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Rethinking Extractive Industry

Regulation, Dispossession, and Emerging Claims



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Guest Editors · Rédacteurs invités

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Cover Image

The cover image for this issue was taken at an open pit gold mine in Andacollo, Chile, by photojournalist Louie Palu. Copyright Louie Palu. All rights reserved.



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Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims

Eduardo Canel, Uwafiokun Idemudia, and Liisa L. North

This double issue of the *Canadian Journal of Development Studies* responds to growing academic discussion and public concern about the environmental, social, political, and economic impacts of the rapid globe-spanning growth of mining and petroleum industries over the past twenty years. The recent boom in mineral and petroleum exports has renewed debate about the potential developmental contribution of extractive industries. It has also opened new discussions about international, and home and host country responsibilities for ensuring both a fairer distribution of the benefits that might be derived from their operations and compensation for the damages they often cause.

In these debates, mining and petroleum corporations argue that they are agents of progressive change, and that modern technology and new corporate social responsibility programs can make extractive activities sustainable and beneficial to all stakeholders.¹ Meanwhile, national and provincial governments of all political tendencies, including the much heralded “new left” in Latin America, almost invariably argue that the expansion of extractive industry is necessary for sponsoring development and overcoming poverty by generating foreign exchange, tax revenue, and employment (Hogenboom and Jilberto 2009).²

Critics respond that extractive industries have too often failed to address the development needs of communities, which have variously demanded the right to be consulted (including the right to say no), a share in the profits, compensation for damage and lost livelihoods, and greater government regulation of the industry. Critics also argue that in countries with weak institutions, including “low-intensity democracies,” extractive activity cannot contribute to sustainable human development. Such a goal, they suggest, can be achieved only in countries with robust civil societies and strong regulatory frameworks, and where governments have the political will and institutional

1. For example, the Mining Association of Canada initiated a Towards Sustainable Mining initiative and points to the billions of dollars the industry has paid in taxes in Canada as evidence of its contributions to development.

2. To avoid unnecessary repetition, we have refrained from citing sources that are available in the bibliographies provided by the contributors to this special issue.

capacity to enforce regulations, conditions often absent in countries of the global South where extractive industries operate.

Some of these arguments are not new. Indeed, extractive industries have been the subject of controversy and a source of conflict among states, transnational corporations, communities, and labour unions since the early decades of the twentieth century. However, the unprecedented and unregulated geographical expansion and intensification of extractive exploitation that characterizes the latest phase of the industry's growth raises new issues. Likewise, the resulting widespread protest and the emerging corporate strategies to obtain community support at the sites of extraction (and even of exploration) raise new challenges for communities, researchers, policy-makers, and corporations alike.

In general, both advocacy networks and industry actors have become more sophisticated in their handling of the issues and their relations with one another. Their capacity to resist and destabilize each other's efforts has also increased. On the one hand, as noted, conflict has intensified and expanded across the globe. On the other hand, further opportunities for dialogue and institution building have also opened.³ New accountability instruments are now being elaborated—for example, in relation to the financing of resource extraction. NGOs have assumed new roles as they attempt to find common ground between mining companies and communities.⁴ Some mining and petroleum companies, for their part, have adopted corporate social responsibility (CSR) codes, and have entered into various forms of partnership and legal agreement with communities.

Many activists and researchers concerned with the environmental and social consequences of extractive industries have suggested that opposition to extractive activity should be accompanied by more proactive forms of engagement and proposal making. Indeed, debate has moved beyond simply arguing for or against extractive industries toward addressing the complex host of issues that has arisen from more than a decade of conflict and experimentation with various forms of regulation. Much of the debate focuses on the conditions required to ensure democratic, transparent, and effective forms of industry regulation. While industry actors and national governments advocate private or voluntary forms of regulation, others propose public regulation through legislation or direct state ownership, as in the cases of Bolivia and Venezuela. Advocates of public regulation suggest that regulatory frameworks must be developed simultaneously in host countries (where extractive activity takes place), in home countries (where corporations are based), and at the international level. In Canada, representatives from industry and civil society negotiated a set of recommendations to transcend the private versus public deadlock, proposing instead an intermediary regulatory framework combining private and public oversight (see Coumans in this issue).

3. See for example the recommendations of the Canadian National Roundtable discussed by Coumans in this issue.

4. The initiatives of the Tata Energy Research Institute in India and OXFAM-UK in Africa are good examples of these efforts.

The new issues in these debates are echoed in parallel discussions taking place within the field of development. Acknowledging the dismal failure of unrestrained capitalism as promoted by neo-liberal policies, most international development institutions now advocate limited forms of state regulation to guard against the “excesses” of unconstrained market regime. In fact, the traditional “state versus market” debate has been largely displaced by a new “post-Washington Consensus” perspective that posits the need for a mixture of state intervention and market competition to promote development. This emerging mainstream approach advocates a form of “socially responsible capitalism” in which markets and states work together with civil society to ensure sustainable human development (Howell and Pearce 2001). However, defining ethical corporate behaviour, determining the appropriate balance between free markets and state intervention, and identifying the conditions that allow meaningful civil society participation remain the subject of intense examination and political struggle, as shown in many of the articles in this issue.

The currency of the post-Washington Consensus outlook may provide new opportunities to communities concerned about extractive activities, and to the supporters of these communities. As discussions about the role of the state have shifted from whether it *should* intervene to *how* (or *how much*) it should do so,⁵ the space for policy debate has opened somewhat, in sharp contrast to the conditions that prevailed during the era of neo-liberal structural adjustment policies. The growing emphasis on socially responsible capitalism, coupled with changing societal expectations about the ethical obligations of corporate actors, provide a more favourable context within which to negotiate with industry actors the terms on which they might operate. As well, the increasing focus on democratic governance and civil society participation bolsters demands for the establishment of appropriate mechanisms to ensure genuine community consultation, whether this consultation leads to informed consent for, or the rejection of, extractive activity. However, the ability of communities to seize upon these opportunities is conditioned by the significant power inequalities between them and the corporations with which they must contend, a point made by many of the contributors to this issue.

A New Phase of Extractive Activity and Conflict

The new forms that extractive industry operations have taken on since the 1990s have been derived from three sources: (1) from the dismantling of public regulation promoted by the neo-liberal policy framework, (2) from the exhaustion of easily accessible and rich deposits in the context (until 2008) of rapidly rising demand and prices, and (3) from the emergence of various national and international voluntary codes of corporate conduct, CSR initiatives, and corporate-community contracts.

5. See Howell and Pearce (2001, 65). However, important differences remain, especially in relation to what should be the primary aim of good government: Should it be to create the conditions to make markets more efficient or to expand democracy and empower citizens?

First, with respect to the policy context, the 1990s Washington Consensus about the desirability of market-led economic growth prompted governments across the globe—under pressure from the International Monetary Fund, the World Bank, and the US Treasury—to dismantle much of the regulatory legislation and public institutional capacity that, following World War II, was created during the decades of state-sponsored development in many third world countries. In some developing countries, the resulting new legislation inspired by the Washington Consensus was designed to attract foreign investment into the mining and petroleum sectors, and led to the rewriting of what were considered antiquated mining codes in order to make them attractive to foreign investors and compatible with the dictates of the neo-liberal prescriptions (see Campbell's discussion of changes to mining regimes in Africa). Subsequently, the new private-sector-friendly legislation and codes regarding the rights of foreign investors were incorporated into free trade agreements signed by Canada with various Latin American countries, thereby providing additional legal protection to Canadian mining corporations for suing governments that rescind permit for operations (see Van Harten 2007 regarding the legal implications of the free trade agreements on the relative power of states and corporations).⁶

Second, with respect to the location and quality of deposits, extractive industries moved into ever more remote regions, often occupied by indigenous peoples, from the tar sands of northern Alberta to the open-pit gold and copper mines of Andean South America, where even glaciers are considered disposable, and into countries with little history of extractive industry operations, as in parts of Central America. In their exploitation of lower grade ores, extractive industries became more intensive in their use of land, water, and energy, raising difficult questions about their impacts on the environment and the people whose lives are dependent on its health. As the damaging impacts of the new mining activities became increasingly visible, local communities, civil society organizations, and social movements mobilized to protest extractive industry operations and the new laws that encouraged them. Some, such as the Ogoni people of the Niger Delta and Amazonian farming communities in Ecuador, launched suits against the corporations that had polluted their territories. (In the two cases mentioned, the corporations were the petroleum giants Shell Oil and Texaco/Chevron, respectively.) In early 2009, an Ecuadorian community launched a suit against a Canadian mining company and the Toronto Stock Exchange for alleged human rights violations.⁷

Third, in response to the increasingly heated debate, activism, and protest regarding the social and environmental costs of the new extractive industry boom, the parallel decrease of state regulation resulting from Washington Consensus policies, and the new emphasis of socially responsible capitalism arising from the post-Washington

6. The Canadian mining company Pacific Rim, for example, is suing the government of El Salvador under the terms of the Central America Free Trade Agreement. Meanwhile, a coalition of Salvadorian mining opponents is supporting legislation to ban precious-metal mining altogether, spurred by the violence at the Pacific Rim operations site.

