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***Meaningful Consultation and Participation
in the Mining Sector?
A Review of the Consultation and Participation
of Indigenous Peoples within the International Mining Sector***

Gail Whiteman and Katy Mamen

The North-South Institute

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Table of Contents

Introduction.....	1
Section 1-The Rights of Indigenous Peoples to Meaningful.....	4
Summary.....	12
Section 2 - Mining on Indigenous lands.....	13
Section 3 - Indigenous Peoples fight back.....	18
Lawsuits.....	18
Public activism: community mobilization and protest.....	20
Challenging environmental impact assessments.....	22
Appeals to international fora.....	24
Negotiation.....	25
Economic engagement with the mining industry.....	25
Summary.....	26
Section 4 - Initiatives by the international community, NGOs and the mining industry.....	28
The international community.....	28
Country initiatives.....	34
NGO Activity: Pressure for meaningful consultation and participation.....	37
The corporate shift toward “sustainable development in mining”.....	42
Summary.....	50
Section 5 - Differentiating between consultation and participation.....	51
What is consultation?.....	51
Participation.....	52
Consultation in practice.....	59
Summary.....	63
Section 6 - An in-depth look at consultation.....	65
The main players in consultation.....	65
The paths of dialogue.....	66
The consultation process.....	73
Key principles of effective consultation processes.....	75
Goals and objectives of the consultation process.....	77
The mechanics of the consultation process.....	78
Summary.....	93

Section 7 - Concluding thoughts and research needs.....	94
The need for further work.....	95
Appendix 1: Indigenous community policies, guidelines and protocols from Canada	97
Appendix 2: Corporate policies and statements pertaining to Indigenous peoples	104
Appendix 3: Sustainable development markers.....	106
References.....	108
Endnotes.....	126

Introduction

Despite being the traditional managers of local ecosystems, Indigenous peoples usually find themselves on the margins of most mining projects, with little or no consultation or participation in decisions that may significantly impact their lives and lands.

Not surprisingly, conflict between Indigenous peoples and the mining industry is widespread, and hostilities can be deeply entrenched and explosive. While each situation is unique, conflict has often resulted from Indigenous peoples' lack of land rights, divergent beliefs on land and resource management, lack of community access to information about mining proposed and existing mining operations and the alienation of Indigenous communities from the central government and its decisions on land access and mine exploration and development plans. Conflict also arises as Indigenous peoples attempt to resist the negative social and environmental impacts of mining and seek to rectify cases of organizational injustice through greater participation in natural resources development (see Whiteman and Mamen, under review).

At the crux of the issue is a power imbalance with mining companies and governments controlling a development agenda that increasingly favours open markets and the liberalization of mining laws. In addition, the role of national governments in natural resources development has decreased, leaving the private sector in greater control of impacts on Indigenous peoples' lands. At the same time, many Indigenous communities are fighting poverty conditions and are understandably concerned with jobs, development programs, improved health and social services and better education. For some, the economic potential of minerals development is appealing. However, such communities typically want development on their own terms, not those imposed by mining companies and national governments.

While not easy to rectify, this issue has been increasingly recognized by civil society groups, international agencies and by the private and public sectors. Consultation, while not a panacea, has been identified as a key tool by which the mining industry can more effectively recognize and address potential social and environmental impacts, which in turn may reduce the inequities and conflict that surround mining projects on Indigenous territories. While more meaningful consultation is critical, it is not the full solution. Indigenous peoples and civil society groups are also demanding greater participation in natural resources management (NRM) as well as the acknowledgement of, and respect for, Indigenous land rights and the right to prior informed consent as outlined in international law and international agreements.

This literature review attempts to synthesize and expand current knowledge concerning the consultation and participation of Indigenous peoples within the international mining sector (see Box 1 for a classification of "Indigenous peoples"). We provide an overview and synthesis of consultation and engagement practices, drawing from academic literature, as well as civil society, industry, and government initiatives. However, we also attempt to move the debate away from a narrowed focus on consultation. We argue that a shift toward "responsible" mining requires a broader approach—the *meaningful participation* of Indigenous peoples at both the consultation and decision-making level of natural resources management, including the right to prior informed consent.

While international in flavour, this review is not meant as an all-encompassing survey. Instead, it is a starting point for research and dialogue with a focus on improving the level of Indigenous peoples' participation in decisions surrounding mining, including the right to prior informed consent. Our literature review will also serve as background information for a participatory research project undertaken by The North-South Institute (NSI) in Ottawa, The Amerindian Peoples Association (APA) in Guyana and The Instituto de Estudios Regionales (INER) in Colombia, entitled: "Exploring Indigenous Perspectives on Consultation and Engagement within the Mining Sector of Latin America and the Caribbean (LAC)." This research project is funded by The International Development Research Centre (IDRC). Results of this multi-country field research will be published in a later synthesis report. In addition, this literature review may be used as a discussion document for a multi-stakeholder round table on this issue.

Our monograph is organized as follows:

- Section 1: The Rights of Indigenous peoples to Meaningful Participation in Natural Resources Management
- Section 2: Mining on Indigenous Lands
- Section 3: Indigenous Peoples Fight Back
- Section 4: Initiatives by the International Community, NGOs and the Mining Industry
- Section 5: Differentiating between Consultation and Participation
- Section 6: An In-depth Look at Consultation
- Section 7: Concluding Thoughts and Research Needs

Box 1 - Who are Indigenous peoples?

While the criteria for defining “Indigenous peoples” is sometimes unclear, it is generally agreed that the term covers a vastly diverse group of peoples, each with unique characteristics. Other terms that apply to Indigenous peoples in different locations include Aboriginal, tribal, traditional, First Nations, Native, Indian and sometimes locals.

The World Council of Indigenous People offers this definition: “Population groups who from ancient times have inhabited the lands where we live, who are aware of having a character of our own, with social traditions and means of expression that are linked to the country inherited from our ancestors, with a language of our own, and having certain essential and unique characteristics which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should be thus regarded by others” (cited in IUCN 1997: 27).

Internationally, the definition proposed by the International Labour Organization (ILO) in the Indigenous and Tribal Peoples Convention No. 169 has wide support. The Convention defines Indigenous and tribal peoples as,

“(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”

A key aspect of the ILO’s definition is that self-identification is a fundamental criterion by which groups are identified as Indigenous or tribal peoples.

Section 1- The Rights of Indigenous Peoples to Meaningful Participation in Natural Resources Management

“Decision-making is not made by those who are affected by those decisions, people who live on the land, but corporations, with an interest which is entirely different than that of the land, and the people, or the women of the land. This brings forth a fundamental question. What gives these corporations like Conoco, Shell, Exxon, Diashawa, ITT, Rio Tinto Zinc and the World Bank, a right which supersedes or is superior to my human right to live on my land, or that of my family, my community, my nation, our nations, and to us as women. What law gives that right to them, not any law of the Creator, or of Mother Earth?.

Is that right contained within their wealth? Is that right contained within their wealth that which is historically acquired immorally, unethically, through colonialism, imperialism, and paid for with the lives of millions of people, or species of plants and entire ecosystems. They should have no such right, that right of self determination, and to determine our destiny, and that of our future generations.” - Winona LaDuke, member of the Mississippi Band of Anishinaabeg, Minnesota, US (LaDuke 1995)

Indigenous peoples have special rights to land and resources, as well as participation in decision-making, as outlined in numerous international agreements such as Agenda 21, the Rio Declaration on Environment and Development, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Universal Declaration of Human Rights, the International Labour Organization (ILO) Convention 169, the UN Draft Declaration on the Rights of Indigenous Peoples, the OAS (Organization of American States) Declaration on the Rights of Indigenous Peoples and the UN Convention on Biological Diversity (CBD).

A review of these international agreements with respect to how they address issues of consultation and participation in natural resources development is presented in Table 1 (see also Forest Peoples Programme *et al* 2000 for an excellent discussion on Indigenous rights with respect to mining). Most of these agreements recognize the rights of Indigenous peoples to participate in, and be consulted on, natural resources development. Most agreements recognize the rights of Indigenous peoples to self-determination. In addition, the right to prior informed consent of such projects is clearly recognized in ILO 169, CERD, the UN Draft Declaration on Rights of Indigenous Peoples, and the OAS Declaration on the Rights of Indigenous Peoples. CERD, the UN Draft Declaration and the OAS Declaration also explicitly identify the need to recognize and promote Indigenous land rights.

CERD and ILO 169 have also recognized the need to compensate Indigenous peoples who are deprived of land or whose land is negatively impacted by minerals development, including the restoration of land. Agenda 21 states that Indigenous land should also be protected from culturally or environmentally unsound activities. Many also recognize the value and need to include traditional knowledge in resource management, to protect Indigenous knowledge, practices and culture and to promote capacity building among Indigenous communities. A summary of these considerations in the respective agreements is provided in Box 2.

Despite the existence of these international standards, informed consent is a rarity and the

implementation of meaningful approaches to consultation and participation is not common, even within countries that have ratified ILO 169. Canada, like some other countries, has refused to sign ILO 169, while simultaneously attempting to position itself as ‘the world’s ‘smartest’ natural resources steward, developer, user and exporter—the most high-tech, the most environmentally friendly, the most socially responsible, the most productive and competitive—leading the world as a living model of sustainable development” (Goodale 2001).

Table 1 Review of key international agreements relating to Indigenous peoples and natural resources development

Dimensions	Agenda 21	Rio Declaration	CBD	CERD	ICCPR	ICESCR	ILO 169	UN Draft Decl'n Rights of IP	OAS Decl'n on Rights of IP	UN Charter
(Parties should) recognize/promote Indigenous identity & interests	X	X	X							
Recognize/promote Indigenous land rights				X			X	X		
Recognize IP rights to self-determination or self-government				X	X	X	X	X	X	X
Recognize/promote traditional resource management	X		X	X				X		
Recognize/promote equal rights to participation in public affairs				X	X		X			
Recognize role of IP in sustainable development & environmental management	X	X					X	X	X	
Improve/recognize rights to Indigenous participation in resource management	X	X					X	X	X	
Promote Indigenous capacity-building	X									
Protect IP knowledge, innovations, practices / culture		X	X							
Protect IP lands from culturally/environmentally unsound activities	X									
Strengthen IP policies/legislation at national level; IP participation in..	X						X	X	X	
Strengthen nat'l dispute resolution mechanisms to settle land/resources management concerns	X									
Achieve informed consent of IP prior to decisions affecting their rights/interests				X			X	X	X	
IP rights to participation in decisions that affect them/informed consent				X			X	X	X	
Where IP have been deprived of lands, must restore/compensate				X			X			
Gov't required to consult with IP re. mineral development							X		X	
IP right to participation and compensation of mineral activities							X	X	X	

Box 2 - International instruments emphasizing the rights and importance of Indigenous peoples in natural resources management

Agenda 21: Chapter 26: Recognizing and Strengthening the Role of Indigenous People and their Communities

Chapter 26 of Agenda 21, the principal document to emerge from the United Nations Conference on Environment and Development (UNCED or Earth Summit) in 1992, deals with the recognition and strengthening of the role of Indigenous peoples and their communities in sustainable development. The document encourages governments and intergovernmental organizations to recognize the importance of Indigenous peoples' values, traditional knowledge and resource management practices to sustainable development, as well as to enhance the participation of Indigenous peoples in the local and national formulation of policies, laws, strategies and programs relating to resource management and other development processes that may affect them. Further, it calls on governments to empower Indigenous peoples and communities through measures such as protecting Indigenous peoples' lands "from activities that are environmentally unsound or that the Indigenous people concerned consider to be socially and culturally inappropriate" and enhancing capacity-building for Indigenous communities, based on traditional experience, knowledge and resource-management practices.

Rio Declaration on Environment and Development

Principle 22: Indigenous people and their communities, as well as other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

The CERD Committee, which oversees compliance, calls for State Parties to ensure that Indigenous peoples have equal rights with respect to effective participation in public life, and that informed consent must be obtained before decisions directly relating to their rights and interests are made. Also, State Parties should not only recognize and protect Indigenous peoples' rights to own, develop, control and use communal lands, territories and resources, but in cases where Indigenous peoples have been deprived of their traditional lands, steps must be taken to return these lands and territories, or where this is not possible, to fairly and promptly compensate these people (Pritchard 1999). CERD is monitored by the Committee on the Elimination of Racial Discrimination, which calls on States to "ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent (Nettheim 1998).

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Universal Declaration of Human Rights (UDHR)

The UDHR, under Article 17: protection against arbitrary interference with property; Article 27: interpreted by Human Rights Committee to include “protection of a particular way of life associated with the use of land resources” (cited in Australian Asian-Pacific Mining Network 1998: 12)

ILO Convention 169

Article 6: Signatory governments are required to appropriately consult Indigenous peoples when legislative or administrative measures which may directly affect them are considered, as well as provide means by which participation can take place and establish the means for the development of these peoples’ own institutions and initiatives. Further, these consultations are to be undertaken in good faith, in a format suitable to the circumstances, and with the goal of reaching agreement or consent to the given measures.

Article 7.1: Indigenous peoples may decide and exert control over their own development priorities, as well as participate in the “formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”

Article 14.1: The rights of Indigenous peoples to collective or individual ownership of lands traditionally occupied shall be recognized, and adequate procedures undertaken to resolve land claims within the national legal system. Article 15.1: Indigenous peoples’ rights concerning natural resources on their lands will be safeguarded, including their rights to “participate in the use, management and conservation” of these resources.

Article 15.2: “In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities” (ILO 1989).

ILO 169 has been criticized by Indigenous peoples for its avoidance of the issue of self-determination, and its focus on consultation and participation rather than an obligation to acquire consent, lack of recognition of ownership of land resources. However, the Convention remains a relatively strong international agreement in support of Indigenous peoples and many still support its ratification (Pritchard 1999). Fourteen countries have ratified ILO 169, including Argentina, Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay and Peru. Canada and Guyana are not currently signatories.

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UN Draft Declaration on the Rights of Indigenous Peoples

(OAS) American Declaration on the Rights of Indigenous Peoples

(see p. 8 where this is titled the OAS Declaration on the Rights of Indigenous Peoples correct if necessary) approved by Inter-American Commission on Human Rights (IACHR) in 1997:

Part V of the Declaration includes the affirmation of the rights of Indigenous peoples to full participation in all decision-making that may affect their rights, lives and destinies, as well as in devising legislative or administrative measures that may affect them, and to develop their own decision-making institutions. Part VI includes: the right of Indigenous peoples to own, develop, control and use lands traditionally owned or otherwise occupied and used, the full recognition of their resource management laws, traditions, land-tenure systems, and institutions; and the right to conserve, restore, protect and determine strategies for development or use of their lands. Furthermore, Indigenous peoples should have the “right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

This declaration has not yet been adopted by the UN General Assembly, and even when adopted it will be non-binding. Many governments have expressed an unwillingness to agree to all provisions as currently devised, but the Declaration has been applauded by many Indigenous peoples worldwide (Pritchard 1999).

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(continued from page 13)

(OAS) American Declaration on the Rights of Indigenous Peoples

Approved by Inter-American Commission on Human Rights (IACHR) in 1997

Preamble: "Recognizing that in many Indigenous cultures, traditional collective systems for the control and use of land, territories, resources, bodies of water and coastal areas are a necessary condition for their survival, social organization, development and their individual and collective well-being; and that the forms of such control and ownership vary and differ, and do not necessarily coincide with the systems protected by the common laws of the states in which they reside.

Article 13.7: When a State declares an Indigenous territory to be a protected area, and in the case of any lands, territories and resources under potential or actual claim by Indigenous peoples, as well as locales used as natural biopreserves, conservation areas shall not be subject to any natural resources development without the informed consent and participation of the peoples concerned. Article 13 also calls for full Indigenous participation in policies and government programs that affect them and their ability to maintain a healthy environment.

Article 15: 1. Indigenous peoples have the right to freely determine their political status and freely pursue their economic, social, spiritual and cultural development, and are therefore, entitled to autonomy or self-government with regard to inter alia culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, the environment and entry by non-members; and to determine ways and means for financing these autonomous functions. 2. Indigenous peoples have the right to participate without discrimination, if they so decide, in decision-making, at all levels, concerning matters which might affect their rights, lives and destiny. They may do so directly or through representatives chosen by them pursuant to their own procedures. They shall also have the right to maintain and develop their own Indigenous decision-making institutions, as well as equal opportunities to gain access to, and participate in, all state institutions and fora.

Article 18.5: In the event that the subsoil minerals or resources of the subsoil belong to the State, or the State has rights over other resources on the lands, the governments shall establish or maintain procedures for the participation of the peoples concerned in determining whether the interests of such peoples would be adversely affected and to what extent, before undertaking or authorizing any program for planning, prospecting, or exploiting the resources existing on their lands. The peoples concerned shall participate in the benefits of such activities, and shall receive compensation, on a basis no less favorable than the standard international law sum for any loss which they may sustain as a result of such activities.

The Beijing Platform for Action

National governments have primary responsibility to implement the following platforms for action:

K.251: The strategic actions needed for sound environmental management require a holistic, multidisciplinary and intersectoral approach. Women's participation and leadership are essential to every aspect of that approach. The recent United Nations global conferences on development, as well as regional preparatory conferences for the Fourth World Conference on Women, have all acknowledged that sustainable development policies that do not involve women and men alike will not succeed in the long run. They have called for the effective participation of women in the generation of knowledge and environmental education in decision-making and management at all levels. Women's experiences and contributions to an ecologically sound environment must therefore be central to the agenda for the twenty-first century. Sustainable development will be an elusive goal unless women's contribution to environmental management is recognized and supported.

K.252: In addressing the lack of adequate recognition and support for women's contribution to conservation and management of natural resources and safeguarding the environment, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes, including, as appropriate, an analysis of the effects on women and men, respectively, before decisions are taken. (Particular attention should also be paid to the Beijing Platform for Action's suggested "actions to be taken" K.1.253 d, e; 254 a, b, d; 256 b, d, e, g; l, 258 b {iv}).

Convention on Biological Diversity

The Convention on Biological Diversity, initiated by UNEP and opened for signature at the Earth Summit in 1992, does not recognize Indigenous resource rights, but affirms sovereign rights over natural resources. Nevertheless, the Convention recognizes the importance of Indigenous communities to in-situ conservation through Article 8 (j), which calls for signatories to: "... respect, preserve and maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices." The implementation of this article can have obvious ramifications to regulation of mining operations, which have been shown in many cases to affect these traditional lifestyles and, subsequently, biological diversity.

In addition, Contracting Parties are called on, through Article 17.2, to facilitate the exchange of biodiversity-related information, including traditional knowledge. This is especially important to the mining industry with respect to baseline studies, impact assessment, and monitoring.

International Covenant on Civil and Political Rights (ICCPR)

right to self-determination of all peoples, participatory rights of citizens (Article 25)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Recognizes right of all peoples to self-determination

The rights of Indigenous women to meaningful participation in natural resources management

Another area of international law that is often overlooked is the right of women to participate in natural resources management. As the United Nations' Beijing Declaration and Platform for Action (United Nations 1995) demonstrates, significant momentum has pushed gender issues and women-specific issues high up on the international agenda. Article K 250 of the Beijing Platform recognizes that: "Women, especially Indigenous women, have particular knowledge of ecological linkages and fragile ecosystem management." In addition, Article G 181 states that: "Without the active participation of women and the incorporation of women's perspective at all levels of decision-making, the goals of equality, development and peace cannot be achieved."

The Beijing Platform for Action calls upon governments, the international community and the private sector to take strategic action in 12 critical areas of concern, including "gender inequalities in the management of natural resources and in the safeguarding of the environment." (United Nations 1995: A44). Article K 249 asserts that: "Women remain largely absent at all levels of policy formulation and decision-making in natural resources and environmental management, conservation, protection and rehabilitation, and their experience and skills in advocacy for and monitoring of proper natural resources management too often remain marginalized in policy-making and decision-making bodies, as well as in educational institutions and environment-related agencies at the managerial level. ... Often women are not equal participants in the management of financial and corporate institutions whose decision-making most significantly affects environmental quality. Furthermore, there are institutional weaknesses in coordination between women's non-governmental organizations and national institutions dealing with environmental issues, despite the recent rapid growth and visibility of women's non-governmental organizations working on these issues at all levels." Clearly, the participation of women, as well as other less visible groups such as elders and youth, should be a consideration in mining decision-making.

Summary

The international community has collectively recognized Indigenous peoples rights to cultural identity, traditional lands and territories, to self-determination, to meaningfully participate in development plans and to follow their own visions of development (which may not be synonymous with Western conceptions of economic development). In addition, the rights of Indigenous women have also been formally recognized through the Beijing Platform. While there is clearly strong international support for the rights and freedoms of Indigenous peoples, international agreements are rarely legally binding or enforceable, and are seldom upheld even after governments become signatories. Consequently, ongoing minerals development often results in the continued infringement of the rights of Indigenous peoples.

This represents a key area that needs to be addressed by both the public and private sectors, and the international community.

Section 2 - Mining on Indigenous Lands

Despite internationally recognized rights, there is a continued expansion of exploration and production into areas traditionally occupied by Indigenous peoples typically without Indigenous consultation or participation in decision-making. Advances in technology and the strong trend toward liberalization and privatization have increased investment in mining in less economically developed regions. In recent years there has also been increased activity from entrepreneurial juniors, which are primarily focused on exploration activities often in remote areas (Rosenfeld Sweeting and Clark 2000). Since the end of the 1980s, international mining companies have focused on three main areas of growth: Latin America, Asia and the Pacific, and Africa. Mineral development also continues on Indigenous territories in developed countries, notably Australia, Canada and the United States.

Structural reform programs by the World Bank and the International Monetary Fund (IMF) have increased private sector interests in the developing world, particularly from foreign companies. The World Bank and the IMF have also actively pushed for mineral development and the liberalization of mining laws. Despite the World Bank development policy for Indigenous peoples (OD 4.20, which is currently being revised as draft OD 4.10), the Bank's activities, particularly its structural adjustment programs, have contributed to mineral development on Indigenous lands and thus are a key financial actor in conflict situations. International political risk insurers and export credit agencies have also made it more feasible to receive risk insurance for mining investment in previously unstable areas.

Mineral exploration and production does not occur on "empty" or "unoccupied" land: much of this land is populated by Indigenous peoples. Yet it often pays for mining companies to perceive Indigenous lands as empty, or to ignore or side-step contentious land rights issues. Acknowledging Indigenous occupation is often seen as a politically hot topic particularly when land rights have not been formally recognized by the State, or where recognized, are not being enforced. Mining companies often cite the need to refrain from "interfering" with host country legislative matters such as land rights, while at the same time reaping the benefits of such ambiguity.

Currently, over 350 million Indigenous peoples live in the world, a large proportion of whom inhabit lands with attractive minerals potential (Davis and Soeftestad 1995). This roughly

translates into 5,000 different Indigenous groups or “peoples,” many of whom may face, or have already faced, infringement of their Indigenous rights alongside minerals development. Unfortunately, the extent of the overlap is unclear (see Box 3). But many Indigenous groups have suffered from or will become vulnerable to severe negative social and environmental impacts from mining.

Box 3 - Mapping mining activity on Indigenous lands

While circumstantial data suggests a strong and increasing overlap between mining activities and Indigenous lands, the global extent of mining exploration or production on Indigenous lands is not precisely known. Global maps identifying potential or current areas of overlap, where Indigenous lands and regions of potential or existing mining activity (including exploration) do not exist. Many specific geographic areas have been mapped for minerals potential, but these are not without their limitations. According to Glevys Rondon, Project Director, Latin American Mining Monitoring Programme (LAMMP), “Most countries in Latin America have general mining maps which show only major mining projects. As a result junior operations and small-scale mining are ignored. In addition, official maps tend to define areas occupied by Indigenous communities as protected forests or inhabited, which in turn makes [it]very difficult [to] overlap the data. We feel the only way any organization can produce accurate maps is by combining both official information (from governments and mining corporations) with informal data accumulated by NGOs and Indigenous communities on the activities of mining companies”(Personal. communication with authors, September 13, 2001).

However, there has been some progress in this area. For instance, a recent government initiative from Natural Resources Canada has developed a map indicating the location of Aboriginal communities and minerals and metals activities in Canada, but does not identify lands that Aboriginal peoples in Canada have traditional rights to, beyond the location of actual communities or reservations. While useful, such maps do not convey the complete picture since Aboriginal peoples often have rights to lands beyond their communities. Similarly, a church-based agency, Environmental Science for Social Change (ESSC), has developed maps of the Philippines showing where mining claims and ancestral land claims conflict or overlap, although they have not included large areas where local Indigenous groups have not made formal ancestral land application. In contrast, the Forest Peoples Programme *et al* (2000) have developed composite maps showing lands

Based on a review of the literature, the identified common impacts of mining activities on communities can be grouped into five main themes: impacts resulting from environmental damage, health impacts, abuse of human/Indigenous rights, socio-cultural impacts and gender impacts of mining (for more comprehensive reviews, see Whiteman & Mamen 2002; O’Faircheallaigh 1991; Bedford and Warhurst 1999; Rosenfeld Sweeting and Clark 2000; The Forest Peoples Programme *et al* 2000; MiningWatch Canada 2000; Howard 1988). Table 2 provides an overview of such impacts.

Table 2: The Negative Social and Environmental Impacts of Mining

Environmental Damage	Health Impacts	Human Rights Abuse/Infringement of Indigenous Rights	Socio-Cultural Impacts	Gender Impacts
<p>Negative impacts on local environment:</p> <ul style="list-style-type: none"> ▪ Habitat ▪ Vegetation ▪ Biodiversity ▪ Groundwater ▪ Surface water ▪ Animal, Bird and Aquatic Life ▪ Atmosphere 	<p>Disease: e.g.,</p> <ul style="list-style-type: none"> ▪ Asbestosis ▪ Mercury poisoning ▪ Skin rashes ▪ Diarrhoea ▪ Respiratory problems ▪ Tuberculosis ▪ Malaria ▪ HIV/AIDS, STDs ▪ Increased infant mortality ▪ Drug & alcohol abuse 	<p>Violence against Indigenous peoples:</p> <ul style="list-style-type: none"> ▪ Murder ▪ Assault ▪ Rape ▪ War ▪ Arrests ▪ Theft ▪ Cultural genocide 	<p>Destruction of Sacred Sites</p>	<p>Health & Well-being:</p> <ul style="list-style-type: none"> ▪ STDs ▪ Sexual harassment ▪ Sex work ▪ Abuse (sexual, physical, emotional) ▪ Domestic violence ▪ Divorce ▪ Abandonment ▪ Dislocation & social alienation
<p>Key problem areas:</p> <ul style="list-style-type: none"> ▪ Changed landscape ▪ Deliberate dumping of untreated tailings ▪ Accidental spills (e.g., cyanide, mercury, etc.) ▪ Acid mine drainage ▪ Waste rock ▪ Mine remediation 	<p>Increased Violence:</p> <ul style="list-style-type: none"> ▪ Murder ▪ Assault ▪ Suicide ▪ Abuse 	<p>Infringement of Indigenous Rights:</p> <ul style="list-style-type: none"> ▪ Ignoring land rights ▪ Ignoring rights to consultation & participation 	<p>Loss of Traditional Lifestyle:</p> <ul style="list-style-type: none"> ▪ Loss of land for hunting, trapping, fishing and farming. ▪ Rapid cultural change ▪ Increased dependence on external world and cash economy. ▪ Devastation of traditional subsistence economy ▪ Roads open traditional lands up to greater development & influx of non-Indigenous workers ▪ Forced resettlement ▪ Emigration of Indigenous peoples to cities 	<p>Negative impact on women's rights and traditional roles:</p> <ul style="list-style-type: none"> ▪ Attrition of women's land rights in matrilineal societies ▪ Introduction of patriarchy & sexism ▪ Decreased ability to act as environmental caretakers ▪ Loss of female traditional knowledge ▪ Decreased ability to provide food and clean water

			<p>Socio-economic Deterioration:</p> <ul style="list-style-type: none"> ▪ Large mines bring few substantial employment opportunities, usually low paying jobs ▪ Lucrative processing and refining are not located on Indigenous land ▪ Most jobs go to outsiders ▪ Jobs also bring: social separation, social de-skilling, alcohol/drug useage, illness, conflict, lack of self-esteem. ▪ Mine closure brings additional socio-economic hardships 	<p>Economic Inequalities:</p> <ul style="list-style-type: none"> ▪ Exclusion from economic benefits of mining ▪ Exclusion from education & employment opportunities ▪ Loss of economic and social independence ▪ Inequality in wages ▪ Negative impact on small-scale miners, often women
			<p>Perpetuating Poverty:</p> <ul style="list-style-type: none"> ▪ Minerals endowment curse 	
			<p>Perpetuating Inequality:</p> <ul style="list-style-type: none"> ▪ Increased marginalization of Indigenous peoples ▪ Uncertain land tenure, territorial invasion ▪ Lack of sub-surface rights ▪ Local economic opportunities may divide communities and increase social inequalities 	

Indigenous peoples from both the developed and developing world are struggling with the social and environmental impacts of mineral exploration and production. Often exacerbated by poor environment, health and safety standards are low, particularly in the South, with mining companies and their subcontractors rarely proactive in taking measures to comprehensively address all of the social and environmental impacts on Indigenous peoples. While more progressive mining companies do undertake environmental and social impact assessments (EIAs/SIAs), these plans are often partial, with key impacts left unmitigated or ignored. Of particular note are the often unrecognized impacts of mining on Indigenous women and girls.

