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A large, dark silhouette of the continents of North and South America is centered on the page, serving as a background for the title and authors' names.

INDIGENOUS GOVERNANCE INDICATORS FOR CORPORATE SOCIAL RESPONSIBILITY

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FINAL REPORT
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EXECUTIVE SUMMARY

The Canadian Foundation for the Americas (FOCAL) organized two workshops during February 2008 on *Economic Opportunities & Indigenous Development*. These workshops were organized with the objective of bringing the private and public sectors together with representatives from indigenous communities to dialogue on the pressing need to strengthen governance surrounding mining activities and to build local capacity for development plans aimed at sustainable communities. The current policy document has been written with the aim of complementing the conclusions and recommendations from the Corporate Social Responsibility (CSR) roundtable process that occurred in 2007, in Canada, with information and perspectives gathered during the workshops organized by FOCAL in Peru and Guatemala, in 2008.

Participants at the workshops in Peru and Guatemala pointed out a major irregularity in the treatment of indigenous communities. The mining industry has been granted various investment guarantees protecting it against tax regime changes and changes in legislation; however, host communities do not have the minimum guarantee that the public and private sectors will respect their right to consultation. This irregularity should be a priority item for policy debate on the linkages between CSR and sustainable development. The roundtable report on CSR lacked depth in the conclusions it drew regarding the interaction between mining and indigenous governance. The current policy document will draw from lessons learnt during the workshops to develop a set of conclusions and recommendations relevant to the CSR roundtable process and the mining sector.

The three main objectives of the current policy document are to increase:

- the ability of the Government of Canada to respond to the issues highlighted in the Advisory Committee Report on the CSR Roundtable Process and which relate to Indigenous Peoples affected by mining in Latin America;
- the awareness of the central role that consultations play in creating the conditions for the participation of host indigenous communities in the benefits of mining;
- the awareness of the fundamental role that the International Labour Organization (ILO) Convention 169 should play in the development of and debate over the CSR frameworks of Canadian mining companies in Latin America.

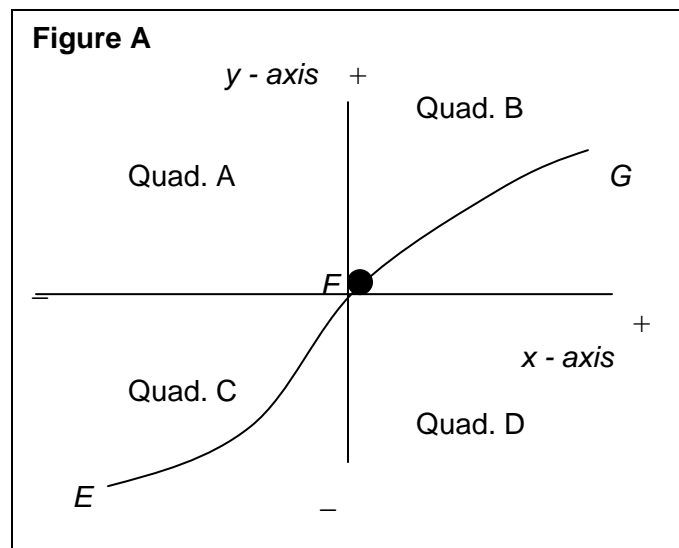
BACKGROUND

Although it is true that mining activities can act as a driving force to address weaknesses in governance, the extent to which mining can contribute to local development is debatable and depends in large extent on the initial strength of governance in host communities. Rural populations are underrepresented and development is biased toward infrastructure in urban centres. Development plans are often centralised and lack the input of local indigenous communities. Governance, as a tool for decentralization and a mechanism for participation, is therefore weak in many Latin American countries.

The mutual compatibility of government priorities for the decentralization of governance and the importance of macroeconomic stability is at the heart of the problem resulting in incompatibility between the norms referring to Indigenous Peoples and those referring to mining. The alignment of these norms creates the conditions for the sustainable development of local indigenous communities where a potential for mining developments exists. The decisions of government increasingly depend upon a cost/benefit analysis of the costs associated with increasing the capacity for governance at the local levels and the benefits of maintaining a centralized system of socio-economic planning.

Indigenous Peoples face the brunt of governments' approaches to development; however, they have little impact on how these processes are developed and implemented. The mining industry is a major stakeholder in this relationship between governments and host communities. Industry faces the costs associated with the lack of decentralization; however, it also benefits from the opportunities to be had from the importance governments place upon macroeconomic stability. Knowing its place and power within this context are important to industry in the design of coherent frameworks for Corporate Social Responsibility (CSR) that assist or at least do no harm in the process of bringing capacity for governance and development to local communities.

The sustainability of host communities can be viewed from two principle perspectives: strength in governance and economic opportunities. **Figure A** provides a graphical demonstration of the relationship between these two components and how they are interdependent when it comes to building sustainable economic growth in indigenous communities. The y-axis represents the strength or weakness of governance in the host community and the x-axis represents the level of economic development. Quadrant C reflects a context of “sustainable poverty”.



Respectively, quadrant B reflects the desired context in which members of an indigenous community have access to a range of economic assets that both generate and maintain wealth and are sustained by strong social capital within the community. Passing from point *E* to point *G* on this hypothetical graph requires the strengthening of governance (which includes legal stability) at the same time as growth in economic opportunities. Point *F* on the graph represents the inflection point in which sustained growth becomes a possibility.

In order for mining to contribute to reaching this inflection point it must contribute to acquiring a diversity of community based assets well in advance of the closure of the mine. The closure of a mine usually causes changes that could significantly disrupt the sustainability of growth and it is therefore crucial that the community surpass this threshold point prior to closure. Sustainability also implies a diversification of economic activity within the community. Prior consultations with the community help to develop the local economic development plans that would set the process of change from sustainable poverty to sustainable development in motion.

It should be noted that both the countries of Peru and Guatemala have experienced the detrimental impacts of internal conflicts, the root of which have been, in large part, the consequence of a persistent lack of participation of certain sectors of the population in the system of government and a polarization of perspectives on development. Dialogue is an important instrument for moving toward greater citizen participation and moving away from the conditions that give rise to internal conflict. The ability to maintain a dialogue is an important indicator of the degree of polarization that envelops a given context and the degree to which sections of any given population are able to fully participate in the political process.