7. See Brett Popplewell, "Copper Mesa sued for alleged assault," *Toronto Star*, 22 November 2009.

Consensus, corporations began to formulate their own regulation strategies, like CSR codes, and to promote corporate-community agreements and impact-benefit agreements (a review of these trends in the Canadian context is provided by Dashwood and Puplampu in this issue). This was done in an effort to secure a “social license to operate” from communities in the regions of extraction and to hold back possible re-regulation by the state. These corporations argued that the new CSR programs and industry-community partnerships would allow the sector to regulate itself in a manner that would be beneficial to all stakeholders. They also suggested that mining and petroleum extraction could be “sustainable” because new and advanced technologies minimized environmental damage, and that they could play a leading role in promoting local and national development through the employment, export income, and tax revenue they generated. In some countries, corporations orchestrated aggressive publicity campaigns equating mining and oil extraction with progress and development, marketing themselves as good corporate citizens and agents of progressive change.

As the home of a number of large transnational mining and petroleum enterprises, the world’s most important exporter of junior companies engaged in exploration activities, and as a country of mineral-rich territories located in indigenous communities, Canada is at the centre of all these debates. Canada is in fact one of the world’s leading producers of minerals⁸ and has ranked as the top destination of global exploration investment since 2004, capturing close to 20% of all global investment. The country is also a major player in international markets and offshore investments. For instance, nearly 60% of all mining companies around the world are registered with the Toronto Stock Exchange, which is the most important hub for global mining finance, accounting for an astounding 80% of all international mining equity transactions since 2003.⁹ Canadian worldwide investment in mining rose by 55% between 2002 and 2008, reaching \$13.2 billion. In 2008, Canadian mining companies operated 350 mines worldwide in various countries of Africa, Latin America, and Asia, as well as in the United States and Australia.

Not surprisingly, Canadian companies have found themselves at the centre of international controversy, often tarnishing the country’s reputation as a relatively “benevolent” power and peacemaker. Although controversy regarding Canada-based mining company operations abroad is not new, it has intensified and became more visible over the past decade. Concerns about the *modus operandi* of Canadian corporate actors and their alleged disregard for human rights, both in Canada and abroad, have increasingly been reported in Canadian and international media (they are also discussed by Catherine Coumans in her contribution to this issue and reflected in the documentary film, *Under Rich Earth*, reviewed here). A recent front page article in the *Toronto Star* (22 November 2009), for example, reported that multiple charges of human rights abuses

8. Canada is the top world producer of uranium and potash, producing 22% and 33%, respectively, of global output. It is also the second largest producer of nickel and cobalt, the third largest producer of titanium concentrate, platinum group metals, and aluminum, and the fourth largest producer of zinc. This section draws from a recent report by the Mining Association of Canada. See “A Report on the State of the Canadian Mining Industry. Facts and Figures, 2009.”

9. In contrast, the Australian and London exchanges handled only around 9% each.

have been raised against Canadian companies in “at least thirty of the world’s poorest countries,” and highlighted the difficulty of passing legislation to regulate and monitor Canadian companies due to their excessive power. The lead story of a major Mexican daily in July 2009 claimed that Canadian companies hold 70% of mining concessions in that country and that their operations have had “devastating effects” on health and environmental conditions at the sites of extraction.¹⁰ A few months later, in October, a Mexican superior court ordered Canadian owned New Gold-Minera San Xavier to cease operations at its very conflictive mine site in northern Mexico.¹¹ The byline of a recent Canadian *Report on Business* front page article on the environmental impacts of mining at home and abroad referred to “A Big Mess” (*Globe and Mail*, 12 October 2009).

Meanwhile, civil society based organizations or NGOs in Canada and abroad—Mining Watch and the Halifax Initiative in Canada, various national branches of OXFAM internationally, and the South-South network Oilwatch among them—questioned the corporate sector’s capacity to self-regulate in a fashion that could ensure environmental sustainability and respect for the human rights of affected communities. They also remained highly skeptical about developmental and social implications of extractive activities, as did various religious organizations and human rights agencies,¹² and advocated re-regulation, both at home and abroad.

Community responses to the expansion of extractive industries have significantly varied across regions and contexts. Overall, communities have become more resourceful and sophisticated in their handling of their interactions with corporations and governments. They have developed multifaceted strategies that include national and transnational legal suits, community referendums, demonstrations and road blockades, boycotts, and negotiations of corporate-community agreements. They have also established alliances and partnerships with concerned NGOs, university researchers, and social movements, both at home and abroad.

If the mobilization strategies have varied, so have the stances adopted by communities toward extractive industries. Some communities and their supporters, especially in Latin America, have rejected extractive industries outright and asserted their right to say no to extraction (see the contribution of Walter and Martínez-Alier in this issue). In many of these cases, corporations accused their opponents of naivety and exaggeration, of being “anti-mining,” and even of eco-terrorism, and governments criminalized

10. See *La Jornada*, 17 July 2009. For a discussion of such past conflicts, stretching back to the 1970s in Guatemala and Indonesia, see Jamie Swift’s *The Big Nickel, Inco at Home and Abroad* (Kitchener: Between the Lines, 1977). In the 1960s, Inco’s subsidiary in Guatemala pretty much wrote the legal code under which it was to operate there, and its executives expressed their support for the repressive military regime that ruled the country at the time (Swift 1977, 68–70).

11. The court is the Mexican Federal Tribunal of Administrative and Fiscal Justice. The ruling was circulated and translated into English by the NGO Mining Awareness Coalition Toronto (30 October 2009).

12. In Tanzania, for example, Christian and Muslim religious leaders organized a joint fact-finding mission and critiqued the operations of Canadian mining giant Barrick Gold (CCT, TEC, and BAKWATA, 2007–08 [<http://cct-tz.org/>]). In turn, the Christian and Muslim leaders were partners of the Canadian ecumenical human rights agency, KAIROS.

and repressed their protests. In contrast, other communities accepted mining or oil extraction as an activity that could, under certain conditions, bring about direct benefits to them, even if only in the short term. In these cases, they chose to engage with corporations through their CSR programs and/or to negotiate benefits through legal agreements with individual companies (see O'Faircheallaigh in this issue). Frequently, differences of opinion within communities over how to respond to corporate projects generated social divisions and produced internal conflicts that weakened their bargaining power or blunted opposition. The divisions hampered the formulation of potentially coherent, and perhaps more environmentally and socially sustainable, alternative approaches to the management of the extractive sector.

In the multifaceted conflicts and negotiations between collaborating states and corporations on the one hand, and communities and a broad range of national and international civil society organizations on the other, the asymmetries of power have been notable, as observed by various authors in this issue. Such power differentials have undermined the capacity of communities and their allies to seize the possible opportunities arising from the new politics of the post-Washington Consensus, and explain the relatively few benefits extraction has brought to many communities, especially those in countries of the South.

It is the complex and interrelated issues briefly identified above that are analyzed in the collection of papers brought together in this publication, which results from a conference called "Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims."¹³ The many facets of extractive industry expansion demand analysis from various disciplinary perspectives, and thus the authors whose works are presented here include anthropologists, political scientists, lawyers, environmental specialists, and sociologists. They work at universities, non-governmental monitoring and advocacy organizations, and research centres. Each examines a discrete set of issues or focuses on a single case, but together they provide a reasonably broad introduction to the critical questions and conflicts arising from the new context, with examples of the ways in which communities, corporations, and governments have responded. They focus on emerging claims around natural resource extraction, and on questions of obligation and responsibility in the pursuit of extraction for development.

13. The conference was jointly organized by the Centre for Research on Latin America and the Caribbean and the Extractive Industries Research Group at York University, 5-7 March 2009. For more information see the conference website at <http://www.yorku.ca/erlac/ei-conf.htm>. Many thanks are due for the generous financial support provided by CIDA, IDRC, SSHRC, and the United Steel Workers of America (USWA). The York University U50 Office and the Office of the Vice President, Research and Innovation (VPRI), as well as many other faculties, departments, and programs, also generously supported the conference.