Cumulative social and environmental effects of mining are also important. Indigenous communities must often contend with not just one mine, but rather an entire mining sector. Mining infrastructure—roads, airports, ports—also opens up communities and Indigenous land to other forms of natural resources development such as forestry, tourism, hydroelectric development and additional mining. Cumulative effects through time and across a variety of different projects is a complex reality facing many groups. Rarely do EIAs and SIAs take into account the cumulative nature of such impacts. Community consultations are also often restricted to discussions on immediate impacts and not historical or cumulative impacts.

In general, the negative impacts of exploration and mining activities are often accepted as a “necessary evil” in the provision of the world’s increasing appetite for minerals and metals. While health, safety and environmental concerns are increasingly on the international agenda, many view these offences against Indigenous (and other) peoples as a secondary concern to the economic bottom line.

Section 3 - Indigenous Peoples Fight Back

Indigenous peoples have undertaken a variety of approaches to increase their participation in decisions on mining activities on their lands. A number of initiatives, ranging from lawsuits, mobilization and protest to the elaboration of community protocols to negotiation and collaboration with industry, are summarized below.

Lawsuits

Many negotiations occur alongside legal action and protest by Indigenous communities, particularly those that do not have settled land claims.

For instance, within Canada, lawsuits undertaken by Aboriginal groups have resulted in some key advancements in Aboriginal rights to meaningful consultation within natural resources development (Chambers and Winfield 2000). The Delgamuukw decision by the Canadian Supreme Court in 1997 provided Aboriginal peoples with the legal precedent to demand meaningful consultation with companies or governments who wish to engage in activities on their lands. Delgamuukw also provided Canadian Aboriginal peoples with legal title for sub-surface rights within land claim agreements (Mousely 1999; Young 1998). The Delgamuukw decision also placed Traditional Aboriginal Knowledge (TK) on an equal footing with scientific data—environmental impact assessments of proposed development projects must value both types of managerial information. The implication is that natural resources companies (and the Canadian and provincial governments) that wish to “extract” natural resources will have a

mandatory obligation to meaningfully consult with Aboriginal groups who hold title (or who may hold title in the case of unsettled land claims) and incorporate traditional knowledge into corporate and perhaps even regulatory decisions. While legal precedents such as *Delgamuukw* are clearly valuable, Aboriginal groups in Canada continue to have many strong criticisms of the mining industry, including the negotiation process.¹

Lawsuits that seek compensation for social and environmental damage also place pressure on companies to consult early and more meaningfully. A number of high-profile cases, outlined briefly below, have contributed to this. For instance, local communities in Papua New Guinea (PNG) have recently filed a civil action suit in the US against Rio Tinto for environmental damages and crimes against humanity caused by the now-closed Bougainville Copper Mine. The communities are using an interesting US law, the Alien Tort Claims Act, which allows foreign nationals to undertake a lawsuit in the US against companies that violate international law. While Rio Tinto is based in the UK, it has a US subsidiary, Borax Inc. While the outcome of this suit remains to be determined, the case prosecutor, Steve Berman, suggested that “the Rio Tinto lawsuit could have broad implications for other groups seeking redress from crimes committed during wartime by private companies” (Solomon 2000).

In Irian Jaya, Indonesia, the local Amungme tribal council successfully sued Freeport in a US court for US\$6 billion over the infamous Grasberg-Ertsberg mine (WWF International and IUCN 1999). Owned by Freeport McMoRan and Rio Tinto, Grasberg-Ertsberg is the world’s largest gold mine and third largest copper producer. The mine displaced large numbers of Indigenous people and caused extensive environmental damage. In the lawsuit (*Beanal v. Freeport-McMoRan Inc.*), local peoples accused Freeport of “eco-terrorism,” and argued that the company's own security guards had committed acts of torture and arbitrary arrests, and also that the military conducted a number of massacres while “guarding” the mine.

Likewise in Kenya, the Maumba and Nguluku village farmers have successfully stopped titanium mining by the Canadian company Tiomin Resources Inc. through a legal challenge at the High Court. The judge prepared a precedent-setting decision to suspend mining activities due to concerns with environmental impacts and also on social grounds—Tiomin was issued prospecting rights by the Kenyan government without the local villagers’ knowledge.²

In January 2001, the Quechan Indian Nation in the southern US successfully stopped gold mining development on their sacred lands. The decision presented by the US Department of the Interior stated that the mine proposal of Glamis Imperial Gold (a Canadian company) was denied, in part, because it “fails to meet the overall statutory requirement in the Federal Land Policy and Management Act that the Bureau of Land Management must prevent ‘unnecessary or undue degradation’ of the public land resources” (Mineral Policy Center 2001).

Less successfully, Indigenous groups in Guyana tried to take Cambior to court in Canada over its culpability in the cyanide spill at the Omai gold mine into the Essquibo river in Guyana. Canadian courts rejected the case though the case is still being reviewed by the Guyanese court system. The Arabunna case is another dramatic though unsuccessful example. On March 25, 1999, Kevin Buzzacott, an Arabunna Elder from South Australia, brought civil proceedings against Hugh Morgan, the Chief Executive Officer of Western Mining Corporation (WMC) for cultural genocide. Co-defendants identified in the lawsuit included other WMC executives (including their Aboriginal affairs person), WMC Board members and major shareholders, as

well as Australian government officials. In August 2000, the High Court of Australia dismissed the Arabunna's case.

Public activism: community mobilization and protest

Indigenous peoples' participation within the mineral sector has historically been one of protest and conflict. They have rarely been given opportunities for equitable participation and, in most cases, remain marginal actors in the mineral development debate. Indigenous participation in mining originated through community resistance, agitation and public activism (de Echave 1996). Daniel Ashini, negotiator for the Innu Nation in Canada summarized this position: "The feeling among Innu is that governments and the mining industry fail to understand, and accept, the fundamentals of Innu life and culture...It is time for governments and industry to stop asking Innu to "move to their side of the table all the time." (quoted in Keith 1996).

Indigenous peoples have made significant headway in mobilizing their communities against unwanted mining development, particularly in the North. According to Daniel Ashini: "We have been too accommodating to the industrial society, to the government, in helping them to destroy our culture. We have been blind to the fact that we have been a party to the destruction of our culture...Our way of life is not even close to what they [great grandparents] lived, and what is remaining has to be saved before it's all gone—our language, our respect for wildlife, our spiritual values." (Gray n.d.) Examples of Indigenous community mobilization and campaigning range from violent demonstration (e.g., Bougainville) to international declarations and sophisticated NGO-supported campaigns such as those undertaken in Peru (EMCBC 1999), or Ok Tedi Such mobilization increases the power of Indigenous peoples to demand effective consultation on proposed mining projects.

Building global and regional linkages is also an important way to push the consultation and participation agenda ahead. For instance, in Peru, Indigenous peoples and NGOs organized the National Association of Communities Affected by Mining. At their Lima Workshop in November 1998, 30 Peruvian communities faced with mining gathered to identify key issues and strategies for response (EMCBC 1999). Indigenous peoples and NGOs worldwide often assemble to discuss strategies to deal with mining operations, and this often results in statements, such as the 1998 Declaration of the International Conference Against Transnational Mining Corporations. At the community level, Indigenous peoples have also built effective international linkages. Often with the support of NGOs, representatives from Indigenous communities from the South make site visits to similar mines in the North, in order to compare conditions and communicate with other communities facing common issues. For example, the Dene and the Canadian Arctic Resources Committee (CARC) in the North West Territories of Canada flew in Alex Maun, a Yonggom leader of the Mirikiri clan from Papua New Guinea while the Dene were negotiating with BHP in Canada. Maun was one of the key PNG plaintiffs involved in the case against BHP in Sydney. Maun and his legal advisor visited Detah and Ndilo and made a presentation at the BHP Environmental Assessment Review Panel hearings, which generated strong media attention and greater local awareness of BHP's international track record. Maun and his colleagues also traveled throughout the world to get support for their campaign against BHP (Kirsch 1996). Similarly, CARC and the Environmental Mining Council of British Columbia (EMCBC) arranged for a community member from a mining area in Peru to visit BHP's mine in northern Canada.

However, in remote areas in many developing countries Indigenous peoples still have a difficult time getting organized and raising the funds necessary to undertake effective campaigns.

Challenging environmental impact assessments

Environmental Impact Assessments (EIAs) are becoming a standard precursor to mining activity. Increasingly, Indigenous groups have submitted formal responses to mining EIAs, even when they have not been formally solicited. One of the most wide-ranging of these is the North Slave Métis Alliance's *Companion to the Comprehensive Review Study on the Diavik Diamonds Project* in northern Canada. It outlines the history of issues faced by the North Slave Métis, issues and concerns with the mining project, perceived problems with the process and relationship to date, potential impacts and offers 80 recommendations for addressing the concerns raised. This document was written based on extensive interviews and consultations with members of the North Slave Métis community, who expect "...Diavik and the government to fully consider these recommendations and to develop, with our full consent and involvement, ways and means to implement them" (Stevenson and Thoms 1999: 7.0). While few mechanisms exist by which to encourage compliance, such projects, carried out by the affected communities themselves, can be extremely effective in vocalizing and amalgamating communities' positions and concerns with respect to mining.

The Centre for Traditional Knowledge in Canada has created an extensive document entitled: *Guidelines for Environmental Assessments with Indigenous People* targeted at Indigenous peoples, corporations and governments. These guidelines are comprehensive and could be applied to mining operations (see Appendix 1). Such initiatives place pressure on mining companies to more meaningfully engage Indigenous peoples in their EIA process. However, most groups, particularly in developing countries, lack the technical and financial resources to undertake such initiatives.

Community policies, guidelines and protocols

Community-based policies, protocols and guidelines appear to be a positive step in creating common understanding between the mineral sector and Aboriginal communities, and it is expected that increasing numbers of such mechanisms will be created. Such mechanisms often work better than immediate agreements negotiated between numerous actors because it allows communities to set their own parameters and priorities. In addition, they can often form part of a broader community dialogue, or "life plan." Some of these initiatives are outlined below, and a selection included in detail in Appendix 1.

The Tahltan Nation and the Wahnapiatae are two examples of Canadian Indigenous communities who have developed their own community-based natural resources development policy as a response to mining activities on their lands. The Tahltan Advisory Group on Mining (TAG) was formed in reaction to attempts by various mining companies to "divide and conquer" the Tahltan Joint Council, comprised of the three Tahltan communities, and the Tahltan Development Corporation (Cleghorn 1999). In the early 1980s, the Tahltan drew up the "Tahltan Development Principles" which have governed their approach to negotiations on mining and other areas. In general the development principles require that:

- The development not pose a threat of irreparable environmental damage
- The agreement not prejudice outstanding aboriginal claims
- There will be more positive social benefits than negative
- There be opportunity for education, training and employment
- There be provisions for equity participation

- There be opportunities created for the development of Tahltan businesses
- There is a formal commitment by the developer to assist Tahltans accomplish these objectives (American Bullion Minerals 1996)

Similarly, when the Wahnapiitae were faced with potentially severe environmental impacts from the closure of a nickel mine in Canada, the community developed its own grassroots natural resources policy. The Wahnapiitae have found this helpful as a way of focusing its negotiations with Inco Ltd. over mine closure (Recollet 2000).

Australia's Council for Aboriginal Reconciliation has developed a set of recommendations to help establish corporate codes of conduct (Council for Aboriginal Reconciliation 1993). The Council recommends that these codes should be *negotiated* between Aboriginal communities and the company. Recommendations include the provision (in the Codes) of: protection and maintenance of Indigenous heritage sites, community relations guidelines, information exchange mechanisms, negotiation of land access and use agreements, and support for local economic development (Council for Aboriginal Reconciliation, cited in Atkinson 1998: 80-81).

The Innu Nation of Canada (1995), in response to mineral exploration and development in Labrador (of which Voisey's Bay is the most notorious), has developed a set of guidelines entitled *Mineral Exploration in Nitassinan: A Matter of Respect: Innu Nation Guidelines for the Mining Industry* outlining in detail their concerns about environmental and cultural impacts, and the steps that should be taken by companies interested in exploration on Innu territory. Building upon past community experiences, these guidelines attempt to educate outsiders and provide an extensive history of Innu occupation of their territory and their contact with mining and industrialized society; and an overview of Innu culture and worldview, highlighting the importance of land and land stewardship. The guidelines also emphasize the importance of the process of healing past conflicts. It states: "This is just the beginning for the Innu. They look forward to the day when their rights [to]the territory are properly recognized, and when they will be equal partners in all decisions that affect their land" (Innu Nation 1995: 3). The document outlines the Innu response to mining activity (which is described in detail in Ntesinan, Ntshiniminan, Nteniunan - Guidelines for 'Building a Respectful Relationship'), and gives information on how to go about obtaining Innu consent. The Innu Guidelines are a good example of Indigenous peoples' assertion of expectations from mining companies, and should be reviewed by Indigenous communities and companies alike prior to the initiation of mining projects on Indigenous lands. Similarly, the Inuit of Nunavik in Canada have published, through their Nunavik Mineral Exploration Fund Inc., a *Handbook for Mineral Exploration Companies Operating in Nunavik, Quebec*, which is primarily a list of contacts for permits required by mining companies operating in Inuit lands (Nunavik Mineral Exploration Fund, n.d.).

Research guidelines

Numerous Indigenous groups have developed protocols for researchers intending to work in Native communities. These are also important resources for government or mining officials considering initiating any activity in these regions. The Dene Cultural Institute in Canada has created guidelines (1998) for the conduct of participatory community research in the context of environmental management. These include specific processes for establishing "cooperative research ventures," which could be particularly relevant in the context of establishing

partnerships for mine management. In addition, their recommended procedures for research methodologies for traditional ecological knowledge are potentially useful in environmental assessment as well as incorporating traditional knowledge into planning of the environmental and social aspects of mineral development.

The Inuit Tapirisat of Canada has also developed a statement of principles for those wishing to do research with Aboriginal people. Stephen J. Augustine, Hereditary Chief of the Mik'Maq of Canada, has developed "Ethical Guidelines on Conducting Research in Indigenous and Local Communities," a set of basic recommendations when approaching Indigenous groups (see Box 4). Samples of research guidelines are also included in Appendix 1.

Box 4 - Recommendations for dealing with Indigenous people

1. Be aware that some values are different and respect those differences.
2. When spirituality is part of the process, no outsider of course has to adhere to it, but they should be aware it is meaningful for the people involved and therefore respect that and be patient.
3. When told about different world views, traditional knowledge, try and listen and understand from the heart (not just your mind). And while you are at it, stop looking at your watch and stop cellular phones from ringing. Make every effort to share the moment and then share your views.
4. Treat people as people, do not try to pop out of an airplane, fast-track a meeting, get a deal and go. Take the time to communicate, to share food, exchange ideas and experiences. It can go a long way in (reaching /creating?) treating a mutually satisfying relationship with the Aboriginal community.
5. Plan a long-term relationship.

Source: (Augustine 1999).

Appeals to international fora

Multilateral meetings are important avenues for challenging liberalized mining policies and for demanding increased consultation and participation of Indigenous peoples in natural resources management. The World Council of Indigenous Peoples and the UN Working Group on Indigenous Populations are examples of places where Indigenous peoples are attempting to protect their rights to natural resources. The United Nations Working Group on Indigenous Populations is currently working on a "Draft Declaration on the Rights of Indigenous Peoples" with the intention of having it adopted by the general membership of the UN. The Indigenous Peoples' Seattle Declaration also called upon the World Trade Organization (WTO) to address these issues: "Mining laws in many countries are being changed to allow free entry of foreign mining corporations, to enable them to buy and own mineral lands, and to freely displace Indigenous Peoples from their ancestral territories. These large-scale commercial mining and oil extraction activities continue to degrade our lands and fragile ecosystems, and pollute the soil, water, and air in our communities...." (Society for Threatened Peoples 1999).

International fora also serve as venues for Indigenous peoples to raise complaints. For example, at a recent annual session of the United Nations Working Group on Indigenous Populations, Canadian Aboriginal leaders accused the Canadian government of pursuing a

“racist” land claims policy which demanded the extinguishment of Aboriginal sovereign title to land in modern day land claims settlements (Ha 2000). While Canadian Aboriginal groups may receive financial compensation, most settlements ensure that their title is extinguished. Visibility at such meetings increases the pressure on companies and governments to engage equitably with Indigenous peoples.

Negotiation

Indigenous peoples have successfully negotiated with mining companies and governments in a number of instances, particularly in countries such as Canada and Australia (see, for example, Barsh and Bastien 1997). The participation of Aboriginal people in mining activities in these countries is generally outlined in *Memoranda of Understanding* between the company and Aboriginal groups, Land Claim Agreements, and/or Impact and Benefit Agreements. Such agreements provide the framework for community-company-State relations.

Areas typically covered by negotiations include: compensation, environmental impact monitoring processes or boards, employment and education, compensation, and development funds. In some countries, Indigenous peoples have also negotiated the ability to tax mineral resources extracted from their land. While not all negotiations result in a legal commitment for participation, some Aboriginal groups in Canada and Australia have successfully negotiated for ongoing participation in natural resources management. This participation is more fully discussed in Section 5.

In many developing countries, Indigenous land rights are not adequately recognized and corrupt regimes make fair negotiations more difficult. Also, companies are often successful in dividing communities, thereby weakening their negotiating position.

Economic engagement with the mining industry

Some Indigenous groups are interested in the economic potential of mining and are not opposed to minerals development (see for example Economic Renewal Secretariat 2000; Ker 1996). For instance, a study conducted by the CSIRO Australian Research Centre for Water in Society (1996) found that a number of the Indigenous peoples interviewed sought positive relationship with the mining industry, although many were unhappy about companies’ past interactions. In addition, they were supportive of mining, provided that adequate consultation was part of the process. Similarly, Indigenous groups like the Eabametoong First Nation in Canada are not averse to mining but expect to be consulted and mutual agreement and participation reached through consultation (Yesno 2000).

Economic initiatives by Indigenous peoples can create a common ground with the mining industry and foster increased commitment to consultation. In Canada, Indigenous communities have often established economic development corporations, which have typically arisen out of compensation and land claims settlements. Such corporations actively promote Aboriginal business development. Within this Aboriginal-led development, there are a growing number of medium-scale initiatives where Indigenous peoples are more actively engaging in minerals exploration and production. For instance, the Mistissini Geological Resources Centre in Canada was set up by the Cree Nation of James Bay in order to help their community become more “actively involved in the mining industry.”

In the Northwest Territories of Canada, the Dogribs and the Yellowknife Dene First Nation have both ventured into diamond cutting and polishing following the operation of the Ekati Diamond mine, owned by BHP. Deton'cho Diamonds Inc is equally owned by Deton'cho Investments North Ltd (a subsidiary of Deton'cho Corp., the economic development corporation of the Yellowknives Dene First Nation) and a private non-native firm Goldeos Ltd. The Dogribs also have a joint venture called Arslanian Cutting Works (NWT). BHP supplies 10 per cent of the rough diamonds from the Ekati mine to four northern businesses, including the two owned in part by local Indigenous peoples (Ashbury 1999b). In order to maximize the economic benefits of mining, these Indigenous groups have actively consulted and sought out economic partnerships: "We want to get into the (diamond-cutting and polishing) business. The only way is to team up with professionals," explained Dogrib Grand Chief Joe Rabesca (Ashbury 1999a).

Similar business opportunities exist within construction and other subsidiary services, such as catering. On a consulting level, the Canadian Aboriginal Minerals Association (CAMA), a private non-profit Aboriginal organization, "seeks to increase the understanding of the minerals industry and Aboriginal community's respective interests in lands and resources. Through increasing this awareness, all parties will benefit." CAMA also tries to further Indigenous economic development through mining and facilitates relations and communication between the mining industry and Aboriginal communities. CAMA has undertaken a variety of Canadian and international consulting projects with industry and/or Aboriginal groups with the aim of improving consultation and negotiation practices, but their work has met with a significant degree of animosity from various Indigenous groups in Canada. The Canadian Aboriginal-run Economic Renewal Secretariat is also actively working on means of fostering Aboriginal mining opportunities and effective partnerships with the mining industry.

However, there are a number of significant challenges for business partnerships with Indigenous peoples which stem from a lack of mutual trust, cultural differences, misunderstandings, lack of Indigenous leadership, unrealistic expectations and the requirement for significant investment (Loizides 2000). The creation of business partnerships is particularly difficult in the South, or areas where experience in mining is limited.

For those communities that are interested in the development opportunities of mining, meaningful participation in natural resources management still remains essential. Indigenous peoples want the right to prior informed consent—the right to say yes or no, and how. According to Daniel Ashini of the Innu Nation in Canada: "We feel very strongly that we have the right to consent to the mine. We have the right to say no and the right to say yes. If we say yes, there is a responsibility that comes with that which is a very huge burden. This is the responsibility of recognizing that a part of our land will be destroyed forever and we must make sure that it isn't destroyed needlessly. If we say no to the mine, and all the opportunities that come with it, we need to understand what we're working toward as a community for our future and our children's future and not just know what we're working against" (Ashini 1999).

Summary

While limited by technical and financial resources, Indigenous peoples' efforts have been modestly successful in impacting minerals development and in creating pressure for greater consultation and participation within mining and natural resources development. Indigenous

efforts range from land claims negotiations, lawsuits and community campaigning to other alternatives such as partnership or economic engagement with the mining industry. However, economic-based consultations may be too narrow in scope, with industry focusing on consultation with like-minded individuals (who seek economic benefits from mining partnerships) rather than consulting with the community at large, which may have legitimate concerns about negative social and environmental impacts.

Section 4 - Initiatives by the International Community, NGOs and the Mining Industry

Conflict between Indigenous peoples and mining interests has caught the attention of a diversity of groups. There are a number of initiatives from the international community, NGOs and the mining industry itself, which are pushing ahead the consultation and participation agenda. A review of some of these initiatives is elaborated below.

The International community

The United Nations

The United Nations Working Group on Indigenous Issues has developed guidelines for multinational corporations (UN Working Group on Indigenous Issues 1997). These guidelines clearly recognize the importance of consultation: “1. Consultation: Consulting with and involving duly selected communities and their representatives from Indigenous territories, whose traditional economic, social or spiritual activities are directly or indirectly affected by or infringed upon the proposed development activities, *prior* to planning and all further stages of assessment, implementation and conclusion” (cited in Bedford and Warhurst 1999: Addendum 1).

However, these guidelines have not been adopted by other UN bodies—a key weakness of this initiative. For instance, the recent UN Global Compact—a voluntary set of human rights, labour and environmental principles for multinational corporations—does not explicitly address the need for consultation among Indigenous peoples and local communities (United Nations 2000). While the background documents for the Global Compact do recognize the importance of ILO Conventions, and also point out the fact that human rights are important to business, in part, because business activities can impact Indigenous peoples, the actual nine principles do not clearly address the rights of Indigenous peoples to meaningful consultation, nor do they emphasize the general principle of community participation in business activities that can affect their land, culture or livelihood. Under Principle 1, the UN Secretary General has simply asked world business signatories to “support and respect the protection of international human rights within their sphere of influence” which includes actions to “prevent the forcible displacement of individuals, groups or communities; [and] protect the economic livelihood of local communities.” However, such statements are too vague and do not adequately address Indigenous rights to meaningful consultation and participation.

The UN Development Programme (UNDP) (September 1994) Draft Guidelines for Support to Indigenous Peoples identifies consultation as one of the key steps that need to be taken by project proponents in order to effectively incorporate Indigenous peoples in the development process. UNDP’s Civil Society Organizations and Participation Programme (CSOPP) has also developed a useful document on consultation and participation, entitled “Empowering People—A Guide to Participation,” which is a useful resource with an extensive bibliography on this topic.

Recently, the United Nations Environment Program (UNEP) and the United Nations Department of Economic and Social Affairs (UN DESA) revised the 1982 Environmental

Guidelines for Mining Operations and released draft Guidelines in early 2000. However, the Draft Environmental Guidelines are relatively weak on the topic of social impact assessments and do not provide clear guidance on how or when to incorporate Indigenous peoples into natural resources plans. Participants at the Berlin Round Table which reviewed the draft guidelines recommended the following: “Regarding the general structure of the guidelines...The guidelines should be improved with respect to approaches to be used to deal with the problem of participation of Indigenous communities in consultations” (Carl Duisberg Gesellschaft 1999: 50). Furthermore, “[r]egarding mechanisms and tools listed in the guidelines, the following aspects should be covered: social issues, conflicts, etc.; problems of sudden mine closure; the place and role of Indigenous peoples, particularly in the light of ILO Convention 169; stakeholder involvement; small-scale mining; environmental impact assessment; exploration in remote areas; more and better structured research, and the wide divulgation of its results” (Carl Duisberg Gesellschaft 1999: 51).

The Berlin participants also recommended that companies and governments should make community representatives and Indigenous peoples formal parties to the environmental and social impact monitoring processes. Finally, participants suggested that: “[d]rawing on international conventions, such as ILO Convention 169, governments should establish a legal framework to ensure, through these and other mechanisms, a sense of trust, consensus and communication amongst all the stakeholders. Starting from the stage of exploration through to post-closure of mines, it is important for mining companies to maintain a consultative and participatory relationship with the affected local and Indigenous communities” (Carl Duisberg Gesellschaft 1999: 54). Despite these recommendations, it is not clear how the final UNEP/UN DESA Guidelines will address these issues.

OECD guidelines for multinationals

The Organisation for Economic Co-operation and Development (OECD) released its *Guidelines for Multinational Enterprises* in March 2000. These guidelines specifically recommend that “[e]nterprises should...engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.” However, the OECD Guidelines do not make specific reference to the special case of Indigenous peoples, nor to consultation with respect to the impact of the enterprise itself.

International Financial Institutions (IFIs)

International financial institutions (IFIs) such as the World Bank Group and export credit agencies are important actors in the relationship between Indigenous peoples and the mining sector. Financial institutions have the potential to exert a significant degree of pressure on corporations to adhere to certain environmental and social standards, particularly when social and environmental standards are part of the financing contract. In many cases, it is in their best financial interests to mitigate potentially financially adverse incidents. Private sector policies governing corporate behaviour by lending institutions are thus a potentially important mechanism to ensure effective consultation and participation of Indigenous peoples within the mining sector. IFIs are taking some initiative in supporting Indigenous rights to participate in decisions affecting Indigenous peoples and their lands.

The World Bank Group

Indigenous people were first recognized in World Bank policy in 1982 (OMS 2.34: Tribal People in Bank-financed Projects) (Davis 1993). The Bank's development strategy states that it is based on the informed participation of Indigenous people. Consequently, project proponents are responsible for identifying local preferences through direct consultation, and should incorporate Indigenous knowledge into any project that affects Indigenous peoples and their rights to natural and economic resources. "The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the Indigenous people affected by the project" (World Bank 1991).. Where Indigenous peoples are affected by Bank-sponsored projects, the current Indigenous Policy mandates that companies must develop, with the informed participation of those affected (through systematic forms of consultation), an Indigenous Peoples' Development Plan which should mitigate local dependence on mine development (World Bank 1996a; Davis and Soeftestad 1995).

In the 1996 *Participation Sourcebook*, the World Bank recommends that governments need to grant some autonomy in decision-making to stakeholders and to increase Indigenous rights to land and natural resources at the legislative level. The Bank recommends that consultations be held in local languages, and development programs should build on traditional lifestyles and activities and also strengthen existing traditional resource management systems. Finally, the Bank recognizes that Indigenous peoples should be able to manage their own funds, preceded (where necessary) by capacity-building and training.