LESSONS LEARNT

The greatest challenge for the actors involved in the sustainable development of local indigenous communities is to articulate the perspectives of communities within government policies that promote local development and within the socio-environmental policies of companies, all the while, sustaining a permanent dialogue.

- A gap exists between the rights of Indigenous Peoples established in the ILO Convention 169 and the application of these rights with communities impacted by the extractive industries. The lack of free, prior and informed consultation with indigenous communities is one of the primary causes of conflict involving mining. These conflicts are not unique to Guatemala and Peru but also occur throughout the hemisphere.

One of the principles endorsed in industry-led CSR frameworks refers to human rights. Given that prior consultation is one of the human rights specific to Indigenous Peoples, the mining sector could lobby the governments of Latin America to implement prior consultation. This measure would be of assistance to

governments and at the same time recognition, on the part of companies, of indigenous rights. In addition, prior consultation should be considered a social guarantee for investment in the same manner that the government currently provides judicial and economic guarantees.

- Land entitlement or land claims have not been resolved, which generates insecurity and unease in communities and local populations surrounding mining. Competition for natural resources (land, water, etc.) as well as environmental impacts, condition communities as victims and companies as the targets for demands from affected communities. This is an issue that the private sector cannot resolve. On the other hand, it does not appear to be part of the agenda of governments when it comes to the granting of licences to mining companies.
- From the indigenous perspective, mining is not a priority when it comes to the economic and social development of indigenous communities in Guatemala and Peru. Communities prefer to reaffirm and strengthen what they have (land) and what they know how to do (agro-industrial production and traditional crafts) because there is a lack of confidence in the benefits of mining. The low level of participation of communities at the level of decision-making about mining developments does not help to fulfil the expectation of a positive change in their quality of life. In Peru, the members of communities who participated in our workshops considered the possibilities of engagement with mining activities but only if an agreement is reached between the community and the other actors, mining companies and government.
- Access to potential benefits of mining depends on a planning process that includes the knowledge and proper systems of community based governance. One mechanism for reaching this is through free, prior and informed consultation. The social investment programs of companies, although able to satisfy the immediate necessities of communities, are short-term solutions that are not necessarily sufficient in order to guarantee the sustainable development of host communities.
- The lack of regulation of the extractive industries leaves in limbo the participation of communities in local development. The legal frameworks on mining and the environment, for example, are not compatible with the present norms on decentralization, participation in mining profits, and even less when it comes to mechanisms for consultation and citizen participation.

Due to the imbalance of power, communities do not feel sufficiently prepared to sustain a tripartite dialogue and make decisions regarding the sustainability of their own development. The strengthening of community organizations and local governments is essential.

CANADIAN CONTEXT

Canada is a world leader in attracting mining investments and exporting primary resources. The Toronto Stock Exchange (TSX) and TSX-Venture Exchanges are home to approximately 60 per cent of the world's mining companies. According to PricewaterhouseCoopers LLP, 2007 was a bullish year for capitalization of mining investments and a record year for spending on exploration, mine development and production. International prices for metals and minerals have helped to leverage the capital markets for mining companies of all sizes. Mining plays a major role in the TSX-V with close to 47 per cent of listed companies being in the mining sector. Forty-nine per cent of the listed companies on the TSX have their operations outside of Canada. Eleven per cent of all mining companies listed on the TSX are located in Latin America. Latin America is second only to the United States in terms of the destination of capital raised on the TSX for mining developments.

Canada was the destination of choice for exploration in 2006. Nineteen per cent of world spending in exploration was invested in Canada, followed by 11 per cent in Australia and eight per cent in the United States. Canada ranks number one in the world in production of potash and uranium. In fact, Canada is the primary source of uranium for countries like France, who are heavily dependant on nuclear power for their domestic energy needs. Canada is ranked second in the production of nickel and cobalt and is a significant producer of a number of other metals and minerals. Mining is a significant contributor to Canada's GDP and is now also the number one industrial employer of Indigenous Peoples in Canada.

In other aspects the Canadian mining industry has been less successful to date in its relations with indigenous communities in Canada. As in Latin America, a major cause of this has been the slow process of settling land claims of indigenous communities in rural Canada. Consultation processes have been slow to develop and it is still not certain how the Federal Government will respond to the legal reality that the Crown has a Constitutional duty to consult Indigenous Peoples. The industry has made efforts to negotiate Impact and Benefit Agreements (IBAs) with communities. However, little knowledge has been transferred from one experience to another due to the contractual nature of these agreements. Indigenous communities, therefore, do not have a model that can be used to build capacity for negotiations with the mining industry.

A number of initiatives have been established between Canadian mining associations and First Nations' organizations in Canada. In November 2007 the Mining Association of Canada (MAC) signed a Letter of Intent with the Assembly of First Nations (AFN) to enter into a partnership to address issues of mutual concern. The Prospectors and Developers Association of Canada (PDAC) began a process in 2008 of developing a framework for sustainable development, which will include guiding principles related to Indigenous Peoples. In March 2008, PDAC signed a memorandum of understanding (MOU) with the AFN, that outlines the understanding and basis for establishing a working relationship between the two organizations.

The Canadian mining sector also has a large presence in Latin America. As mentioned above, 11 per cent of mining companies listed on the TSX have operations in Latin America. It is important to make a distinction between companies given the fact that many of the companies listed on the TSX and which are located in Latin America may not be fully operational in Canada. The reputation of some Canadian companies that have operations in both Canada and in the Latin American and Caribbean (LAC) region have come under fire for the lack of respect for indigenous cultures and the inability to positively contribute to the development of host communities. Significant allegations of human rights abuses and environmentally damaging practices of Canadian extractive companies in the South triggered the Government of Canada to begin a roundtable process on CSR in 2007. The roundtable process has implications for Canadian companies with operations in Latin America, a region where governance is weak and a significant percentage of the population is indigenous.