Conceptualizing Extractive Industry Regimes through Canadian Lenses

The first section of this special issue presents two articles that examine the legal regimes under which mining corporations function in Canada, and the regulation—or lack thereof—by the Canadian state of their activities at home and abroad. In the context of the debates summarized above, criticism of Canadian mining and petroleum industry operations abroad—by developmental NGOs, human rights agencies, churches, and academic groups—led Parliament to set up the “National Roundtable on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries” in 2006. The roundtable’s report was issued in 2007, and it called for the creation of an independent Ombudsperson and Compliance Review Committee that, as Catherine Coumans explains, would have provided a mechanism through which community complaints against Canadian extractive companies operating in countries with weak governance regimes could be credibly investigated and their violations sanctioned. This recommendation was rejected by the federal government, which instead favours the self-monitoring and self-regulation of the sector under various CSR schemes and via negotiated agreements between corporations and communities. Some of the recommendations—except, significantly, the recommendation to create an independent Ombudsperson—were reintroduced in Parliament through a private member’s bill and are currently under discussion in the legislature.

In her analysis of the limitations of voluntary codes of conduct, Coumans argues that they “do not address the need for sanction and remedy, do not ensure respect for human rights, and do not support and promote community agency in protecting social, economic, and environmental values.” Since there are few provisions for the sanctioning of corporations that violate the voluntary codes and none for providing “remedy” to communities whose rights have been violated, corporations enjoy “effective impunity.” Coumans, who was a participant in the 2006–07 roundtable process, makes the case for legally binding state regulation, both national and international, that would allow communities to hold corporations accountable and obtain remedy for violations.

In the second article, Myriam Laforce analyzes the origins, nature, and consequences of the “free mining” or “free entry” regime that was established in the United States and Canada during the second half of the nineteenth century and that has remained largely intact to the present. The regime was set up at a time when state power did not reach the remote frontier areas where mining booms were taking off in these two countries, California during the “gold rush” being the prime example. Consequently, mining entrepreneurs stepped in to fill the normative field that the state could not establish. Thus, the miners defined the rules of the game, which the state eventually adopted, thereby establishing a legal order in which mining came to trump all other economic and land use alternatives. Ever since, communities at the sites of exploration and exploitation have had no legal basis for opposing mining once a “claim” has been properly made and duly registered.

After examining the social and political power relations that created and sustained this historic free mining/free entry regime, Laforce looks at recent mining code reforms that encourage corporations and indigenous communities to negotiate impact benefit agreements (IBAs). Do such agreements in any way alter the asymmetries of power that have characterized the sector and create more favourable conditions within which indigenous communities can elaborate and decide on a development path for their own territories? Do the reforms actually provide the communities whose territories have become the sites of mining activity the opportunity to make decisions about the ways in which exploitation should take place or whether it should take place at all? Laforce views the benefits gained from IBAs in Canada as limited if not meagre, despite the fact that Canadian indigenous peoples tend to enjoy greater possibilities—legal rights, access to information, a democratic political system, and the like—for having their views taken into consideration in comparison to their counterparts in many other parts of the world.

Both Coumans's and Laforce's articles make it clear that what happens in Canada directly influences the expectations of Canada-based corporations operating abroad regarding the legal regimes of host states and the rights of local communities. In brief, the weaknesses of Canadian laws and regulatory regimes, as analyzed by Coumans and Laforce, can limit the developmental choices of the communities where our extractive corporations establish operations.

Corporate-Community Agreements and Informed Consent: Ensuring Developmental Benefits at the Sites of Extraction?

In the second section of this special issue, Ciaran O'Faircheallaigh looks at the ways in which negotiations between mining corporations and indigenous communities are taking place in Canada and Australia; Viviane Weitzner addresses multi-party policy dialogues among states, corporations, (indigenous) communities, and others in Canada, South Africa, and several Latin American countries; and David Szablowski probes the conditions under which informed community consent may or may not be given.

O'Faircheallaigh argues that the now standard Australian and Canadian practice of negotiating contractual agreements between mining corporations and indigenous or aboriginal communities is becoming increasingly common because the agreements appear to offer "significant economic and social opportunities." Indeed, O'Faircheallaigh shows that several communities in Canada and Australia have successfully obtained important benefits from these agreements. Nevertheless, he also argues that as private contracts, such agreements, once signed, can limit the ways in which indigenous peoples access government and the judicial system, and significantly restrict their relations with environmental and community groups. The agreements, he argues, also limit the capacity of communities to engage in political action to address problems they may encounter with the company after the agreement has been signed. Thus, for

indigenous and other communities, bargaining capacity and a thorough understanding of the terms of the contractual agreements offered by extractive corporations are critical for ensuring local developmental benefits. The building of such capacities requires time and dedication, but is of vital importance in light of the history of multiple outrages suffered by such communities at the hands of extractive companies across the globe, as recorded by the contributors to O'Faircheallaigh's edited volume, *Earth Matters: Indigenous Peoples, the Extractive Industries and Corporate Social Responsibility* (reviewed in this issue).

As a step toward identifying "key lessons" for indigenous participation in multi-party dialogues among states, corporations, indigenous communities, and other social actors, Viviane Weitzner assesses the "lessons" of 14 such experiences (eight in Canada, one in South Africa, two in Brazil, and three in Peru). They stretch from the White Horse Mining Initiative (WHMI) (1992–94) to the National Roundtable on Corporate Social Responsibility (2006–07). The participation of industry, government, environmental groups, labour unions, and aboriginal organizations in dialogue to "seek consensus on how best to make mining in Canada contribute to sustainable development," a process first established by the WHMI, has already been replicated in some third world countries with the encouragement and support of CIDA. Further, such dialogues are potentially on the agenda in still other countries where the Ottawa-based North-South Institute, where Weitzner works, provides technical assistance to mining communities such as Guyana, Surinam, and Colombia.

However, the history of the dialogues in Canada and elsewhere is not promising. Among other things, Weitzner found that they seldom resolve the "deeply controversial or systemic issues" (such as the ones embedded in the "free entry" regime discussed by Laforce); that their recommendations have not been implemented by governments (as Coumans also makes clear with regard to the National Roundtable of 2006–07); and that since the processes themselves are costly, mining affected communities may lack the resources to effectively participate, or they have to divert resources from other essential activities (also often the case in drawing up contracts with corporations, as analyzed by O'Faircheallaigh). Nonetheless, some communities may occupy relatively strong bargaining positions and derive benefits, as argued by Gabrielle Slowey in her *Navigating Neoliberalism: Self Determination and the Mikisew Cree First Nation* (reviewed here).

David Szablowski evaluates the extent to which the principle of free, prior, and informed consent by indigenous communities is being adopted by governments having to decide whether or not to license oil and mineral extraction on indigenous territories. The variability in government positions and local capacities that he finds is echoed in the African and Latin American case studies presented in the final section of this issue and discussed below. Depending on their organizational coherence and capacity, their access to information, and the resources they are able to mobilize, communities may be able to stop mining activity even when governments refuse to recognize prior consent, as in the case of Esquel in Argentina in 2003 (as discussed by Walter and Martínez-Alier). However, in general, the possibility of saying no to mining or petroleum extraction, and of obtaining support for alternatives to extraction in resource rich areas, is

minimal when tremendous power asymmetries exist between local communities on the one hand, and corporations and national governments on the other, an issue to which all the contributors to this publication draw attention. Nevertheless, lack of consultation may have tragic consequences, as evidenced in the deaths of at least 33 police and indigenous people that resulted from the June 2009 confrontation between the Peruvian government and Amazonian indigenous organizations that felt that their rights had been ignored (Federación Internacional de Derechos Humanos October 2009).¹⁴

Corporate Voluntary Initiatives: Can They Ensure Accountability and Development?

The three articles on this question included here provide African case studies—on Nigeria, Cameroon, and Ghana—that evaluate the extent to which various corporate voluntary approaches to regulate the industry have altered corporate behaviour and yielded benefits for communities at the sites of extraction.