Currently, the participation of Indigenous peoples is addressed under two circumstances by the World Bank: environmental impact assessments or Indigenous peoples development plans on Bank-supported projects, and in Bank-funded projects where Indigenous people are the primary beneficiaries (Davis and Soeftestad 1995). The World Bank has also developed *Guidelines and Good Practice for Civil Society Consultations*. According to the Bank's *Participation Sourcebook*, consultation procedures with Indigenous people must take into account their languages, traditional means of knowledge and value transmission, and mistrust of outsiders. World Bank Operational Directive 4.20 also requires the informed participation of Indigenous peoples in Bank-sponsored projects. OD 4.20 states that projects should not be financed when "adverse impacts are unavoidable and mitigation plans acceptable to local people cannot be developed."

The World Bank Indigenous Policy (1991) is under revision and the Bank is currently holding stakeholder consultations on the draft Indigenous Peoples Policy (O.P./B.P. 4.10), scheduled to end on December 14, 2001. However, external stakeholders, including NGOs and Indigenous peoples' organizations, have severely criticized OD 4.10. Critics argue that it is significantly weaker than OD 4.20, particularly with respect to land rights and resettlement since the draft policy allows for forced relocation even if it will result in significant adverse impacts on Indigenous peoples' culture and livelihood. The draft policy also does not acknowledge Indigenous peoples' right to prior informed consent and falls short of international law standards such as those outlined in ILO 169 and CERD. Furthermore, the policy does not address compliance issues. In addition, there have been a number of criticisms on the Bank's process for consultation on this draft policy, in terms of scope, timelines, and the absence of hard copy policy documents (World Bank 2001b).

Furthermore, in October 2001, the World Bank Governing Board passed the new

Involuntary Resettlement Policy, which denies the right of prior informed consent to Indigenous peoples facing involuntary settlement (Downing and Moles 2002). The Board followed the recommendation of James Wolfenson, President of the Bank, who argued that the new involuntary resettlement policy does “not incorporate provisions requiring prior, informed consent of indigenous peoples to resettlement. Instead, it calls for meaningful consultation with and informed participation of all potentially displaced persons...” (cited in Downing and Moles 2002: 68). However, meaningful consultation and participation should not be used as a replacement for internationally recognized Indigenous rights and the Bank is facing sharp criticism for this decision.

In addition, the World Bank has faced strong criticism for their role in fostering liberalization and promoting the privatization of the mining industry at the expense of Indigenous peoples and other affected communities (see, for example, Nettleton 2000a). The Bank, particularly through its structural adjustment programs, has also typically advocated development based on large-scale infrastructure projects, which often have highly negative impacts on Indigenous peoples. The revised OD 4.10 has also been criticized on the grounds that it will not be applicable to structural adjustment operations and programmatic lending.

Other World Bank initiatives

The World Bank’s Business Partners for Development was initiated in 1998 and “seeks to enhance the role of oil, gas and mining corporations in development.”³ The program provides a multi-stakeholder forum for government, industry and society to work together to strengthen the role of business in development that contributes to local economic, social and environmental sustainability. The principal objective of this initiative is to expand a framework for dealing with community issues and risk management, and to establish tri-sectoral partnerships that maximize development impact on local communities (World Bank Group 1998). While this particular forum is advertised as a multi-stakeholder forum, it remains strongly dominated by business representatives, with no participation from community representatives.

In addition, the Bank is currently undertaking an Extractive Industries Review (EIR)— a consultation on the future role of the World Bank group in the oil, gas and mining sectors. Civil society members have criticized this consultation initiative with respect to both structural and procedural issues, which are much less participatory and non-inclusive than the standards set by, for instance, the World Commission on Dams. The EIR is also not an independent review and relies on only one “eminent” person for coordination. The terms of reference for the review are unduly narrow in scope and do not probe for commentaries on alternatives to large-scale mining development.

IFC and MIGA

The International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) are two other key organizations in the World Bank Group. An Office of the Compliance Advisor/Ombudsman (CAO) has also been set up to review project complaints for the IFC and MIGA, which potentially provides a mechanism for dealing with project grievances, though there have been strong criticisms of its practical implementation.

International Finance Corporation

The IFC is the largest multilateral source of loan and equity financing for private sector projects in the developing world and thus its policies on consultation with Indigenous peoples are important. Currently, the IFC's requirements for public consultation are limited to environmental and social review of projects through the environmental assessment process, and to some extent through operational policies and manuals.

The IFC requires public consultation in environmental assessments of projects to occur *at least* twice: during the scoping stage of project development, and once the draft environmental assessment has been prepared. The goals of these consultations should be to work with local and affected groups to identify potential environmental and social impacts with a view to gaining an increased understanding of their nature and extent and the acceptability of projected measures for mitigation, reconciling differing opinions and improving the decision-making process, among others.

The IFC has also developed a good practice manual called “Doing Better Business Through Effective Public Consultation and Disclosure” (IFC 1999). Similarly, IFC’s guide “Investing in People, Sustaining Communities through Improved Business Practice: A Community Development Guide for Companies,” also identifies the need for community participation within community development programs. Additionally, the IFC recommends that companies attempt to maximize local employment and integrate community development into business decision-making. However, the IFC does not require that projects receive the prior informed consent of Indigenous peoples.

The Multilateral Investment Guarantee Agency

MIGA is also required to follow World Bank Group policies. However, this has not prevented MIGA from supporting questionable mining projects, in violation of numerous of the aforementioned policies. For instance, Friends of the Earth report that “MIGA supported Indonesia’s Freeport McMoRan mine for years, and when the US Overseas Private Investment Corporation terminated its political risk insurance contract with Freeport in 1995 due to environmental and social contract violations, MIGA undercut this decision by continuing its support of this problematic company” (Friends of the Earth 2000).

The Inter-American Development Bank (IDB)

The Inter-American Development Bank (IDB) first brought consultation within their strategy in 1990, in the form of documents such as “Strategies and Procedures for the Interaction between the Inter-American Development Bank and Non-governmental Environmental Organizations.” In addition, the 1990 document “Strategies and Procedures on Socio-Cultural Issues as Related to the Environment” discusses Indigenous peoples and the importance of participation, including consultation, in the successful execution of projects. This policy framework stresses Indigenous issues and the importance of community consultation and participation throughout the project life cycle. For projects that have potentially substantial social and environmental impacts, Bank clients are expected to conduct consultation in order to obtain the informed opinions of members of affected communities (Schwartz and Deruyttere 1996).

Anne Deruyttere, Chief of the IDBs Indigenous Peoples and Community Development Unit, Sustainable Development Department, at the has acknowledged that: “[e]mpowering poor men and women to consult throughout the project cycle will exercise and strengthen the vital connection between lessening poverty and increasing justice in civic (or civil??) society. Precisely because consultative processes are likely to meet with resistance, the commitment by international lending agencies to consultation and participation as a condition for financial support is vital.” (Schwartz and Deruyttere 1996: 3). However, IDB policy states that the

responsibility to address the concerns raised by stakeholders lies with the project sponsor (Environmental Resources Management 1997), which weakens their direct control over participation and consultation, although the IDB has been involved in some planning processes.

In an interesting recent development, the IDB may be offering a line of credit to finance consultation activities prior to the call for bids on oil and gas exploration or production blocks in the Amazon.⁴ Currently, the IDB is consulting with OLADE member governments, Indigenous organizations and petroleum companies on a draft proposal that would enable governments to apply for IDB financing in order to conduct consultations, diagnostic assessments and environmental and social mitigation measures. While still in the review stage, there has been some indication that the IDB may be able to use the same mechanism for similar pre-qualification consultations in mining and logging exploration and production.⁵

The concept paper on this proposed program states that: “The primary objective of this concept Program is to establish formal, effective and meaningful processes of consultation between Andean/Amazon Basin country governments and indigenous peoples in the hydrocarbon sector, prior to government calls for bids on oil and gas exploration/development blocks. A related objective is to address Indigenous concerns over land and resource development by financing a series of activities to be carried out by governments, in consultation and with the participation of indigenous peoples, related to land regularization, socio-cultural and environmental baseline studies, community development plans and indigenous community investment mechanisms” (Donohue and Dixon 2000: 2). In doing so, the IDB has recognized that “[s]ome of these conflicts [in oil and gas] might have been avoided or better managed if: (1) mechanisms for meaningful consultation existed; and (2) indigenous people had clearer participatory roles in natural resources management” (Donohue and Dixon 2000: 15).

Such initiatives are valuable since they recognize for meaningful consultation prior to project approval, and also recognize the need to finance such activities. This approach may provide a powerful model for other financing organizations.

Political risk insurers: The Export credit agencies

International political risk insurance is a critical financing instrument for mines in high-risk countries. Export credit agencies do not typically take into consideration human rights or Indigenous issues in their lending decisions, and typically ignore the source of political risk and social instability. Nevertheless, export credit agencies support billions of dollars worth of mining projects around the world and operate largely without any concern for the perspectives of Indigenous peoples.

The OECD Working Party on Export Credits and Credit Guarantees is in the process of developing a draft agreement on common standards or principles for environmental and social impact assessment. However, in the current OECD draft agreement, the rights of Indigenous or local peoples to meaningful consultation and participation are not identified. In general, these guidelines have been criticized for being highly inadequate in terms of transparency, and consultation with external stakeholders including local peoples is not mandatory.⁶

Country initiatives

National legislation has begun to recognize Indigenous rights in the context of natural resources, but approaches vary substantially. Many countries recognize, to some degree, the rights of Indigenous people to manage their lands, resources and internal politics. A small number of countries have ratified ILO 169 and made provisions for its adoption into national law. More commonly, public participation is worked into many national EIA regulations.

Consultation with Indigenous peoples is a complex issue when it comes to national implementation. Few countries have clear and effective legislation on the rights of Indigenous peoples to prior informed consent and meaningful consultation in natural resources management, though some, for instance Canada (see Henderson and Healy 2000) do mandate the basic need to consult prior to development. Side-stepping the need for regulation, governments, particularly the international development agencies, are increasingly supporting voluntary corporate initiatives and the development of industry codes.

For instance, the UK and US governments have recently collaborated with seven companies from the mining and oil sectors and a number NGOs to develop “Voluntary Principles on Security and Human Rights,” which were released in December 2000. The voluntary principles focus on security and human rights in the extractive sector, which fall into three categories: risk assessment, relations with public security and relations with private security. With respect to consultation, the signatories support the following general tenet: “*Taking note of the effect that Companies’ activities may have on local communities, we recognize the value of engaging with civil society and host and home governments to contribute to the welfare of the local community while mitigating any potential for conflict where possible.*” (see Box 5 for details on consultation issues within this initiative). The companies that participated were BP Amoco, Royal Dutch/Shell, Rio Tinto, Texaco, Chevron and Freeport McMoRan. The NGO participants were Amnesty International, Human Rights Watch, the Prince of Wales Business Leaders' Forum, International Alert and Business for Social Responsibility. The UK and US governments hope to persuade other governments to subscribe to the guidelines (Stout 2000). Such voluntary measures, however, are problematic. This is discussed later in this section.

Box 5 - Voluntary Principles on Security and Human Rights from the UK/US (December 19, 2000)

Within this set of voluntary principles, a commitment to consultation with civil society arises in the following places:

Risk Assessment

- Potential for violence. Depending on the environment, violence can be widespread or limited to particular regions, and it can develop with little or no warning. Civil society, home and host government representatives and other sources should be consulted to identify risks presented by the potential for violence. Risk assessments should examine patterns of violence in areas of Company operations for educational, predictive and preventative purposes.
- Conflict analysis. Identification of and understanding the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors, can be instructive for the development of strategies for managing relations between the Company, local communities, Company employees and their unions and host governments. Risk assessments should also consider the potential for future conflicts.

Interactions Between Companies And Public Security

Consultation and Advice

- Companies should hold structured meetings with public security on a regular basis to discuss security, human rights and related workplace safety issues. Companies should also consult regularly with other Companies, host and home governments, and civil society to discuss security and human rights. Where Companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments.
- In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.
- Companies should support efforts by governments, civil society and multilateral institutions to provide human rights training and education for public security as well as their efforts to strengthen State institutions to ensure accountability and respect for human rights.

Interactions between Companies And Private Security

- Companies should consult and monitor private security providers to ensure they fulfil their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, Companies should seek to employ private security providers that are representative of the local population.
- Companies should consult with other Companies, home country officials, host country officials, and civil society regarding experiences with private security. Where appropriate and lawful, Companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.

NGO Activity: Pressure for meaningful consultation and participation

NGOs are active in a number of areas, including international campaigns, lawsuits, developing codes and guidelines, and in research, and range from developing consultation guidelines to arguing the limitations of a consultation-based approach.

Campaigns and lawsuits

Currently, a coalition of more than 200 NGOs from some 55 countries are calling for the World Bank Group to terminate its funding for oil, gas and mining projects, citing 10 reasons, including impacts on Indigenous peoples around the world (loss of territory, cultural identity, livelihoods, population, right to self-determination, etc.). A recent Friends of the Earth report also recommends the following: “As a *first step* toward phasing out their support for all fossil fuel and mining projects during the next five years, the IFIs should each establish an *immediate ban* on any support for fossil fuel and mining *prospecting and exploration* in intact tropical forests, frontier zones, ecologically sensitive or biologically rich areas, biodiversity hotspots and Indigenous peoples' lands including those with areas of “high conservation value.”⁷ Recommendations from the World Commission on Dams further support the principle of prior informed consent of local Indigenous communities in natural resources development.

Civil society groups are also actively working to improve the World Bank draft Indigenous Peoples Policy (OD/BP 4.1) and to strengthen the Bank’s Extractive Industries Review, both of which are currently soliciting feedback.

A number of international NGOs have strongly campaigned for more meaningful consultation of Indigenous peoples within the mining sector. International NGOs have refused to participate in industry or government-led initiatives that do not allow for *meaningful* consultation of civil society, including Indigenous peoples, and have actively campaigned against them. For instance, many members of the NGO community have criticized the Mining Minerals and Sustainable Development (MMSD) Project stakeholder consultations held by the International Institute for Environment and Development (IIED), and financed largely by the global mining industry, for precisely this reason. A more detailed discussion on the MMSD process is presented under “Industry Initiatives.”

Civil society groups also actively campaign and undertake lawsuits in conjunction with, or in support of, local peoples against mining companies. For instance, the South Jakarta District Court has recently ruled against Freeport in a case filed by the NGO Walhi (the Indonesian Forum for Environment) following a fatal accident when a waste pile near Grasberg collapsed in May 2000, killing four workers and flooding a nearby village. The court ruled against Freeport, finding that “[t]he accused [Freeport] did not reveal the truth behind the incident.” The early warning system in the village went off 30 minutes after the flood of waste hit the village. Freeport is now required to reduce its amount of waste and follow specific Bapedal (the Environmental Management Impact Agency) environmental guidelines on chemical waste. However, the court rejected Walhi’s demand that Freeport publicly apologize.

Guidelines, principles and codes

A number of NGOs have developed guidelines, principles or codes that speak to the need for meaningful consultation and participation of Indigenous peoples in mining projects. Box 6 provides a summary of some of these NGO initiatives.

Church action for corporate responsibility has been substantial. For example, in a multi-country joint project, the Taskforce on the Churches and Corporate Responsibility (TCCR) in Canada, the Ecumenical Council for Corporate Responsibility (ECCR) in the UK, and the Interfaith Center on Corporate Responsibility (ICCR) in the US, have developed *Principles for Global Corporate Responsibility: Benchmarks for Measuring Business Performance* (Taskforce on the Churches and Corporate Responsibility 1998). This initiative resulted in an extensive set of social and environmental criteria and business performance indicators for corporate social responsibility, which are based on many international human rights, labour, and environmental standards and principles. The **Benchmarks** have a section devoted to impacts on Indigenous peoples, including principles, criteria and benchmarks.

The Mineral Policy Centre's *Guidelines for a Responsible Mine* (which focus on adequate environmental protection) do not include social measures or participation of local communities. However, these guidelines were adapted by the Environmental Mining Council of British Columbia (EMCBC) (*Guidelines for a Responsible Mine Outside Protected Areas*) to include "Local citizen oversight committee should be established at all major mines as a condition of permit approval." In a related area, a group of German NGOs, coordinated by Brot für die Welt, has prepared *Principles for the Conduct of Company Operations within the Oil and Gas Industry* (1999). Brot für die Welt (1999) recommends that companies should abide by all relevant international treaties and codes, including ILO 169.

However, NGOs have found that codes of practice for consultation and participation have had limited effect. In addition, most NGOs do not perceive consultation as the ultimate solution. Instead, many are demanding that mining projects on Indigenous lands stop unless they have the prior informed consent of local Indigenous communities.

Research and workshops

A number of Indigenous communities in Latin America affected by mining projects approached CoDevelopment Canada (CoDev), a Vancouver-based NGO, to help them become more active negotiators with mining companies. In 1995, with support from the International Development Research Centre (IDRC), CoDev held community consultations with local NGOs in five Latin American countries. "From this process, we developed a comprehensive community decision-making model around mining activities, which helps communities identify their concerns...For example, if a community is receptive to mining activity, the model helps them define what conditions are acceptable and how to engage the mining companies in negotiations that cover issues ranging from environmental impacts to social and economic benefits."⁸

MiningWatch Canada has undertaken a series of national and international community workshops on Indigenous and local community issues in mining, partly financed by IDRC. Consultation has emerged as one of the key issues in these meetings (see MiningWatch Canada

2000 for more details). The Mineral Policy Institute (2001b) has also recently released a new book, *“Moving Mountains: Communities confront mining and globalization,”* which presents examples of communities and civil society groups that are campaigning against transnational mining and also outlines strategies to challenge these activities.

Box 6 - NGO Recommendations for consultation and participation of Indigenous Peoples in mining projects

Australian NGO Principles for the Conduct of Company Operations within the Minerals Industry:

(Each of these has a list of recommendations. See relevant document.)

- Companies should include community participation at all stages of project identification, development and monitoring.
- Companies should include NGOs/communities and/or their nominated representatives, in the community’s right to know and participation in the development of environmental impact statements and social impact statements.
- Companies should establish trust accounts in order to ensure resources to enable adequate levels of community and NGO participation when requesting such organization to help them in their work. Such trusts should be administered independently of either company or NGOs by a Board of Trustees, which should include representatives of companies, and of community groups but which has a majority of independent representatives (if mining companies want to use expertise of NGOs and community groups then they should be willing to pay for it.).
- All employees involved (including CEOs, etc.) in decision-making should be required to undertake appropriate training/cultural awareness and environmental workshops. Employees should be bound by codes of conduct as a condition of employment with appropriate penalties for breaches. (Cultural awareness workshops should be run in ways that engenders respect for local communities, their culture and customs, and where possible involve local communities.)
- Companies must recognize Indigenous peoples and their traditional or customary ownership of land especially where a host government does not recognize the legal status of customary land [see Principle 3.3].
- Mining companies should develop and publish a code of practice for negotiations over exploration and mining with communities and NGOs.
- Companies must recognize that every community has a right to negotiate over the use of its land and impose a veto on development that it does not support.
- Companies must ensure that *all* landowners are fully involved in any negotiations concerning any minerals operations which affects or has the potential to affect them.

Forest Peoples Programme *et al* 2000

“Community groups must retain the right and flexibility to withdraw at any stage from any engagement or negotiation if they find them unacceptable or because of what they have learned through the process of information gathering. Attempts to institute legally binding or exclusive agreements early on in negotiations may not always be appropriate to a successful outcome.” (Forest Peoples Programme *et al* 2000: 84).

(continued on page 41)

(continued from page 40)

German NGOs' Principles for the Conduct of Company Operations within the Oil and Gas Industry (1999)

Overriding principles: Companies must make effective participation of the people in all phases of planning, production and post-production the fundamental principle. This implies the setting up of suitable instruments for the necessary processes for consultation and decision-making (incorporate widest possible participation, avoid 'divide and rule' tactics) Companies must accept the principle that in addition to government legislation in any given country, affected communities must through their participation be enabled to have genuine influence on the decision making process (Brot fur die Welt 1999: 3, 4).

- A code of practice should be developed to guide company negotiations with Indigenous peoples. This should include identifying instruments for a stakeholder identification process, funding the negotiation process, NGO involvement, hiring independent consultants and advisors. (Brot fur die Welt 1999)
- Companies must recognize that every community has a right to negotiate over the use of its land and to impose a veto on development that it does not support (Brot fur die Welt 1999: 12)

Conservation International 2000

"Including all parties in a two-way participatory consultation process will help to ensure that the company and the community understand and accept each other's needs and desires" (Rosenfeld Sweeting and Clark 2000: 51)

EMCBC

"Local citizen oversight committee should be established at all major mines as a condition of permit approval." (*Guidelines for a Responsible Mine Outside Protected Areas*)

CoDevelopment Canada

The Community Decision-Making Model for Mining Activities in the Americas (1997):

The Co Dev Model is based on five principles:

1. A community has the right to be fully involved in decision-making processes at all stages of mining development. They have the right to be consulted by governments and companies and their decisions respected, with due regard to their traditions, culture, needs and priorities. A community has the right to reject mining. A community has the right to information and to have access to information related to the mining company and its operations.
2. A community has the right to benefit from the wealth generated by mining. Communities have the right to benefit through better health, environmental, social and economic conditions. Indigenous populations have the right to their traditional land, and use of that land should be negotiated in a fair and peaceful manner.

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3. A community has the right to socially and environmentally responsible mining. Communities have the right to demand the companies' compliance with internationally accepted standards and the implementation of codes of ethics in their mining operations. Communities have the right to independent assessment and monitoring. Companies should internalize these costs.
4. A community has the right to preserve protected areas, highly sensitive ecosystems, and those areas essential to ensure food security. Mining development should not infringe upon these areas.
5. A community has the right to promote the full participation of women in decision-making processes with respect to mining activities. Young people should be equally encouraged to participate.

Taskforce on the Churches and Corporate Responsibility *et al* (1998):

Principles for Global Corporate Responsibility: Benchmarks for Measuring Business Performance

1.4.P.5 "The development of joint working agreements between indigenous communities and companies is a prerequisite to building business relationships and commitments."

1.4.C.2 "The company seeks and receives approval from the legitimate local indigenous leadership prior to beginning any business activities."

1.4.C.6 "The company develops a transparent process for the inclusion of indigenous peoples as full participants in business decisions".

1.4.B.1 "The company, through its programmes, policies, practices, and communications implements the principles expressed in the International Conventions on Human Rights, Agenda 21 and the International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries, Convention 169."

1.4.B.2 "The company, together with the legitimate representatives of the indigenous community jointly establishes clear decision-making processes and structures."

Amnesty International (1998)

Amnesty International, in their Human Rights Principles for Companies, states that "[a]ll companies should take reasonable steps to ensure that their operations do not have a negative impact on the enjoyment of human rights by the communities in which they operate. This should include a willingness to meet with community leaders and voluntary organizations to discuss the role of the company within the broader community. Companies should seek to support activities and organizations which promote human rights, for example by supporting education, training or citizenship programs which incorporate human rights issues and organizations which defend human rights."

The corporate shift toward “sustainable development in mining”

In addition to external pressures for consultation and community participation, the mining industry itself is arguing that it has undertaken an internal shift in thinking. Proponents argue that corporate policy has moved away from an enclave model toward the idea of sustainable development. The enclave model of mining saw local communities as dependent on the operation, having no consultative or decision-making powers, with little direct compensation through royalties and taxes, etc. The new sustainable development model is supposed to focus more on a holistic approach that aims to meet community and environmental goals: local employment, remediation plans, community and NGO negotiating power (Strongman 1998). However, it remains to be seen whether this shift is truly operational in nature.

Many civil society groups remain highly sceptical. The sustainability of mining operations has been heavily debated. While some believe that mining can support sustainable development while creating profit for the corporation (e.g., Labonne 1999), many others outside the industry believe mining and sustainability to be inherently contradictory. Mining by its very nature is an extractive industry and depletes “natural capital,” while increasing “economic” and in some cases, “social” capital for certain groups while decreasing capital for other, often Indigenous, groups. Technological advancements may minimize environmental impacts but does not necessarily ensure the sustainability of natural capital. In addition, technological advancements may also negatively impact social benefits of mining since they may reduce the number of jobs available for Indigenous mine employees. In general, “sustainable mining” requires the sustained ability of the industry to supply minerals and metals (or economic sustainability), rather than environmental or social sustainability (Forest Peoples Programme *et al* 2000).

Certainly, the public face of mining has changed. CEOs of mining companies now speak openly of the need to deliver the “triple bottom line” of sustainable development, an approach that states the need to incorporate economic, environmental and social considerations into business operations. Corporate social and environmental responsibility are also key buzzwords on the corporate agenda.

Toward corporate social and environmental responsibility

On the positive side, the concept of corporate social and environmental responsibility has slowly expanded to include “expectations for greater involvement in the overall development of local communities and for stricter ethical standards governing corporate behaviour” (ICME 1998). Labonne (1999) maintains that it is essential for today’s mining companies to incorporate social concerns into their mandates. She believes that companies must adapt their policies and approaches to include devolution of decision-making power, and dialoguing with and supporting stakeholders, shareholders, civil society, and governments. Stakeholder participation and governance has been identified as one of the critical themes for mining and sustainable development, along with the economy, environment and society (including human rights, community empowerment, and health and safety). ICME (1998) also argues that environmental and social costs are already part of the economic equation for mining companies: increased instability translates into higher operating costs.

Given the mining industry’s desire to position itself as socially responsible, companies

are more actively attempting to discuss their activities with Indigenous groups. Concepts like “partnership,” “meaningful community consultation,” and “participation” are appearing with increasing regularity. According to Stephen Davis, previously of the Western Mining Corporation (WMC), “Community is in its formative stages of being addressed as a corporate issue” (Davis 1998: 8). Companies state that their long-term success will depend on the ability to balance the interests of local communities with those of the company, and develop meaningful partnerships (see for example Rio Tinto Review 1996). Companies argue that they are seeking a “social license to operate” along with traditional permits. Take, for instance, these thoughts from the Prospectors and Developers Association of Canada: “Gaining a social license to mine is rapidly emerging as a new reality for the exploration and mining industry worldwide. This complex issue involves such key considerations as; the social, cultural and economic impacts of mining; benefits to local communities; small scale and artisanal mining; Indigenous peoples; land access and land title; resettlement; compensation; training and more. The bottom line is that mining companies can no longer do business without engaging in the social realities of the regions in which they choose to work, and this begins with exploration.”⁹

Certainly, corporate motives to consult with local peoples vary, and are not always in the communities’ interests. However, the consulting firm KPMG has argued that a competitive advantage exists for corporations with a social conscience (KPMG 2000). Other benefits for extractive companies include the:

- demonstration of corporate social responsibility
- provision of an opportunity to establish good community relations
- mitigation of problems that may arise previous to expansion applications
- development of, and access to, local labour force and business
- provision of a source of advice on sustainable development and reclamation strategies
- corporate consultation capacity-building
- avoidance of costs and risks which occur when consultation does not take place (which may include negative press, project delays, roadblocks to permits)
- establishment of a neighbourly atmosphere (Syncrude Canada 1999)

While mining companies have traditionally perceived consultation as a costly and unnecessary process, many industry leaders now believe it to actually *reduce* costs in the long term, as well as providing a form of insurance against local protest.¹⁰ Additionally, local input and participation can help reduce conflict, increase stakeholder acceptance of, commitment to and involvement in projects; produce better and more dependable data; and contribute to both a higher degree of equity and better management decisions (Schwartz and Deruyttere 1996; Johnston and Jorgensen 1994; Redman 1993). Yet lack of financial and human resources is a commonly cited constraint used by companies who do not emphasize the need for community consultations.

Corporate policies and codes

To date, most initiatives have been on the part of larger multinational companies and have taken the form of corporate policies and codes focused on sustainable development, and relations with local communities or Indigenous peoples. Appendix 2 contains a few examples of corporate Indigenous Peoples Policies.

For instance, Placer Dome Inc. has identified Indigenous issues within its Sustainability Policy, which states that the company's operations have to "recognize and respect the importance of the land, and traditional knowledge to local indigenous or aboriginal communities and be sensitive to their cultural distinctiveness." In its Sustainability Policy, Placer Dome also committed "to...provide for the effective involvement of communities in decisions which affect them, to treat them as equals, respect their culture, customs and values, and take into account their needs, concerns and aspirations in making our decisions." One of the company's key stated goals is to establish "a formal stakeholder engagement process that will enhance our business strategy with input from a wide variety of sources internally and externally on an ongoing basis." A key problem with Placer Dome's policy is that it emphasizes interaction with like-minded civil society groups: "Our progress will come from our efforts and from our partnerships with communities, governments, joint-venturers, non-governmental organizations and international institutions. We invite all those who share our vision of mining and sustainability to work with us in creating our common future." Yet such sentiments do not adequately recognize the value of interaction with those groups who do not share Placer Dome's vision of mining and sustainability.