LATIN AMERICAN CONTEXT

During the last twenty years, Latin America has experienced various degrees of democratic government, that, to the present day, have not been completely consolidated. Early in the process toward political transition, governments were faced with structural adjustment programs the purpose of which was to move countries toward a new development model even though these very same countries suffered from weak institutions and grave social problems. The framework of a market economy reduced the government's autonomy in the design and execution of public policies, which, in turn, reduced the capacity of governments to address the social demands that resulted from previous regimes and as a consequence of the adjustment programs under the new regimes. In this context, social movements, which include indigenous movements, have gained space in the democratic system of the region since the 1990s. The coming to power of an indigenous leader in Bolivia and the constitutional reforms in Ecuador, Bolivia, Mexico, Paraguay, Colombia, and Venezuela have been of significant influence in the region.

The new economic model in the region has the dual challenge of improving growth and reducing social inequalities. According to World Bank studies, the historical inequality in Latin America and the Caribbean has posed high costs on society that can negatively affect the economic development that is necessary for the reduction of such inequalities. The same study shows that those within the 10 per cent richest range of the population receive between 40 and 47 per cent of the total income in the majority of Latin American societies, while those within the 20 per cent poorest range of the population receive only between two and four per cent of the total income of these same nations. These differences are considerably higher than in OECD countries, Western Europe, and the majority of Asia.

In terms of land ownership, Latin America has the largest inequalities in comparison to the rest of the world. According to the Organization of American States¹ in the 1970s

¹ OAS; Sustainable Development Department; Policy Series, number 10 April 2006

and 1980s it was possible to find countries where six per cent of the population had control over all lands while 94 per cent had no land ownership. According to the Director of the Food & Agriculture Organization (FAO), indications show that the concentration of property in the region has increased in recent years². Given the importance of land policy to economic growth, both the World Bank and the Inter-American Development Bank have extended their support for projects of land administration in countries of Latin America and the Caribbean. Similarly, the OAS has provided spaces for discussion on equal access to land, recognizing “the importance of agriculture in the reduction of poverty and for the integral development of peoples in the Americas”.

Mining

The process of privatization and liberalization of investment regimes since the 1990s converted Latin America and the Caribbean into an attractive venue for global mining investments. In the last decade, investment reached a high of 30 per cent of global mining investments. This record sustained a competitive advantage that led to projections that the region would be the primary venue for foreign investment in 2007 with 31 per cent of global mining investment. In addition to geological resources, cheap labour has also contributed to these advantages, primarily in Brazil, Chile and Peru where the majority of investments are concentrated.

In Central America, where mining activity is relatively new, important investments have been registered in countries like El Salvador, Guatemala, Honduras, and Nicaragua. Civil society has demanded increased government involvement in the compliance of mining and environmental laws.

While on the one hand mining activities are expanding with ease, on the other hand they are also subject to government controls when there are perceived irregularities in the legal procedures. In the case of Ecuador, 587 concessions were revoked for non-compliance on the part of companies with payments for environmental conservation, which is stipulated in article 26 of mining law³. Six of the 587 companies who had their concessions revoked were Canadian. The measure was taken by the National Constituent Assembly that approved by majority vote the “mining mandate” that will be in place until the new legal framework is negotiated with the mining industry⁴. The extractive industries in Ecuador have not been less conflictive than in the rest of Latin America.

Although it is true that mining has contributed to economic growth in the region (according to CEPAL, Latin America and the Caribbean registered a combined economic growth rate of five per cent in 2007 with projections of a 4.6 per cent growth rate for 2008), it is also true that growth based on mining has high social, political and environmental costs for the populations within the area of influence of projects and the for society in general.

² Jose Graziano, Director General of the United Nations Food & Agriculture Organization (FAO) in a press release on April 18, 2008, Reuters)

³ According to Galo Chiriboga, Minister of Mines and Petroleum; April 2008

⁴ Latin American Observatory for Environmental Conflicts; April 18, 2008

Corporate Social Responsibility

In Latin America, the efforts are noticeable in working toward making companies responsible according to a framework of human rights and democracy. The norms of the ILO provide important tools for the strengthening of CSR (e.g., the Declaration on the Fundamental Rights of Workers and Convention 169 on the rights of Indigenous People).

At the regional level various initiatives have been started for the creation and strengthening of programs that support the insertion of citizen participation in the development process. Companies comply, or try to comply, with international codes of conduct but do not obtain optimum results in the prevention of conflicts with interest groups. Since the 1990s, the vision of philanthropy or the social investment activities of some companies cast a shadow on the best practices of other companies that try to apply the ethic of working in a coordinated manner with society.

At the level of companies, it is worth mentioning the Business Forum, a hemispheric alliance of business organizations that promote CSR in the Americas⁵ At the state level, the “Conference of the Americas on Corporate Social Responsibility of the Business Alliance for Development” was organized in 2002 in Miami. The conference was organized by the Inter-American Development Bank in collaboration with the OAS and the World Bank in compliance with the mandate adopted by governments in the region during the Third Summit of the Americas in Quebec City, and resolution AG/RES 1871 (XXXII-O/02), the “Promotion of the Social Responsibility of Companies in the Hemisphere”, that was adopted in the General Assembly in Bridgetown, Barbados⁶ Following up this resolution, the Permanent Council of the OAS created the General Commission on the Social Responsibility of Companies in the Hemisphere.

Given the frequent re-occurrence of mining conflicts, private sector dialogue should not only be with government and NGOs but also with representatives from communities impacted by extractive industry projects. It is important that the OAS include in its agenda for the promotion of CSR an exchange of understanding on the topic with communities, given that it is communities that are the most vulnerable among the interest groups and on whom falls the impact of decisions that are taken unilaterally by companies on how to establish relations between actors. The OAS should take into account that the impacts of mining conflicts in the Americas are proof of a deeper democratic crisis of governance and the violation of human rights. The resistance of communities rejecting mining is expanding at the same scale as the expansion of mining projects themselves.