Can CSR yield positive results, like corporate social development, in the absence of a strong and coherent state apparatus able to provide an “enabling environment” for such programs? This is the question posed by Uwafiokun Idemudia with reference to Nigeria. His review of the CSR and corporate social development programs of petroleum corporations in the Niger Delta leads him to the conclusion that their benefits are negligible, if they exist at all, when the state does not have the capacity and political will to regulate the corporations and enforce norms. Although the Nigerian state has created a number of regulatory institutions at various levels of government to deal with the distributional issues and environmental costs associated with booming petroleum exports, it suffers from corruption and lacks capacity. Thus, rather than promoting development, the spectacular expansion of petroleum production in the Niger Delta has undermined livelihoods and the social peace the region’s inhabitants once enjoyed, generating the cycle of escalating violence and conflict analyzed by Cyril Obi in this issue.

In a neighbouring West African region, petroleum corporations and local communities, the disenfranchised Bakola Pygmies among them, negotiated an agreement to allow for the construction and operation of the Chad-Cameroon pipeline. However, the agreement offered minimal compensation packages for communities who were going to be evicted from their lands or whose traditional land use patterns would be seriously disrupted by the construction of the pipeline. According to Marieme Lo, this outcome resulted from the significant power asymmetries among the negotiating parties. She argues that communities were cognizant of their lack of power vis-à-vis a giant oil corporation like Exxon Oil and of their lack of political efficacy. As a result,

14. The report was prepared by Rodolfo Stavenhagen, former United Nations rapporteur for indigenous peoples, and Elsie Monge, the head of Ecuador’s Ecumenical Commission for Human Rights.

they entered the negotiations with a "minimalist approach," hoping to gain only minor concessions from a project that, they assumed, would go ahead regardless of their preferences and opinions. Further illustrating these power differentials between disenfranchised communities and corporate actors, Lo shows that Exxon Oil did not even pay affected communities the minimal compensation stipulated in the agreement. In effect, the communities and their allies in national and international NGO and human rights agencies lacked the power to force the company to live up to the spirit of the agreement. Further exacerbating these problems, the Cameroonian state abstained from intervening on behalf of local communities. Its lack of action arose in part from its own weakness vis-à-vis large corporate actors, but it also derived from lack of political will to demand better corporate behaviour: the pipeline promised substantial revenue and passed through territories inhabited by underprivileged minorities who do not enjoy effective citizen rights. In this context, the petroleum corporations and their foreign backers were under little or no pressure to deliver on the terms of the agreements that were signed.

While the biggest and most visible players among the large mining and petroleum corporations have led the movement toward CSR (however problematic their performance may be), what has happened among the juniors? This is the question addressed by Hevina S. Dashwood and Bill B. Pupilampu, with specific reference to a Canadian gold mining enterprise in Ghana. Their study provides an interesting and promising contrast to the cases presented by Idemudia and Lo, and to the questioning of the efficacy of voluntary initiatives advanced by others in this journal issue. Dashwood and Pupilampu show that some junior corporations are both willing to learn from critiques of their operations, and to implement CSR programs in ways that respect communities and contribute to local development. They argue that the existence of a committed senior leadership that is willing to introduce "major organizational innovations" is the central organizational condition that encourages a junior mining company to commit meaningfully to CSR. They add that their incentive to innovate comes "from the direct correlation between the need for a social license from the local communities and the company's ability to operate its mines" and from the fact that, from a business standpoint, the benefits of CSR programs far outweigh their costs. As a result, the Canadian company, under the authors' evaluation, has improved relations with the communities where it operates and established a number of programs in community consultation, and job creation and training. However, Hevina and Pupilampu caution that given the relative newness of these initiatives, it is too early to assess their contributions to local development. Indeed, contributors to *Corporate Citizenship in Africa: Lessons from the Past Paths to the Future* (reviewed in this issue) acknowledged both the opportunities and the challenges confronting CSR as a vehicle for development in Africa.

States, Conflicts, and Community Resistance: Developmental Alternatives to the Reigning Regime?

In this section, six case studies from Africa and Latin America deal with a broad range of issues, ranging from the impact of the neo-liberal reform of mining codes in Africa (Bonnie Campbell) to the violence generated by petroleum production on the Niger Delta (Cyril Obi); the performance of a South-South NGO network in West Africa (Asume Osuoka and Anna Zalik); the territorial and social inequalities and inequities generated by mineral extraction in Bolivia (Anthony Bebbington and Denise Humphreys Bebbington); effective community resistance to mining in Argentina (Mariana Walter and Joan Martínez-Alier); and the generalization of conflict among communities, corporations, and the state in the course of Peru's spectacular mining boom (José de Echave).

Bonnie Campbell discusses and critiques the neo-liberal rewriting of mining codes in sub-Saharan Africa, taking place under pressure from the World Bank, the IMF, and the major donor countries. The multiple negative impacts of the new reformed codes, which bear a strong family resemblance to the free mining/free entry regime critiqued by Laforce, arise in good part from the fact that they were not designed as an integral part of a national development project but, rather, as an isolated, sectorial approach favouring mining corporate interests. Campbell argues that the retrenchment of state authority contributed to the institutionalization of "asymmetrical relations of power and influence," and she highlights consequences of mining code reform, including the weakening of state sovereignty, the diminishment of policy options, and the reduction of state capacity for institutional reform. Moreover, Campbell argues that building state capacity (or rebuilding it, in cases where neo-liberal reforms disarticulated previously existing institutional capacities), is not so much a technical but a political issue that requires fundamental change in social power relations.

Disillusionment with Washington Consensus reforms in sub-Saharan Africa, recorded by Campbell, applies as well in Latin America and other parts of the world. However, this disillusionment has yet to yield alternative policy frameworks, even within the context of the post-Washington Consensus, given national and international power structures that favour corporations and the national (often rentier) elites aligned with them.

Cyril Obi's examination of the multi-faceted and tragic conflicts between communities and corporations that have been raging for the past 20 years in the oil-industry-dominated Niger Delta demonstrates how the rapid, unregulated expansion of an export industry can produce violence and undercut the livelihoods of people at the sites of production, rather than increasing well-being and generating development. Like Idemudia, in his analysis of the ineffectiveness of CSR in the absence of an "enabling" state, Obi emphasizes the incapacity of the Nigerian state, controlled by rentier elites, to address the inequitable distribution of oil export income, and to bring a peaceful resolution to the conflicts raging among various types of armed groups, criminal gangs, and ethnic minority militias. These groups arose from the failure of peaceful protest to redress the

distributional conflicts and environmental degradation of the Delta. The political volatility generated by the powerlessness of ethnic minorities vis-à-vis the state, and the importance of an effective and democratic political system are illustrated once again in Obi's account of the descent into violence in the most resource rich region of Nigeria.

Asume Osuoka and Anna Zalik look at the origins, conduct, and impacts of a southern NGO network, Oilwatch, on the operations of petroleum corporations and the functioning of states in Africa. Oilwatch is an independent southern NGO network, first headquartered in Ecuador and now in Nigeria, that broke off from its northern partners. The questions Osuoka and Zalik pose are: How does this southern NGO network differ in philosophy and strategy from its northern counterparts and how effective has it been in representing communities affected by petroleum production? Not unexpectedly, it turns out that the power differentials between civil society organizations, on the one hand, and multinational corporations, their international backers (like the World Bank), and both home and host states, on the other, preclude most effective action on behalf of communities whose livelihoods have been damaged and whose developmental alternatives have been limited.

Osuoka and Zalik conclude that while token issues have been addressed by the states and corporations lobbied by Oilwatch, fundamental questions regarding such issues as the distribution of income and compensation for environmental damage remain unaddressed. Moreover, similar to the situation observed by Lo in Cameroon, local communities are often willing to settle for palliatives instead of risking the potentially repressive consequences of challenging corporations and states on systemic or fundamental issues. Thus, Oilwatch—to link Osouka and Zalik's analysis with Coumans's preoccupations—has not been able to improve corporate accountability or provide “sanction and remedy” while its efforts to promote effective community “agency” have been limited.

The Latin American cases of conflict brought under scrutiny here include Bolivia (analyzed by Anthony Bebbington and Denise Humphries Bebbington), a country in which the government has recently taken controversial measures to reform earlier neo-liberal codes and legislation in an attempt to ensure greater benefits from its mining, petroleum, and gas sectors for national and regional development. However, nationalization of natural resources and greater political will on the part of state leaders do not necessarily produce positive outcomes for communities when the state lacks the administrative and political capacity to deal with the multiple issues of historically structured social inequality, inequity, and injustice. Moreover, Bebbington and Humphries Bebbington point out that “spatial justice” issues—that is, territorial inequalities and inequities “among regions where extraction occurs and those where it does not occur”—also prompt thorny conflicts that become all the more complex and difficult to resolve when they overlap with ethnic differences.