WMC's Community Report 1999 also recognizes that working with Indigenous communities in the vicinity of their operations is a critical issue. The company has also stated that it performs cultural heritage surveys to protect significant cultural sites and will consult with the communities. WMC also hopes to seek greater community involvement through processes which "are open to all community members, are broadly representative, provide informed and independent views of our activities, help ensure open and transparent reporting through local involvement." They have also publicly committed to reporting on their activities: "From 2000 we will: collect data on our community activities, review and analyse the impact of our activities, benchmark our activities, use these to improve our systems and processes, involve communities in the process, publicly report on our progress" (WMC 2000b: 10). Yet despite strongly voiced support for Indigenous communities, WMC has been the target of heated protest and resistance by communities and NGOs who argue that, particularly at operations such as exploration at Tampakan in the Philippines, WMC does not respect peoples' fundamental human rights (Goodman 1998; Webb 1999).

Falconbridge has also publicly recognized the importance of positive Aboriginal relations to business performance, and the Raglan mine in northern Quebec has had ongoing involvement of local Indigenous communities. However, the company does not have a formal policy on consultation with Indigenous peoples (Placer Dome 1998; Falconbridge Limited 1999). Rio Algom (now owned by BHP Billiton) released a *Statement on Community Responsibility* in 1998, which commits the company to integrate these Core Principles. In contrast, Normandy offers a less formal framework of principles for which its employees are to emulate.

Overall, corporate codes and policies are universally weaker than the approach recommended by ILO 169 and merely constitute non-enforceable guidelines. This is a key weakness of corporate-led initiatives. Dr. Ted MacDonald at Harvard University believes that the private sector is hesitant to adopt international standards such as ILO 169 into operating principles.¹¹ This may stem from a desire to maintain a "level playing field" with other companies but also from the concern that ILO 169, if properly implemented, provides Indigenous peoples with greater decision-making power than most companies are comfortable with. Mining companies are typically reluctant to engage governments in land rights issues with

Indigenous peoples, citing respect for national “sovereignty.” However, many companies are prepared to lobby national parties for more favourable mining legislation when it suits their own purposes.

Are voluntary corporate policies and codes sufficient?

The existence of corporate codes does not ensure an operational shift in corporate vision or practice. Many NGOs also argue that corporate codes of conduct can be an attempt to placate mining critics and shareholders, and facilitate corporate access to Indigenous lands (Forest Peoples Programme *et al* 2000). In essence, corporate codes can provide a good “public relations.” Corporations often limit the degree of community involvement in decision making to just enough to limit opposition, rather than actually empowering the community to act in their best interests.

While codes may have definite benefits and can help to change corporate culture, they are not sufficient to ensure meaningful participation of Indigenous peoples in natural resources development, and often constitute little more than public relations. In addition, codes and policies rarely support independent monitoring and reporting. For instance, global mining companies often say that they support community dialogue and sustainable development; however, the existence of codes and policies does not always translate into effective implementation. For instance, at a recent Permanent Peoples Tribunal at Warwick University (March 2000), local communities and NGOs summarized their concerns about Rio Tinto’s performance in the Philippines in three key areas, all of which speak to an inadequate or skewed consultation process:

- Failure to gather, recognize or respect local wishes
- Attempts to misrepresent local opinion
- Questionable efforts to influence local opinion to serve company ends (Nettleton 2000b).¹²

With the Olympic Dam mine in Australia, WMC also suggests that it has an effective consultation process. To support this, the company says that it has met at least twice with the Arabunna. However, as discussed earlier, this is clearly insufficient from the Arabunna perspective. Similarly, in the “Report Card” on Placer Dome’s Sustainability Policy, undertaken by the Mineral Policy Center (Dahlberg 1999), critics argue that: “Placer Dome has not fully informed and consulted with the Indigenous communities and their legal representatives (Federation of Indigenous People of the Bolivar State) near Las Cristinas mine in Venezuela regarding the influx of outside mine workers. There are a significant number of Indigenous communities, mainly Pemón and Kariña in the area near the mine. One of the concerns of the Federation of Indigenous People of the Bolivar State (FIB) is the impact that thousands of mine workers will have on their traditional way of life. In particular, there is a fear this influx of newcomers will push the Indigenous peoples away from their ancestral territories. It is reported that Placer Dome has neither consulted them nor offered them any jobs at the mine, in spite of the fact that many of them are educated, know the area extremely well and speak English, Spanish, and their native language. This lack of respect for Indigenous views has caused resentment” (Dahlberg 1999: 29).

In research on Canadian corporate commitment to social and environmental responsibility, the Taskforce on the Churches and Corporate Responsibility in Canada asked CEOs to indicate their level of commitment to a variety of different benchmarks on corporate social and environmental responsibility (see Table 2.1a). Research results indicate that most Canadian mining companies had an unacceptably low level of commitment to corporate social

responsibility.

For example, Placer Dome demonstrated commitment to less than half (48%) of TCCR’s *Benchmarks for Measuring Business Performance* in global corporate responsibility. Other mining companies performed at an even lower level. Barrick Gold and Inco had only an 11 per cent commitment level (TCCR 2000). By far, companies surveyed stated that they had high levels of commitment to benchmarks on the natural environment (ecosystems) yet demonstrated low levels of commitment to benchmarks for their relationships with Indigenous communities. CEO statements on corporate implementation levels show that all companies were found to have an unacceptable level of implementation of benchmarks on social responsibility with Indigenous communities (see Table 3.1a).

Benchmarks Section	Suncor	Shell	Placer Dome	Talisman	Barrick Gold	Inco
Ecosystems	94%	81%	81%	56%	44%	50%
National communities	50%	50%	25%	0%	0%	0%
Local communities	80%	80%	80%	20%	0%	40%
Indigenous communities	80%	25%	38%	0%	0%	0%
Overall level of corporate commitment to entire Benchmarks framework	80%	59%	48%	23%	11%	11%

Companies also fared badly in terms of implementation of benchmarks with respect to Indigenous Peoples, with Placer Dome at 20 per cent, and Barrick Gold and Inco dropping to 0 per cent (see Table 3.1b).

Bench Marks Section	Suncor	Shell	Placer Dome	Talisman	Barrick Gold	Inco
Ecosystems	77%	70%	48%	10%	22%	30%
National communities	80%	75%	50%	33%	0%	0%
Local communities	100%	100%	75%	25%	25%	25%
Indigenous communities	30%	0%	20%	20%	0%	0%
Overall level of corporate commitment to entire benchmarks framework	57%	54%	32%	13%	6%	8%

Quantitative data documenting stakeholder satisfaction about the impacts of mining is

meagre. Yet an interesting picture emerges from a significant study in Peru (Ossio Acuña n.d.) involving more than 450 community respondents who had experience with mining in or near their communities across six different regions. Only 21 per cent considered that mining improved their quality of life, while 65 per cent stated that mining brought damage to local people. Fifty-five per cent of the sample population stated that life would be better without mining. It is especially interesting to note the disparity in points of view between company and community responses—the majority of companies stated that relations with communities had improved over time, while the large majority of community members stated that relations had worsened or stayed the same (Ossio Acuña n.d.).

An Australian media consultant working in mining reported on companies operating in less economically developed countries: “It’s not unlike the missionaries in this country who went out there and conquered people (that is, the Aborigines) in the 1940s and 1950s. Mining companies these days, as a goal, are religiously driven. They go into these frontier places. They think, in their own way, they’re bringing economic development as well as a project. Undoubtedly they get lost in that mindset” (cited in Elder 2000).

Industry initiatives: codes

International industry coalitions are beginning to position the mining industry as good neighbours, actively promoting the importance of community relations and consultation in mining ventures, particularly where Indigenous peoples are concerned. The Australian Minerals Industry Code for Environmental Management, a voluntary Code signed by over 35 mining companies, also emphasizes the need for effective community consultation.

The International Council on Metals and the Environment (ICME) has also developed Community Responsibility Principles (see Box 7) to guide member companies, including the need to “recognize local communities as stakeholders and engage with them in an effective process of consultation and communication.” The ICME states that community consultation “is used to learn about the needs, concerns and aspirations of the Indigenous communities, to ensure community participation in formulating development programs and improving living standards, and to ensure that those immediately affected by the mining activities understand the consequences of the company’s presence in the area” (ICME 1999: vi). Also, the ICME recommends that companies respect local culture, participate in community development and try to mitigate adverse effects of operations, and respect and work with governmental authority and development objectives (ICME 1998: 20). Corporate members of ICME, however, while supporting these principles, have not done enough to operationalize them.

Box 7 - Industry codes and principles

ICME's Community Responsibility Principles:

- Respect the cultures, customs and values of individuals and groups whose livelihoods may be affected by exploration, mining and processing.
- Recognize local communities as stakeholders and engage with them in an effective process of consultation and communication.
- Contribute to and participate in the social, economic and institutional development of the communities where operations are located and mitigate adverse effects in these communities to the greatest practical extent.
- Respect the authority of national and regional governments and integrate activities with their development objectives. (*ICME Environmental Charter*)

The Australian Minerals Industry Code for Environmental Management: According to Principle 2: “Strengthening our Relationships with the Community”, signatory companies commit to: “Engaging the community about the environmental performance of our operations by:

- Fostering openness and dialogue with employees and the community.
- Respecting cultural and heritage values and facilitating cross-cultural awareness and understanding.
- Consulting with the community on the environmental consequences of our activities.

Anticipating and responding to community concerns, aspirations and values regarding our activities.”

ICME has also released a series of case studies on Mining and Indigenous peoples. Gary Nash, ICME’s Secretary General, states that “Because mining represents a long-term investment, often in remote areas, the way a company manages its relationship with local—often Indigenous— communities will be a critical factor in the success of its activities” (ICME 1999). Consultation practices are identified by ICME as a key success factor in building successful Indigenous relations. However, consultation approaches tend to vary across projects and it is unclear how Indigenous peoples view existing consultation and engagement approaches. The ICME booklet focuses primarily on capturing corporate perspectives on successful consultation practices but is not based on field research among the Indigenous groups identified in the ICME case studies.

The effective implementation of industry codes of conduct is significantly impeded by a lack of external regulations and penalties (Bedford and Warhurst 1999), particularly for those companies who do not join. For instance, the Mineral Policy Institute (MPI) has argued that for Australian mining companies operating overseas, voluntary regulation has been an abject failure. More specifically, “The Tolukuma spill demonstrates the ineffectiveness of the Mineral Council of Australia's voluntary Code of Environmental Management. Membership of the Code is voluntary and the Code has no sanctions that are applied to companies that do not comply. The

Code has failed to stop Australian mining companies exploiting lower standards offshore. Dome Resources (responsible for the Tolukuma mine) is not a member of the Council, nor a signatory to the Code.”¹³

Mining, Minerals and Sustainable Development (MMSD) project

The World Business Council on Sustainable Development's (WBCSD) Global Mining Initiative (GMI) aims to better comprehend the economic, social and environmental performance of the industry: “The GMI is supported by 27 mining companies worldwide and is to reach a conclusion on its findings at the end of next year.” The WBCSD has provide core funds for the International Institute for Environment and Development (IIED)'s Mining, Minerals and Sustainable Development (MMSD) project which is undertaking a series of international stakeholder consultations on key issues surrounding sustainable development in mining as a prelude to the upcoming 2002 Earth Summit. A key issue identified thus far by IIED is the issue of more effective interaction with Indigenous peoples.

However, many civil society groups and ngos have voiced strong criticism about initiatives such as the gmi and mmsd. that is: “despite a reticence to participate by most (if not all) community groups and even ngos, the WBCSD is now claiming that the results of the scoping study “pave the way for the full range of the industry’s stakeholders to be consulted.” The WBCSD has declared its intention to move to a global conference on “Mining, Minerals and Sustainable Development”, though it does not explain how critical and sceptical groups in the most affected communities are to be identified, involved or consulted” (Forest Peoples Programme et al 2000: 23). While the MMSD has met with some success in engaging Indigenous representatives, several key mining-focused NGOs, Indigenous peoples’ organizations and communities affected by mining refused to engage in the IIED initiative due to their concerns stemming from the extent to which the MMSD process is driven by industry.¹⁴ This has created an imbalance in the range of voices and views feeding into the project. Some civil society groups are developing a parallel process in order to ensure meaningful consultations with Indigenous peoples, leading up to the Rio+10 discussions. In particular, many civil society groups object to MMSD’s statement that it is conducting a ‘participatory’ research program, since the process has not allowed for Indigenous peoples (and other civil society groups) to have participatory input in terms of the research design and implementation.

Summary

Despite their potential value, many of these initiatives have had only limited impact. In particular, the World Bank and others have been criticized for falsely supporting Indigenous rights and refusing to recognize Indigenous peoples’ rights to prior informed consent. Development banks continue to support oil and gas and mining development on Indigenous lands, which privatizes the land and works against traditional ownership principles. Such land reform strategies favour large multinational corporations and threaten local communities.

It is also useful to note that many of the positive corporate shifts in policy have been developed in response to international pressure from NGOs, Indigenous peoples, lawsuits, and the international community through protocols and financing policies. By and large, mining companies have not “voluntarily” become progressive: they have been forced to improve their performance by international pressure and stakeholder conflict. Nevertheless, internal shifts in

corporate cultures are important forces pushing the consultation agenda ahead.

But meaningful consultation practices are still not common and much work needs to be done to improve this situation. Certainly, there are many examples of consultation “processes” that have been used primarily as a public relations mechanism (see Whiteman and Mamen 2001). Furthermore, consultation itself does not ensure sustainable and equitable development. Instead, sustainable and equitable development for Indigenous peoples requires the right to prior informed consent and the broader participation of Indigenous peoples in natural resources management. This is discussed in detail in the next section.

Section 5 - Differentiating Between Consultation and Participation

What is consultation?

The concept of “consultation” remains a contested arena. Some actors, mostly the private and public sectors, perceive it narrowly as an informative process that can improve community relations and quell project opposition. This has, indeed, been a major criticism of mining industry consultations (Nettleton 2000b), since many companies view consultation as a one-way approach, one which generally does not allow for significant changes in project plans.

Others, typically NGOs and Indigenous communities, identify consultation more broadly as a process that provides space for Indigenous peoples to communicate meaningful feedback about natural resources management and have this feedback acted upon by governments and mining companies. For instance, Status of Women Canada describes consultation as a two-way communication process whereby all parties contribute views, information and ideas, and which should precede decisions and action on the issue. In addition, it is “...part of an ongoing relationship...in which mutual trust and understanding is built up over time through a continual process of discussions, decisions, and follow-through” (Status of Women Canada 1999). Consultation is thus “a two-way street” (Winds and Voices Environmental Services 1999b; Province of British Columbia 1997; Status of Women Canada 1999), a mechanism for meaningful exchange.

“Engagement” is an alternative term to describe the role of people in dialogue and decision-making. Engagement processes are ideally based on meaningful dialogue, capacity-building and education, and are understood to “...encompass dialogue and listening, the expression and exchange of views, group and individual deliberation, reflection and learning. They may create alternative solutions and options, have participants work through trade-offs and choices, and work toward finding common ground and possibly reaching consensus.” (Abele *et al* 9).

The Inter-American Development Bank also notes that consultation should involve the “devolution of power and authority to local groups” (Schwartz and Deruyttere 1996: 3). Alternatively, consultation can be considered an advisory process in which there is rarely an explicit requirement for the proponents to incorporate stakeholder contributions into decision-making (Connor 2000). While many consider consultation to be a form of participation, it can also be viewed as a prerequisite to participation (World Bank 1996a).

Participation

The concept of local community participation in international development has become increasingly popular (see for example The Participatory Development Forum 1999; DAC Expert Group on Aid Evaluation 1996; Samuel 1986; Singh and Titi 1995; UNDP 1998; World Bank 1996a). Indeed, “participation” has emerged as a mantra in development, as a central pillar of the shift toward increased grassroots empowerment and control over development. This concept is now internal to all types of projects and is widely promoted by numerous sectors, including government, academia, lending institutions and industry, though many question the authenticity of its adoption by industry (see, for example, Rahman 1995). It has been recognized that projects aimed at helping the disadvantaged but which are imposed by outsiders with no local control have generally not been successful, and that real empowerment comes from local control over the development process. Increasing the participation of beneficiaries in development projects has been shown to result in better outcomes (Isham *et al* 1995).

One relatively common definition of participation in the development context is: “the organized efforts to *increase control over resources and regulative institutions* in given social situations, on the part of groups and movements of those hitherto excluded from such control” (Stiefel and Wolfe 1994: 5). The emphasis in development circles is on empowering marginalized groups. The World Bank (1996a) and the DAC Expert Group on Aid Evaluation (1996) describe participation as “a process through which stakeholders *influence and share control* over development initiatives and the decisions and resources which affect them” (World Bank 1996a: 3). Broadly speaking, participation may be considered an instrument of empowerment.

According to Pandey (1998), participation in natural resources management means sharing ownership, management and benefits. But participation also includes the basic right to prior informed consent. More specifically, the terms public participation, citizen participation, local participation and stakeholder participation are used to specify the group involved. The term stakeholder is widely used in the mining industry, as “stakeholder” refers more specifically to those groups which may be directly affected by a company’s activities, as opposed to simply involving citizens in a given geographic area.

Levels of participation

Numerous attempts have been made to tease out the various shades of participation (e.g., Arnstein 1969; Choguill 1996; White 1996). These efforts look to classify different levels, or degrees, of citizen/stakeholder involvement in projects. Arnstein’s 1969 ladder of citizen participation is perhaps the most commonly cited work in this area (see Figure 1), and clearly distinguishes between three key levels of participation: participation; token participation; and non-participation. Under this framework, consultation on its own is not true participation but can be viewed as a form of tokenistic participation, though at a higher level than manipulation or one-way information transfer, which is actually a form of non-participation.

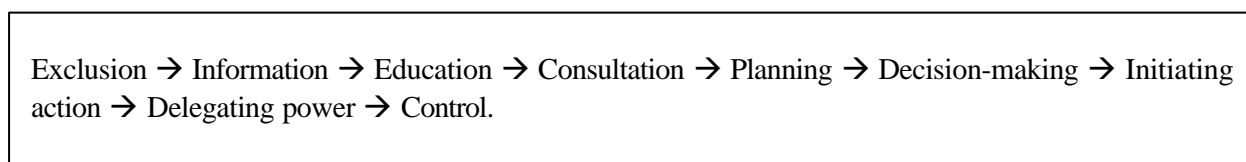
Figure 1: Arnstein’s ladder of citizen participation (Arnstein 1969)

1. Citizen Control 2. Delegated Power 3. Partnership	participation
4. Placation 5. Consultation 6. Informing	tokenism
7. Therapy 8. Manipulation	non-participation

In this classic framework, participation in natural resources management moves beyond simple consultation and allows Indigenous peoples to meaningful contribute to and share decision-making responsibility for natural resources management issues.

Building upon Arnstein’s work, Stewart Carter (1999 2000) has elucidated levels of community control for participation in mining projects (Figure 2). In general, the levels of participation can be grouped into four main categories: information-transfer, consultative (advisory), collaborative (joint decision-making) and local control.

Figure 2: Stewart Carter’s levels of Community Participation (1999)



Mechanisms for participation

Just as there are different levels of participation, there are also different mechanisms for participation, which also can influence the quality of participation. An analysis of some common public participation mechanisms is provided in Table 4.

Table 4: Public participation mechanisms (from Mitchell 1989: 119, reprinted in Mitchell 1996: 164)

	Representative-ness	Informa-tion in [input into decision-making]	Information out [information dissemination]	Continuous exchange	Ability to make decisions
Public meetings	Poor	Poor	Good	Poor	Poor-Fair
Task force	Poor	Good	Good	Good	Fair-Good
Advisory groups	Poor-Good	Poor-Good	Poor-Good	Good	Fair
Social surveys	Good	Poor	Fair	Poor	Poor
Individual/group submissions	Poor	Good	Poor	Poor	Poor

Litigation	Poor-Fair	Good	Good	Poor	Good
Arbitration	Poor-Fair	Good	Good	Poor	Good
Environmental mediation	Poor-Fair	Good	Good	Fair	Good
Lobbying	Poor-Fair	Good	Fair	Good	Fair

Co-management

Co-management is a general concept used to describe shared decision-making in the planning and administration of natural resources. It has been defined as “a situation in which two or more social actors negotiate, define and guarantee amongst themselves a fair sharing of management functions, entitlements and responsibilities for a given territory, area or set of nature resources” (Borrini-Feyerabend *et al* 2000: 1). It has also been called participatory management, collaborative management, joint management etc.

Co-management approaches are anchored in a commitment to the sustainable use of natural resources, equity and social justice, as well as the recognition of the value of community-based management activities (Borrini-Feyerabend *et al* 2000). While practitioners and theorists acknowledge that co-management arrangements may be lengthy and complex, they argue that the co-management process is an “expression of a mature society, which understands that there is no ‘unique and objective’ solution to manage natural resources but, rather, a multiplicity of different options compatible with both indigenous knowledge and scientific evidence, and capable of meeting the needs of conservation and development” (Borrini-Feyerabend *et al* 2000: 1). Co-management is an appealing approach to participation since it implicitly recognizes Indigenous peoples right to self-determination and informed consent. At the same time, it recognizes the reality of other goals and objectives from both the mining industry and the State. In mining projects, however, the few instances of approaches labelled “co-management” have fallen short of this idealized model. Some research aims to identify key concerns in order to mitigate problems and power imbalances in the co-management of natural resources (e.g., Saskatchewan Indian Federated College 1996).

Barriers to participation

The UNDP’s 1993 *Human Development Report* recognizes that some groups are particularly prone to marginalization in the participation process, including poor people, women, minorities and Indigenous peoples, rural people and the disabled. Special mechanisms may be required to ensure the participation of disadvantaged groups. Additionally, while efforts to involve these groups may create *space* for their participation, they may not *guarantee* it. For example, cultural norms may insist that women not express their views while men are present. Other factors which may limit participation include widespread illiteracy, social inhibitions, poverty and dependency, past experience, centralized governments which control decision-making, resources, and lack of information transfer to the rural poor, as well as project-related factors (Pandey 1998). According to Choguill (1996), local peoples in the South face greater political, financial, technical and motivational constraints to participation in development projects. Additional selective barriers to effective participation include poverty, rural settings/distance, illiteracy, language barriers, local values and culture, legal systems, views of interest groups and the state of knowledge/access to information (Status of Women 1997; Saunders 1999).

Certainly, many Indigenous peoples are hindered from effective participation by a lack of technical understanding and access to financial resources (O’Faircheallaigh 1999). The participation of communities as *partners* is also hindered by cultural gaps, communication problems and language barriers, lack of information transfer and training, lack of political as well as corporate resolve and the complexity and dynamism of mining operations (Anderson 1996, cited in Stewart Carter 1999).

Despite stated commitments to sustainable development and fostering “good” relations with Indigenous communities, most mining companies still find it difficult to move beyond consultation to participation: “...it is not clear the extent to which many mining firms are ready to accept such an initiative, and, more importantly, it is not clear if communities are adequately prepared to take such a step or to agree to defining procedures and structures that may be necessary to successfully implement such a step. In many cases (and this can also be true for consultation) communities lack the capacity to undertake effective participation. Thus, it will be necessary to build up the needed skills and knowledge base in order to move from consultation to participation” (Strongman 1998).

Participation in action

To some degree, the mining industry has recognized that Indigenous peoples should participate in certain aspects of mining, usually community development projects, as well as any social assessments or studies (World Bank 1996a; Davis and Soeftestad 1995). Nevertheless, the participatory paradigm in mining, while gaining prominence, often lacks true substance. If participation means the sharing of mine ownership, management and benefits, the achievement of all three criteria is rarely achieved. Indeed, “[p]articipation is a seductive and elusive notion, possibly one that could be abused, and certainly one that can be misunderstood” (Stewart Carter 1998).

While the mining sector has begun to talk about participatory approaches, there is much room for further progress. For instance, the International Council on Metals and the Environment strongly promotes a “partnership approach” (described in ICME 1998) but largely ignores local community involvement. Few communities have the power to determine whether or not mining is to proceed in the first place: the right to prior informed consent is rarely upheld. Consequently, lawsuits, NGO action and community mobilization still remain the principal means through which Indigenous peoples affect decisions regarding mining developments on their lands, rather than through meaningful participation.

In contrast, Indigenous peoples are gaining increased control and participation in the forestry industry. To help ensure responsible forestry practices, the Forest Stewardship Council (FSC) was established in 1993, as a result of the UN Convention on Environment and Development in Rio. FSC established a system of certification for sustainable forest management, which provides for a labeling system in order to inform consumers that the products result from appropriate forest management. One of the 10 principles of the system calls for the respect and recognition of Indigenous rights to own, use and manage their lands, territories and resources (Forest Stewardship Council 1996). The forestry industry has seen a shift from centralized planning to participatory and grassroots approaches which aim to satisfy the needs of those dependent on forest resources.¹⁵ Participation in forest management refers to “the active involvement of various stakeholders in defining forest sector and conservation

objectives, determining beneficiaries, managing forest resources, resolving conflicts over forest uses, and monitoring and evaluating the performance of forestry and biodiversity conservation projects.” (Banarjee *et al* 1997: 3).

In addition, the rights of Indigenous peoples has been recognized by the World Commission on Dams (WCD). On November 16, 2000, the World Commission presented its final report and made a number of important recommendations.¹⁶ With respect to Indigenous peoples, the WCD recommends that:

- No dam should be built without the “free and prior consent” (in the case of Indigenous and tribal peoples) or “demonstrable public acceptance” of affected people, expressed through binding formal agreements “negotiated in an open and transparent process conducted in good faith and with the informed participation of all stakeholders”;
- Mechanisms should be developed to provide adequate compensation for those who are suffering the social and environmental impacts of dams, and to restore damaged ecosystems.

The WCD recommendations set a valuable precedent for more equitable natural resources development. In particular, these recommendations clearly recognize the rights of Indigenous and affected communities to have greater participation in natural resources development.

There are many ways in which Indigenous peoples can participate in natural resources management and in the potential development and operation of mines on their lands. Participation must not be seen merely as input into a project, but as an underlining operational principle that should underpin all activities. Participation must be intrinsic to the project’s development and not simply an activity that is used from time to time to provoke beneficiaries’ interest (UNDP 1998). Participation must include the right to prior informed consent of all mining activities on Indigenous lands. Indigenous peoples can also be involved in participation in mine operations and management, environmental management, mining activities, enjoyment of benefits, and peripheral activities (such as company-sponsored community development programs).¹⁷

Outlined below are a few examples of participation and co-management in action from Canada and Australia.

Canada

The Whitehorse Mining Initiative (WMI), a multi-stakeholder process in Canada was initiated by the Mining Association of Canada in the early 1990s. It was one of the first processes to recognize the need for substantive Indigenous participation in mining. The Leadership Council Accord, the main document which emerged out of the WMI process, was signed by government, industry, NGO and Indigenous representatives, although some of the Indigenous representatives did not sign. On page 27, the Accord recognizes as a fundamental principle that: “Aboriginal peoples are entitled to opportunities to participate fully in mineral development at all stages of mining and associated industries at all employment levels.” This established an important standard for the mining industry. Unfortunately, this Accord has, to date, had little real impact on mining operations. Most companies and governments, in Canada

and elsewhere, have not focused on truly involving Indigenous peoples in decision-making on natural resources management.

However, a number of Canadian Aboriginal peoples have successfully negotiated land claims agreements that allow for increased participation of natural resources management. In the future, Graham (1999) reports that the approximately 80 self-government negotiations currently taking place in Canada will result in Aboriginal people becoming major players in resource management. For example, in the Northwest Territories of Canada, the implementation of comprehensive land claims agreements between the federal government and Indigenous peoples has provided for the co-management of environmental assessment, land use planning, land and water administration where Aboriginal governments appoint at least one-half of the members of independent boards.

Throughout the Arctic region, co-management regimes have become well developed and also occur in US territory. More specifically, the Mackenzie Valley Land and Water Board (MVLWB) is a co-management board established in 1997-98. This Act implements obligations under land claims agreements between the Crown and three Aboriginal groups—the Gwich'in, Sahtu Dene and Metis. Through the MVLW board, local Indigenous communities have direct participation in resource management, planning, and regulatory approvals. Indigenous peoples participation is ensured through:

- Guaranteed membership on MVLWB
- Guaranteed membership on panels reviewing applications
- First Nation organizations will receive and review all applications
- First Nations will review applications for impact on heritage resources
- First Nation organizations will review applications for impacts on wildlife
- If there is a public hearing the First Nations will have the opportunity to be contributors.

