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# The Canadian approach to corporate social responsibility in the extractive industry: toward better regulatory governance in mining in Latin America

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## Abstract

This paper describes the current Canadian approach to CSR in the mining sector and proposes that, in addition to the current support for CSR, the Canadian government put its efforts toward improving the capacity of national governments in Latin American Countries (LAC) to ensure that the mining industry comply to environmental and labour regulations and that revenues from the sectors are funnelled. In addition to documentary research, this paper relies on more than 35 interviews conducted in Chile, in Canada, in Uruguay and the Caribbean in between September 2008 and March 2009 with representatives of the private sector, governments, regional organisations and civil society organisations.

## Introduction

Canadian companies and investors are key actors in the mining sector of many countries in the Americas. Canada has an opportunity to make a difference in a sector which matters to Latin America, as primary products will remain an area of key comparative advantage for most countries in LAC and which matters to Canada.

What can Canada contribute to ensure that mineral wealth translates into opportunities for all citizens? Until recently, answers to this question have focused on the role of the Canadian government in promoting corporate social responsibility (CSR), i.e. ensuring that mining companies make positive contributions to the communities and regions where they operate, without detrimental impacts on the surrounding ecosystems.

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This paper describes the current Canadian approach to CSR in the mining sector and proposes that, in addition to the current support for CSR, the Canadian government put its efforts toward improving the capacity of national governments in LAC to ensure that the mining industry comply to environmental and labour regulations and that revenues from the sectors are funnelled. In addition to documentary research, this paper relies on more than 35 interviews conducted in Chile, in Canada, in Uruguay and the Caribbean in between September 2008 and March 2009 with representatives of the private sector, governments, regional organisations and civil society organisations.<sup>2</sup>

### Corporate social responsibility: Increasingly seen in the interest of all parties

CSR, especially in the extractive industry has received much attention in Canada in recent years. Indeed, cases involving Canadian mining companies having negative social and environmental impacts on the communities where they operated came to the spotlight.<sup>3</sup> In this context, Canadian mining companies are seeing CSR as congruent with their own interests. Indeed, there is a growing sense that the Canadian mining sector has much to gain from positioning itself clearly as a global leader on CSR. In interviews the author conducted in Chile in 2008, a number of representatives of Canadian-owned companies in Chile made comments to that

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<sup>3</sup> Julia Sagebien, Nicole Lunsday, Peter Campbell, Rob Cameron and Naomi Smith. "The corporate social responsibility of Canadian mining companies in Latin America: A systems perspective," *Canadian Foreign Policy*. Vol. 14 no. 3 (2008): 103-128. One case which drew a lot of attention occurred in 1995 in Guyana, when the contaminated water held in (Canadian-owned Cambior gold company) a mine's run-off pond leaked and let 3.2 million cubic metres of cyanide-laced effluent into two main rivers of the country. See: Sara L. Seck. "Environmental Harm in Developing Countries Caused by Subsidiaries of Canadian Mining Corporations: The Interface of Public and Private International Law," in *1999 Canadian Yearbook of International Law*. edited by Donald M. McRae. (Vancouver: UBC Press, 2000): 139-159. A class action was filled in a Quebec court seeking to assist the Guyanese who were affected by what has been called by the Quebec judge the "worst environmental disasters in gold mining history."

effect. With this objective in mind, one suggested that the Canadian government and the Canadian association of explorers should jointly develop strong binding guidelines on exploration practices.<sup>4</sup> Another suggested that the respect of international standards such as the Ecuador Principles should be a condition for companies to be able to go to the Toronto Stock Exchange to raise capital.<sup>5</sup> Others preferred the development of strong third party certification in the mining sector, as one interviewee suggested that such certification should be a prerequisite to be a member of the Canada-Chile Chamber of Commerce.<sup>6</sup>

One interviewee noted how the bad reputation and behaviours of one Canadian company abroad had an impact on their own operations and relationship with government and communities in that same country.<sup>7</sup> Canadian mining companies are the public face of Canada in many LAC countries. Beyond the impact of Canadian business, if Canadian firms are associated with disastrous environmental damage and lack of benefit sharing with the communities in which they operate, it directly impacts the Canadian government's reputation in the region. Self-interest in positioning Canada as a leader in CSR is also recognised by the Canadian government:

*"Because Canada is a major player in the global extractive sector, both the Canadian Government and the Canadian industry share an interest in maintaining a positive image of Canada in this sector, and ensuring that Canadian businesses contribute positively to the broader social and environmental objectives of the communities in which they operate".<sup>8</sup>*

## How Canada promotes CSR: The existing approach and recent strategy

The current Canadian policy framework for social responsibility of Canadian firms operating abroad includes an Organisation for Economic Cooperation and Development (OECD) -based mechanism and information sharing about good practices. In response to demands for more accountability of corporate practices, in 2001 the OECD countries created the OECD Guidelines for Multinational Enterprises which include a National contact point, such as an office in each

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4 See: Interview no. 15

5 See: Interview no. 1

6 See: Interview no. 13

7 See: Interview no. 16

8 5 Department of Foreign Affairs and International Trade. "Annual report 2008." Canada's National Contact Point for OECD guidelines. (Ottawa: 2008).