The experience of community mobilization and referendum in the city of Esquel in Southern Argentina, presented by Mariana Walter and Joan Martínez-Alier, is one of very few in which a mining project was stopped from advancing to production by community intervention. The project in Esquel was rejected in a community referendum in 2003. The elements of social-political organization and access to information

that allowed Esquel's citizens to successfully assert their right to say no to mining may be used as the point of comparison to the other cases presented in this issue. Several characteristics of the city's culture, economy, and socio-political organization stand out in Walter and Martínez-Alier's presentation. Although Esquel was far from prosperous (in fact, it was in the midst of economic crisis and suffering high levels of unemployment at the time the possibility of gold mining in the area arose), it was a uniquely endowed city. It had a university and university-based research capacity that could be turned to the systematic examination of the mining company's claims about cyanide use and open-pit mining. It was also a city with local newspapers and social organizations—like a strong teachers' association—that could disseminate information among citizens about the potential environmental and social impacts of mining. Moreover, as a provincial capital, Esquel was home to a relatively high number of educated professionals who were working in the public sector. In the political economic realm, the city also had formulated a development "vision" through a broad process of consultation with the citizenry, and that vision was based on the expansion of existing capacities in agriculture, forestry, tourism, and "knowledge industries." Thus, the level of community consensus was such that even the local, rural Mapuche indigenous minorities joined the movement against mining, alongside ranchers with whom they had battled on other issues. Esquel's successful organization against mining became a model for other communities in Argentina, as analyzed in Maristella Svampa and Mirta A. Antonelli's edited volume, *Minería Transnacional, Narrativas del Desarrollo y Resistencias Sociales* (reviewed in this issue), but the success was not easily replicable in other regions of the country.

In his discussion of Peru, where the very rapid expansion of the mining industry, both in traditional and new mining regions, has provoked widespread conflict, José de Echave refers to the other successful example of mobilization against mining in South America: the 2001 anti-mining referendum in the city of Tambogrande and its surrounding region. In fact, the social, economic, political, organizational, and knowledge dimensions of Tambogrande's opposition to mining bear a resemblance to those found in Esquel. Like Esquel, Tambogrande includes an established urban centre populated by citizens (not disenfranchised ethnic minorities), and it is situated in a region with an established agricultural economy that produced fruit for both national and international markets. De Echave draws particular attention to the breadth of the alliance that opposed mining, one that included progressive sectors of the Catholic Church in addition to national and international NGOs. Among other things, members of the alliance had the capacity to establish and maintain a technical committee (*mesa técnica*) that could provide credible information to the local population concerning the implications of mining for the area.

Other Peruvian communities have not been able to replicate Tambogrande's success in keeping mining out, despite the fact that the country is home to one of the most broadly based national organizations opposed to the expansion of the mining economy—the National Coordinator of Communities Affected by Mining,¹⁵ founded

15. In Spanish, Coordinadora Nacional de Comunidades Afectadas por la Minería.

in 1999 with the participation of about 400 delegates from almost every region of the country. Since then, another network, the Red Maqui, was established in 2004, and in addition a large number of local and national NGOs provide support to communities. However, to date, this dense network of organization has not been able to fundamentally change the pro-mining policies of successive governments. Meanwhile, the corporate response has ranged from enlightened CSR programs and negotiations with communities to retrenchment and rejection of all proposals for reform that might address the multiple social and environmental problems that the most recent of Peru's historic mining booms has generated.

In Peru, too, there is a prominent Canadian presence. Given the high stakes of Canadian mining companies in the Peruvian extractive sector, CIDA is promoting multi-party dialogues among the state, corporations, and communities (as noted by Weitzner) at the same time that the Canadian government has rejected the setting up of institutional arrangements to ensure the legal accountability of its mining corporations abroad (as recommended by the national roundtables and discussed by Coumans).

Rethinking Extractive Industry: Dispossession and Emerging Claims

The relatively recent recognition of local communities as "stakeholders" in extractive projects, allowing them a place at the table alongside states and corporations, changed the contours of conflict and debate over the distribution of potential benefits from resource extraction. These communities, which are often rural and indigenous and typically disenfranchised, have emerged as the new principal social actors at sites of extraction, attracting the attention of researchers, activists, and the media, while the study of related labour conditions and trade union mobilization has been largely set aside in academic work and civil society activism. As large-scale extractive industry has acquired greater significance for states, communities, and environments, conceptions of corporate obligations and responsibilities are changing, adding legitimacy to community demands for more socially responsible corporate behaviour.¹⁶ Thus, when an extractive industry receives a community "social license to operate" it often does so in exchange for promising to deliver tangible local benefits of different kinds (as discussed by O'Faircheallaigh and Weitzner). The quantity and quality of the benefits won depend on the knowledge, capacities, and resources that communities can bring to the negotiating table, as well as their capacity for political mobilization during and after the negotiations take place.

The articles published in this issue of the *Canadian Journal of Development Studies*, instead of falling into a simplistic pro- or anti-mining dichotomy, provide

16. Although analyses of small-scale extractive industry show characteristics and problems that differ dramatically from those of large-scale mining or the petroleum industry (see Hilson 2009 for detailed discussion), attention to the sector is beyond the scope of this volume.

nuanced interpretations of the complex relationships and possibilities that form at the sites of extractive activity. To what extent do patterns emerge from these articles? What factors permit communities to negotiate agreements that provide better chances of local, socio-economic development or that mitigate potential environmental harm? What factors enable them to resist extractive activities they consider harmful to the livelihoods of their members? How might community negotiating capacities be strengthened?

The successful case of Esquel can be used as our point of comparison with regard to community power and agency vis-à-vis states and corporations. To begin with the realm of political organization and rights, it has to be emphasized that Esquel was an urban centre with active citizens exercising political rights in a democratic context. Despite its history of periodic military dictatorship, Argentina has also lived through periods of lively democracy, structured by well-organized and established political parties. The country's last and particularly brutal military dictatorship was brought down in 1982, more than a quarter of a century ago. It is also perhaps the democratic context, alongside access to information and professional support, that provide much of the explanation for the extent to which Australian and Canadian indigenous communities have been able to engage mining corporations in dialogue (however imperfect the results) and eventually drive relatively good bargains with them (see O'Faircheallaigh's, Weitzner's, and Szablowski's contributions to this issue).

By contrast, most rural communities in Latin America and Africa lack the institutional and technical capacities to effectively engage with the state or transnational mining companies. Not only are these communities far from the centres of power, but often the state has historically been absent in these localities. Indeed, the situation is even more dramatic in sub-Saharan Africa where the history of slavery, differences in colonial experiences, and colonial-imposed borders not only shaped the nature of the state but continue to define state-society relationships. For example, not only did colonization "create" ethnic differences in Africa, but also the colonial-imposed borders reinforced the minority status of, for example, the people of the Niger Delta and of the communities on the path of the Chad-Cameroon pipeline. Therefore, these minority peoples do not enjoy full citizen rights or are otherwise politically disadvantaged (see Idemudia's, Obi's, and Lo's articles). They did not enjoy access to education, nor had they experience forming political alliances, working within political parties in a democratic context, or negotiating with government authorities prior to the veritable blitz that the initiation of petroleum exploration and exploitation represented for their societies. In short, the legacy of dictatorship and the weakness of democratic institutions are notable in both cases.

In addition, we learned from the articles in this collection that—in terms of stance, strategy, and condition—there is as much variation among communities and their supporters, as among corporations and their allies. For example, by exploring the contradictions of resistance movements, Osuoka and Zalik avoid the frequent tendency to homogenize civil society, and instead reveal not only north-south tensions but also the south-south conflicts that have significant ramifications on the capacity of social movements to effectively defend the interests of local communities. From another vantage

point, the contribution of Dashwood and Pupilampu makes clear that corporations are not homogenous either; in some cases, whether for instrumental or normative reasons, they can reform themselves and conduct their operations in ways that are more respectful of local communities, even in the rather unfavourable context of weak states like Ghana. The contribution by de Echave also highlights differences among corporations in the level of commitment to CSR programs and in their readiness to negotiate with communities.

