National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries

-Position Paper

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I. Introduction

Discussion of corporate social responsibility is growing in extractive industry, globally. With the introduction of these Roundtables, the Canadian government recognizes the importance of this discussion and the government's role in turning that discussion into action. Canadian companies operating in developing countries must act proactively to mitigate negative consequences of failing to address social responsibility issues. **Orezone Resources (www.orezone.com)** is a Canadian junior exploration company operating in West Africa that seeks to do this. Our company is committed to act responsibly and make a positive difference the communities where we operate. Orezone's commitment to providing clean water through the Mining for Water Challenge (www.miningforwater.com) and our partnership with the Ryan's Well Foundation (www.ryanswell.ca) makes us a leader in our field by finding innovative ways to involve civil society in our operations and give value to our shareholders.

In light of this, Orezone submits this report for consideration by the Standing Committee of these Roundtables in order to present our position on the questions raised by the Discussion Paper they prepared. We hope this contribution to Canadian CSR discourse can complement the Standing Committee's understanding of the issues and inform its decision-making.

II. CSR Standards and Best Practice

Canadian mining companies working abroad face many challenges in regard to CSR standards and best practice. The primary challenge facing companies is achieving the balance between the needs of local communities and the expense of providing community development programming. There is currently no universally accepted guideline or clear best practice as to what monetary commitment to communities is required by companies, nor is there any suggestion as to what monetary commitment would be based on; profits, expenses? Best practices lack cohesion and vary by country, particularly in countries with little or no history of large-scale mining which may also lack effective legislation and government support for companies to follow with reference to local affairs issues; such as resettlement and small-scale or artisanal mining. The standards and guidelines for companies which do exist (such as the E3 initiative by the PDAC mentioned in the Standing Committee's Discussion Paper) are not widely known to companies, or are not applicable to junior companies that are not in a production situation. Since most CSR commitments are based on a production scenario, there is no clear picture of what is acceptable CSR practice from exploration projects in particular, which are the type of projects in which Canadian junior companies are most likely to be engaged.

In order to respond to these challenges, Canadian government, civil society, and industry actors must all contribute to the establishment and promotion of CSR standards and best practice. Canadian government may offer grants to PDAC or other mining-related bodies to promote responsible practices within their membership and increase awareness of standards through booklets or seminars. Civil society, industry and government could meet to establish guidelines for CSR activities for the various levels of mining activities, from prospecting and exploration through to production. Industry itself could meet to form a set of non-binding standards within their peer groups (juniors, majors, etc), or cooperate with government to hold an annual conference dedicated to formalizing and renewing industry standards. All of these possible actions use the resources of civil society, government, and extractive industry to better establish and promote CSR standards and best practice.

III. Incentives Supportive of Implementation

In terms of incentives supportive of implementation of CSR standards, government and industry face challenges in broadening the scope of CSR practices. The Canadian government is largely unable to provide incentives because of the weak link (both legally and financially) with Canadian companies working abroad. They also largely lack the ability to “punish” or provide disincentives for the same reason. Therefore there is really no Canadian incentive for companies to meet CSR standards, even if such a set of Canadian standards existed. Companies are also challenged in seeing incentives of CSR implementation when they see how some host governments may use their royalties and taxes towards self-interested means, or, at the very least, fail to re-invest a portion of these funds into local community infrastructure near mine sites. This creates a notion within industry of being “double-taxed” by not only providing the host government with funds, but also funding local community programs that the government fails to provide because royalty funds are not re-invested locally.

The main incentives that are attractive to extractive industry are market-based incentives. These promote company compliance by adding value in a socially responsible manner, which attracts shareholders. There are even certain “ethical funds” which capitalize on this premise by requiring certain standards for consideration. By being included in these types of funds through responsible activity, companies gain access to a previously unavailable group of shareholders, while gaining a social license to operate by meeting ethical fund criteria.