OECD country, which receives complaints about multinational firms based in their territory. The National Contact Points do not have investigative powers or a dispute settlement role. Their mandate is to diffuse information about the *Guidelines* for multinational enterprises and to facilitate dialogue in specific instances where a complaint is filed about an OECD company operating abroad. In the case of Canada, the National Contact Point has received seven complaints since its creation –three of them related to mining.<sup>9</sup> The Canadian government has also integrated CRS in the activities of its Department of Foreign Affairs and International Trade (DFAIT). The approach adopted is “to promote CRS by facilitating dialogue and information sharing on CSR best practices with civil society groups, business and within government.”<sup>10</sup>

In March 2009, the Canadian government announced a new strategy to position Canada as a leader on CRS in the mining sector.<sup>11</sup> This strategy is the outcome of a consultation process which included the setting up of an Advisory Group commissioned by the Government of Canada. Indeed, in 2006, the federal government held national roundtables on CSR and the activities of Canadian companies in developing countries. This process led to the publication of recommendations by the Advisory Group which aimed “to enable Canadian extractive sector companies operating in developing countries to meet or exceed leading CSR best practices.”<sup>12</sup> A number of these recommendations can be found in the new strategy titled “Building the Canadian advantage.” This strategy recognises the importance of CSR standards as the Canadian government commits itself to promote “international CSR performance guidelines with Canadian extractive companies operating abroad.”<sup>13</sup> The guidelines include the international standards adopted in 2006 by the World Bank’s lending arm, the International Finance Corporation and the Global Reporting Initiative (GRI) standards. This initiative was launched in 1997 and has become the main global benchmark for CSR reporting principles for the

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9 Department of Foreign Affairs and International Trade. “Annual report 2008.”

10 Department of Foreign Affairs and International Trade. “Development and Society: Corporate Social Responsibility.” (January 2009). Accessed 28 April 2009, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/approach-csr.aspx>

11 Government of Canada. “Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian International Extractive Sector.” (March 2009).

12 Advisory Group. “National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries.” Final report. (Ottawa. 2007): 1.

13 Government of Canada. “Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian International Extractive Sector.” (March 2009): 8.

extractive industry's environmental and social impacts. Unlike what was recommended in the Advisory Group report, the Strategy does not require Canadian companies in the extractive sector to use their guidelines or reporting standards, but the recommendations commit the government through activities of DFAIT and National Resources Canada to promote their CSR standards. Unfortunately, as of 2009, the nature of these promotion activities was not yet specified. Currently the trade commissioners in Canadian embassies around the Americas, and the world, are mandated to diffuse information about corporate social responsibility. However, one cannot help but wonder how, in spite of their good will, these officials with a specific expertise can marry this mandate to their traditional role of promoting Canadian exports and investments.

To position Canada as a leader in CSR, Canadian authorities need to think about how to ensure compliance with these CSR standards. Obviously, CSR standards cannot be only principles described on paper, but have to translate into practices on the ground. The creation of an ombudsman office is a key component of the Advisory Group report, for ensuring such impact. The Advisory Group proposed that this independent ombudsman would be mandated to screen complaints against Canadian mining companies and, in cases in which raise serious concerns about compliance to Canadian CSR standards, would investigate and assess the accuracy of the complaints.

The Government responded to this recommendation in its new strategy with the creation of the Office of the Extractive Sector CSR Counsellor, who reports directly to the Minister of International Trade. The Counsellor is mandated to review the CSR practices of the Canadian extractive companies operating outside Canada and advise stakeholders on the implementation of CSR standards. This new office will not review the activities of a Canadian company unless it receives a request from an individual, group or community affected by these activities, or from a Canadian company that believes it has been subjected to unfounded allegations regarding its practices. The review process includes five stages: initial assessment, informal mediation, fact finding, access to formal mediation (outside the Counsellor's office) and reporting. This process will only be undertaken with the consent of the involved parties. The model adopted by the Canadian government is weaker in terms of independence than the one proposed by the Advisory group, but it remains an interesting strategy to ensure that CSR voluntary guidelines are more than just a public relations exercise.