Nonetheless, it would appear that, overall, it is a democratically organized and active citizenry operating within a framework of civil and political liberties, with access to information and influential allies, that can effectively halt harmful extractive industry projects and/or obtain the best local outcomes if such projects do go ahead. In addition, successful mobilization requires the availability of resources, including leadership, organizational networks, and stocks of social capital; allies from other civil society organizations and/or from local states; and the capacity to imagine development alternatives to extraction and/or to negotiate agreements that effectively bring tangible benefits to the community.

However, the collection of papers presented here suggests that the conditions required to enable effective negotiation or community resistance are still lacking in many regions affected by resource extraction. Therefore, beyond activism and building community capacity, work is needed to create the conditions that will enable communities to become real "stakeholders," an issue addressed by Weitzner. A key challenge in this respect is to build more robust states with greater capacity to set institutional frameworks, not only to regulate industry but also to allow democratic dialogue and negotiation (including protest) to take place.

Rethinking Extractive Industry: Regulation, States, and Development

Has the developmental performance of national economies dominated by mineral exports surpassed that of other countries in Africa and Latin America? Although the articles included here do not engage in such comparative evaluations of overall national economic performance, nearly all of them point to the negative social and/or environmental effects of mineral and petroleum extraction. They do so in line with the types of argument advanced by Richard Auty (1993) in his "resource curse thesis" (as discussed by Bebbington and Humphries Bebbington in this issue).

Here, it is worth recalling the classic statement on the developmental impacts of mineral exports formulated already 40 years ago by the late Celso Furtado, the distinguished Brazilian historian of Latin American economic development (Furtado 1976, first published in 1970). Furtado pointed out that for the most part, the twentieth-century history of mining in Latin America had been associated with developmental failures; in his analysis, mining had not contributed to broader national development for many of the same reasons that were later identified by Auty. Furtado argued that

positive effects of mineral export growth on national economic development and diversification were realized only when states intervened with measures that ensured local benefits by, for example, "obliging mining companies to acquire part of their inputs locally and collecting, in the form of tax revenue, a significant share of the flow of income traditionally remitted abroad" (1976, 49; see also Thorp 1998, 69–77). Chile, a country often singled out as exemplifying successful development based on mineral exports, started to enact these types of policy in the 1930s, if not earlier. Moreover, the Chilean state developed planning and administrative capacities at the same time. Meanwhile, the step-by-step growth of a powerful union movement within a democratic political system (until 1973 and then again after 1989) ensured improved living conditions for workers (e.g., Vergara 2008).¹⁷

Chile's combination of state capacity and democratic participation was the exception in Latin America and contrasts sharply with other mineral-export-dependent countries—such as Bolivia, Peru, and Venezuela—that remained among the poorer countries of the region. Chile's developmental trajectory also contrasts very sharply with the African cases analyzed here, where states have remained weak and democratic participation has been suppressed. Moreover, as Bonnie Campbell points out, the already deficient state regulatory and administrative capacities of sub-Saharan countries were further weakened by neo-liberal Washington Consensus inspired policies in the 1990s; those policies had highly deleterious effects on the potential for converting the wealth derived from mineral and petroleum exports into broadly based social and economic development through public policy.

Indeed, among the resource-rich mineral exporters analyzed here, just about all facets of the resource curse appear to be at play—that is (in addition to the problems already mentioned above), high levels of social conflict, pervasive corruption, lack of economic diversification away from extractive industry, and relatively low levels of investment in human resources, especially education (see Idemudia's contribution in this issue). Such historical legacies, as Bebbington and Humphries Bebbington make clear in their analysis of Bolivia, cannot be easily overcome by reformist governments that attempt to reverse course and sponsor more equitable forms of national development.

What about the impacts of mining on local economies? There is no doubt that, around the globe, the environmental impacts of both old and new mining operations have often been devastating. In Chile, however, where the old copper mines were located in high altitude desert and companies had to construct towns for workers, no displacement of agricultural and pastoral activities took place, a fact that contributed to the attractions of mining for the state, the public in general, and workers in Chile. Elsewhere, the recent wave of mineral exploitation is turning once viable farming areas into "deserts," as soils and water sources are contaminated. These are the accusations of peasants against many of Peru's mining operations (as discussed by de Echave), both in the past and today, and of Chilean farmers against the new mining operations

17. The analysis of labour conditions and labour organization has been left aside in most recent scholarship on mining. This is an unfortunate oversight, considering the importance of labour organizations for advancing democracy and improving income distribution patterns.

of Barrick Gold. Meanwhile, the new mining also employs fewer and fewer workers, especially the unskilled, thereby providing less and less compensation for its environmentally destructive effects on farming communities (see Idemudia 2009).

As already suggested above, because states cut back severely on social and educational programs during the decades of neo-liberal hegemony starting in the 1980s, those now weakened states are incapable of delivering, except perhaps in the principal urban centres, the social and educational services that citizens increasingly expect from public authorities. Thus, for example, in *Mining and Development in Peru* (reviewed in this issue), Bebbington et al. found that the state was completely absent at the local level in the conflict-ridden rural mining site they studied.

It is in this context that the various types of CSR programs have been established to persuade local community members to provide extractive industry with a “social license to operate.” However, it is difficult to visualize how such local programs, even when well executed with the best of intentions, can provide the bases for sustainable development without the strengthening of public institutions and public programs to address fundamental economic planning, distributional, and social justice issues and to encourage political participation within a democratic framework (see Idemudia’s contribution to this issue). It is doubtful that the largely technocratic and sector-specific policies proposed by the contributors to *Escaping the Resource Curse* (reviewed in this issue) will deliver their intended benefits if fundamental issues of power and structural inequality are not addressed, and if state social policies are not made effective inside and across national territories.

References

- Auty, Richard M. 1993. *Sustaining development in mineral economics: The resource curse thesis*. London: Routledge.
- CCT (Christian Council of Tanzania), TEC (Tanzania Episcopal Conference), and BAKWATA (Muslim Council of Tanzania). 2007–08. *Mining for life, a fact finding mission by religious leaders in mining areas* (<http://cct-tz.org/>).
- Federación Internacional de Derechos Humanos. 2009. *Perú—Bagua. Derramamiento de sangre en el contexto del paro Amazónico*. Paris: FIDH (October).
- Furtado, Celso, 1976. *Economic development of Latin America. Historical background and contemporary problems*. 2nd ed. Cambridge: Cambridge University Press.
- Hilson, Gavin, 2009. Small-scale mining, poverty and economic development in sub-Saharan Africa: an overview. *Resources Policy* 34 (1–2): 1–5.
- Hogenboom, Barbara, and Alex E. Fernández Jilberto. 2009. The new left and mineral politics: what’s new? *European Review of Latin American and Caribbean Studies* 87:93–102.
- Howell, Jude, and Jenny Pearce. 2002. *Civil society and development: A critical exploration*. Boulder, CO: Lynne Rienner.
- Idemudia, U. (2009). Oil extraction and poverty reduction in the Niger Delta: A critical examination of partnership initiatives. *Journal of Business Ethics* 90 (1): 91–116.
- Mining Association of Canada, 2009. “A Report on the State of the Canadian Mining Industry. Facts and Figures; 2009,” <http://www.mining.ca/www/index2.php>.
- Swift, Jamie, and the Development Education Center. 1977. *The Big Nickel: Inco at home and abroad*. Toronto: Between the Lines.
- Thorp, Rosemary. 1998. *Progress, poverty, and exclusion: An economic history of Latin America in the 20th century*. Washington, DC: Inter-American Development Bank.

Van Harten, H.H.A. 2007. *Investment treaty arbitration and public law*. Oxford/New York: Oxford University Press.