Mining in Indigenous Territories

The public policies in support of mining investments are not compatible with norms that facilitate the coexistence of mining projects with populations in their zone of influence. Previously, the granting of licenses and concessions to the private sector did not recognize the rights of affected communities. The principle problem has been the threat

⁵ www.empresa.org

⁶ Secretary of the Summit of the Americas

to land and resources such as water and forests on which Indigenous Peoples depend for their survival.

Under the premise that underground resources are the property of the state and the argument that mining is the only activity that generates wealth, many communities have been removed from their lands, which has aggravated conditions of poverty. In all countries there is judicial security for the protection of investments, but there is not a similar territorial security for Indigenous Peoples. This reality shows a weakness of national legislation in its protection of this sector of the population. Likewise, it can be argued that it is for this reason that ILO Convention 169 has been ignored when passing laws favouring mining investments that affect Indigenous Peoples.

Relations between Community and Mining

The contradictions in interests, the socio-environmental impacts of mining, and the lack of recognition for the rights of communities have resulted in conflict-ridden relations between the state, communities, companies, and civil society. Basically, the conflicts that exist throughout the region originate from the lack of consultation with communities from the onset of exploration activities.

States in Latin America have not oriented their actions toward the management of mining conflicts in such a way as to give an answer to the central problems. States have advanced the passing of norms related to citizen participation, but compliance of the ILO Convention 169 remains weak. For their part, communities have demonstrated their ability to bring their rights to the public forum along with proposals for action. Activities such as judicial processes, popular consultations (e.g., participation in congresses and forums at the national and international levels) and public demonstrations have brought the issues of the defence of Indigenous Peoples' rights to the attention of multinational organizations who have assisted in the protection of such rights in relation to the extractive industries.

The country where there has been the most polarization of positions on mining is Guatemala. Since the end of 2007 there have been a number of instances where dialogues have been set up, but the results have not led to positive advances. The confrontation between state company and communities is maintained under what has essentially become a power struggle. The interests of a model of development based on the market economy are what have been affecting the rights of Indigenous Peoples.

Resources in Relationship Management

Initiatives such as the Table of Dialogue and the High Level Commission have permitted and exchange of opinions and information on legal instruments from each of the actors and have helped in advancing processes toward reaching agreements. There are dialogues between the government and civil society with proposals for reform of mining laws, as was the case with Guatemala in 2005. There are also dialogues between companies and communities with the purpose of resolving socio-environmental problems, as in the case of the Tintaya project in Peru.

In other cases companies have incorporated models of mutual learning in order to construct strategic alliances in their relations with communities. This has been done in view of guaranteeing a social license to operate. Despite the fact that companies have engaged in these efforts, there is still a lot that needs to be done in order to reach a consensus on the implementation of certain codes of conduct.

The voluntary nature of CSR has led to a loss of some credibility and confidence with communities because initiatives taken by companies on a voluntary basis are not often sustainable due to the temporary nature of companies and the tendency of programs for social investment to not be linked to participatory plans for local development.

In Ecuador, dialogue is not so much between companies and communities but rather between the government and companies. Social pressures against the environmental impacts of the extractive industries and the interests of government in redefining mining policy have motivated the “mining dialogue” with the possibility of reaching agreements but under a framework of greater government control. The government is searching for greater benefits from the mining sector in order for mining to become the motor for a more equitable model of development.

A dialogue that has yet to occur in Ecuador is one between the government, indigenous organizations, and NGOs. Behind the rejection of mining is the search by the Confederation of Indigenous Nationalities of Ecuador for greater participation and decision-making power. The indigenous population is 35 per cent (13.5 million) of the total population of the country. If the government and the private sector wish to develop the mining industry within a democratic model, then this will require achieving a consensus between all actors.

Table A: Recommended Ways of Reading the Table of Conclusions & Recommendations

	Canada	Latin America	Linkages	Assumptions
Objectives				
Desired Impact of Recommendations Proposed				
Recommendations relevant to the Roundtable Process on CSR that were reinforced by the workshops				
Conclusions drawn from the Canadian Roundtable Process on CSR that were reinforced by the workshops				

The diagram illustrates the relationships between four key components across four categories: Canada, Latin America, Linkages, and Assumptions. The components are Objectives, Desired Impact of Recommendations Proposed, Recommendations relevant to the Roundtable Process on CSR that were reinforced by the workshops, and Conclusions drawn from the Canadian Roundtable Process on CSR that were reinforced by the workshops. Arrows indicate the flow and reinforcement between these elements. For each category, there are vertical markers. Horizontal arrows show flow from Assumptions to Objectives, and from Objectives to Assumptions. Diagonal arrows show flow from Assumptions to Objectives, and from Objectives to Assumptions. Vertical arrows point down from the Assumptions column to the Conclusions row.

Table B: Conclusions & Recommendations

	Canada	Latin America	Linkages	Assumptions
Objectives	<ul style="list-style-type: none"> • Increase the ability of the Government of Canada to respond to the issues highlighted in the Advisory Committee Report on the CSR Roundtable Process and which relate to Indigenous Peoples affected by mining in Latin America. • Increase the awareness of the central role that consultations play in creating the conditions for the participation of host communities in mining. • Increase the awareness of the fundamental role that the ILO Convention 169 should play in the debate over the CSR frameworks of Canadian mining companies in Latin America. 	<ul style="list-style-type: none"> • Incorporate feedback from workshops in Peru and Guatemala into recommendations developed by FOCAL that are designed to improve upon the conclusions developed through the CSR Roundtable Process in 2007. • Create a space for the expression of the views and recommendations developed directly by representatives of indigenous communities in Peru and Guatemala. 	<ul style="list-style-type: none"> • Increase the knowledge exchange from North to South and from South to North on the central role of the ILO Convention 169 in both upholding the rights of Indigenous Peoples in Latin America and in promoting a more sustainable model for mining operations in host communities where governance is weak. 	<ul style="list-style-type: none"> • An assumption is made that the status of the Government of Canada’s interest in acting on recommendations pertaining to Indigenous Peoples and Canadian mining operations in Latin America is “on-going”. • The assumption is made that the Canadian International Development Agency (CIDA) will continue to provide funding for projects through programs such as the Indigenous Peoples Partnership Program (IPPP). • The assumption is made that DFAIT will continue to be successful in including CSR standards within free-trade negotiations with countries in Latin America that have ratified the ILO Convention 169.