In addition to the application being delivered to the First Nations by the Board, all applications are available on a MVLW web page and in local newspapers on a regular basis to solicit public comments. However, the legislation does not provide for funding for contributors to attend hearings or for the regular review of applications. Also, it does not ensure prior informed consent.

Indigenous peoples are also involved in the co-management of forestry practices in Canada. For example, the Clayoquot Sound Central Region Board in British Columbia was established in 1994 in order to develop long-term sustainable forestry, and at the same time address short-term economic needs. The Board was formed under an Interim Measures Agreement between the provincial government and the Hwiih (hereditary chiefs) of the Nuu-Chah-Nulth Central Region Tribes after many years of intense negotiations and community blockades. It was the first significant joint-management venture in British Columbia between Indigenous peoples and the government. The Board coordinates all development projects in Clayoquot Sound including logging and mining projects. It utilizes an ecosystem-based approach to natural resources planning and management, and integrates the traditional ecological knowledge of local Indigenous peoples into the planning process.

Australia

Australia has ratified ILO 169 and has implemented the Convention quite directly. But similar to the situation in Canada, much of the advancement with respect to consultation and participation of Indigenous peoples in Australia has been through case law development. For instance, the Mabo decision in Australia (Mabo v. Queensland) invalidated the Queensland Act (1985) which extinguished native title in the Torres Strait. In 1976, the Aboriginal Land Rights (Northern Territory) Act recognized traditional land ownership through a “freehold title” and representation through the Central Land Council. The Act allows traditional landowners to refuse mineral exploration and activity on their lands. When landowners consent to mineral activity, the Central Land Council is mandated to ensure that landowner views and interests are represented and included in mine planning. (Stoll 1995). Where consent to an application for exploration/exploitation is refused, the application may be re-submitted in five years. Terms of the relationship/liaison between the company and traditional landowners, as well as environmental provisions, is laid out in mining agreements.

While Land Councils have the right to refuse an exploration licence, mining lease applications cannot be rejected (O’Faircheallaigh 1995). Exploration licence agreements usually result in traditional landowners to receive at least five per cent equity in projects that result from exploration on their land. (O’Faircheallaigh 1995). Community objections can also be overturned by the government if the mine is “in the national interest.” Note that the Chamber of Mines and Energy of Western Australia also believes that this participatory process holds up the minerals application process.¹⁸

The Cape Flattery case study in Australia, outlined in Box 8, illustrates some lessons learned about participatory environmental and social impact assessment processes.

Box 8: Cape Flattery: A participatory approach to SIAs

(Source: O’Faircheallaigh 1999: 69-70)

“Cape Flattery Silica Mines (CFSM), a fully owned subsidiary of Mitsubishi Corporation, has operated a silica mine at Cape Flattery since the late 1960s. The mine was established on Aboriginal reserve land, then under the control of Queensland’s Department of Aboriginal and Islander Affairs (DAIA). It was located some 50 km from the Aboriginal community of Hope Vale, which at the time was run by a Lutheran mission. Despite the mine’s proximity to Hope Vale, travel between the two is difficult because of the absence of a surfaced road, and Hope Vale people working at Cape Flattery have always resided there, in single accommodation, for extended periods of time.

No [social impact assessment] SIA was conducted prior to the granting of mining leases, and Aboriginal people were not consulted regarding the establishment of the mine. By 1990 CFSM needed an additional mining lease to support its operations, and a number of its existing leases were due for renewal. Hope Vale had by then been granted title to the reserve (referred to as Deed of Grant in Trust or DOGIT) under Queensland legislation, and the community (numbering about 900) was administered by an elected Aboriginal Council. Under Queensland’s Mineral Resources Act 1989, mining leases cannot be granted over DOGIT land unless the developer has first sought the consent of the Aboriginal trustees of the land, in this case the Hope Vale Council. This provided an opportunity for the community to enter into negotiations with CFSM regarding the terms of any new lease; since such a lease would be closely integrated with the company’s existing operations, CFSM quickly agreed that the latter should also be addressed.

During 1990-1991 the Hope Vale Council prepared for the negotiations, in particular by commissioning the author [O’Faircheallaigh] and one of his graduate students to conduct an economic and social impact assessment (ESIA) of the mine. Though federal and state agencies responsible for Indigenous affairs helped fund the ESIA, it was undertaken entirely under the control of the Hope Vale community, which set its terms of reference, appointed the consultants

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When the ESIA process was complete, the council requested the author [O’Faircheallaigh] to join its negotiating team and to compile a draft negotiating position based on the ESIA report. This position was then ratified by the council, and formed the basis for negotiations with CFMS/Mitsubishi. Thus information on the impact of mining as experienced by Hope Vale people, and on their concerns and aspirations, was fed directly into the negotiation process. Negotiations with CFMS/Mitsubishi commenced in August 1991, and a final agreement was signed in April 1992.

[A]n important point to stress is that the agreement created an institutional base that allows impact issues to be addressed on an ongoing basis. In particular, it provided for the establishment of a Coordinating Committee, made up of equal numbers of representatives nominated by the Hope Vale Council and by CFMS. This body has “*control over environmental, historical and Aboriginal issues which arise from mining operations*” (my emphasis). In other words, its role is not advisory; it is authorized, under the Agreement, to take decisions in relation to these key (from an Aboriginal perspective) aspects of CFMS’s operations. It also has a general responsibility to monitor implementation of the agreement. In addition, a Good Order Committee, with Aboriginal, trade union, and management representation, was established to deal with matters relating to workplace discipline and township administration.

The Coordinating and Good Order Committees are of crucial importance, as they provide forums through which implementation problems and new issues and circumstances can be addressed. However, the Hope Vale Council has had to devote significant resources and energy to ensuring that its representatives play an effective role on these committees, a fact that was not fully appreciated when the agreement was negotiated.”

Lessons Learned

- This case study demonstrates that “...it is indeed possible for Indigenous people to take control of SIA and ensure that it reflects their experiences and their goals. Very importantly, they also show that a negotiation-based approach can allow SIA to help shape the outcomes of development projects in ways favorable to Indigenous communities” (O’Faircheallaigh 1999: 75).
- “SIA can pay as much attention to the possibilities for achieving positive economic and social gains as to the mitigation of social costs” (O’Faircheallaigh 1999:75).
- But, “...there is a perceived danger that those who lack power can be co-opted into negotiations that are essentially tokenistic and as a result give way on matters that involve fundamental issues of principle (Amy 1983; Austin and Bullets 1996; Campbell and Floyd 1996; RuBino and Jacobs 1990).” Nevertheless, community-controlled SIA can highlight where these conflicts exist, can help shift the power to weaker stakeholders (O’Faircheallaigh 1999: 76).

Consultation in practice

In practice, the term “consultation” is applied broadly and can mean many different things. Operationally-speaking, consultation can range from being a “cloak for manipulation” in the form of unidirectional communication intended to supply information or gain support for an initiative, to an “ideal means of promoting a two-way exchange of ideas and information” (Baetz and Tanguay 1998). Consultations in the mining industry generally tend to be weak, particularly

when carried out solely by the mining company.

For example, at Cerro Colorado in Panama, the Ngäbe-Buglé, in whose territory a major copper deposit is located, have collectively opposed mining development for over 30 years, both through written manifestos and protests at each General Congress, a territory-wide meeting and election which occurs once every three years. Tiomin Resources Inc., the company who currently controls the concession, has stated that they will leave the project if that is what people want (Mamen 1999). The problem is that Tiomin claims, on the basis of company surveys, that opposition is not overwhelming and that significant support of the mining project exists. However, the local Indigenous community has repeatedly voiced strong opposition, which Tiomin ignores (Whiteman and Mamen 2001).

A similar situation has occurred in Kenya, where Tiomin has not meaningfully consulted local communities on proposed titanium mining. In response to their lack of both consultation and distributing full information, Tiomin has faced growing opposition and criticism from a coalition of local communities and organizations called the Coast Mining Rights Forum, formed in response to a proposed titanium mine in Kenya. Yet Tiomin claims to have distributed over 100 copies of their environmental impact assessments (EIAs) for local community “review.” Local Kenyans argue that they have never seen this document, nor have they been provided with formal consultation mechanisms in order to comment on what they perceive as disparities in the report. Local communities also argue that they were not consulted on potential social impacts during the EIA preparation. In contrast to the participatory approach to EIA that was used with the Cape Flattery mine example (Box 8), local Kenyans were not consulted with, nor had the chance to meaningful participate or control in the EIA process.

Such situations are not isolated. Often, weak consultation processes are used by companies like Tiomin for public relations purposes and avoid the central issue of meaningful participation in natural resources decision-making. Indigenous peoples frequently complain about the significance, substance and scope of corporate consultation processes. It is not simply the quantity of consultations that is at issue.

Problems arise when stakeholder expectations of the nature of the process, and degree of influence on decision-making, are not met. Indigenous peoples’ concerns often include the perception that input into the consultation process was not absorbed, which can then result in feelings that peoples’ time has been wasted and in diminished future participation (Schwartz and Deruyttere 1996). It can also result in greater environmental and social impacts. Additionally, community complaints that have arisen out of consultation include the contention that companies use consultation as a tool to coerce local residents into accepting the mining project, and also the claim that community consent was obtained when in fact the community either outright rejects the mining project, or is *conditionally* consensual. Abele *et al* (1998) report that the selective choice of participants in consultations can lead to public indignation and a skewing of views contributed. For example, at the Diavik mine in Canada’s Northwest Territories, BHP claims to have conducted over 300 consultations on proposed mine operations. However, members of the North Slave Métis Alliance, along with other Aboriginal groups, disagree, claiming that many of these consultations were done with government officials or among corporate representatives, rather than community members.

Peter Di Gangi, Research Director at the Algonquin Nations Secretariat in Canada, voices

a growing concern among Indigenous peoples that consultation “processes” are executed in a cursory manner in order to satisfy a corporate checklist: “[the company would] ask people what they thought, they’d take into account the things people said that they agreed with, and they’d ignore the stuff they didn’t agree with” (Di Gangi 1999: 1). Resentment among Indigenous communities has resulted from companies claiming to have consulted them, when in fact local people did not view the interaction as official consultation (e.g., casual chat on the street). This has been reported around the world, including most recently at the Ekati mine in Canada and the Tampakan mine in the Philippines. A second and equally concerning problem is the contention that companies employ “divide and conquer” techniques to pit different local Indigenous groups against each other in order to weaken their collective power and/or organization.

In addition, gender issues are rarely addressed effectively in consultation processes. For example, Inuit women severely criticized the EIA for Voisey’s Bay since it did not consult with local Indigenous women despite having gender-based consultations as an explicit dimension of the terms of reference for the EIA (see Tongamiut Inuit Annait 1997). In most cases, the gendered impacts of mining go unrecognized and unmitigated, despite the significance of such impacts.

The Berger Inquiry

Although it was carried out over 20 years ago, the Berger Inquiry in Canada is still widely considered a landmark in consultation with Indigenous communities surrounding natural resources exploitation. Two types of hearings were held, community hearings and formal hearings, in order to avoid conflicts created by having the same process for both experts and community members. The less formal community hearings were carried out in every settlement in the Northern Yukon, the Mackenzie Valley and the Mackenzie Delta. The Inquiry heard the perspectives of approximately 1,000 individuals. Hearings were all conducted in the local language, which included, among others, English, French, Dogrib, Loucheux, Slavey and Chipewyan. A committee was established to plan and oversee this process, and “[t]he Inquiry remained in each community as long as was necessary for every person who wanted to speak to do so.” (Berger 1977: 227). A company representative attended each community hearing and media representatives were invited to all proceedings of the Inquiry. CBC’s Northern Service even reported daily to provide local updates. As the Mackenzie Valley pipeline issue was considered to be of national importance, hearings also took place in 10 cities across Canada. Funds were provided by the Canadian federal government in order to facilitate the participation of Indigenous groups and environmental organizations.

It is interesting to note that the Inquiry travelled, not the people. Eventually, after lengthy community consultations, the Berger Inquiry recommended that the pipeline project not proceed due to the severity of the potential social and environmental impacts. Local Indigenous peoples were simply not prepared for the development. As a result of the Inquiry's findings, the pipeline project was indefinitely put on hold (Berger 1977).

Box 9 - Camisea

(with exception of noted references, information from May *et al* 1999)

In the oil and gas industry, Shell's Camisea project in Peru has focused on developing detailed community consultation processes after a rocky start. Shell identified their consultation process eventually involved "all stages of stakeholder engagement including informing, listening, dialoguing, participation, and where possible partnering" (Jones 1999). However, Shell's consultation process was far from perfect, though the case demonstrates that concrete improvements can be made.

The Camisea gas fields in the lower Urubamba region of the Peruvian Amazon were discovered by Shell in the early 1980s. The company's exploration work at this time was criticized for having created, in addition to environmental damage in one of the world's foremost biodiversity hotspots, significant health and socio-cultural problems for the local Indigenous peoples (including prostitution, rape, introduction of fatal diseases, deforestation, cultural impacts due to first contact with outsiders, etc.) (see May *et al* 1999). The operation was abandoned in 1988 due primarily to economic reasons. When, in 1998, Shell made the final decision to exploit the resource there was a strong recognition on behalf of the company that it had to be done in a socially-responsible manner, and numerous measures had already been put in place. This pressure not only resulted from Shell's previous experience in the area, but from strong opposition to the company surrounding previous condemnation of their involvement in human rights abuses in Nigeria and activities surrounding the dismantling of the Brent Spar platform in the North Sea, as well as recommendations from internal reviews (May *et al* 1999). According to Murray Jones, "a sustained anti-Camisea campaign was seen as a high risk event" (Jones 1999).

As such, Shell Prospecting and Development Peru (SPDP) adopted an innovative approach with a formal Community Liaison Program. To reduce social and environmental impacts, Shell also decided that no additional roads would be constructed (all transportation would be via water and air). In addition, no contact with local communities would be permitted without the explicit permission of designated community liaison officers (May *et al* 1999). The company's total expenditures on social and environmental programs at Camisea comprised a mere two per cent of the project's start-up costs, and were found to have delivered disproportionately high benefits (especially in the form of risk and cost minimisation) (May *et al* 1999).

Community Liaison Program

Nine staff under the Health, Safety and Environment (HSE) department implemented SPDP's community liaison program at Camisea. The community liaison program promoted non-compensatory approaches to ensure a more equitable distribution of benefits and also building capacity and "social capital" and sustainable development by strengthening existing institutions such as mothers' clubs, training in environmental management, etc. Efforts were made to facilitate subcontractor adherence to corporate policy. Shell staff were placed, for example, in the construction consortium contracted for the pipeline construction project to ensure consistency. Additionally, SPDP worked with the regional government to put in place sustainable local development programs. The program adopted an adaptive approach.

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For example, initial company negotiations with local communities focused on consulting with community leaders rather than community members at large. Numerous problems were experienced with this approach, including corruption and mismanagement, and so the company shifted to dealing with general community assemblies instead (May et al 1999).

A broad consultation process formed part of the community liaison program. Community consultation consisted primarily of an iterative process in which the community liaison officers conducted six consultation rounds in each of the more than 30 villages in the region. This involved capacity-building (explaining specifics of the development plans to community members), and soliciting peoples' input into the project's design and implementation. With the idea of facilitating community understanding of project details, a wide variety of tools were employed including "one-on-one discussions, regular briefing papers, release of all studies into the public domain and workshops at both national and international levels. Within the native communities these techniques were supplemented by village meetings and working with individuals, communities and representative federations. These were supported by specially designed presentation materials, copies of all documents to all communities, training and capacity- building on EIA and operations, open opportunities for site visits, and even comic books and puppet shows" (Jones 1999).

Approximately 200 groups were identified for inclusion in the consultation process and were categorized into different stakeholder "levels," depending on type of involvement in the project. In addition, operations personnel were involved in the consultations in order to more effectively build common understanding. Non-governmental organizations were also involved, not only in the consultation process, but also throughout other aspects of operations. A member of the international NGO Pro-Natura was hired in a full-time advisory role to help promote company-community partnership and the internalization of social and environmental concerns.

Despite their efforts, Shell's consultation process had a number of weaknesses. The Camisea project faced significant opposition. Many critics argued that the company should not have pursued development in such a culturally and environmentally vulnerable area to begin with. Shell did not allow for prior informed consent—consultation was focused on how to go ahead, not if the project should go ahead. Also, local communities did not jointly define the consultation process. Additional problems encountered at Camisea were reported as follows: the consultation time frames and deadlines were too strict; leaders were not representative spokespeople for their groups; some groups were under-represented; and some negotiation agents were not transparent or objective (Seymoar *et al* 1998 this source is missing from the References). Problems also developed between the three concerned Indigenous federations and the consultation process did not have an adequate conflict resolution process built in to address differing community perspectives.

Further difficulties stemmed from inexperience and lack of training among community liaison officers. While this may be mitigated with improved training programs, it might also have been prudent to employ local people (community members or at least representatives from the NGO or academic community with experience in the area) in these positions. While effort was made to operationalize social and environmental policy, this did not occur in certain areas. For example, despite the desire for local capacity-building, the company's emphasis lay on contract negotiation rather than local capacity-building for decision-making (May et al 1999).

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May et al (1999) elaborate the following corporate lessons from Shell's experience at Camisea:

- Stakeholder consultation allows for the construction of sensitivity and early identification of important local social and environmental issues.
- Issues raised during the consultation process must be internalised and company staff should be encouraged to work positively with, and learn from, stakeholders.
- Trust must be built through a just and transparent consultation and community liaison process.
- Company management must be committed to social and environmental high standards from early on.
- Staff continuity is important in carrying out corporate commitment and community relationships.
- Interim goals should be realistic and creative in order to maintain credibility.
- An interdisciplinary and well-trained team of people is important to an effective community liaison process.
- Essential preconditions for project development: understanding of local dynamics, local institution strengthening, "put trial initiatives to the test."
- Establishing a collaborative and adaptive learning framework is constructive.

Summary

Consultation and participation are not synonymous terms. Indeed, consultation can be viewed as a low level form of participation and as a precursor to meaningful participation. Consultation, itself, remains a contested arena. In many cases around the world, consultation processes have been used by mining companies and governments as a tokenistic measure to placate local communities, fulfill financing requirements, and to avoid criticism for decisions that have, in effect, already been made. In general, many consultation processes remain weak, particularly from a gender issues and Indigenous peoples' standpoint.

While essential, meaningful consultation is insufficient to ensure equitable and sustainable natural resources development. Furthermore, many international conventions go beyond consultation and strongly identify the rights of Indigenous peoples to participate fully in decisions on natural resources that affect or may affect their livelihoods and lands (as previously outlined in Section 1). But such rights are rarely if ever incorporated into the consultation process. Consequently, there is a pressing need to improve current consultation processes and also to move beyond consultation into greater levels of participation, including the right to prior informed consent of mining projects by affected Indigenous peoples.

Section 6 - An In-depth Look at Consultation

While consultation does not ensure Indigenous peoples' rights to sustainable and equitable natural resources development, more effective community consultation processes have the potential to empower local communities to influence decisions on mining projects. Consequently, we provide an in-depth look at consultation processes, with the aim of summarizing key advancements in the area. However, we must emphasize that meaningful consultation on its own is an insufficient tool to address deeply entrenched power imbalances and unrecognized Indigenous peoples' rights. Mechanisms and processes for meaningful participation are also required.

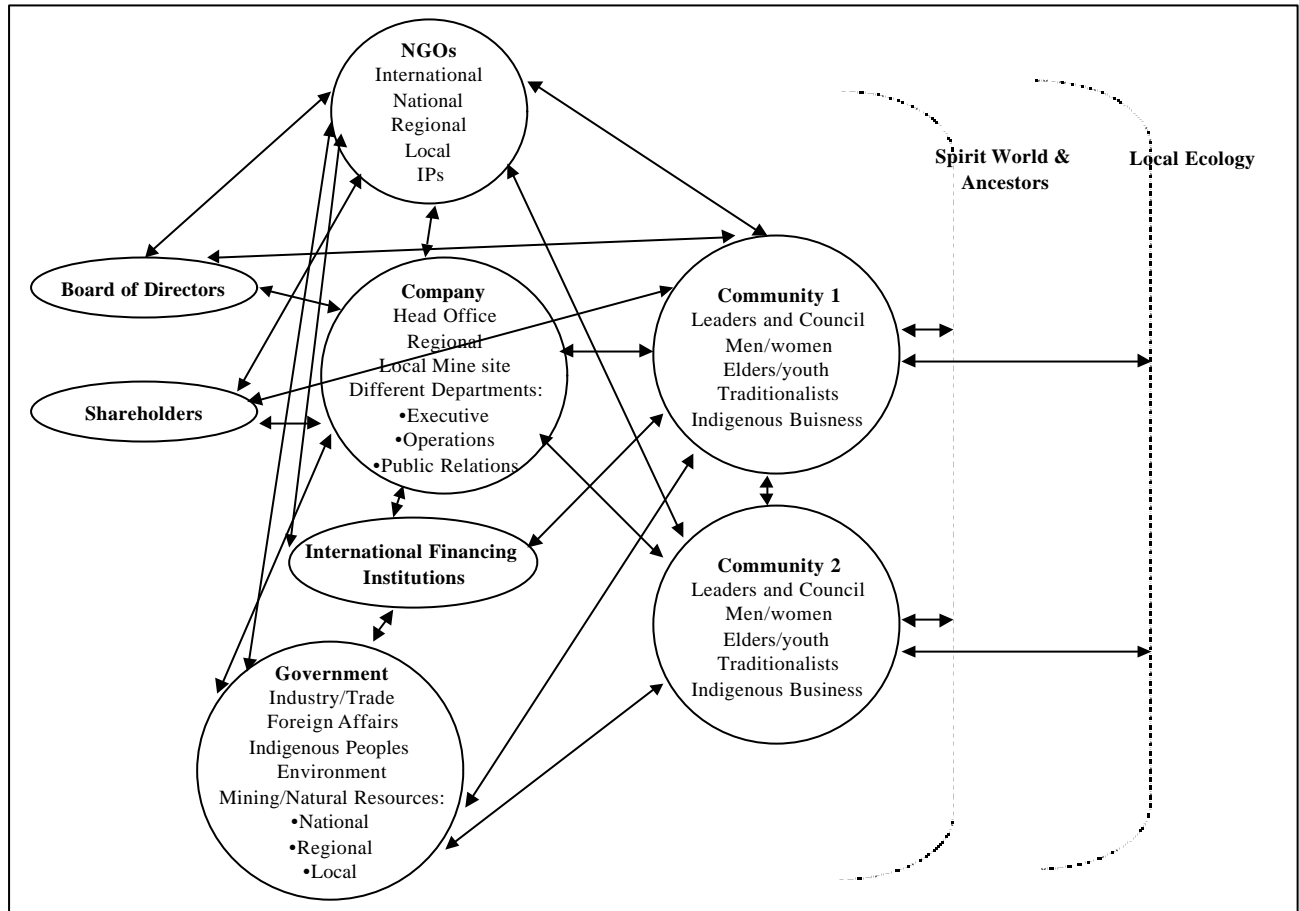
This section examines the main players in the consultation process, provides a categorization of strong versus weak processes and summarizes literature on consultation goals/objectives, values/principles and mechanics.

The main players in consultation

To date, very little research has comprehensively examined the wide range of possible consultation dynamics within actual or proposed mining projects. The consultation literature focuses largely on company-community consultation (and to a lesser extent on government-community consultation), which is indeed important. However, effective consultation and participation on proposed mining projects on traditional Indigenous lands requires communication between, and within, numerous parties. In general, the four main groups of players include: companies, government, affected Indigenous peoples and land users, and non-governmental organizations. In addition, lending institutions have an important role to play in ensuring that consultation occurs (Schwartz and Deruyttere 1996), particularly if meaningful consultation with Indigenous peoples is a condition of financing agreements.

Figure 3 depicts a map of consultation involving the main players. The arrows correspond to the paths of dialogue between the actors. Consultations between these groups can occur at the same time, or sequentially. Who is involved in a given consultation may depend on factors such as the geographic scale of the particular consultation (local, regional, national, international), the issue at hand, and the project phase, as well as what steps are taken on the part of the implementing body to involve stakeholders. However, some relationships are more formal than others. For instance, company-community consultation or government-community consultation often takes on a legal significance while inter-community consultations are often more informal but may be equally binding from the community perspective.

Figure 3: Main Players in Consultation



The paths of dialogue

Breaking down the relational dynamics of consultation processes into a series of more simple relationships can strengthen an understanding of the subtleties of consultation. On a fundamental level, consultation and dialogue on proposed or existing mining projects should occur among stakeholder groups (external consultations) but also *within* each group (internal consultations).

External consultations

Company-community consultation

The interaction of a mining company and the communities affected by its operations often forms the backbone of discussion on consultation. Through the 1970s to 1990s, the trend in consultation has been one of slow progression: that is, companies are moving away from ignoring the community to attempting to integrate community concerns, from traditional social concerns (alcohol, prostitution, violence) to development concerns and respect for community and Indigenous rights (Strongman 1998). Consequently, relationships between companies and stakeholders are becoming much more complex (Andrews 1998). There may also be different

kinds of relationships between communities and State-owned mining companies versus multinationals. Andrews (1998) suggests that State-owned mining companies tend to have more profound partnerships with communities (e.g., Codelco in Chile), though there is little research as yet to support this proposition.

Mining companies often assign responsibility for implementing consultation programs to mine managers or senior engineers, some of which may or may not have expertise in consultation processes. Increasingly, companies are being encouraged to bring in qualified personnel with a solid understanding of mining issues, sociology and anthropology (Strongman 1998; Williams 1998; The Chamber of Mines and Energy of Western Australia Inc. 1994), and knowledge of Indigenous peoples and Aboriginal governance structures (Barreiro 1996).

Stewart Carter (1999) found that greater community participation was achieved when companies had a department devoted to community development, rather than community relations carried out by a department such as public relations. Stewart Carter (1999) also found that a company's relationship with the local community varies depending on whether residents are viewed as an "employee pool," "the political centre" or as "poor neighbouring communities." Findings suggest that a mining company's general management tended to engage in relationships with the potential work force, while the public relations department tended to interact with the political centre of the local community, and the community affairs department was left responsible for what the company perceived as "the poor neighbouring communities." Consequently, the department responsible for consultation is a key factor in shaping company perceptions and actions.

Unfortunately, many companies still believe that they do not have the financial resources to comprehensively involve the local community or to carry out consultations (ICME 1998). This is particularly true for junior mining companies. This reality can create significant problems for both the local community and the mining industry at large, since most junior exploration companies eventually sell the concession rights to a larger company to exploit the deposit, who may have to deal with an established community relationship that is poor or hostile. In addition, profitability has to continue to be the bottom line for companies (ICME 1998), and there is delay in recognizing the potential contribution of community involvement to meet this end.

Government-community-corporate consultation

The traditional model has been one of company-government dialogue in order to establish concession agreements and mining permits. Communities are rarely brought in for "tripartite" consultation, often only being informed of mining decisions and permits after they have been granted (CoDevelopment Canada 1997). Governments often play a peripheral role in overseeing consultation processes, despite the growing demand by Indigenous peoples that their land rights be formally recognized prior to natural resources development. Governments in many countries are moving away from regulation and an active role in natural resources development, leaving consultation in the hands of companies.

Yet governments explicitly affect the level of Indigenous peoples' participation in mining, through legislation and policy or by playing a direct or mediating role in consultation and negotiation processes. Labonne (1999: 316) highlights a shift in the role of the State from "overall provider and operator to that of an enabler and guarantor of the [governance]

institutions, through legal and regulatory frameworks and a strong rule of law.” However, in many cases, the State is not a neutral actor and focuses on enabling companies to develop mines rather than enabling Indigenous communities to participate actively in natural resources development. Throughout the world, governments are aggressively promoting minerals development while Indigenous perspectives continue to be marginalized.

In order to protect foreign direct investment, governments are increasingly reluctant to enact tough regulation on mining investment, including the need for consultation. Even where regulation exists, through such vehicles as ILO 169, governments do not necessarily ensure compliance. For instance, in Colombia, a country that has ratified ILO 169 and enacted supporting legislation, meaningful and informed consent is a rarity. In Canada, a country that purports “sustainability in mining,” advances in community consultation have occurred mostly as a result of the court system (i.e., through lawsuits by Aboriginal peoples) and not through government initiatives (Canada has also refused to ratify ILO 169). Governments may also be unable to adequately enforce mining legislation due factors such as lack of resources, inadequate training, absence of a clear mandate, unwillingness to apply legislation in an impartial and transparent way, and problems such as war, civil strife, political instability and corruption (Andrews 1998). Research has demonstrated that states which are dependent upon oil and minerals development also have higher rates of corruption, authoritarianism and government inefficiencies (Ross 2001).