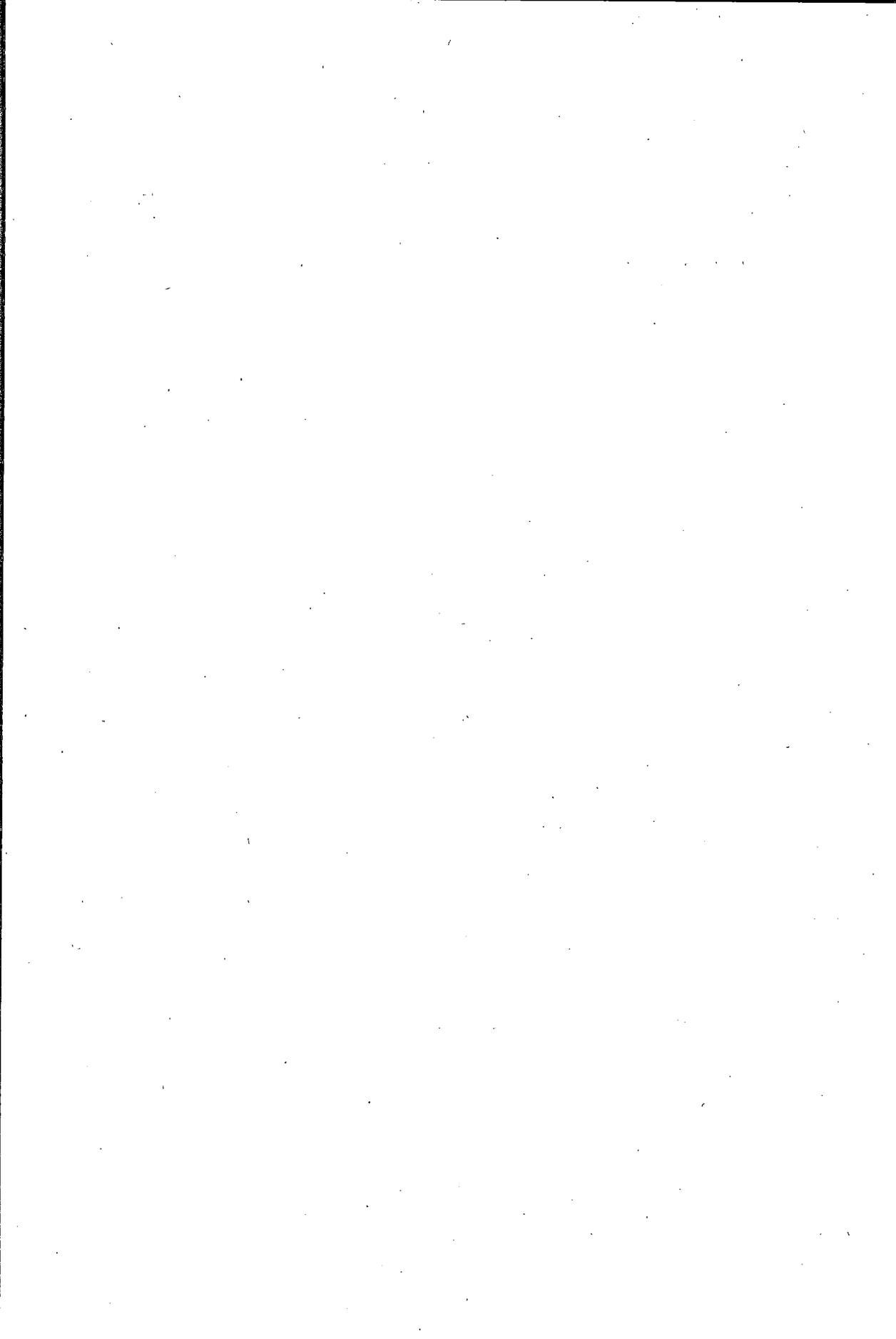
Vergara, Angela. 2008. *Copper workers, international business, and domestic politics in cold war Chile*. University Park: Pennsylvania State University Press.



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Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency

Catherine Coumans

ABSTRACT In the absence of a global regulatory system or international legal system to hold multinational corporations to account for their operations in weak-governance zones, a range of internationally applicable alternative accountability mechanisms have emerged under the broad rubric of corporate social responsibility. In Canada a parliamentary report initiated high-level efforts to design CSR accountability mechanisms with respect to the operations of Canadian extractive industries overseas. This paper examines whether these international and national CSR efforts provide for sanction and remedy and assure respect for human rights, and whether they support the agency of affected communities to protect values of importance to them.

RÉSUMÉ En l'absence d'un système de réglementation global ou d'un système de droit international qui exigerait des sociétés multinationales qu'elles rendent compte de leurs activités dans les régions à gouvernance précaire, une multitude de mécanismes alternatifs d'imputabilité, applicables internationalement, ont vu le jour sous l'appellation générale de responsabilité sociale des entreprises. Au Canada, un rapport parlementaire a été à l'origine d'efforts de la part des hautes instances, afin de créer des mécanismes d'imputabilité quant aux activités outre-mer des industries extractives canadiennes. Cet article tente de déterminer si ces efforts nationaux et internationaux prévoient des sanctions et des correctifs, s'ils assurent le respect des droits de la personne et s'ils soutiennent les organismes des communautés concernées afin de protéger les valeurs d'importance pour ces dernières.

Introduction

In March of 2005, an indigenous Subanon man and a Filipino from the same municipality in the Philippines were on route to Canada to testify before the Parliamentary Sub-committee on Human Rights and International Development. They had been invited by the sub-committee to present their concerns regarding the operations of a

junior Canadian mining company, TVI Pacific, in the mountains of their municipality.¹ Just days before the two witnesses were to testify, the Parliamentary Sub-committee received a letter from TVI Pacific's lawyers, warning of repercussions should the Filipinos make statements that TVI Pacific would consider damaging to its interests.² Although witnesses before a parliamentary committee enjoy immunity, allowing them to speak freely, the chair of the sub-committee was sufficiently concerned about potential repercussions for the Philippine witnesses, once they returned to the Philippines, that he offered the witnesses the option of testifying in camera, which they accepted.³

The concerns they put forward had been previously documented (Forests Peoples Programme, Philippine Indigenous Peoples Link, and World Rainforest Movement 2000; Christian Aid and Philippine Indigenous Peoples Links 2004) and presented in Geneva before the United Nations Working Group on Indigenous Populations in 2001, 2002, 2004, and 2005.⁴ Their allegations against TVI Pacific comprise human rights abuses related to the activities of paramilitary security guards, including violence, denial of access to their homes, and forced evictions. Alleged indigenous rights abuses include operating without the prior consent of the Canatuan Subanon, desecrating a sacred mountain, and subverting traditional leadership and decision-making structures. Environmental allegations include contamination of a main river system through acid mine drainage and metal leaching that affects drinking water, agriculture, and harvesting of food from the river by downstream communities in the municipality of Siocon.

This brief account highlights a number of themes central to this paper. Mining has the potential to cause serious, long-lasting, and wide-scale social and environmental harm. Communities affected by mining, particularly those in remote areas,

1. The two witnesses to the Sub-committee on Human Rights and International Development are from the municipality of Siocon in the province of Zamboanga del Norte on the Island of Mindanao.

2. As MiningWatch Canada was also slated to testify, it too received a letter from TVI Pacific's lawyers. For more on the legal exchange between MiningWatch Canada and TVI Pacific's lawyers, see: <http://www.miningwatch.ca/en/search/node/Canatuan+project?page=1>. Catherine Coumans of MiningWatch Canada and Diana Bronson of Rights and Democracy did testify. Their testimony can be read at <http://www.miningwatch.ca/en/38th-parliament-1st-session-subcommittee-human-rights-and-international-development-standing-committ>. In addition to testimonies, submissions in support of the witnesses from the Philippines were made to the sub-committee by Victoria Tauli Corpuz; Catherine Coumans; Ofelia "Inday" Davi; Godofredo C. Galos; Bishop José Manguiran; Siocon Peace and Development Advocates Alliance League; Timuay Jose "Boy" Anoy; Diopim Committee on Mining Issues; Kairos, Canadian Ecumenical Justice Initiatives; Alan Laird; Mennonite Central Committee Canada; and the National Council of Churches in the Philippines. Submissions were also made by Foreign Affairs Canada, International Trade Canada, the OECD National Contact Point, and the National Commission on Indigenous Peoples of the Philippines.

3. The chair of the sub-committee also wrote to the Canadian Embassy in Manila and requested a letter of protection for the witnesses allowing them to call on the support of the embassy in case of need related to TVI Pacific. The embassy refused to supply the protection letter.

4. Since 2005, the issues faced by the people of Siocon as a result of the operations of TVI Pacific have been further documented in a human rights impact assessment (Rights and Democracy 2007), in the report of a high-level fact-finding mission (Doyle, Wicks, and Nally 2007), and in a submission by the Canatuan Subanon and supporting organizations to the United Nations Committee on the Elimination of Racial Discrimination in 2007.

in conflict zones, and in countries with weak governance—all of which pertain to the Canatuan Subanon—often find themselves with little or no recourse through legal or regulatory means to address harmful mining practices. The fact that the Canatuan Subanon had already made several trips to the United Nations in Geneva before testifying before Canadian Members of Parliament is a fair indication of the level of desperation that fuelled their efforts to find a body outside of the Philippines that could exert influence over the activities of TVI Pacific.⁵ The legal threats issued by TVI Pacific's lawyers serve to highlight the power differential between (even junior) Canadian mining companies and the people whose lives they affect, making even the act of speaking out about alleged abuses at the invitation of Canadian Members of Parliament potentially hazardous.⁶

The concerns raised by the witnesses from the Philippines were not unique. It was also not the first time community members affected by Canadian extractive companies operating overseas had travelled to Canada to seek the assistance of Canadian Members of Parliament. The sub-committee recognized these facts in its report to government officials: "Over the past several years, the Sub-committee on Human Rights and International Development has heard evidence related to activities of Canadian mining and other resource companies in developing countries, including Colombia, Sudan and the Democratic Republic of the Congo" (Standing Committee on Foreign Affairs and International Trade [SCFAIT] 2005).