There are many possible responses to the challenges presented by CSR implementation incentives. Since market-based incentives are the most attractive, promoting and augmenting these incentives is a constructive way to increase CSR implementation of Canadian extractive industry in developing countries. Possible ways to do this include minimum CSR standards for listing on all Canadian exchanges, and a possible rating system for companies in terms of CSR so investors can more easily make informed decisions on their investments and support socially responsible business. Other market-based initiatives could include the general promotion of socially responsible investing and "ethical funds", particularly the contribution of Canadian companies to such funds. The Canadian government can also carry out Team Canada trade missions to countries where Canadian extractive industry operates, communicating a two-fold purpose. First, they must use their influence to pressure host governments to reinvest royalties locally and increase transparency on local spending. Second, they must help develop regional incentives so companies are more inclined to participate in socially responsible activity. They can also hold companies accountable for implementation by carrying out proposed Human Rights Impact Assessments (as mentioned in the Standing Committee's Discussion Paper), which could perhaps form the basis of the rating system for Canadian exchanges.

NGOs and civil society can also provide incentives to business by reporting positively on good actors, rather than consistently focusing on "black listing" companies who act damagingly. NGO approval or support is another way companies gain legitimacy and social license, and if it is seen as an attainable goal, companies may make a more concerted effort to have open dialogue with the NGO community and move toward greater CSR implementation.

IV. ASSISTANCE IN IMPLEMENTATION

Implementation of CSR practice, and assistance with that implementation, can only be realized if there is some understanding of what CSR implementation means in various extractive sector contexts. Company's face implementation challenges from lack of knowledge of what level of community or social involvement is required, or what actions or initiatives are appropriate at various levels of investment (such exploration versus production). A lack of auditing process for reporting or evaluation purposes also creates implementation challenges by limiting a company's ability to confidently report on CSR activities since they do not know what will be accepted as sufficient by civil society.

Civil society and NGOs also create implementation challenges through their campaigns to improve corporate conduct. Although these initiatives may be undertaken as well-intentioned techniques of increasing corporate awareness, they are often carried out as hostile slander campaigns that are not seen as supportive or helpful. Current NGO practices of "black listing" companies for bad behaviour lead to corporate mistrust of NGOs, and feed a perception of these groups as an enemy that is never satisfied. These activities impede progress toward positive relationships and cooperation between extractive sector companies and NGOs. Both groups -as well as local communities- stand to benefit from such relations.

In order to address these challenges to implementation, civil society must be prepared to recognize good corporate performers as well as negative ones, and have realistic corporate performance expectations. Government should commit to establishing a set of protocols or policies for companies to follow. A model such as that used by the International Organisation for Standardisation (ISO) with protocols, policies for accreditation, audits, and certification could be used to provide a structured framework for CSR expectations. Using this model, a tiered system could be established based on various criteria (such as industry, level of exploration or production) to measure corporate compliance with established CSR standards. Industry, in turn, must also commit to voluntarily adopting such standards and abiding by them, and reporting regularly to the appropriate regulatory body. Special assistance with this implementation strategy should be given to junior companies as they have fewer funds available for CSR activities but constitute a large portion of Canadian extractive industry.

V. MONITORING AND DISPUTE RESOLUTION

Monitoring of corporate socially responsible activities and dispute resolution of such activities face many of the same challenges. Principally, it must be determined where jurisdiction of such monitoring or dispute resolution lies; with host countries or with Canada? Host governments face challenges in this regard as they do not want to impose onerous legislation that may limit foreign direct investment. Currently, monitoring is mainly voluntary, which creates problems of consistency and frequency of reporting. Monitoring also currently yields few obvious benefits, so companies are disinclined to voluntarily monitor and report. Outside monitoring bodies (such as NGOs) are often seen by business as “looking for problems” and may not accord appropriate credit for responsible corporate activity. Dispute resolution falls somewhere vaguely within host jurisdiction, but history has shown that occasionally countries are willing to compromise the rights of their populations to secure much-needed foreign investment. Existing dispute resolution is non-binding so really offers little protection to populations if companies choose not to comply, and types of resolution and compensation can vary widely.

In order to face some of these challenges, Canada could develop an internationally recognized mechanism for monitoring and dispute resolution which would enforce established standards and best practice (perhaps considering regional context) in conjunction with host countries where Canadian extractive industry operates. This could be developed as part of the market-based securities reporting system mentioned previously, and thus would incorporate the related benefits and company incentives. This same system could decide definitive jurisdictional roles as well. Companies must either be bound by decisions rendered by such a body, or commit to voluntarily comply. Corporate willingness to do so will largely depend on the perceived legitimacy of such a body through characteristics such as industry knowledge, fairness, and reasonability.