Typically, the mining industry and the government often wish to minimize the role of government in mining-community relationships, while Indigenous communities tend to press for a strong government presence, particularly when land rights have not been legally recognized. While some believe that antagonism between local and national level governments can complicate the relationship between the company and the community (Labonne 1999), government involvement can in some instances help ensure that Indigenous peoples are not taken advantage of. In addition, mining companies can make greater contributions to socio-economic development in partnership with governments (ICME 1998), and government involvement can help to ensure lasting benefits to local people should the company decide to withdraw from the project. However, this is rarely the case, as federal governments most often prioritize economic development and foreign direct investment over the well-being of communities, particularly Indigenous communities.

Government-community consultations are especially important prior to opening lands to exploration, prior to signing agreements with companies, during impact assessment and in land claims disputes. Governments, at minimum, need to establish the rules of the game. A key role for governments in consultations is to legally recognize Indigenous peoples’ land rights and rights to prior informed consent and meaningful consultation and participation in natural resources management. However, the Harvard Dialogues on Oil in Fragile Environments found that typically no operational guidelines for consultation exist at the national level, despite some existing legislation: “While many governments state that their policies toward consultation are clearly defined and fully operational, that opinion is not shared by those who participate in the Harvard dialogue. Participants [which included representatives from major oil companies, Indigenous organizations and NGOs] were unable to cite a single positive example that demonstrated government clarity regarding consultation. While detailed plans and documents have been written and new norms are being suggested, there is, at best, poor definition and implementation” (PONSACS 2000: 4; see also Jones 1998). This is a key area for future work.

Other government functions include the following: ensuring equitable sharing of benefits, establishing rules/regulations/incentives to ensure that consultation and information-sharing is carried out appropriately, ensuring adequate social and environmental studies and impact assessments, facilitating the articulation of community concerns and input into feasibility study, issuing licenses and social and environmental approvals, outlining the terms for funneling project revenues into local development, establishing mechanisms for guaranteeing sustainable financing of social provisions and adhering to financing commitments, facilitating NGO work, ensuring compliance with standards/regulation, and ensuring appropriate mine decommissioning and reclamation plans (Strongman 1998; Hartog and Jones 1999; McPhail 1998). Governments can also play a key role in facilitating communication between stakeholders, ensuring adequate local compensation, and helping to educate Indigenous peoples about the economic costs and benefits, and the social and environmental impacts of mining.

NGO-community consultation

The NGO community is diverse. Some represent environmental interests, others may seek to ensure the cultural survival of Indigenous peoples, or work in community development. NGOs may act as facilitators within the consultation process and provide technical advice, information on best practices and implement capacity-building programs. NGOs can be particularly useful in ensuring that communities fully understand and assess the alternatives to mining, as well as building capacity for effective negotiation and monitoring of impacts, and helping Indigenous peoples demarcate their land through mapping programs.

While NGOs and Indigenous peoples often have similar goals, there have also been instances of conflict between Indigenous groups and environmental NGOs. Some mining companies claim that environmental organizations use scaremongering tactics to discourage Indigenous communities from supporting mining projects, though this is unsubstantiated. NGOs typically operate as proponents of Indigenous peoples' rights, yet when Indigenous peoples argue for the right to engage in mining, environmental NGOs have been known to contest this choice, citing the need for environmental conservation. For example, in Indonesia, many local Indigenous peoples engage in artisanal mining and their use of mercury may have profound environmental impacts. As Robert Lee of the New York-based Wildlife Conservation Society explains: "I suspect the food chain is contaminated but nobody has done any tests. The illegal miners are doing incredible damage to the environment" (Murdoch 2001)

NGO-company-government dialogue

NGO-company dialogue is often fraught with conflict as NGOs may be perceived by the private sector as "turning communities against" them. Dialogue is often limited, with some companies attempting to side-step international NGOs by consulting directly with local community groups. An emerging strategy among key companies has been to focus primarily on local civil society ("affected peoples") and circumvent discussions with international groups who are not directly affected by mining projects. However, international and national NGOs have an important perspective on sustainable development issues and these should be incorporated into consultation processes. In addition, local civil society groups on their own may lack adequate capacity and/or knowledge about potential negative impacts. Consequently, civil society consultations need occur at both the international and local level (possibly also regionally).

Encouragingly, there are some innovations in this area and companies are beginning to involve NGOs in project evaluation. For example, in their Camisea project, Shell Peru involved certain NGOs from the onset (see Box 9). Placer Dome Inc. has also actively attempted to engage NGOs in ongoing discussions about sustainability in mining.

Indigenous peoples also have worked with NGOs to establish and facilitate government relations, particularly if there has been little interaction in the past between communities and governments. NGOs have also actively engaged in dialogue with governments that are promoting mining development, often through lobbying efforts. To some degree, governments have also taken the initiative and opened up natural resources development planning to NGO consultations. In 1987, the Brundtland Report on the Environment and Development (WCED 1987) recommended that multi-stakeholder collaboration between governments, business and civil society was a key means of achieving sustainable development. In Canada, for instance, the emergence of government organized multi-stakeholder round tables on such issues is relatively commonplace.

While multi-stakeholder collaboration has potential merit, in many cases the approach is actually only a token effort by corporations and government policy makers. In such situations, multi-stakeholder events become window-dressing, a new public relations process that allows corporate executives or government policy makers to continue with “business-as-usual” while presenting the appearance of innovative problem solving (Whiteman 2001).

Community-community dialogue

Community-community consultation refers to dialogue between different Indigenous communities or between an Indigenous community and other local non-Indigenous communities in a given area. This level of consultation is important early on in order to help avoid divide-and-conquer strategies of companies. It can also serve to strengthen the local communities’ position on mining, including securing improved benefits or vetoing mining. If such consultations can resolve outstanding issues (such as overlapping land claims or different development objectives) prior to mining negotiations, local people can strengthen their bargaining positions and more effectively engage with companies and governments.

However, consultation processes often do not provide space for such discussions and many Indigenous communities end up acting in isolation. In addition, non-Indigenous communities do not always take the initiative to include local Indigenous peoples in local discussions on the costs and benefits of mining, partly due to different development objectives.

Internal consultations

Within communities

The decision whether or not to accept mining is usually an extremely difficult one for remote Indigenous communities. A deep tension often exists between the potential for an improved economic situation, and the cultural, spiritual, health and intrinsic arguments for environmental protection. A plurality of views exists *within* any given community or stakeholder group. Indigenous communities are not homogenous groups and consultation needs to recognize and incorporate community diversity into the process, with a special emphasis on

soliciting input from Indigenous women, elders and youth. Failure to recognize this can exclude important perspectives and contributions (Solomon 2000). Yet there is a tendency for mining companies to “consult” with the male leader(s) of an Indigenous community and assume that this represents the interests of the community/group as a whole. Not only can this result in a biased view of community opinion, it can lead to disintegration of cultural cohesion within the community.

However, communities can resist such behaviour by ensuring that their own internal community consultations are broad and representative. A number of Indigenous groups, such as the Wahnapiatae First Nation and the Tahltan First Nation (both in Canada), have found that the development of a community-based natural resources development policy helps consolidate internal community consultations (see Appendix 2). Companies can also contribute to this process by encouraging internal dialogue among various groups and allowing sufficient time for this to occur.

Maintaining an effective internal consultation process is critical given that internal community conflicts can arise in the face of mining. For example, at Voisey’s Bay in Labrador, conflict arose between community members who opposed the mine and Innu individuals who were interested in business opportunities arising from joint partnerships with non-Aboriginal business bidding for contracts at the mine. Independent Innu businesspeople also began competing against the community-based development corporation, Innu Economic Development, with the community spirit and cohesion being compromised, as well as a notable cultural shift from values emphasizing community sharing toward greater individualism (Ashini 1999).

Spiritual consultations

For most Indigenous peoples, effective dialogue on natural resources management must also incorporate spiritual issues (Williamson 1996). Indigenous cultures perceive the Earth as an active, living entity that conveys important management information—if the manager is willing to listen and learn (Whiteman and Cooper 2000). The Arabunna are a case in point. They believe that the drying up of mound springs (an environmental impact of the Olympic Dam mine) is an indication that the spirit world and the Creator are displeased. Many Indigenous peoples do not create a dichotomy between themselves and the Earth in the way Western people tend to, and such sacred dialogues are fundamental to Indigenous management approaches, forming a central tenet of traditional ecological knowledge. Indigenous peoples, in general, are continually attempting to listen to the Earth and learn from their local ecology.

Internal community consultation processes often include spiritual dimensions. Such information is culturally important to Indigenous peoples and should not be dismissed by corporate executives and government officials as “unimportant” and “unsubstantiated” myths or beliefs.

Within companies

Dialogue within mining companies must also occur. However, there is a tendency for community responsibility to be limited to the community liaison officer/team and for key issues not to reach higher levels of the company. Consultation issues may not be communicated well across departments, or from regional offices to head office. Boards of Directors are also often

shielded from “messy” community concerns. Different company levels and departments may also be assigned responsibility for interacting with the local community on different issues, and this interaction may occur with different community sub-groups (e.g. local leadership).

Furthermore, when consultation processes are relegated to the control of public relations departments, companies often run into problems (e.g., from NGO campaigns) and have difficulty internalizing lessons learned from different consultation experiences. While codes of conduct may look appealing, they must be effectively operationalized and implemented at the level of the mine site. Putting principles into practice is easier said than done. An ongoing taskforce on community consultation may help institutionalize this process and ensure corporate development in consultation.

Yet it is essential that ‘lessons learned’ at each level be worked up the corporate structure, and shared between departments, or conflicts and problems may occur in implementing/integrating aspects of corporate policy (see for example May *et al* 1999). Stewart Carter (1999) found that employees encounter difficulties when attempting to work change up the corporate ladder, as well as between departments. This area warrants further research.

In addition, the conflict between Indigenous peoples and a company should be openly and transparently discussed with the company’s shareholders and board of directors. Obtaining a “social license to operate” is not simply an internal operational issue but should also be supported by shareholders and boards, particularly as mining companies start to report on the triple bottom line. In particular, shareholders and boards need to understand the importance of meaningful consultation and the challenges inherent in implementing corporate codes and policies on these issues.

Within governments

In many countries, the responsibility for natural resources development, environmental assessment and Indigenous peoples rights spans a number of government agencies. Effective communication and coordination across departments and agencies is thus critical in order to ensure meaningful consultation with Indigenous peoples. However, bureaucratic weaknesses often mean that ongoing coordination is weak.

Recognizing this issue, various Canadian government departments are attempting to address this problem. The Canadian Intergovernmental Working Group on the Mineral Industry (IGWG) Sub-committee on Aboriginal Participation in Mining was formed in 1989 with the objectives to document best practices in Aboriginal participation in mining, identify next steps for the main stakeholders, and to examine incentives and legal and structural barriers to Aboriginal participation in mining activities (IGWG 1998). While the group has usefully shared information between government departments, its impact has been limited, partially due to funding constraints. Currently, IGWG has not adequately disseminated its information to external stakeholders such as Indigenous communities, mining companies and NGOs. In addition, Aboriginal representation on the IGWG sub-committee has been poor.

However, the concept of an intergovernmental working group as a means of improving consultation processes may be quite useful, particularly if lessons learned from the Canadian experience are incorporated and improved upon.

The consultation process

This section presents a review of the literature on consultation goals/objectives, values/principles, and mechanics and summarizes the main recommendations in this area. It draws from diverse literature, including corporate literature, NGO experience and recommendations, communities' and community-based organizations' demands and academic analyses. However, this literature has not yet been validated by research with Indigenous peoples and consequently should not be used as a checklist for meaningful consultation without further grassroots validation with Indigenous peoples.

Strong vs. weak consultation processes

Since definitions of consultation differ markedly, we believe that it is useful to differentiate between two broad categories of consultation processes. Through an analysis of the existing literature on consultation, we have identified key dimensions of strong and weak consultation processes, in terms of principles/values, goals/objectives and mechanics. These are summarized in Table 5, and discussed in detail in the following sections.

Table 5: Characteristics of strong and weak consultation processes

Strong consultation Process	Weak consultation process
Principles/Values	Principles/Values
Recognition of Indigenous Peoples rights to consultation and participation in NRM, and their right to prior informed consent	No recognition of these international rights
Adherence to principles of mutual respect, accountability, transparency, flexibility	Principles may be stated, but not fully adhered to
Goals and Objectives	Goals and Objectives
Goals are jointly developed by Indigenous communities and companies prior to consultations. Goals are binding.	Goals are developed by companies in isolation and are not binding.
Possible goals include: increased level of understanding of mutual concerns and goals; to achieve informed consent; to establish co-management regimes; to pursue sustainable development objectives including the protection of the environment and Indigenous culture and land rights; to reduce conflict.	Possible goals: to obtain community consent (sometimes through manipulation or partial presentation of the facts); to reduce opposition; to educate people about benefits of project; to fulfill financing obligations.
Mechanics	Mechanics
Senior management/Board commitment	No senior management/board commitment
Government involvement, particularly if land rights are unrecognized	No government involvement; biased involvement
Detailed pre-consultation planning of mechanics undertaken jointly with Indigenous community (ies)	No pre-consultation planning of mechanics, or plan is developed by company without Indigenous peoples' involvement
Strong stakeholder identification process, with adequate representation of all stakeholders, including perspectives from women, elders, children and other minority groups.	Stakeholders not fully represented at discussion table; biased selection of stakeholders
Consultation process is jointly defined and culturally appropriate; tailored to the local context.	Top-down consultation plan and agenda imposed using a standard corporate process
Consultation topics are jointly defined, including TEK where appropriate	Consultation topics determined by company
Evidence of shared decision-making power between company and community	Power issues not addressed: entrenched power differential between company who are in control and communities who have little control

Education on the part of all parties/mutual capacity-building	One-way learning with Indigenous communities perceived as “ignorant”
Use of a variety of different methodologies for public participation and consultation	Use of only a few narrow methodologies for public participation and consultation , _____
Two-way dialogue, with open and transparent communication using local languages.	Dominated by information transfer; one-way communication
Concrete mechanisms in place to incorporate stakeholder/community feedback into decision-making; Implementation of feedback occurs in plenty of time to affect decision-making	Lip-service; feedback may be solicited after decisions have effectively been made.
Community based problem-solving, joint decision-making processes	Corporate problem-solving and decision-making
Measures in place for dispute-resolution and for managing disengagement	No dispute-resolution or disengagement mechanisms
Timing: Consultation process is ongoing and covers a variety of different stages of minerals development	Timing: Consultation process is discrete—occurs once or twice
Measures in place for dispute-resolution and for managing disengagement	No dispute-resolution or disengagement mechanisms
Post Consultation follow-up, evaluation and reporting procedures	Little follow-up or evaluation. No reporting
= <i>Meaningful Consultation</i>	= <i>Tokenistic Consultation</i>

Note that this categorization is based upon a review of the existing literature and has not yet been validated by research on the perspectives of Indigenous peoples regarding strong vs. weak consultation.

Key principles of effective consultation processes

The following basic principles serve as overarching guides to meaningful consultation:

- Recognition of Indigenous peoples’ rights to consultation and participation in natural resources management, and the right to prior informed consent.
- A commitment to building strong consultation processes (see Table 5).
- A commitment to building long-term participatory relationships with local Indigenous communities, including Indigenous women, elders and youth.

In addition, a review of the literature shows that a number of key values for effective consultation have been repeatedly identified and are described below.

Trust

Mutual trust, which is usually built up over the long term, is a key challenge for mining consultations. Trust can be nurtured through numerous mechanisms, including: a readiness to outline joint objectives cooperatively, mutual effort and respect, open and continuous

communication, clearly defined and realistic project outcomes, establishment and attainment of benchmarks, and the participation of all community subgroups (Ramsar 1999). The World Bank recommends that individuals (e.g., anthropologists) or organizations who have gained the trust of the communities in question should also be identified and involved (Davis and Soeftestad 1995), but there is a danger of manipulation if companies intend to “use” these people to infiltrate the community.

Sustained in-field presence is important. For instance, local residents’ feelings of distrust at the Century zinc project in Australia were attributed to an absence of liaison officers in each community and a lack of cultural understanding among company staff, resulting in ineffective and sparse communication. It was recognized that an “[o]n the ground presence would have allowed issues to be addressed as they arose, providing better insight into community thinking and the establishment of good communication links for the future” (Williams 1998). However, companies must avoid infringing upon the privacy of Indigenous communities, ensuring that permission is obtained for ongoing activities in Indigenous areas.

Cultural awareness and respect

Effective consultations and negotiations between different cultures require a commitment to cultural understanding and respect. However, Indigenous spiritual and cultural beliefs often pose a widespread problem for mining companies and governments. Discussions on traditional ecological knowledge are often framed in a cultural manner and language that is in stark contrast to quantitative cost benefit approaches. For instance, when stories about protecting the ecological and spiritual sanctity of the land enter the corporate boardroom, they often fall on deaf ears. Mining operations often create a situation in which two fundamentally and drastically different cultures meet and must work together. Cultural awareness and respect requires in-depth capacity-building among mining company personnel. Encouragingly, some large companies like WMC are offering cultural training for mine employees, although such efforts are relatively new and may be superficial.

Full transparency

Meaningful participation requires open and transparent stakeholder involvement (Jones 1999). Full transparency of company objectives, parameters and processes (Status of Women Canada 1999) is critical and the definition and delivery of benefits at local, regional and national levels should be clear (Jones 1999). Additionally, all pertinent documents and information should be made available to consultation participants in plenty of time before consultation, and in an appropriate format and local Indigenous languages. Corporate responses to stakeholder concerns should also be transparent. For example, companies should clearly indicate how they have taken into account community concerns and if they have not, why not.

Accountability

ICME acknowledges that there is a growing public demand for operations and environmental accountability (ICME 1998). The World Business Council for Sustainable Development has also recognized accountability in its work on corporate social responsibility. In addition, a reputation for transparency and accountability has been demonstrated to have financial benefits. According to Labonne (1999: 320): “A recent World Bank survey found that

companies with a reputation for accurate reporting, transparency and good environmental practices have shares which are on the average valued 15 per cent higher than comparable firms with less pro-active environmental policies.”

At the very least, mining operations must be accountable to established international environmental and social standards (Jones 1999). Double standards must be eliminated particularly where companies are applying weaker criteria in poorer countries or regions. Company codes of ethics must be applied ubiquitously at every operation (CoDevelopment Canada 1997) and independently monitored and reported upon. Corporations must be held accountable to the community rather than simply to shareholders and international agencies (CoDevelopment Canada 1997). The literature also recommends the use of accountability mechanisms that allow Indigenous peoples to directly evaluate consultation exercises, and for companies to report to participants on lessons drawn from consultations with a detailed plan on how this will affect decision-making (Status of Women Canada 1999). In addition, it is recommended that companies must report on these processes externally, in order to be accountable to shareholders and the general public.

Flexibility

Throughout the mine life cycle, both community needs and levels of understanding evolve. The literature indicates that consultation processes must be flexible enough to adapt, and work to incorporate community feedback into the process and for Indigenous participants to jointly determine the appropriate consultation process. Ensuring that the process is iterative will help to ensure that community organization leaders participate in workshops to review proposals, examine current public opinion, identify major concerns and identify steps required to address these concerns.

Goals and objectives of the consultation process

The goals and objectives of the consultation process should be jointly defined by Indigenous peoples, the mining company and the State (in the case of tri-partite consultations) prior to the commencement of community consultations. In addition, these should be binding and companies held accountable to these jointly agreed upon goals.

Mining companies and Indigenous communities often have different objectives for the consultation process. Goals may also vary depending on which stage of the project the consultation is being carried out. Commonly, Indigenous communities’ concerns focus on whether or not to accept mining in the first place, safeguarding environmental health and traditional ways-of-life, and securing community benefits, empowerment, jobs and business opportunities. An analysis of the literature indicates that the goals of consultation in the context of mining and Indigenous peoples could include the following:

- recognition of land rights;
- identification of potential project impacts (social, environmental, cultural, economic, spiritual) and review of mitigation plans;
- community/stakeholder education;
- company education: local politics and culture, needs, concerns and development goals
- delineation of sacred sites or sites of conservation importance;

- ensuring communities share in the benefits of mining projects that will go ahead;
- enhance planning and decision-making by incorporating local opinions and traditional knowledge;
- ensuring local empowerment and capacity-building;
- creating projects which are more ecologically, economically and socially sustainable (Saunders 1999);
- reducing conflict through the early identification of contentious issues, and working through these to find acceptable solutions (Saunders 1999); and
- improving corporate transparency and accountability.

The mechanics of the consultation process

Operational guidelines for consultation and engagement with Indigenous peoples within mining projects are often superficial and few guidelines adequately outline a concrete process for interaction. While the need for effective consultation is generally agreed upon, the practical details on the process are unclear—operational questions on the “how” of effective consultation largely remain unanswered (Andrews 1998). There also exists a constant tension between companies’ need for guidance via rules and standards and the recognition that decisions often require a case-by-case approach (PONSACS 2000). According to Craig Andrews at the World Bank, some key remaining problems which need to be addressed include: who to consult, how and by whom decisions should be made, what documentation is adequate, how much time is required, whether or not these could be appealed, and whether or not the central government is able to effectively enforce the decision (Andrews 1998).

Below is a synopsis of recommendations made by various parties for consultation with Indigenous peoples, drawn primarily from experiences in the mining industry. Collectively, these recommendations provide an indication of consultation best practice, and may serve to assist in the design of consultation programs.

Pre-consultation planning

It is vital that a detailed pre-consultation plan be developed jointly by the company and the local affected Indigenous community or communities. Jointly defined consultation processes are the foundation for meaningful consultation. In addition, government officials should play a role in the planning process, particularly if land rights are not recognized.

An analysis of the literature indicates that good plans take time and require sufficient resources in terms of time and financial support. Commitment from the company’s board of directors prior to commencement is also essential. Recognizing that it is difficult to elaborate concrete step-by-step plans, and that processes should be adaptive and tailored locally, there are a number of useful general steps and recommendations for companies to follow:

- Confirm board support.
- Confirm government involvement. The type of government involvement must be clarified, and at a minimum, government should be informed of the process although the government’s participation must be actively encouraged. Government involvement is critical in the event of unsettled land claims or unrecognized land rights.
- Companies should have a community policy and Social Issues Management Plan that guides the implementation of community policies. A community policy should reflect mutual

respect, partnerships, long-term commitment and the company's ethical principles, as well as articulating the company's perspective on benefit-distribution and closure planning. See Epps (1997) for elements of a Management Plan. This document should be discussed with local Indigenous peoples to clarify the starting perspective of the company. Feedback should be solicited from Indigenous groups, who should also share their Natural resources Development policies with companies, if they exist. (If community plans do not already exist, time should be provided for communities to develop them independently in advance of the consultation process.)

- Work with Indigenous peoples to prepare a social profile—a systematic and comprehensive understanding of the community or residents of an area—to gain a thoughtful appreciation of the local ecosystem, society and culture. A thorough social profile will also identify Indigenous methods of community education and cooperation, which may be used or adapted for a mining company's consultation program. Social profiles should be conducted by, or in conjunction with, local Indigenous peoples. Information gathered during this stage should also be gender-sensitive (see Tongamiut Inuit Annait 1997 for detailed guidelines on gender issues in SIAs).
- Work with Indigenous peoples to develop a strategy for the consultation process, which is in line with Indigenous value systems and decision-making regimes, is funded, and which fulfills legal obligations (Winds and Voices Environmental Services 1999a). The scope and nature of the consultation process must be discussed with the Indigenous community and ground rules, roles and decision-making processes should be agreed upon in advance and not imposed upon communities by mining companies (World Bank n.d.; Canadian Standards Association 1996).
- Work with Indigenous community to develop a comprehensive public involvement and communication plans should be elaborated for the entire project and should outline how women and other interest groups (elders, youth, frontline workers) will be reached and involved (Tongamiut Inuit Annait 1997). Ensure that participants will be fully informed about the proposed development (Tobin et al 1998). Provide sufficient relevant information in a form that is appropriate and easily understood by non-experts (without being simplistic or insulting) (Saunders 1999; World Bank n.d.). Provide resources for capacity- building in order to ensure that local communities can participate meaningfully in mining consultations and adequately review technical documents.
- Allow sufficient time for notice of meetings/events and distribution of materials (World Bank n.d.). Communicate in local languages. Work with Indigenous community to plan for a suitable location and time (World Bank n.d.). Location and timelines should be established with local input (Bedford and Warhurst 1999) and ensure physical accessibility.
- Identify what resources (human and financial) are required to support the process and ensure their availability (Canadian Standards Association 1996; World Bank n.d.).

Box 10 also outlines Tobin *et al's* (1998) suggestions on activities that should take place prior to consultation.

Box 10 - Prior activities for consultation

- Recognize and define Indigenous peoples' land rights
- Adopt legislation and processes that define Indigenous peoples' rights to participation, as well as mechanisms which facilitate the participation of all social groups (women, elders, children, etc.)

- Undertake Indigenous capacity-building to assist in developing an understanding of mining activities prior to elaboration of activities on their lands
- Guarantee access to necessary information to ensure Indigenous peoples are kept adequately informed for meaningful input
- Recognize and respect traditional leadership and decision-making and conflict resolution systems
- Strengthen Indigenous peoples' organizations
- Establish structure for coordination: identify decision-makers and their roles, identify mechanisms for information exchange and decision-making
- Define guidelines for isolated/non-contacted peoples; avoid activities on their lands
- Strengthen capacity of the State. Capacity-build among officials regarding Indigenous issues

Source: (Tobin et al 1998)

Consulting stakeholders

Stakeholder consultation can assume many forms and implicate numerous different tools and methodologies. Most published recommendations and guidelines for companies operating on Indigenous lands recommend that consultation take place; however, details on how this should be done are usually superficial or partial in scope (i.e., limited to a segment of the process).

Stakeholder identification

It is vital to carry out a stakeholder identification process, rather than make assumptions about which groups (or individual people) should be involved in decision-making processes (Rosenfeld et al 1997; UNDP 1998). A stakeholder analysis is the identification of: “all those groups and individuals who have a stake, or vested interest, in determining the success or failure of an [activity]. Stakeholder groups can include: local and central ministry officials; line agency representatives; community-based organizations; mass organizations; co-operatives; water user groups; local and international non-governmental organizations; international donor organizations; traditional leaders; religious leaders and groups; political parties; elders societies; the very poor or destitute; the subsistent poor; money-lenders; the landed and the landless; and the business community and local contractors” (UNDP 1998: Ch. 3).

In particular, it is important to involve government agencies and local NGOs (Davis and Soeftestad 1995; World Bank n.d.), as well as contract companies, as they can also have significant impacts on Indigenous peoples (Bedford and Warhurst 1999). Neglecting to include certain groups (e.g., Indigenous national groups, NGOs), and focusing on negotiating agreements individually with communities has in many cases led to protest (Tobin et al 1998). “FN/AN [First Nations/Aboriginal Nations] groups may have different views about what constitutes meaningful consultation. For example, national and regional political bodies generally are concerned with representativeness issues and ensuring the protection of Aboriginal rights and land-related issues. Regional and local groups will likely have a greater focus on ensuring that the voice of the community is heard, that grassroots people have their opportunity to speak and be heard. It is critical...that full participation and support of the national political bodies be obtained if development of the guidelines is to be successful. As part of this involvement, it is critical that an approval process for the adequacy of the consultation strategy be developed and implemented” (Winds and Voices Environmental Services Inc. 1999b: 38).

When selecting representatives to participate, local people and national and local political and technical organizations can help identify appropriate candidates (Winds and Voices Environmental Services Inc. 1999b: 47; Ramsar 1999). Indigenous organizations should also be directly involved in the consultation process in order to ensure that regional and/or national Indigenous concerns are addressed. Ideally, the organization and facilitation of consultation programs should be carried out by, or in conjunction with, the Indigenous group with which the company wishes to consult. One study carried out by an Indigenous peoples' organization in Canada recommended that consultations be managed by Indigenous organizations that were "respectful of the cultures, customs, protocols and people, familiar with [Indigenous] issues, familiar with community dynamics, involved in or highly cognisant of land issues and know how to express those issues, capable and bilingual and bicultural" (Winds and Voices Environmental Services Inc. 1999b: 26).