	Canada	Latin America	Linkages	Assumptions
<p align="center">Desired Impact of Recommendations Proposed</p>	<ul style="list-style-type: none"> • Canadian mining companies with operations in countries that have ratified the ILO Convention 169 have a competitive advantage due to their experience with the consultation process and the CSR standards set by governments. • The Government of Canada, through its Departments and Agencies working in Latin America, has the knowledge and tools to promote and maintain standards of responsible mining. • The Government of Canada, through its Departments and Agencies working in Latin America, is better equipped to respond to strategies for achieving the Millennium Development Goals (MDGs). 	<ul style="list-style-type: none"> • Mining companies that comply with the ILO Convention 169 gain a competitive advantage over companies that neither have the capacity nor the experience of complying with a CSR standard that mandates free, prior and informed consultations with Indigenous Peoples • Indigenous Peoples would benefit from the stability that would follow a guarantee that the right to free, prior and informed consultation would be respected • Indigenous Peoples would also benefit from direct participation in the benefits derived from mining as a result of negotiations that follow an “in good faith” process of consultation. 	<ul style="list-style-type: none"> • The reputation of Canadian companies as respectful of indigenous rights and as contributors to the development of host communities would allow them to work in regions where higher standards would decrease competition and increase access to opportunities to companies willing and able to comply with a process of free, prior and informed consultation and the achievement of broad community support. 	<ul style="list-style-type: none"> • An assumption is made that the ILO Convention 169 would be enforced in a consistent manner across the mining industry regardless of the nationality of any given company. • The assumption is made that CSR standards would be developed in parallel with the strengthening of the government’s ability to implement the ILO Convention 169 and the resulting obligation to consult Indigenous Peoples.

	Canada	Latin America	Linkages	Assumptions
<p>Recommendations relevant to the Roundtable Process on CSR that were reinforced by the workshops</p>	<ul style="list-style-type: none"> • <i>The Government of Canada</i> <p>The Government of Canada could look into the potential of the Flow-Through-Share (FTS) model as an incentive for Canadian companies who support the consultation process in their operations abroad.</p> <ul style="list-style-type: none"> • <i>The Department of Foreign Affairs & International Trade (DFAIT)</i> <p>DFAIT currently has as one of its priorities the negotiation and signing of a number of bilateral trade agreements with Latin American countries that have ratified the ILO Convention 169. The Canadian government could raise the issue of the status of consultations with indigenous communities during these negotiations as part of a framework for advancing CSR and creating better access for Canadian mining companies through assurance of broad community support.</p>	<p><i>Note: The following recommendations came from community representatives who participated in the Peru workshop.</i></p> <ul style="list-style-type: none"> • Normalize (legally) the participation of communities during the phases of prospecting, exploration, and exploitation so that communities are involved in the process of monitoring environmental impacts. • The Ministry of Energy and Mines should periodically (annually) inform communities, through their municipal governments, of the mining acts that involve their area: new concessions, exploration activities, changes in exploitation activities, and future mine closures (information could be disseminated during the workshops organized by Community Assemblies for the purpose of developing participatory proposals) 	<ul style="list-style-type: none"> • The Government of Canada, through DFAIT and its foreign missions abroad could play a major role in encouraging and supporting continued open dialogue on issues related to Indigenous Peoples, governance, consultation and mining. • Through the Americas Branch, CIDA Inc., and/or the Indigenous Peoples Partnership Program (IPPP), could support consultation processes in LAC countries where Canadian mining companies operate. • The government of Canada may wish to review its policy position toward consultations and include government directed consultations with Indigenous Peoples as a desired first step in reaching a successfully negotiated Impact & Benefits Agreement (IBA). 	<ul style="list-style-type: none"> • An assumption is made that although Canada has a duty to consult Indigenous Peoples and many success stories have resulted from the use of IBAs, there is still no current best practice model for government directed consultations that can be replicated in Latin America. • An assumption is made that cooperation between governments on improving the process of consultation of Indigenous Peoples in Canada and in Latin America would be of mutual benefit.

	Canada	Latin America	Linkages	Assumptions
<p>Recommendations relevant to the Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>	<ul style="list-style-type: none"> • <i>The Canadian International Development Agency (CIDA)</i> <p>Through the Americas Branch, CIDA could develop bilateral agreements with governments of LAC countries to provide funding and assistance to develop mechanisms for broad consultation of local communities (including but not exclusive to indigenous communities). This could be done through a similar mechanism through which the PERCAN initiative was developed in Peru.</p> <p>Through the IPPP, CIDA could encourage partnerships between Canadian aboriginal organizations and LAC indigenous organizations in order to build capacity in communities to manage the consultation process.</p>	<ul style="list-style-type: none"> • Indigenous communities should have direct access to a portion of the tax revenue generated by mining activities in their area (these monies should be placed in a fund that is managed by the community) • Revisit pertinent laws to assure that they are consistent with the Articles of the ILO Convention 169 • It is recommended that the government include a clause in its contracts with companies for the granting of licenses that creates an insurance policy against any potential risk of contamination (risks of contamination should be evaluated with the participation of the community) • The government should guarantee and regulate the use of mining technology so that “clean technologies” become the norm in industry 	<ul style="list-style-type: none"> • The practice of engaging in government directed consultations prior to community negotiations with industry should be promoted both as a domestic best practice and as a best practice to be taken up by companies in their foreign operations. 	