## Beyond CSR: Better regulatory governance of the mining sector in LAC

Despite its emphasis on the practices of Canadian mining companies operating abroad, the new strategy tabled in March 2009 “Building the Canadian Advantage,” also recognises the importance of capacity building in host countries in order to “improve the prospects for developing countries to benefit from their own natural resources endowments and to achieve economic prosperity.”<sup>14</sup> This strategy commits CIDA to support the capacity of governments, mining companies and affected communities to manage their extractive sectors in an environmentally sustainable and socially responsible manner, which protects human rights and produce benefits for communities and industry. It also states that Natural Resources Canada will continue to support initiatives aimed at enhancing host country resources management governance.

Canadian companies and investors are present in the mining sector of many countries in the Americas. Canada now has an opportunity to make a difference in a sector where it has strong common interests with Latin America. Indeed, primary products will remain an area of key comparative advantage for most countries in LAC, What can Canada contribute to ensure that this wealth translates into opportunities for all citizens? First and foremost, it can work with national and local governments in the region to strengthen their capacity to harness the benefits of mineral wealth and mitigate the negative environmental and social impacts associated with mining exploration and operations. Canada can also help to improve the central and local governments’ capacity to regulate and supervise the activities of mining companies, and in the long term, should have the objective of working with these governments to ensure positive impacts of the mining sector on economic and human development. In this context, Canada should support a capacity building initiative to address the current legal, regulatory and judiciary weaknesses in the region, whether in terms of the participatory nature and transparency of the regulatory policy process, the mechanisms through which environmental and labour regulations are monitored and enforced and how disputes can be solved fairly in domestic courts.

In developing such a capacity building initiative for mining policy and regulation, Canada should learn from its past experiences with mining code reforms. Indeed, CIDA has supported initiatives in this area in Latin America in recent years, but the impact of this support has been contested. In the case of Colombia, for example,

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<sup>14</sup> Government of Canada. “Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian International Extractive Sector.” (March 2009): 9.

the CIDA-funded reform to the mining code did not include adequate consultations with Indigenous and Afro-Colombians as mandated in the Colombian constitution, and led to an erosion of their hard earned territorial rights.<sup>15</sup> Therefore, it is crucial that the capacity building efforts include not only the Ministries of Mining, but many other institutions such as the Environment Ministries. The guiding principle of the initiative would be to adopt a broad view of how to maximise the benefits of economic and human development and minimize the negative impacts related to extractive industries.

During the interviewees conducted in LAC while preparing this paper, representatives of the private sector, government and NGOs stressed the importance of capacity building as a key instrument for Canadian engagement in the mining sector in the Americas.<sup>16</sup> The interviewees argued that capacity building should target central and local governments, as well as mining companies and local communities. The weak capacity of local governments to put mining related income to productive use was mentioned by a number of interviewees. Capacity building to improve national and local consultation processes in terms of environmental and social impacts, and to establish credible fora for multi-stakeholder dialogue was also welcomed by the interviewees. Many looked at the process of the national roundtable on corporate social responsibility (CSR) in Canada as a model. Supporting the development of a multi-stakeholder dialogue and a meaningful consultative process for the emission of permits for mining operation was seen as especially useful. All respondents underlined the importance of customizing capacity building efforts to the reality of each LAC countries. For instance, they noted that given the remote geographical location of mineral deposits in Chile, mining projects in that country were less subject to controversy in terms of social and community impact than in neighbouring Peru, where mining activities would often clash with farmers who are already living on the land. In Chile, the environmental issues related to water use are more prominent in the public debate about minimizing environmental impacts, as the mining operations are located in the driest regions of the country.

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15 Viviane Weitzner. "Through Indigenous Eyes: Toward Appropriate Decision-Making Processes Regarding Mining On or Near Ancestral Lands." Final Synthesis Report of The North-South Institute (Canada), Amerindian Peoples Association (Guyana) and Institute of Regional Studies of the University of Antioquia (Colombia). (The North-South Institute: Ottawa, 2002).; Colin Campbell. "CIDA goes for the gold. Is the aid agency helping the poor -- or our mining companies?" *Maclean's*. (1 July 2006).