Community consultation must allow for adequate representation from all members of the community (CoDevelopment Canada 1997). "Community" can be defined as those who may be directly or indirectly impacted by the project, including those communities who may be living downstream from mining projects. Ensuring local representivity is an extremely complex issue in many Indigenous communities. Local politics are often complex and subtle (Davis and Soeftestad 1995). In addition, as stated by Augustine (1999), "[i]ndustry has to be aware that making an agreement with a band council doesn't necessarily represent the community, and often not the keepers of Traditional Knowledge (TK)."

Company-community consultations should also ensure gender equality and cultural representation. Community consultation should involve sub-groups such as traditionalists, academics, youth, resource users active on the land, elders, tribal councils, women and environmental organizations (Winds and Voices Environmental Services Inc. 1999b: 47). The marginalization of women in consultation processes is an area of particular concern, and special consultation procedures may be required to ensure that Indigenous women are heard (IWGIA 1999; Davis and Soeftestad 1995; Pandey 1998; CoDevelopment Canada 1997; Ramsar 1999). The concept of the "local community" must also include residents along transportation corridors, downstream of the proposed mine, and at all related infrastructure, such as port facilities.

It must also be recognized that in identifying the leaders of local Indigenous peoples or communities, leaders identified by authorities may be different than leaders from the perspective of local residents (Bedford and Warhurst 1999). Many communities have dual systems of political and traditional leadership. But, "...it is important to recognize that groups and leaders which support traditional values may not necessarily be opposed to development. Indigenous participation, if it is to be accepted and authentic, must be based on a thorough understanding of such situations, including a recognition that within Indigenous communities there is often a plurality of belief systems, values and views" (Davis and Soeftestad 1995). Participant selection within the stakeholder identification process is often best done by stakeholder groups themselves (Rosenfeld et al 1997, World Bank n.d.).

Particularly for Indigenous peoples, working out who represents the community is a complex issue. Indigenous peoples' political contexts are often extremely complex and subtle, such that first impressions are often wrong (Davis and Soeftestad 1995). An assessment must be made of how characteristic representatives are of the group's position (Rosenfeld et al 1997). Furthermore, participatory processes are especially useful in identifying appropriate stakeholders

and ensuring maximum representivity. Consultations with Indigenous peoples takes place within a larger political context, and these relationships can implicate the company in the host country's political processes (Andrews 1998). The Inter-American Development Bank (IDB) suggests that assessing relative power positions is essential in ensuring an equal stake for less powerful stakeholders (Schwartz et al 1996).

The incredible diversity of Indigenous peoples and their worldviews is one of the main factors that makes a blueprint approach to consultation extremely difficult. Not only does each group possess different histories with resource companies and thus disparate levels of understanding and attitudes toward development, but their very base assumptions, methods of understanding and learning, and ways of expression are often radically different from those of corporate culture.

Capacity-building

How can consultation be meaningful if local Indigenous peoples have no prior experience with, or understanding of, the mining industry? The issue of capacity-building is another critical aspect of effective consultation that has been addressed to some degree. Capacity-building is an underlying process of consultation for all stakeholders, and is particularly important in building common understanding and fostering change. Capacity-building among Indigenous peoples can contribute significantly to local development, building skills such as organizational and negotiating skills, record keeping, financial management, and conflict management (Ramsar 1999). Equally importantly, corporate capacity-building with respect to how local people use and manage the land, as well as on local needs and problem-solving approaches, etc., may contribute to more sustainable development.

Capacity-building in mining consultations usually refers specifically to building sufficient local understanding of the proposed project and its impacts so that local people can effectively contribute to decision-making. Many critics believe that this education process, most often provided by the mining company, is highly biased, and no more than a tool to manipulate residents into accepting the project. In some cases, citizens' groups may be intimidated into accepting decisions when faced with highly technical information and no means of translating/understanding it (Baetz and Tanguay 1998). In addition, when the company is responsible for providing information, there are no checks and measures to ensure that *all* information is provided in an *unbiased* and *appropriate* fashion. Capacity-building can also be useful in addressing power differentials. For instance, at the Placer Granny Smith mine in Australia concerns that arose from the consultation process included how to communicate uncertainty, how to handle power differentials, and how to incorporate diverse values in decision-making (Solomon 2000).

At a recent Indigenous peoples' conference on mining in Canada, it was concluded that neither corporations nor the government could be relied upon to build local capacity. In this particular case, NGO support was solicited in creating a network of organizations and communities with experience in mining issues, establishing a database of important contacts on a variety of topics, organizing future procedures/measures in which connections can be established with outside collaborators, supplying information regarding mining company activities in the form of a newsletter, and instituting an educational program to educate communities about the basics of mining (MiningWatch Canada 1999). However, mining companies or governments should be required to provide funds for such capacity-building to ensure effective community participation.

Encouragingly, some companies like BHP, Falconbridge and WMC are implementing cross-cultural training programs for mine personnel. For example, in 1997, BHP developed a cross-cultural training course for employees at the Cannington mine in Australia (BHP 2000). Carried out during the construction phase of the project, a preliminary scoping study demonstrated that typical approaches to community consultation were inappropriate, so a participatory design approach was implemented. The design of the Indigenous Awareness Course began with widespread community consultations to determine the local issues that needed to be addressed. According to Mick Roche, Manager of Safety, Environment and External Affairs at BHP Cannington, "[T]raditional European models for consultation with Indigenous people are generally written by Europeans. We wanted our awareness course to better

reflect the local community and to be what the community wanted to tell the people at BHP, not necessarily what BHP thought was best to tell to its people. This enabled the Indigenous community to contribute to the development of the project as a whole.”¹⁹ BHP states that Aboriginal elders were given control over planning the community consultations, which involved the adoption of Aboriginal protocols of the right to know, speak and social respect. In its own evaluation, BHP suggests that the design of the cross-cultural training program allowed BHP staff to be more effectively educated about the local socio-cultural context, and of the issues of importance to the local peoples.

Corporate capacity-building and cultural awareness training are important dimensions of effective community consultations. However, there have been some concerns that such approaches do not adequately deal with cultural issues and instead may be largely a public relations tool. However, there are no independent assessments of such programs, which could be an interesting area for future research.

Consultation topics

The subject matter addressed during the consultation process is often limited to non-operational/managerial (or what may be perceived as peripheral) aspects of the mining project, such as environmental assessment and community development programs. This can serve to divert public attention away from the fact that communities are often given no role in decision-making regarding mineral resource management or mine development. When consultation on topics such as infrastructure development and mine operations does occur, it is usually limited to very weak forms of consultation. The World Bank (1996) Participation Source book suggests that public education on the potential impacts of mine development is a necessary element in all company-community relations.

The opportunities for consultation are broad. The literature suggests that it is critical for companies to work with Indigenous peoples to identify “problem areas” or areas of key concern, and to adequately consult on these issues. Researchers at the UK-based Mining and Energy Research Network elaborated a partial set of operational issues on which local communities should be consulted. These include (but are not limited to): water use and diversions, transportation types, geological survey techniques, area of mining operations, transportation and location of roads, potential mine capacity, potential permanent impacts, techniques/machinery to be used, toxic waste, impact-minimization plans, location of base camp, equipment types, waste disposal, remediation and mine closure plans (Bedford and Warhurst 1999). Under a strong consultation process, the topics for consultation will be jointly defined by the affected communities, the mining company, and potentially, the government.

While information-sharing is not true participation, it is nonetheless *essential* to mining on Indigenous lands. In particular, companies need to be made aware of a community’s perspective on development plans, sacred sites, current subsistence patterns and native management approach, current reliance on resources, etc. This can be problematic, though, since some Indigenous peoples’ spiritual beliefs prevent them from speaking freely about cultural beliefs and practices. Conversely, communities should be informed about the specifics of the mining operation in their area, including “technology used, the size of the operation, metals output, mining methods, mineral processing methods, metallurgy of the ore, engineering aspects (especially tailing treatments and the effect on the local water supply), planned reclamation

work, and the possibility of future expansions in the size of the mine” (CoDevelopment Canada 1997), as well as potential benefits and impacts..

Given the abundance of possible topics for consultation, care must be taken to avoid overloading people with meetings that interfere with their traditional lifestyles. Numerous consultations can also lead to consultation fatigue and declining stakeholder participation. This is a concern since peoples’ learning increases over time, as does their capacity to participate effectively.

Consulting on and incorporating traditional ecological knowledge

Indigenous knowledge systems are increasingly recognized as playing a significant role in the conservation of biological diversity (for example through the Convention on Biological Diversity, which was ratified by 168 countries). Sacred groves and forests, for example, highlight mechanisms developed by Indigenous peoples to protect their natural resources. In addition, Indigenous peoples’ resource management practices can *nurture* biological diversity, for instance through traditional agricultural practices. The sustainable nature of Indigenous resource management systems is proven by sustained agricultural productivity in one location over thousands of years (IUCN 1997).

Indigenous managers rely on Traditional Ecological Knowledge (TEK) as a framework for management. TEK is defined “as a cumulative body of knowledge and beliefs, handed down through the generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment” (Berkes 1995). TEK focuses on the complex relationship of all living beings with each other and the environment, including spiritual linkages. Indigenous systems of knowledge such as TEK are not separated from management practice but are intrinsically intertwined. Consequently, TEK can be viewed both as an indigenous approach to management as well as an information base from which decisions are made (Warren *et al* 1995).

TEK is increasingly recognized as an important tool in environmental management. Scientific researchers in the fields of health, agriculture, geography, natural resources management, development studies, and business management (e.g., Grenier 1998; Warren *et al*, 1995; Whiteman and Cooper, 2000) have acknowledged the value of Indigenous management in sustainable development. The mining industry has also recognized the importance of TEK in social and environmental baseline studies and impact assessment. TEK is considered a “valuable source of information” about things like animal migration patterns and hunting seasons (Falconbridge Limited 1999). For instance, at their Raglan mine in northern Canada, Falconbridge cited the use of Traditional Knowledge obtained through consultation in modifying the company’s shipping schedule in response to sea mammal migration patterns (Falconbridge 1999).

Methodology

Consultation methodology should be designed in conjunction with stakeholders (especially with Indigenous peoples’ direct involvement in, and control of, the process) and be adaptive. Cultural differences must be respected. Culturally-appropriate communication and language issues are a concern when engaging Indigenous communities—communication should

be carried out in the local dialect and with the assistance of agreed-upon and trusted translators (CoDevelopment Canada 1997; Bedford and Warhurst 1999; Davis and Soeftestad 1995; Australian Asian-Pacific Mining Network 1998). Consultation processes should take into account traditional modes of knowledge transmission (often orally based—literacy rates may be particularly low) and importance of legends and other oral traditions, and ideally build on traditional knowledge, livelihood systems and institutions (Davis and Soeftestad 1995). A culturally appropriate consultation process must also reflect Indigenous cultural protocols, language requirements and also allow for spiritual information and ecological feedback to be formally brought into the process instead of perpetually being marginalized as “unimportant” traditional stories. Indigenous peoples often operate under different time horizons and traditional activities like hunting, trapping and fishing may be seasonally based and should not be ignored by a consultation timetable. Finally, the place and mode of interaction should also reflect Indigenous needs.

Several recommendations, tips and guidelines on consultation methodology have been proposed by a variety of organizations:

- Familiarize yourselves with the range of public involvement mechanisms that could be implemented (Canadian Standards Association 1996).
- Consider consultation mechanisms, venues and timing that encourage maximum participation (Saunders 1999).
- Gender-sensitive methodologies should be employed (Tongamiut Inuit Annait 1997).
- Mapping out stakeholders’ concerns and priorities (including those of companies) is a good first step in moving toward consensus (Macdonald 1999).
- When it is foreseen that opinion will be highly divided, an independent mediator can be useful (World Bank n.d.)
- Work toward stakeholder ownership of the consultation process as well as participatory management arrangements (Ramsar 1999)
- Ensure early and ongoing contact (The Chamber of Mines and Energy of Western Australia Inc. 1994)
- The methodology employed may be constricted by the objective, number of people/groups involved, nature of issues, level of awareness of consultees, time availability and availability of resources (Redman 1993).

A broad range of practical methodologies exist, including:

- town hall meetings/public hearings
- planning workshops
- seminars
- mass media
- written communication
- interviews
- key informants
- focus groups
- oral histories
- community mapping
- popular theatre/role-playing/socio-drama (esp. helps with understanding various

perspectives)

- priority-definition games
- citizen advisory committees
- site visits
- public displays and information documents
- mediation (especially where strong conflict exists)
- surveys/questionnaires
- multi-stakeholder round tables
- public deliberation fora (which involves bringing together a representative sample, educating them, then carrying out a process with the goal of reaching a solution)
- model-building and alternative scenario-building
- internet discussion groups and feedback mechanisms
- input on a discussion paper
- Rapid Rural Appraisal method

(See Rosenfeld *et al*(1997) and Status of Women Canada (1997) for an elaboration of these methods.)

Not every mechanism is appropriate in all contexts. For instance, internet-based methods are exclusionary to certain segments of society and many Indigenous communities may not be on-line. Approaches must be selected carefully, and should be tailored to local context (Chambers 1997). All tools have potential strengths and weaknesses. For instance, research on multi-stakeholder round tables has also shown that (see Turcotte 1997; Driscoll 1996):

1. The diversity of participants often limits consensus to useless generalities, although it can facilitate increased participant learning about specific subjects if learning (and not simply consensus-based outcomes) becomes a key objective.
2. Innovation in multi-stakeholder problem solving is incremental not radical.
3. Multi-stakeholder environmental negotiations are not an alternative but a complementary coordination mechanism to both market and regulatory mechanisms.
4. Multi-stakeholder consultations are not a solution to controversies—ideological conflicts will always come to the forefront and if there is insufficient time or commitment on the part of participants to explore these differences, then such conflict will remain. Many participants can feel disappointed if the outcomes were not those that were anticipated.
5. Conflict in round tables can be useful if it rattles “people out of complacency and ignorance” and brings “out the superficiality and irrationality of some arguments” (Driscoll 1996: 7).
6. If stakeholders have a different level of understanding or awareness of the issues, this will limit the effectiveness of the dialogue. Stereotypes of the other participants’ policies, goals, and values will also negatively work against effective dialogue.

7. If participation is not balanced or truly representative, then members will likely develop only a “fragile trust” and a “shallow consensus” (Driscoll 1996: 10). Biased selection and power imbalances can corrupt the process of meaningful exchange.

Managing disengagement and conflict

A crucial component of a participation scheme and negotiation-based approaches is a conflict management scheme (CoDevelopment Canada 1997). It is inevitable that some degree of conflict—potentially large—will arise. Strong consultation processes must include a process for conflict management. Consultation processes must also address non-engagement and disengagement. For many peoples, such as the Hopi of the southwestern United States, disengagement from dialogue can signify a form of protest rather than disinterest. In addition, disagreements and conflict are bound to occur during a consultation process. Currently, none of the existing guidelines on mining specifically address this key area, though the field of conflict resolution is vast. This is a key area for future research.

However, an interesting initiative in the oil and gas industry is the multi-stakeholder process *Dialogues on Oil in Fragile Environments* facilitated by the Program on Nonviolent Sanctions and Cultural Survival at Harvard University. This ongoing series of meetings has been very successful, and involves oil companies, environmental NGOs and Indigenous organizations concerned with oil exploitation in the Upper Amazon Basin.²⁰ Participants in the Oil Dialogues “...do not anticipate or seek consensus; nor do they pretend that all conflicts can be resolved. They participate based on the assumption that *some* conflicts can be and have been generated through an absence of discussion, information exchange, and mutual understanding, and that *some* conflicts can be managed if mechanisms for dialogue exist” (PONSACS 2000b: 3). The Oil Dialogues, to date, have resulted in enhanced mutual understanding and respect among stakeholders as well as a deeper insight into complex issues such as stakeholder consultation (see for example PONSACS 2000b). An interesting opportunity for the mining sector would be to undertake a similar pilot project with Indigenous peoples from around the world. However, there have been some criticisms of the confidential nature of the dialogues.

Timing/stages of consultations

One of the most neglected aspects of many corporate guidelines is the identification of when consultation should occur in the life cycle of a mine. Prospecting companies typically do not view community relations as a high priority, and this can lead to worsened local perceptions of outside industrial interests. Yet our analysis of the literature suggests that dialogue should be ongoing from the time the company requests access to traditional lands prior to exploration, throughout the mine life cycle to mine closure, and should aim to increase in depth as both parties learn.

The Mining and Energy Research Network (MERN) has also recognized the need to consult early, prior to any activity on lands occupied, or used by, Indigenous peoples. Further, MERN research has suggested that consultation occur prior to exploration, as well as during infrastructure planning and during mine closure, and that community liaison be carried out prior to production and in delineating access areas (Bedford and Warhurst 1999). MERN has

identified the following guidelines and stages for the consultation and engagement of Indigenous peoples, outlined in Box 11.

Box 11 - Summary of the Mining and Environment Research Network (MERN) Guidelines on Stages for the Consultation and engagement of Indigenous peoples

Pre-exploration consultation

Identify those directly and indirectly affected by mining operations.

Identify the true representatives of the local communities.

Arrange the meeting location and timing based on community needs.

Use local languages or appropriate translation.

Utilize a two-way communication process so that Indigenous peoples can express genuine concern which must be discussed and addressed before future meetings. Transparency and clarity are key elements of the process.

Familiarization with the local environment and local culture, including the possible use of Indigenous peoples as consultants who are financially rewarded for their traditional knowledge.

Consideration of the Indigenous calendar in the planning of activities.

An appreciation that decision-making takes time and might require a series of meetings.

Pre-mining contract consultation—processes and impact

Undertake environmental and social impact assessments.

Discuss these impacts with Indigenous peoples.

Discuss potential participation which may occur in a variety of stages and activities, including the demarcation of sensitive sites, the selection of suitable transportation routes, the selection of suitable water sources, advice on ecosystem effects, selection of suitable sites for waste disposal, advice on the extent and nature of remediation, advise on how to minimize impacts, job opportunities, provide services, identification of community programs and health services, undertake intercultural training, participate in capacity-building activities, suggest levels of compensation, suggest terms for the Memorandum of Understanding, suggest community representatives for the monitoring committee and community committee.

Consultation planned infrastructure

Consultation on various routes, sites, sources and facilities of planned infrastructure projects to support mining activities.

Community liaison —mining

Prior to the commencement of production, community committees may receive updated and detailed information regarding the planned extractive process, schedules of production and transportation plans.

Dangerous areas within the operation need to be clearly delineated to ensure the safety of local people.

(continued on page 87)

(continued from page 86)

Community liaison subsidiary services

Representatives from companies that offer subsidiary services to the mine should also be involved in the consultation process.

Security services pose particular risks for effective community engagement.

Emergency services.

Community liaison remediation and mine closure

Consultation with the monitoring committee about emergency remediation plans due to accidents.

Ongoing consultation as mine infrastructure becomes dysfunctional.

Consultation with the monitoring and community committee about mine closure, including post closure environmental and health monitoring.

The MERN guidelines provide a useful framework for the critical points and stages of consultation with Indigenous peoples. However, this framework is not based directly upon research on Indigenous peoples' perspectives on consultation and engagement, which may provide additional dimensions. In addition, the framework does not address the issue of prior informed consent and the need to jointly develop a consultation and engagement process that allows for joint decision-making, capacity-building and conflict resolution. Currently, the MERN framework does not address the underlying issues of power differences, land rights and the broader issue of co-management of natural resources. MERN also does not address how the government and other players (e.g., NGOs, international financing institutions) can enter in to the process. Nevertheless, the MERN framework may be a useful starting place for research with local peoples.

Using the petroleum industry in Peru as a basis, Tobin et al have also developed guidelines on community consultation and different stages of a project's life cycle. These guidelines recognize the need to incorporate consultative roles for both the State and the private sector, which may be involved at different stages of the consultation process. While useful, note that there are a few areas of oversight. For example, prior to the negotiation of the contract, the framework currently identifies the State as having the primary role of consulting communities. However, in both mining and petroleum exploration, it would be beneficial to have companies more effectively consult with local communities. In addition, Tobin *et al* have not explicated how and where other players such as NGOs and the international financial institutions can play a role at various stages. However, like the MERN framework, this is a good starting place for discussions on common guidelines. The stages of consultation are presented below in Table 6.

Table 6: Consultation and the project life cycle

Project stage of project	Who should consult	Purpose/Rationale
Prior to establishing contracts	The State	<ul style="list-style-type: none"> • identify impacts of project • identify rights to compensation and benefit-sharing • exercise community's rights to deciding land use • establish participation process for the development of a regional sustainable development plan
During EIA	The company	<ul style="list-style-type: none"> • ascertain scope of study • should allow information generated during consultation to be incorporated into plans and disagreements to be settled • provide copies of EIA to communities at least two-months prior to sending to authorities for approval
Before EIA approval	The State	<ul style="list-style-type: none"> • hearings should be held in project area and as many that are needed to reach all affected communities • ensure that proposed project is in line with regional sustainable development plan
Prior to signing agreements for land use	The company	<ul style="list-style-type: none"> • agreements must be passed through consultation process before signed
During project execution phase	The company and the State	<ul style="list-style-type: none"> • should include independent monitoring by communities • capacity-building on emergency plans • capacity- building regarding plans surrounding compensation
Conflict resolution program	The State and the company	<ul style="list-style-type: none"> • ongoing participation of communities • attempt to determine potential conflicts/problems arising from project activities
Closure plan	The company and the State	<ul style="list-style-type: none"> • ensure compliance with measures set out in EIA • contribute to planning for rehabilitation • take into account alternatives that are compatible with the traditional practices and beliefs of the Indigenous people in the region

Evaluation of project impacts on regional sustainable development plan	The State	<ul style="list-style-type: none"> • for final evaluation of project impacts, as well as impacts on regional sustainable development • support revision of policies and legislation pertaining to resource extraction and evaluating the effects of Indigenous peoples' participation
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Source: Based on Tobin *et al* (1998).

In addition, other authors have made the following recommendations on timing:

- The consultation process should be initiated by government, prior to licensing in the area (Mayorga Alba 1999).
- Companies must be committed to a long-term relationship with stakeholders (Status of Women Canada 1999).
- Processes must move from weak to strong consultation, and “some form of regular, multi-stakeholder dialogue must be established.” (PONSACS 2000: 6).
- Consultation should start at an early phase of the project and continue throughout the mining cycle, being present in every aspect of operations (Strongman 1998, Jones 1999). It should be organized early enough for results to be incorporated into company decision-making (CoDevelopment Canada 1997).
- The timing of activities must follow the Indigenous calendar (Bedford and Warhurst 1999).
- Allow sufficient time and number of consultations for stakeholders to consider the information and its implications and to present their views, and for project proponents to fully understand Indigenous views and values (Saunders 1999; Bedford and Warhurst 1999; Davis and Soeftestad 1995).
- Community consultation should be an iterative process (Schwartz and Deruyttere 1996).
- There should be an explicit understanding that all views will be respected and attempts made to understand others' perspectives (Status of Women Canada 1999).

Post-consultation

Our review indicates that the consultation process should be accompanied by ongoing feedback and follow-up with Indigenous groups.

Evaluation

Some research has been undertaken on how to monitor and evaluate companies' ability to deliver on social codes of conduct, through the development of social performance indicators and reporting guidelines. MERN, for instance, has developed a set of Sustainable Development Markers which focus on the involvement of Indigenous peoples in mining decision-making, as well as a list of “social performance evidence,” or indicators of implementation success (see Appendix 3).

Reporting

The Global Reporting Initiative (GRI) was created in 1997 to devise “globally applicable guidelines for preparing enterprise-level sustainability reports” (Global Reporting Initiative 1999: 1). The GRI has identified stakeholder consultation as an element of their 2000 Sustainability Reporting Guidelines. According to the GRI, reporting on stakeholder consultation should include:

- The basis for selection, definition and profile of major stakeholders (e.g., employees, investors, suppliers, customers, local authorities, public interest groups, non-governmental organizations)
- Approaches to consultation with each stakeholder (e.g., surveys, focus groups, community panels, written communications). Number of such consultations by type.
- Type of information generated by such consultations.
- Use of such information (e.g., performance benchmarks and indicators), including applications in this report.

The Institute of Social and Ethical AccountAbility recently launched an accountability framework, AA1000. This work emphasizes the principle of inclusivity, and a strong process of stakeholder engagement is a key aspect of its foundation. A number of organizations have begun to use the framework to develop their accountability processes (and to improve performance), but also as a way of assessing organizational accountability. Companies that have recently published reports citing AA1000 include Camelot, Novo Nordisk, the Co-operative Bank and Traidcraft.

Despite the development of preliminary indicators by MERN, GRI and AA1000, it is often difficult to ensure and verify the implementation of guidelines through a formula approach. Indeed, while many decision-makers adopt such principles (or codes of conduct) in spirit, evaluation of adherence presents a constant challenge.

Summary

Consultation is increasingly being promoted by the international mining industry, policymakers, NGOs and Indigenous groups as a key advancement in “responsible” mining. Yet many different definitions of consultation exist and it is critical to identify between strong versus weak consultation processes.

Consultation, like any form of participation, is an inherently political process, with deeply embedded power structures. Consultation by itself does not ensure a “level playing field.” Different levels of power exist between the primary decision-makers (usually governments and companies) and civil society (Indigenous peoples and NGOs). Given inherent power inequities, mining companies are powerful drivers of consultation processes, and company goals typically override local aspirations. In many instances, the complex issues of historical marginalization, institutionalized and severe power imbalances, unrecognized land rights, human rights abuses,

weak capacity and a lack of opportunities for participatory decision-making are avoided or side-stepped in the race to develop natural resources.

Despite the rhetoric of the triple bottom line where companies commit to strong social, environmental and economic performance, providing space for Indigenous peoples' participation may be perceived to threaten corporate control over profits. As such, consultation processes can fall short of their potential value unless they incorporate specific key principles/values, goals/objectives, and mechanics for strong consultation processes. Initiators of consultation processes would do well to recognize the limitations of adopting consultation over other forms of participation, and work to understand consultation as a highly complex and ongoing process of interfacing with often extremely heterogeneous groups of people. We have reviewed the literature on consultation in detail and provided a summary of the key recommendations and concerns that exist. Table 5 also provides a summary and contrasts the characteristics of strong versus weak consultation processes.

Section 7 - Concluding Thoughts and Research Needs

Meaningful and effective community consultation is a critical step in helping to ensure more socially and environmentally equitable mining projects. But consultation alone will not address the inequities and conflict inherent in mining on Indigenous lands. Indigenous peoples have the right to meaningful consultation and participation in natural resources development and also the right to prior informed consent of proposed mining projects. While international law has explicitly recognized these rights, mineral development continues to ignore them. Much work needs to be done in order to ensure that mining companies and governments comply with international standards.

Clearly, better consultation approaches are valuable, and this monograph attempts to provide some guidance in this area. Our international literature review has provided information on advances in consultation and participation processes for Indigenous peoples within the mining industry, as well as a detailed summary of the key characteristics of strong versus weak consultation processes (summarized in Table 5). In practice, consultation is typically restricted to issues such as community development and environmental impact assessment and is often quite superficial. This is not sufficient. The *scope* of community involvement in decision-making must extend deeper, to core decisions such as location of infrastructure and processing options. Unless consultation processes are implemented in a comprehensive and meaningful way, this tool runs the risk of being co-opted by mining companies and States which seek only to further mining development on Indigenous lands. Mining companies need to incorporate a more long-term approach into their interactions with Indigenous peoples and to set aside resources for more meaningful consultations with Indigenous peoples. Gender issues must also be clearly introduced and addressed in meaningful consultation processes.

But the issues facing Indigenous peoples and the international mining sector cannot be solved solely through the development of guidelines for community consultation and progressive corporate policies on meaningful consultation with Indigenous peoples. At the crux of the problem are power inequities and clashes between cultural and spiritual beliefs. Consultation is

important but limited in that, by itself, it cannot go deep enough to address these imbalances, inequalities and the lack of recognition of Indigenous rights. In addition, community participation is often portrayed by industry as being simple issues, discounting the complexity of such approaches. Stewart Carter (1999: 401) suggests that "...corporate culture tends to regard community participation as discrete issue(s) rather than a web of issues requiring ongoing attention varied in approach." It is critical that "efforts to promote participatory development understand and examine the political and cultural context in which participation is to occur. Participation does not take place in a vacuum, but its development and progress will be influenced by a variety of factors inherent in the context. Time should be made available, therefore, at the beginning of any participatory project, to identify and to analyze the factors which could influence the process" (UNDP 1998). Developing more effective mechanisms for meaningful participation is essential since there are not many examples of meaningful participation in action within the mining sector.