	Canada	Latin America	Linkages	Assumptions
<p>Recommendations relevant to the Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>	<p>In order for the IPPP to be able to fund partnerships for consultation, greater flexibilities would have to be built into the program in order to adapt to the reality that many LAC community groups lack the institutional capacities that will allow them to take the lead on projects. A statement of need, endorsed by the community, should be sufficient for establishing the justification for a partnership when it comes to partnerships for consultation.</p> <p>Through CIDA Inc., CIDA could assist mining companies in developing CSR frameworks that are more accepting of the participation of indigenous communities, local governments, and NGOs.</p>	<ul style="list-style-type: none"> • The government should guarantee the advanced notification of communities in potential areas of influence about any new applications for concessions that are being processed • Companies should explain their activities/projects during the workshops organized by Community Assemblies for the purpose of developing participatory proposals • Prior consultation should be conducted with communities as a precursor to receiving a social license to operate from the community • Judicial or legal stability: laws pertaining to Indigenous Peoples (including title to lands) should be insured against short-term changes <p>The organic law of municipalities should include a norm that formalizes the participation of the community in the elaboration of programs, projects, and plans within the district of the municipality.</p>		

	Canada	Latin America	Linkages	Assumptions
<p>Recommendations relevant to the Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>	<p>CIDA could also support the institutional strengthening of municipal associations. Possible Canadian partners in these initiatives could be the University of Toronto's Institute for Municipal Finance and Governance, which is housed within the Munk Centre for International Studies, and the Federation of Canadian Municipalities (FCM).</p> <p>These efforts should be coordinated with projects such as the Enhancing Local Benefits program of the International Financial Corporation (IFC) in Peru.</p> <ul style="list-style-type: none"> • <i>The Department of Indian & Northern Affairs Canada (INAC)</i> <p>Through its international secretariat, INAC could form partnerships with government departments in Latin American countries where Canadian mining companies operate in order to work jointly on improving processes and capacity for consultation.</p>	<ul style="list-style-type: none"> • That the right to consultation, including local economic priorities, be applied to all communities in the zone of influence of a mining project • Resolve issues of land title for indigenous communities • That norms related to participation be disseminated and promoted in communities through their municipalities and through colleges so that community members are aware of their rights • That municipal governments comply with their legal obligation to give account of their spending and publish their budgets • That all municipalities convoke, with prior notification of one full week, open meetings to determine local economic development and budgetary priorities 		

	Canada	Latin America	Linkages	Assumptions
<p>Recommendations relevant to the Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>	<p>These partnerships could have the purpose of facilitating the exchange of information and the improvement and harmonization of consultation processes in Canada and in Latin America.</p>	<ul style="list-style-type: none"> • That the opinions and proposals of community members be aired by radio or some other appropriate means of communication so that the voice of the community can be heard by all the local authorities <p>It is recommended that communities seek out knowledge and share their understandings with communities that have experience with mining so that they can enrich their knowledge on the degree to which norms are being fulfilled by their governments, communities, and the private sector. It is recommended that the municipal government could contribute time and/or resources to these knowledge sharing activities</p>		

	Canada	Latin America	Linkages	Assumptions
<p>Conclusions drawn from the Canadian Roundtable Process on CSR that were reinforced by the workshops</p>	<ul style="list-style-type: none"> • <i>Indigenous Peoples’ Rights</i> <p>In order to “support” and “promote” CSR capacity building that respects the rights of Indigenous Peoples, it is crucial that the Government of Canada acknowledge the role that the ILO Convention 169 plays within the legal structure of many Latin American countries</p> <ul style="list-style-type: none"> • <i>CSR Standards – Voluntary vs. Regulatory</i> <p>The report mentions “meeting or exceeding good CSR standards with respect to human rights and the environment” as a way in which Canadian companies could generate a competitive advantage in their foreign operations.</p>	<ul style="list-style-type: none"> • <i>Indigenous Peoples’ Rights</i> <p>A need exists to “advance” the rights of Indigenous Peoples in relation to CSR & mining developments</p> <p>The ILO Convention 169 is the longest standing legal framework for defining the rights of Indigenous Peoples in many Latin American countries</p> <ul style="list-style-type: none"> • <i>CSR Standards – Voluntary vs. Regulatory</i> <p>Given the complex nature of the relationship between Indigenous Peoples and the mining industry in Latin America and the current polarization of points of view, voluntary industry led initiatives are insufficient.</p> <p>A minimum industry wide set of standards and/or regulation must be developed such that companies can effectively and efficiently engage in dialogue with Indigenous Peoples and local governments.</p>	<ul style="list-style-type: none"> • <i>Indigenous Peoples’ Rights</i> <p>Although Canada is not a signatory of the ILO Convention 169, there is nothing that legally prevents the Government of Canada from taking into account such a convention in CSR standards that are adapted for the operations of Canadian mining companies abroad</p> <ul style="list-style-type: none"> • <i>CSR Standards – Voluntary vs. Regulatory</i> <p>If the Canadian Government were to develop a set of minimum standards as a condition for support of operations abroad and tied investment incentives to these standards not only would individual companies gain a competitive advantage but also the Canadian mining investment infrastructure as a whole would maintain its comparative advantage.</p>	<ul style="list-style-type: none"> • <i>Indigenous Peoples’ Rights</i> <p>An assumption is being made that the Government of Canada will continue to strengthen its relationship with counties in Latin America.</p> <p>An assumption is being made that the Canadian experience of CSR in relation to mining developments that affect Indigenous Peoples in Canada is an experience that is of value to the Latin American context.</p> <ul style="list-style-type: none"> • <i>CSR Standards – Voluntary vs. Regulatory</i> <p>An assumption is being made that the trend toward increased environmental regulation will continue in Latin America and that standards will be maintained for all mining companies regardless of nationality.</p> <p>An assumption is being made that Latin America will continue to be a prime target region for Canadian mining investments.</p>