16 See: Interview no. 4, 9, 11, 13, 14, 15, 16, 18, 19 and 21



## Harnessing mineral wealth for sustainable development: Chile's Fondo de Innovación para la Competitividad (FIC)

In 2004, the Chilean tax authorities realized that a foreign owned mining company had been in Chile for 15 years and had never paid taxes. When the owner Exxon sold the mine to Anglo-American, the authorities realized that the company, thanks to various fiscal acrobatics, had never declared any profits, thus were never required to pay taxes. Chilean political parties put this issue on the political agenda, stressing how the exploitation of non-renewable resources under the ownership of the Chilean public needed to contribute to the broad economic development of the country and to generate revenues for the public purse. Consequently, in January 2006, the Chilean Law 20.026 came into force which applied a royalty rate on the mining sector of 1 percent to 5 percent of sales (varying depending on the size of the firm).<sup>17</sup>

There was some level of controversy around this new legislation, given that Chile prides itself in the stability of its legislative and regulatory framework which provides security for investors, especially in the mining sector which requires capital intensive investment.<sup>18</sup> The private sector publicly opposed it, but once they had closed doors meetings with government officials about the exact financial consequences of the new royalty, their opposition waned. In 2004's context of high world prices for minerals and general Chilean public support, the legislation was adopted. The question remained about how to spend these new tax revenues.

The Chilean majority view was that these revenues from non-renewable resources should be invested in a key renewable resource: knowledge. As a result, the *Fondo de Innovación para la Competitividad* (Innovation Fund for Competitiveness) was created, as it was believed to provide the required stable funding for Chile's long term goals such as innovation. In 2007, the FIC received about 250 millions dollars from the new royalty income. The next question was how to best spend these funds to foster innovation. Faced with the failure of Chile's Congress to adopt a legislation which would create a council mandated to develop a national innovation strategy, the Presidency adopted an Executive decree which created the *Consejo de Innovación*, composed of five ministers and stakeholders from university, unions and the presidential office.<sup>19</sup> The council has three main roles:

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17 Biblioteca del Congreso Nacional. "Establece un impuesto específico a la actividad minera." (8 April 2006). Accessed 28 April 2009, [http://www.minmineria.cl/574/articles-4529\\_recurso\\_1.pdf](http://www.minmineria.cl/574/articles-4529_recurso_1.pdf)

18 See: Interviews no. 1, 4, 7 and 19

19 For more information, please see: Consejo de Innovación. Homepage. Accessed 28 April 2009,

[www.consejodeinnovacion.cl](http://www.consejodeinnovacion.cl)

firstly, to develop a national strategy on innovation and competitiveness, secondly to offer suggestions on how to use the resources of the FIC, which totaled \$250 (US million), and thirdly to offer recommendations about how to allocate all public spending on innovation in Chile, which amounted to \$800 (US) million in 2007.

The *Consejo* has produced a national strategy on innovation. The first volume offered an argument for the allocation of public resources to different program and agencies for innovation. Indeed, the members offered a strong argument about market failures and state failures to overcome the mainstream view in some ministries like the Finance Ministry against government intervention. An external consulting firm was hired to do a cluster analysis, to identify criteria to select clusters where funds should be allocated, most of them building on Chile's comparative advantage in natural resources. The similarity of this approach with targeted industrial policy, even though it was pragmatically based, it was seen in odds with the rather non-interventionist role of the Chilean state. As one interviewee put it, "the idea of making informed bets was a major change in economic policy thinking here."<sup>20</sup> The second report published in 2008 by the *Consejo de Innovacion* focused on the actions to take in four areas: tertiary education, science, innovation at firm level and the institutional framework for innovation policy such as coordination mechanisms among private actors.

The overall Chilean experience with the FIC is still very recent; interviewees raised doubts about the effectiveness of its implementation.<sup>21</sup> Nevertheless, it represents an excellent example of the policy innovation to harness natural resources for economic development which could be discussed and shared in a Hemispheric policy forum.

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20 See: Interview no. 7

21 See: Interviews no. 4 and 20

## Conclusion

The mining sector is one area where Canada has a significant economic footprint in LAC. To protect Canadian interests and to promote long-term economic and human development in the region, Canada should position itself as a leader in building capacity for better regulation and governance of the mining sector and on corporate social responsibility in LAC. Improving the central and local governments' capacity to regulate and supervise the activities of mining companies should be, in the long term, Canada's priority in terms of maximising the positive impacts and minimizing the negative consequences of mining activities. As the capacity of national government in countries improve, CSR would become a second-best option, less necessary as the regulatory and legislative frameworks would be put in place and implemented effectively. For Canada to be a true leader in the Hemisphere in governance in mining, Canada should inspire its Hemispheric partners by bold and innovative initiatives. Many interviewees considered the openness and transparency associated with the federal government's 2006 national roundtables on CSR to be a good example of an innovative practice where Canada was leading by example. Our capacity building activities should be inspired by the same spirit.