VI. CAPACITY BUILDING IN DEVELOPING COUNTRIES

Governments in developing countries face challenges with the governance of resources, and particularly the governance of the revenue generated by such resources. The main challenge to be addressed is the lack of funds from extractive industry royalties and revenue being reinvested in local communities by federal governments. This creates inequality and dissatisfaction among populations as those who are affected most by corporate operations often do not see appropriate benefits from tax revenues. This same phenomenon feeds a lack of governance capacity in municipal governments as they do not have the financial means to meet the needs of their populations, who are often rural communities with few monetary resources. Due to the gap created between communities' level of affectedness and level of benefit, companies are often seen as exploitative and usury and thus persuaded to carry out community development programming that would normally fall under governmental auspices. Companies are often then criticized for taking on a "governmental" or "patriarchal" role which undermines government, but are also criticized if they do not come to the aid of local communities. Since companies cannot – and should not- replace host government responsibilities and mandates, host governments must be compelled to contribute to their own national capacity by reinvesting appropriately in affected communities. While there exists lack of political will to do so, resource governance and the governance of associated revenue will continue to be problematic.

A secondary challenge to resource governance capacity is general inexperience with resource exploitation on a large scale. Countries, such as Burkina Faso, with historically little or no major extractive operations merit particular focus in terms of capacity-building efforts as they have not developed the infrastructure or precedent with which to address extractive industry operations.

A tertiary challenge to resource governance is presented to civil society in the countries where extractive activities take place. Since governments are largely unaccountable and opaque, NGOs and civil society groups are unable to hold government to their stated mandates and obligations. Since government spending in many countries is unreported or unmonitored, civil society organizations face difficulties in holding governments accountable if there is a lack of contribution to local communities, which is possibly a reason why they turn their attack on companies.

In order to address these challenges, a system must be established with host governments whereby a certain minimum standard of affected community reinvestment is mandatory. For example, any country accepting a Net Smelter Royalty (NSR) from a producing company would be obligated to contribute a minimum percentage of such revenues (say 5% or more) to the local community affected by the mining operations. The local government receiving the funds would then produce an action plan for local initiatives to be carried out with the funds which would be published and accessible for both the company involved and the local community to maintain accountability. This concept is already being introduced through the Publish What You Pay initiative (www.publishwhatyoupay.org) which may have insight in how to produce such a model. Monitoring of government reporting should be maintained by an outside body to ensure accountability and possibility for recourse for communities if adequate reporting does not occur. An obvious candidate for such monitoring is the World Bank, since many of the countries concerned are involved in some aspect of Structural Adjustment.

The Canadian government could get involved by helping to establish this kind of program, by coordinating with the World Bank, and by increasing pressure on governments to meet their commitments to invest locally. Canada could also provide assistance to host governments through conferences, forums, or direct training on accountability and transparency issues. This would build government capacity to responsibly manage funds and meet community and corporate expectations.

Canadian civil society can assist their counterparts in developing countries in building capacity by networking with other NGOs to help them encourage government to meet its commitments.

Canadian extractive industry can also build its own capacity, by establishing a publicly accessible knowledge database for CSR activities. Such a tool would allow companies embarking on new CSR activities or operating in new countries to review case studies and become more familiar with existing standards and best practice. This would also give corporate Local Affairs staff the opportunity to learn from previous activities of mining companies in the region, and allow them to create and implement more effective end beneficial activities in the future.

VII. Conclusion

Canadian industry, government, and civil society all have a role to play in developing corporate social responsibility. Governments must work together to establish and promote standards and best practice, while also improving local capacity and accountability mechanisms. Civil society must broaden its efforts from shaming companies who do wrong to recognizing companies who do right. They must also recognize host governments’ role in contributing to CSR challenges and issues, and address those issues with the governments themselves. Industry, in turn, must see the value added by good CSR practices and voluntarily adopt such practices as part of their business strategies. They must use their influence to affect positive change where possible, and communicate within their peer groups to broaden collective industry understanding of CSR issues. With these actions, the Canadian extractive sector can legitimately lay claim to social license to operate anywhere in the world.