments he had begun in the Apuseni mountains "would create numerous jobs for the people in the area and would reinvigorate mining in Romania". Frank Timis has retired for a while from all position he held within Gabriel Resources and European Goldfields companies but according to the annual reports he still holds an important number of stock within both companies. Esmeralda - Eurogold Besides the Apuseni Mountains area, gold can be found in Northern Romania as well in the Baia Mare area. The main firm which is active in the area is Esmeralda-Eurogold. The name of the Australian firm, Esmeralda, is connected to one of Europe's major ecological disasters: the release of over 100 tones of poisonous substances (n.a. - mainly cyanides) in the Lapus and Tisa rivers. The ecological disaster caused by the break-up of a dyke stemming the cyanides used for processing the ore to get the gold lead to the massive pollution of the two rivers and involved Romania in an international scandal which is not finished yet. After the disaster from Baia Mare, Esmeralda switched its name into Eurogold and it is presently very active in Romania through the companies Transgold and Explorer. As it results from the documents that we got, the switch did not assume any other change in the management of the company, the same people holding the same key-positions. ORE-LEAVE The fifth firm that has a gold exploitation license is Ore-Leave Capital. It has concessioned terrain that sums approximately 750 square kilometers, both in the Baia Mare area and in Apuseni, among the perimeters possessed by Gabriel Resources and European Goldfields. Ore-Leave is a newcomer on the Romanian gold stage. Stock Games on International Markets Up to today Romania hasn't represented an attraction for important investors in the gold exploitation field. The companies which have received exploitation rights are firms which try to capitalize gathering money from international markets. The procedure is simple. A foreign firm concedes a certain surface from ANMR, preferably in the area also known as "The Gold Quadrilateral"; namely the Apuseni Mountains; it then releases the news to the public. Afterwards figures and investment plans are spread via studies and reports. The firm is already listed on markets such as the Toronto stock exchange and then shares are auctioned off. People interested in stock automatically appear. The more the better. Then they launch a strong media campaign. The price of the stock begins to rise and transactions keep at a continuous pace. This would be the route followed by transnational firms that wish to exploit the Romanian gold. But still, nothing happens in Romania. None of the active private firms on the precious metals markets has ever extracted a gram of gold from this country. One of the most prestigious firms that has wished to extract Romania's gold is Rio Tinto. This is a giant amongst the world of gold mining who, after a short experience, ran off without taking a look back. Cons in the Gold World Esmeralda switches its name to Eurogold.

The Toronto stock-market which lists the majority of gold companies de risc is considered to be one of the most permissive stock institutions in the world. Practically, it also accepts and lists small

companies that are not thoroughly verified. The vulnerability of the Toronto stock-market has been fully underlined on two occasions in the last years. The first one occurred in 1997 and was called Bre-X. Bre-X is the name of a gold mining company which reportedly discovered an impressive gold deposit in Indonesia. Consequently, the price of Bre-X shares increased at an extraordinary pace. But the price equally decreased when investors discovered that Bre-X had "baptized" the ore samples taken by adding gold from its own pocket. The damage caused by the BreX con was in the amount of CAN\$3 billion. One year later, on the same market, the hit came from YBM Magnex, a company supported by one of the most wanted Mafiosi in the world - Semion Mogilevich. YBM Magnex shares increased in value when it was announced that a miracle fuel had been discovered. The miracle only lasted 3 days, when the con was revealed and again, the investors got worthless shares and several billion dollars damage. Between Poverty and Cyanide The situation of the locals from the gold zones is dramatic. The state mines were shut down or function at minimum capacity and unemployment has certainly augmented. People there do not get many chances for a decent living. The land rich in gold is poor for agriculture. Rural tourism has begun to develop especially in the North of Alba Iulia and Hunedoara counties, but few people take advantage. Transnational companies that wish to exploit gold offer a limited number of jobs and this certainly is a chance embraced mainly by youngsters. I met on the paths from Apuseni people who wanted to get a job with these companies. "I go and try to get a job. These Canadians offer big salaries, but I don't know if they continue to employ people. I hope they'll accept me", told us a young man who was hitchhiking on the road to Rosia Montana. He says he wants to have food. He doesn't care much that after some 15 years, RMGC's estimated mine life, the mountains will have disappeared and sizeable basins with tailings and cyanide will instead appear. The man is hungry and he wants food now, not later. Years from now his story would probably become Adelina Szekely's story with whom we began this story. A story of the gold lacking brilliancy and which breaks the lives of so many
Romanians. [...]