At a basic level, companies, financing institutions and governments need to appreciate the value of increased Indigenous participation in minerals exploration and development. Indigenous peoples have critical roles to play in sustainable development. The IUCN Inter-Commission Task Force on Indigenous Peoples states boldly that: "the road to sustainability is not some unknown course into a cavernous future—it is rather the recognition and empowerment of Indigenous, traditional and local communities many of whom are already practicing the fundamental principles of managing their land and resources for the spiritual health of the Earth and for the future generations of all its species" (IUCN 1997: 159). Indigenous peoples generally have well-developed locally adapted strategies to manage "natural resources" which, in many areas, have proven to be sustainable over the long term (e.g., Berkes 1999).

In spite of policy optimism, it is clear that the road ahead is long and complex. On-the-ground realities suggest that the road to good relations will be difficult. That is, "[i]f participation means that the voiceless gain a voice, we should expect this to bring some conflict. It will challenge power relations, both within any individual project and in wider society. The absence of conflict in many supposedly "participatory" programs is something that should raise our suspicions. Change hurts. Beyond this, the bland front presented by many discussions of participation in development should itself suggest questions. What interests does this 'non-politics serve, and what interests may it be suppressing?" (White 1996).

The need for further work

While Table 5 summarizes existing literature on strong versus weak consultation, grassroots data on the perspectives of Indigenous peoples on effective consultation and participation processes is still missing, yet remains critical to the debate. This will be one of the focuses of our IDRC-funded research project. Consequently, from our participatory field research with Indigenous peoples in Colombia and Guyana, we hope to increase our understanding of:

- The impacts of mining on Indigenous peoples in these areas.
- The dynamics of internal and external community consultations, and their potential contribution to more equitable and effective decision-making, including an exploration of the power issues between companies and communities.
- Local definitions of “meaningful consultation” and “meaningful participation.”
- The refinement of appropriate consultation methodologies and processes, including gender considerations.

Our final report will also outline a number of key recommendations for governments, companies, NGOs and Indigenous communities. In addition, our literature review has identified a number of areas for further work:

- An examination of the macro-level issues that impact the relationships between Indigenous peoples and mining companies, including globalization, trade liberalization and the changing role of the State.
- An examination of the regulatory and change management processes required for mining companies to move up the ladder of participation away from tokenistic forms of consultation (e.g., Table 5) and toward meaningful participation.
- The validation and refinement of indicators and reporting mechanisms on consultation and participation from the perspective of Indigenous peoples.
- The development of a participatory approach to community capacity building.
- Undertaking research on the gender impacts of mining on Indigenous peoples. Developing tools to more adequately incorporate gender issues into Environmental Impact Assessments’ consultation and participation processes.
- The development of culturally appropriate and equitable dispute resolution and mechanisms that can account for, and minimize power differentials, and deal with community disengagement are also required.
- To evaluate corporate capacity-building programs and cultural awareness training.
- To elaborate options for policy reform which are supportive of Indigenous perspectives and bring countries closer to fulfilling their obligations under treaties pertaining to human rights, Indigenous peoples and environment.
- To develop the capacity and resources of Indigenous peoples to carry out their own community-based research and support them in their efforts to gain access to information, develop community protocols, etc. Identifying and documenting global “high risk” sites where Indigenous peoples are at risk of, or are currently encountering social and environmental harm from mining development and operations, for example, from mercury and cyanide spills, or indirectly, from destruction of the ecological basis of subsistence activities.

Appendix 1: Indigenous Community Policies, Guidelines and Protocols from Canada

The Tahltan Development Principles

These principles govern the community's approach to negotiations on mining and other areas. In general the development principles require that:

- The development not pose a threat of irreparable environmental damage.
- The agreement not prejudice outstanding Aboriginal claims.
- There will be more positive social benefits than negative
- There be opportunity for education, training and employment.
- There be provisions for equity participation.
- There be opportunities created for the development of Tahltan businesses.

There is a formal commitment by the developer to assist Tahltans in accomplishing these objectives.

Guidelines for a respectful relationship between the Innu Nation and the mineral exploration industry

A respectful relationship requires companies and individuals involved in mineral exploration activities in Nitassinan to recognize and incorporate these guidelines in their dealings with the Innu Nation:

- 1) that the Innu are the original inhabitants of this land. They have rights protected under the Constitution Act (1982), which include priority rights to lands and resources. These rights are the subject of ongoing land rights negotiations involving the Innu Nation, Canada and Newfoundland, and the Labrador Inuit Association. Mineral exploration which is carried out in Nitassinan without Innu consent is prejudicial to Innu rights;
- 2) that the Innu people continue to depend on land for foods, well-being, and spiritual and cultural values. The Innu Nation requires accurate, complete and timely information at all stages of exploration activities to decide if their rights are being affected and to determine how they can be protected. Companies must commit to full disclosure of information about their activities and must be willing to provide assistance to ensure that the Innu can undertake independent assessments of these activities;
- 3) that the Innu people have the right to determine the social and economic future of their communities. There must be a commitment from companies to respect the aspirations of the Innu people, including their choices of employment and vocation, and the uses of their land. If requested by the Innu Nation, companies must be prepared to offer preferential training, employment and business opportunities to Innu people in a manner acceptable to the Innu Nation;
- 4) that Innu harvesting activities take precedence over other uses of Nitassinan and accordingly must be afforded first consideration in planning exploration activities and siting camps. This is consistent with the Sparrow line of cases in the Supreme Court of Canada;

5) that exploration activities may have a negative impact on Innu cultural, historical and spiritual sites. The Innu Nation must be involved in an archaeological survey of any areas that may be affected by exploration activities prior to the commencement of such activities to ensure that historic or cultural resources will not be affected prior to siting a drill or camp site, cutting grid lines, etc. In the event a burial or archeological site is identified during operations, companies must suspend operations and contact the Innu Nation to determine what action is appropriate;

6) that there is very little available environmental baseline information for most of Nitassinan, but that the Innu people have knowledge about the environment and ecology of Nitassinan which is based on thousands of years of collective experience. Innu ecological knowledge must be incorporated into planning, management and operational decisions in a manner acceptable to the Innu Nation;

7) that because the potential impacts of exploration activities may have negative effects on the Innu people and the land, water, wildlife and plants that they depend on, companies must adopt strict environmental protection practices acceptable to the Innu Nation to avoid or prevent such impacts. In cases where there is insufficient data regarding potential impacts, exploration activities will not be initiated until there is adequate data to ascertain the nature and severity of the impact;

8) that the cultural, ecological, social and economic impacts of exploration activities may not be restricted to the immediate area and duration of a specific project. Companies must recognize that because of the intensity of exploration activities and other developments in Nitassinan, consideration must be given to cumulative effects.

9) that certain areas because of their cultural importance or ecological sensitivity may be designated by the Innu Nation as protected areas. Protected area networks are essential contributors to cultural integrity, environmental health, landscape and biological diversity, and ecological processes. Companies must respect these limitations on exploration activities;

10) that because of the intensity of mineral exploration activities in Nitassinan, a comprehensive approach to cultural and environmental protection is required. The mineral exploration industry as a whole must commit to supporting mechanisms for comprehensive studies and the meaningful participation of the Innu Nation in the interim regulation of mineral exploration and development;

11) that the Innu Nation must be consulted and involved in environmental data collection, monitoring studies and identification of mitigation measures related to environmental assessment of exploration activities or potential developments;

12) that the Innu Nation must be consulted and involved in monitoring mineral exploration activities in Nitassinan. Companies should be prepared to fund and facilitate site visits by Innu observers to their camps and exploration sites to encourage good communication and to ensure that activities are proceeding in ways that are respectful of Innu rights and the environment;

13) that where there is damage caused by exploration activities, companies must be responsible for the costs of any cleanup, restoration, reclamation or enhancement work required.

An expanded version of the guidelines entitled *Mineral Exploration in Nitassinan: A Matter of Respect: Innu Nation Guidelines for the Mining Industry* is available online at <http://www.innu.ca/guidelines.pdf>

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Handbook for Mineral Exploration Companies Operating in Nunavik, Quebec

The Inuit of Nunavik have published, through their Nunavik Mineral Exploration Fund Inc., a handbook which is primarily a list of contacts for permits required by mining companies operating in Inuit lands.²¹

A Guide to Mineral Exploration and Development on Inuit Owned Land in Nunavut (revised January 2000)

The Inuit in Nunavut have established a comprehensive set of directions to help guide mining exploration and development on Inuit-owned lands. While the guide has no legal force, the rights of third parties on such lands are governed exclusively by agreements or licenses that are based on compliance with the guidelines.

The detailed guide can be found online at <http://www.polarnet.ca/ntilands/mineral/minguide.htm>

Guidelines for Environmental Assessments with Indigenous People

The Centre for Traditional Knowledge in Canada has created an extensive set of guidelines for undertaking environmental assessments targeted at Indigenous peoples, corporations and governments (Emery and Patten 1997). These guidelines are excellent and could be applied to mining operations.

Guidelines for Indigenous People

1. Form a Representative Group:
 - Choose team members according to skills
 - Community needs to have legal status
2. Predict all the impacts of the project:
 - Good predictions mean good decisions
 - Include women and women's knowledge to improve predictions
 - Be skeptical of predictions of great wealth
 - Leave broad margins of error in predictive modeling
3. Don't be left out:
 - Be alert to new projects
 - Don't just refuse to cooperate when decisions have pre-empted your authority—find out what legal recourse is available
 - To be effective, participate fully
 - Establish financing for your participation
 - Train to be involved in the assessment
 - Participation by women will improve the assessment

- Use communication techniques to meet your needs
 - Work with the media: Be message-driven, not question-driven
4. Know the rules:
 - Government sets the rules, the Corporation defines the process
 - Establish your own spokespersons
 - Enhance your power base: include others such as national and regional Aboriginal groups.
 - Ask lots of questions
 - Translation is important, particularly for elders
 - Women help interpret the rules
 - Negotiate the timeline
 - Preserve/record your customary Aboriginal rights
 5. Use your traditional knowledge, don't give it away:
 - Transmit traditional knowledge on your own terms
 - Distinguish between ancient and modern traditional knowledge
 - Participatory use of traditional knowledge can be better than selling it
 - Traditional knowledge of women is often invisible
 - Become a legal entity
 - Shape your traditional knowledge access agreements carefully
 6. Insist on your rights, know your bottom line:
 - Know your rights
 - Safeguard your rights
 - Settle the question of land ownership before you agree to the project
 - State your limits to the project
 - Do a cost benefit analysis of the project for the community and the corporation
 - Third party arbitration can help
 7. Find out what the corporation knows and how it operates:
 - Classify land use from your perspective first
 - Challenge scientific findings
 - Create a report card on the corporation's past
 8. Know what you need:
 - Get a technical summary
 - Prepare a community list of questions
 - Hire someone you trust to interpret science-based knowledge
 - Protect your community from societal impacts of alcohol, drugs, diseases, migration to cities
 9. Find out what the corporation wants from you:
 - Begin a full dialogue:
 - i. Establish how the dialogue will proceed
 - ii. Establish needs for necessary background information
 - iii. Set agendas together with the corporation
 - iv. Alternate chairing the discussions between the community and the corporation

- v. Be prepared to provide an explanation of the organizational structure of the community, who its leaders are, what are the community's long-range goals, what is the social and economic makeup of the community
 - vi. Ask the corporation to supply an organization chart with the local representatives identified on the chart. Find out how the impact assessment will be done and by whom
 - vii. Have the community define what it wants from the project
10. Don't be outmanoeuvred:
- Resist unreasonable demands
 - Too little time can lead to poor decisions
 - Insist on meaningful consultation, not just information
 - Do not allow anyone to undermine the credibility of traditional knowledge
 - Do not accept a disregard for community standards
 - Insist on open door negotiations including Indigenous peoples, not private negotiations
11. Inform and involve nearby communities:
- Define direct effects
 - Define indirect effects
 - If you are the neighbour, become informed
12. Communicate directly with government agencies:
- Do not settle for second-hand information— go to the source
 - Use international and national protocols

Guidelines for Corporations

1. Local customs and etiquette are important:
 - Carry out socio-economic research on the community before contact
 - Consider training staff who will interact with Indigenous peoples
 - Tread carefully—proper protocol is important throughout the project
2. Predict all the impacts on the community:
 - Define key issues and concerns to save time and money
 - If impacts will be serious, international attention may result
 - Combining science and traditional knowledge markedly improves predictions
3. Don't leave Indigenous peoples out:
 - Include Indigenous peoples right from the beginning to avoid disputes
 - Help the community to become involved—it improves relationships
 - Financing community participation prevents charges of excluding the community
 - Include the community in managing and monitoring the on-going project
4. It's to your advantage to play straight:
 - You need to help the local community to understand the corporation's needs
 - Culture clash can be harmful to both parties— be careful
 - Working with local people is beneficial to both parties
5. Communicate so that Indigenous peoples understand:
 - An empathetic attitude is important to success
 - Work in groups and always use the local language

- Get the information across in an easy to grasp manner
 - Evaluate the success of your communication:
 - i. Evaluate the progress at regular intervals—can everyone follow the project? Does everyone understand the implications? Are the corporate representatives perceived to be helpful, hostile, competent or out to lunch? Do the men and women participate equally or appropriately for the culture?
 - ii. Do it together with local community
 - iii. Don't use outsiders unless the community agrees
 - Give people the needed time
 - You may be a health risk to Indigenous people—be careful
6. Intellectual, cultural, and traditional resource rights:
 - Determine the rights of the Indigenous community for your own benefit
 - Settle land ownership disputes before initiating the project
 - Customary Aboriginal rights need to be settled early
 7. Work with traditional knowledge:
 - Site-specific traditional knowledge is of great value to the project
 - Partner with Indigenous peoples; the value-added is immense
 - Traditional knowledge and the work of Indigenous peoples is not free
 8. Negotiate based on equity, empowerment and respect:
 - Be respectful
 - Be sure to include everyone in the negotiation, including men, women and children
 - Empower the community through meaningful consultations
 - Help the community to define its expectations so you understand them
 9. The local community will need complete information:
 - Provide a complete report with technical details in plain language
 - Provide a cost-benefit analysis
 - Reach agreements on the limits of the project
 10. Legally correct actions may be dangerous to both parties:
 - Do not try to outmanoeuvre the community or try to “divide and conquer”
 - Make sure everyone has time to think
 - Attempting to undermine the credibility of traditional knowledge is not useful
 - Maintain cultural respect for the community
 11. Make sure the neighboring communities are informed and involved:
 - Joint assessments of impact are important
 12. Call for arbitration to get past non-productive situations:
 - If relationships erode, try a simple self-examination
 - Agree on an acceptable arbitrator

Guidelines for Governments

1. Establish sustainability policies for natural resources and Indigenous people:
 - Set policies to rationalize exploitation of non-renewable resources
 - Set policies on the basis of sustainability for renewable resources

- Set policies on the basis of sustainability of quality of life for Indigenous peoples
2. Develop sustainability strategies by involving all stakeholders:
 - Good strategies are based on the needs of all people
 - Multi-stakeholder negotiations work in many countries
 3. Separate government agencies that exploit from those that regulate:
 - Regulatory agencies should not have an inherent conflict of interest
 - Manage access to isolated Indigenous peoples to maintain their social, cultural and physical health
 - Research the socio-economic background of the community before making contact
 4. Enforce the traditional resource rights of Indigenous people:
 - Be aware of relevant international statutes and conventions
 5. Fund capacity-building among your nation's Indigenous peoples

The Inuit Tapirisat Research Principles

The Inuit Tapirisat of Canada has produced a useful list of principles based on existing ethical guidelines and the concerns expressed by members of Inuit communities. Mining companies wishing to undertake consultations could benefit from adhering to such principles.

1. Informed consent should be obtained from the community and from any individuals involved in research.
2. In seeking informed consent the researcher should at least explain the purpose of the research; sponsors of research; the person in charge; potential benefits and possible problems associated with the research for people and the environment; research methodology; participation of or contact with residents of the community.
3. Anonymity and confidentiality must be offered and, if accepted, guaranteed except where this is legally precluded.
4. Ongoing communication of research objectives, methods, findings and interpretation from inception to completion of project should occur.
5. If, during the research, the community decides the research is unacceptable, the research should be suspended.
6. Serious efforts must be made to include local and traditional knowledge in all stages of research including problem identification.
7. Research must avoid social disruption.
8. Research must respect the privacy, dignity, cultures, traditions and rights of Aboriginal people.
9. Written information should be available in the appropriate language(s).
10. The peer review process must be communicated to the communities, and their advice and/or participation sought in the process.
11. Aboriginal people should have access to research data, not just receive summaries and research reports. The extent of data accessibility that participants and communities can expect should be clearly stated and agreed upon as part of any approval process.

For further information contact: Inuit Tapirisat of Canada, Suite 510, 170 Laurier Avenue W., Ottawa, Canada K1P 5V5.

Appendix 2: Corporate Policies and Statements Pertaining to Indigenous Peoples and Local Communities

Excerpts from Placer Dome's 1999 Sustainability Policy:

- “Limit negative impacts on livelihoods in local communities, and provide adjustment assistance as appropriate.”
- “Conduct or support research programs to expand knowledge on the impact of mining activities on the environment and community.”
- “Provide for the effective involvement of communities in decisions which affect them, treat them as equals, respect their cultures, customs and values, and take into account their needs, concerns and aspirations in making our decisions.”
- “Understand and respond to stakeholders’ concerns about specific impacts or risks, our sustainability performance or mining industry practices.”
- “Promote the participation of local communities and host country citizens in the employment generated by the mine.”
- “Encourage community economic expansion where it is sustainable beyond the life of the mine” and a number of social progress indicators.

WMC Indigenous Peoples’ Policy

WMC is committed to developing relationships of mutual understanding and respect with the Indigenous peoples of the areas in which we operate or propose to operate.

To fulfil this commitment, the company will:

- Establish and maintain effective, positive and frequent communication with Indigenous groups.
- Recognize the desire of Indigenous peoples to fulfil their responsibilities within their traditional culture.
- Seek to identify all Indigenous interests in the area within which the company is operating or intends to operate, define the basis for those interests whether derived from cultural traditions, historical association, occupation, social or economic need, and deal with those interests in accordance with the relevant government policy.
- {PRIVATE "TYPE=PICT;ALT=*"}Recognize and observe all state, provincial, and federal laws relevant to Indigenous and cultural matters.
- {PRIVATE "TYPE=PICT;ALT=*"}Formulate and implement for appropriate company personnel, an Indigenous awareness program, pertinent to the local situation, which will engender the appropriate understanding, sensitivity and respect toward the local Indigenous peoples.
- {PRIVATE "TYPE=PICT;ALT=*"}Wherever reasonable and appropriate, provide local Indigenous groups with the opportunity to participate directly or indirectly in employment opportunities.
- {PRIVATE "TYPE=PICT;ALT=*"}Taking into account local conditions, provide the opportunity for qualified local Indigenous businesses to tender for the supply of goods and services necessary for the company's local activities.

Rio Algom's Core Principles on Community Responsibility

1. Respect the cultures, customs and values of individuals and groups whose livelihoods may be affected by exploration, mining and processing.
2. Recognize local communities as stakeholders and engage with them in an effective process of consultation and communication.
3. Participate in the social, economic and institutional development of the communities where operations are located and mitigate adverse effects in these communities to the greatest practical extent.
4. Respect the authority of national and regional governments and integrate activities with their development objectives.

Normandy's Corporate Principles

1. Outward orientation (look beyond the fences)
 2. Engagement with the world at large and social contracts with neighbours
 3. Blur the boundaries (develop methods for bringing people in: open days, tours, videos)
 4. Absolute transparency (the main key to trust)
 5. Think holistic
 6. Keep it simple
 7. Social investment (open, known policy, tough but fair)
 8. No "enemies"/constant vigilance
 9. "Culture" focus (being aware that other people do things differently; protocols very important)
 10. Day one start (when geologists first set foot on ground)
 11. Everyone walks the talk (CEOs to truck drivers)
 12. Integrated bottom line (no profit without looking after the environment and the community)
- (Anderson 1999)

Other corporate policies can be found at

Rio Tinto

<http://www.riotinto.com/ok.html> Business Practice (pp: 8-11,14 -16)

BHP

<http://www.bhp.com/default.asp?page=501> Community Relations Policy

<http://www.bhp.com/default.asp?page=508> Indigenous Affairs

Freeport McMoRan

<http://www.fcx.com/esp/index.htm> 1999 Economic, Social & Environmental Report

<http://www.fcx.com/esp/srp.html> Social Responsibilities & Programs

<http://www.fcx.com/esp/socpolicy.html> Social & Human Rights Policy

<http://www.fcx.com/esp/socialaudit.html> Social Audit Report
<http://www.fcx.com/esp/envpolicy.html> Environmental Policy
<http://www.fcx.com/esp/envraudit.html> Environmental Audit Reports

Appendix 3: Sustainable Development Markers
 (Bedford and Warhurst 1999)

Indigenous Guidelines	Social Performance Factors
<p>Consulting with and involving duly selected communities and their representatives from Indigenous territories, whose traditional social, economic, or spiritual activities are directly or indirectly affected by or infringed upon the proposed development activities, <i>prior</i> to planning and all further stages of assessment, implementation and conclusion.</p>	<p>To what extent do companies ensure that they are consulting with the true representatives of the Indigenous communities? At what stage and how are consultation meetings set up? To what extent do companies research the cultures prior to the meetings? What mechanisms are in place for Indigenous peoples to express their concerns about proposed and ongoing operational practices? To what extent do the mining representatives address these concerns? To what extent is Indigenous knowledge of biodiversity and ecosystems incorporated into the planning stages? Does the company have a policy to integrate Indigenous peoples in the operations? What training programs are in place to allow full participation in the new economic activity? What intercultural training is provided for the non-local labour force? What intercultural training programs are established for outside contractors? To what extent does the mining company assist and plan for avoiding areas of spiritual significance? Are visual aids and other materials used to communicate with transparency the potential adverse effects to the communities? What means do company representatives use to communicate effectively in Indigenous languages? How often do meetings take place, and are the company representatives appropriately skilled with Indigenous languages, sensitivity to cultures and differing worldview perspectives? Are there full-time employees who carry out the consultations to establish continuity and trust?</p>

Mechanisms for verifying the indicators from Bedford and Warhurst (1999)

Indigenous Factors	Social Performance Evidence
To what extent do companies research the cultures prior to the meetings?	Cultural report Maps Significant sites marked
What mechanisms are in place for Indigenous peoples to express their concerns about proposed and ongoing operational practices?	Minutes from meetings Interviews Translated documents Documentary evidence of replies
To what extent is Indigenous knowledge of biodiversity and ecosystems incorporated into the planning stages?	Notes Indigenous knowledge Planning reports Physical evidence
Does the company have a policy to integrate Indigenous people in the operations?	Community relations policy Evidence of participation Personnel files
What training programs are in place to allow full participation in the new economic activity?	Training manuals Course register
What intercultural training is provided for the non-local labour force and outside contractors?	Dates and times of courses Course attendees Training reports
To what extent does the mining company assist and plan for avoiding areas of spiritual significance?	Aerial maps Demarcation of sites Infrastructure and mining plans
Are visual aids and other materials used to communicate with transparency the potential adverse effects to the communities?	Visual aid Tapes Interviews
Frequency of meetings: are there regular company representatives with language skills, sensitive to cultures and differing worldview perspectives?	Attending meetings Interview staff Interview committee

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Endnotes

¹ As a valuable starting place, see the workshop summary *Between a Rock and a Hard Place: Aboriginal Communities and Mining*, held by the Innu Nation and MiningWatch Canada, Ottawa, Canada, September 10-12, 1999.

² See Press Release by MiningWatch Canada. August 18, 2000. "Canadian Resources Company Creating Conflict in Eastern Kenya." http://www.miningwatch.ca/publications/Kenya_Release.html

³³ Participants include: Anglo American Corp., BP plc, CARE International, the UK's Department for International Development (DFID), the International Council on Metals and the Environment (ICME), (ICMP Ltd/CESC), Norsk Hydro, Phelps Dodge, Placer Dome, Rio Tinto, Shell International, The World Bank Group, and WMC Resources. Currently, the Natural Resources Cluster of the BPD has undertaken a number of case studies on mining partnerships. See <http://www.bpd-naturalresources.org/> for more details.

⁴ Nicole Gesnot, Counselor, Office of the Executive Director for Canada, IDB Personal communication via e-mail, April 27, 2000.

⁵ Personal communication with Anne Deruyterre, IDB, August 2, 2001.

⁶ For a detailed critique of the OECD Draft Agreement, refer to the NGO campaign for ECA reform available at <http://www.eca-watch.org>

⁷ More than 200 environmental, human rights and Indigenous peoples' organizations from 52 countries called for this ban at the Kyoto climate change meeting in 1997, in the Oilwatch Declaration. These types of areas have been identified and defined by a wide range of environmental, scientific and Indigenous peoples' organizations, including International Union for Conservation of Nature and Natural Resources (IUCN), Conservation International (CI), World Wildlife Fund International (WWFI), Rainforest Action Network (RAN), Oilwatch International, Project Underground, World Rainforest Movement, Nature Conservancy and various national or regionally focused Indigenous peoples organizations.

⁸ Personal communication with Jim Rader, CoDev.

⁹ The Prospectors and Developers Association of Canada at <http://www.pdac.ca/>

¹⁰ Based on company spokespeople's comments during workshops at the World Mines Ministries Forum in Toronto, Canada (March 9-10, 2000). See also Schwartz *et al* 1996, Johnston and Jorgensen 1994, Redman 1993.

¹¹ Personal communication., May 11, 2000.

¹² This report presents the experience of monitoring Rio Tinto in their attempted entry into the Southern Philippines and is based on the submission made to the Permanent Peoples Tribunal that met in 2000 in Warwickshire to consider the activities of transnational corporations and focused upon and found against Freeport McMoRan and Rio Tinto. For a copy of the report, contact PIPLinks: tongtong@gn.apc.org

¹³ <http://www.mpi.org.au>

¹⁴ For an elaboration of some of these concerns, see for example the London Declaration at <http://www.minesandcommunities.org/Charter/londondec.htm>

¹⁵ The forestry industry has a much greater emphasis on holistic management than does the mining industry. Many of the changes stem from increased awareness of the value of forest resources including the natural capital/ecosystem services of forests as a whole and a growing recognition that local people have important role to play in the sustainable management of local resources (Banarjee *et al* 1997).

¹⁶ The full WCD report is available in PDF format on www.dams.org/report or in hardcopy (World Commission on Dams 2000). International Rivers Network prepared a useful compilation of excerpts from the report, which is available on www.irn.org.

¹⁷ See Stewart Carter (1999) for an assessment of community participation in employment, contracts, environmental management, land access and social integration at 11 mining operations around the world. Indigenous peoples can also effectively participate in the incorporation of local and traditional knowledge in environmental planning, cooperative baseline studies, environmental and social research and monitoring, cooperative social and cultural impact studies, developing local business opportunities, cooperative infrastructure development, science and technology needs analysis.

¹⁸ The Chamber of Mines and Energy of Western Australia (1998) believes that the Australian Native Title Act is not working and is holding up the mineral application process, which results in less economic benefits to Aboriginals. Since the Mabo No. 2 decision and the Native Title Act (which represented the government's response to Mabo), the Australian minerals industry has been working to define a new relationship with Indigenous people.

The Native Title Act has been criticized by industry because of its inability to be responsive to time-sensitive mineral investment decisions (Minerals Council of Australia 2000).

¹⁹ Roche, personal communication, May 17, 2000.

²⁰ Oil Companies: ARCO BP AMOCO, ExxonMobil, Anadarko, Chevron, Occidental, Shell. Environmental NGOs: World Wildlife Fund (US), The Nature Conservancy (US), Natural Resources Defense Council (US), Fundación Natura (Ecuador), Fundación LaSalle (Venezuela), Sociedad Peruana para la Defensa de la Naturaleza (Peru), Pro-Naturaleza (Peru), The Terra Group. Indigenous Organizations: Coordinating Group for Indigenous Organizations of the Amazon Basin (COICA), Confederation of Indigenous Peoples of the Bolivian Oriente (CIDOB), Indigenous Association for the Development of the Peruvian Jungle (AIDSESEP), Confederation of Amazonian Nations of Peru (CPNAP), Organization of Indigenous Peoples of Pastaza (OPIP), National Confederation of Indigenous Peoples of Venezuela (CONIVE), National Indian Organization of Colombia (ONIC), Organization of Indigenous Peoples of the Colombian Amazon (OPIAC) (from: PONSACS 2000b).

²¹ Nunavik Mineral Exploration Fund, n.d.