	Canada	Latin America	Linkages	Assumptions
<p>Conclusions drawn from the Canadian Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>	<ul style="list-style-type: none"> • <i>Definition of “Broad Community Support”</i> <p>Broad community support is an important factor in understanding the link between the environmental sustainability of operations and the sustainability of host communities beyond the closure of a mine.</p> <p>The Canadian Government and mining industry need to better understand the impacts of mining on host communities and the types of conditions and guarantees that would contribute to establishing broad community support and a social license to operate in rural indigenous communities in Latin America.</p> <ul style="list-style-type: none"> • <i>Free, Prior and Informed Consent – Consultation</i> <p>CSR frameworks and standards need to respect the duty of governments to consult Indigenous Peoples</p>	<ul style="list-style-type: none"> • <i>Definition of “Broad Community Support”</i> <p>In economic terms there is a potential for a large gap between the positive and negative externalities that mining activities can generate in rural indigenous communities in Latin America. Broad community support is therefore crucial for the growth of sustainable communities under this context.</p> <p>The danger of not seeking broad community support is that those who otherwise make decisions for the community may be more likely to fall into a bias of accepting immediate and temporary economic opportunities at the expense of long-term benefits to the community as a whole.</p>	<ul style="list-style-type: none"> • <i>Definition of “Broad Community Support”</i> <p>The strength of local governance is a critical factor in defining broad community support and guaranteeing a social license to operate. Free, prior, and informed consultation is therefore fundamental if broad community support is to be achieved and a mining project is to contribute to the sustainability of a host community.</p> <ul style="list-style-type: none"> • <i>Free, Prior and Informed Consent – Consultation</i> <p>In order to avoid further polarization on these matters a mechanism for consultation needs to be developed and supported that aims at reaching agreements first of all between local government and the community on what the local socio-economic priorities are and secondly on how the community will be supported throughout a process of negotiation with a company.</p>	<ul style="list-style-type: none"> • <i>Definition of “Broad Community Support”</i> <p>The assumption is being made that the meaning of community for Indigenous Peoples in Latin America cannot be defined within the mere boundaries of legal jurisdictions and that indigenous communities of interest would also include components of culture and family ties.</p> <p>An assumption is being made that there is a general consensus that broad community support and the strengthening of the social capital of indigenous communities are crucial elements for the success of the relationship between a mining company and a host community.</p>

	Canada	Latin America	Linkages	Assumptions
<p>Conclusions drawn from the Canadian Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>	<p>Given the importance that the Canadian Government places on governance and decentralization in its engagement with Latin American countries the Canadian Government should acknowledge that indigenous governance will continue to be weakened so long as communities are excluded from the decision-making processes that affect them directly.</p> <ul style="list-style-type: none"> • <i>Engagement with Civil Society and Indigenous Peoples</i> <p>The value of Civil Society Organizations (CSOs) is in their capacity and ability to identify and fill gaps in the flows of information by creating channels of communication and by increasing the capacity of their interest groups to access, internalize, and manipulate information relevant to making decisions.</p>	<ul style="list-style-type: none"> • <i>Free, Prior and Informed Consent – Consultation</i> <p>Free, prior and informed consultation goes hand in hand with free, prior and informed consent in the sense that the primary objective of consultation is to reach an agreement on the conditions for entering into negotiations and the reaching of a mutual understanding about the rights that each actor has in their relation to others.</p> <p>In this sense consent neither means a veto power nor a voting process since it does not refer to conducting a referendum. The ILO Convention 169 does not refer to referendums when it refers to consultation but rather the reaching of an agreement between the government and the indigenous community on the conditions for entering into further negotiations.</p>	<ul style="list-style-type: none"> • <i>Engagement with Civil Society and Indigenous Peoples</i> <p>If mining operations, CSR frameworks/standards, and government actions are seen as going against the right to free, prior and informed consultations, then communication and dialogue will likely break down.</p> <p>Tripartite dialogue is therefore both a mechanism for bringing issues to the forefront of policy discussions and an indicator of the acceptance of the current parameters guiding mining developments.</p> <ul style="list-style-type: none"> • <i>Dialogue – Tripartite</i> <p>When priority is given to the support of industry by both the Canadian Government and host country governments without sufficient regard for the strength of local governance it becomes increasingly difficult to create the conditions under which free, prior, and informed consultation could be institutionalized.</p>	<ul style="list-style-type: none"> • <i>Free, Prior and Informed Consent – Consultation</i> <p>An assumption is being made that there is sufficient political will and economic resources available within government to develop a mechanism for community consultations and to direct the consultation process.</p> <p>An assumption is being made that both the Canadian Government and governments in Latin America recognize their Constitutional obligation to conduct consultations with Indigenous Peoples, regardless of how this legal obligation has come about in either context.</p> <ul style="list-style-type: none"> • <i>Engagement with Civil Society and Indigenous Peoples</i> <p>An assumption is being made that increasing engagement with CSOs will help create greater transparency in communication and capacity for dialogue.</p>

	Canada	Latin America	Linkages	Assumptions
<p>Conclusions drawn from the Canadian Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>	<p>CSOs that replace the voice of their interest groups or assume false representation of others do not contribute to the process of increasing governance. CSOs that operate in the above manner decrease the transparency possible in any consultative process and also contribute to the creation of gaps in the flow of information.</p> <ul style="list-style-type: none"> • <i>Dialogue – Tripartite</i> <p>Support for tripartite dialogue is crucial for keeping the channels of communication open between government departments and among governments and other stakeholders, including Indigenous Peoples and industry.</p> <ul style="list-style-type: none"> • <i>Role of Governments in Fostering Conditions</i> <p>The Canadian Government has an important role to play, as both a source of funding and general support, in fostering the conditions under which CSO and private sector initiatives in CSR can flourish.</p>	<p>The distinction between an adequate consultation and a referendum needs to be clear. Further, the process of negotiation has as its end the reaching of a consensus that is legally binding. Therefore, consultation and consensus go hand in hand and are inseparable from the rights of Indigenous Peoples.</p> <ul style="list-style-type: none"> • <i>Engagement with Civil Society and Indigenous Peoples</i> <p>The major issue of importance to indigenous communities and CSOs is free, prior, and informed consultation.</p> <p>The lack of transparency and accountability of some CSOs is an important issue and a potential hindrance in increasing engagement with some CSOs operating in Latin America.</p>	<ul style="list-style-type: none"> • <i>Role of Governments in Fostering Conditions</i> <p>Support for government led consultations with indigenous communities should be the primary focus of government support for the CSR initiatives of CSOs and the private sector.</p> <p>CSR initiatives should not replace regulation.</p> <ul style="list-style-type: none"> • <i>CIDA Support</i> <p>In order for mining to contribute to sustainable rural indigenous communities there needs to be strong coordination between local governments, Indigenous Peoples, CSOs, and the private sector.</p> <p>Partnerships are an important component of sustainability and increased participation from indigenous communities is necessary in order to establish broad community support for CSR initiatives that can act as an impetus for development.</p>	<ul style="list-style-type: none"> • <i>Dialogue – Tripartite</i> <p>The assumption is being made that efforts to increase transparency could in turn increase the capacity to “create opportunities for constructive dialogue”.</p> <ul style="list-style-type: none"> • <i>Role of Governments in Fostering Conditions</i> <p>The assumption is being made that CSR initiatives put forth from CSOs and the private sector are often more flexible than government activities in their approach and deliverability.</p> <p>An assumption is being made that the institutional capacity and strength of governance of some CSOs and private entities are stronger than those of government entities in many of the rural areas where these organizations operate.</p>

	Canada	Latin America	Linkages	Assumptions
<p>Conclusions drawn from the Canadian Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>	<ul style="list-style-type: none"> • <i>CIDA Support</i> <p>The Government of Canada, through the Canadian International Development Agency (CIDA), could have an important role to play in building consistency between the standards for mining investments in Latin America and development priorities of indigenous communities.</p> <ul style="list-style-type: none"> • <i>Local Economic Development</i> <p>The Canadian Government could have a positive impact on the development of strategies for “assuring” that private investments in mining support local development needs.</p> <ul style="list-style-type: none"> • <i>Strengthening Governance</i> <p>Canadian mining industry associations play an important role in the “development” and “promotion” of CSR tools for member companies that operate in countries that suffer from weak governance.</p>	<ul style="list-style-type: none"> • <i>Dialogue – Tripartite</i> <p>The prioritising of government support for the extractive industries is at the heart of the debate on free, prior, and informed consultation and has an impact on the willingness and ability of governments in Latin America to engage in genuine dialogue with all actors involved.</p> <ul style="list-style-type: none"> • <i>Role of Governments in Fostering Conditions</i> <p>Given the importance of base-line studies in monitoring the positive and negative impacts of mining on communities, governments should lead consultations with communities, as a bare minimum, in order to help establish the parameters for data that would be used by mining companies to monitor the socio-environmental impacts of projects.</p>	<ul style="list-style-type: none"> • <i>Local Economic Development</i> <p>In order for Indigenous Peoples to participate more fully in defining investment priorities their representatives require access to resources from other levels of government.</p> <p>The process of decentralizing economic planning also requires a strengthening of local institutions.</p> <ul style="list-style-type: none"> • <i>Strengthening Governance</i> <p>Industry could improve its CSR practices and help to strengthen governance by insisting that governments carry out free, prior, and informed consultation as a precondition to assuming the risks of developing a mining project.</p> <ul style="list-style-type: none"> • <i>Tools & Incentives</i> <p>The development of CSR tools is best left in the hands of industry associations; however, the creation of incentives should fall into the hands of governments.</p>	<ul style="list-style-type: none"> • <i>CIDA Support</i> <p>The assumption is being made that mining investments are mid-term and undergo fluctuations in the extent to which they can contribute either directly or indirectly to local economic development.</p> <ul style="list-style-type: none"> • <i>Local Economic Development</i> <p>The assumption is being made that local governments are not entirely restricted in the ability to use financial resources in support of productive activities and that not all monies are required to go toward investments in urban infrastructure.</p> <ul style="list-style-type: none"> • <i>Strengthening Governance</i> <p>An assumption is being made that governments would respond positively to pressures from mining companies requesting that consultations occur in the area of influence of their projected activities.</p>

	Canada	Latin America	Linkages	Assumptions
<p>Conclusions drawn from the Canadian Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>	<p>Industry associations, due to the political sphere of their activities, are in a good position to be involved in tripartite dialogue with Indigenous Peoples and governments.</p> <ul style="list-style-type: none"> • <i>Tools & Incentives</i> <p>Improving access to economic opportunities for indigenous communities in Latin America derived from mining requires the strengthening of governance and CSR tools. Tools and incentives should be developed in Canada using a framework that recognizes the importance of consultation with Indigenous Peoples.</p>	<ul style="list-style-type: none"> • <i>CIDA Support</i> <p>In order for development to be sustainable beyond the life of a mine, the mine must build up financial and social capital within the community that can be transferable to other productive assets and economic activities upon the closure of the mine.</p> <ul style="list-style-type: none"> • <i>Local Economic Development</i> <p>Indigenous Peoples have expressed a consistent desire to be included more effectively as participants in decision-making processes. Local ownership and the building of capacities are both crucial elements for sustainable development. These elements can only be achieved through direct participation and dialogue.</p> <p>Local governments often lack the ability to identify priorities for investment and lack the administrative skills and discipline required to make long-term investments that meet the development needs of the community.</p>	<p>There are two types of incentives that can be applied to the mining industry: positive (or economic) incentives and negative (or retroactive) incentives.</p>	<p>The assumption is being made that the average Canadian exploration company would not be increasing its marginal exposure to risk from competition by making such a request.</p> <ul style="list-style-type: none"> • <i>Tools & Incentives</i> <p>The assumption is made that both economic and retroactive incentives can be developed within the jurisdiction of Canada that will actually have a tangible impact upon the operations of Canadian companies abroad.</p>

	Canada	Latin America	Linkages	Assumptions
<p>Conclusions drawn from the Canadian Roundtable Process on CSR that were reinforced by the workshops (Continued)</p>		<p>In many circumstances local development plans do not exist and the priorities of local communities are often dismissed because of a centralized system of planning.</p> <ul style="list-style-type: none"> • <i>Strengthening Governance</i> <p>Respect for the institutions of indigenous governance is fundamental for mining operations in countries where the decentralization process is weak. A major component of respecting the rights of Indigenous Peoples and their governance institutions comes from respecting the right to free, prior and informed consultation.</p> <ul style="list-style-type: none"> • <i>Tools & Incentives</i> <p>Developing tools and incentives that disregard the importance of consultation in gaining broad community support will only lead to further polarization and will undermine the effectiveness of CSR frameworks and standards.</p>		

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