The sub-committee's report further recognized the root problem as the effective impunity of Canadian mining companies operating overseas in weak-governance zones, and understood the need for recourse in Canada. The report calls on the Government of Canada to "establish clear legal norms in Canada to ensure that Canadian companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with activities of Canadian mining companies" (SCFAIT 2005).

Finally, the sub-committee's report recognized the need for government accountability and conditioning of government support with respect to the activities of Canadian companies operating overseas by recommending "measures" that include "making Canadian government support—such as export and project financing and services offered by Canadian missions abroad—conditional on companies meeting clearly defined corporate social responsibility and human rights standards, particularly through the mechanism of human rights impact assessments." (SCFAIT 2005)

5. The Canadian government's link to TVI Pacific was substantial, since CIDA funds had been channeled through TVI Pacific and the Canadian Embassy in Manila had provided the company substantial political support.

6. One of the two witnesses had already borne the brunt of legal challenges by TVI Pacific in the Philippines, and was also named and accused of unsubstantiated serious transgressions on TVI Pacific's website.

The sub-committee's report, which was subsequently unanimously endorsed by SCEAIT,⁷ may rightfully be called groundbreaking, since its recommendations call for legal and regulatory measures to be taken by the Government of Canada to assure Canadian mining companies respect human rights and environments in their operations overseas.

The now widespread acceptance of the need for voluntary, corporate, social responsibility (CSR) measures by the global extractive sector and by many governments may be interpreted as an implicit acknowledgement of the potential for social and environmental harm caused by irresponsible extraction. However, while there is strong and growing support among corporations, industry associations, chambers of commerce, and governments for voluntary and "self-regulatory" CSR measures, there is equally strong resistance by these actors to increased regulation and better access to legal recourse for those affected by extractive projects, particularly with respect to home country regulatory measures or legal reform that would pertain to the activities of corporate nationals overseas.

The resistance to regulatory and legal reform has supported the rise of a vigorous and rapidly growing CSR industry characterized by the evolution of an ever-increasing array of voluntary codes, standards, and alternative accountability mechanisms (estimated at over 300 by 2005 [Goel 2005, 2]), as well as by the exponential growth of CSR experts, auditors, and consultancies to help corporations carry out the obligations they have volunteered to take on (Welker 2009; Coumans 2009; Conley and Williams 2005).

This paper reviews CSR standards and accountability mechanisms pertaining to extractive industries with respect to three criteria: a) the extent to which they are able to address the need for sanction and remedy, b) the degree to which they reflect and assure respect for international human rights norms and principles, and c) whether they support agency by communities struggling to protect social and environmental values of importance to them. Key international CSR instruments that pertain to mining are reviewed here, as well as the outcomes of a number of high-level efforts initiated by the legislative and executive branches of government in Canada between 2005 and 2009. This paper concludes with a discussion of alternatives to voluntary CSR measures that may better address the three criteria outlined above.

7. The Standing Committee of Foreign Affairs and International Trade of the 38th Parliament, first session, was chaired by Bernard Patry (Liberal); vice-chairs were Francine Lalonde (Bloc Québécois) and Kevin Sorenson (Conservative). Members were, from the Liberal party, Maurizio Bevilacqua, Laurence MacAulay, Dan McTeague, and Beth Phinney; from the Conservative party, Ted Menzies, Stockwell Day, and Helena Guergis; from the New Democratic Party, Alexa McDonough; and from the Bloc Québécois, Pierre Paquette.

CSR Accountability Measures: Effective Impunity, Human Rights, and Agency

Corporate Social Responsibility standards, codes, and accountability mechanisms that pertain to mining originate with individual companies, industry associations (such as the Mining Association of Canada⁸ or the International Council on Mining and Metals⁹), governments (like the Voluntary Principles on Security and Human Rights¹⁰), standard setting and certification bodies (like the International Organization for Standardization's *Guidelines for Social Responsibility 26000*¹¹), non-governmental organizations (like the Initiative for Responsible Mining Assurance¹²), financial institutions (such as the Equator Principles¹³ and the International Finance Corporation's Performance Standards¹⁴), and with the United Nations (such as the Kimberley Process,¹⁵ the United Nations Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights [UN Norms],¹⁶ and the United Nations Global Compact¹⁷).

8. The Mining Association of Canada is developing guidelines for its members called *Towards Sustainable Mining*; see http://www.mining.ca/www/Towards_Sustaining_Mining/index.php. Other examples of industry association initiated codes include the Canadian Prospectors and Developers Association's *Environmental Excellence in Exploration* and the Australian Minerals Industry framework for sustainable development, called *Enduring Value*.

9. The International Council on Mining and Metals has developed a broad framework called *Sustainable Development Framework: 10 Principles*; see <http://www.icmm.com/our-work/sustainable-development-framework/10-principles>.

10. See <http://www.voluntaryprinciples.org/principles/index.php>. Other examples of government leadership and involvement in CSR codes are the Extractive Industries Transparency Initiative (<http://eitransparency.org/>) and the OECD Guidelines for Multinational Enterprises (http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1_1,00.html). The Government of Canada (2006) has issued a guidance document on CSR for Canadian companies and government officials who work with these companies.

11. The International Organization for Standardization's *Guidelines for Social Responsibility 26000* are forthcoming in 2010. See <http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/home.html?nodeid=4451259&vernum=0>.

12. For more information on the Initiative for Responsible Mining Assurance, see <http://www.responsiblemining.net/>. Another example of a civil society-led certification framework is the Alliance for Responsible Mining's certification project for the products of small-scale mining. Oxfam Australia's Mining Ombudsman Project has developed and adopted standards on which to base investigations of complaints against mining projects belonging to companies that are Australian based or listed on Australian stock exchanges.

13. For information on the Equator Principles, see www.equator-principles.com/.

14. For the International Finance Corporation's Performance Standards, see www.ifc.org/ifcext/enviro.nsf/Content/GuidanceNotes.

15. For information on the Kimberley Process, see <http://www.kimberleyprocess.com/>.

16. For more information on the UN Norms, see <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.2003.12.Rev.2.En>.

17. For information on the United Nations Global Compact, see <http://www.unglobalcompact.org/>.

Some codes cover a wide range of social and environmental issues, while others are focused on specific areas such as the environment, labour, corporate governance, money laundering, bribery and corruption, the conduct of public officials, human rights, the conduct of security forces, and compliance reporting. While sometimes initiated, led, or sponsored by one stakeholder group, many codes are now developed and informed through multi-stakeholder engagement and many also involve participation by members of more than one stakeholder group, typically industry, civil society, and government.¹⁸ All CSR codes are strictly voluntary, but they vary in the extent to which they entail accountability mechanisms that may be compelling on corporations. For example, certification systems such as the Kimberley process for conflict-free rough diamonds and the Initiative for Responsible Mining Assurance for all mines give rewards for compliance in the form of a certification of approval or sanctions for non-compliance as companies or individual mine projects fail to achieve certification, or lose their certification, and become ineligible to market their products to certain consumers.¹⁹ Compliance with the International Finance Corporation's Performance Standards is a condition for receiving IFC funding and non-compliance may result in loss of funding.

Effective Impunity

The SCFAIT report (2005) discussed above importantly recognizes that there are jurisdictions in which Canadian mining companies operate where "regulations governing the mining sector and its impact on the economic and social wellbeing of employees and local residents, as well as on the environment, are weak or non-existent, or where they are not enforced." An Oxford University study of "obstacles to justice and redress for victims of corporate human rights abuse" concludes a review of Canadian law by stating: "The law of Canada regarding corporate social responsibility for acts committed by Canadian corporations extraterritorially is currently insufficient ... The parliamentary Standing Committee on Foreign Affairs and International Trade of the House of Commons was correct in its conclusions that more needs to be done to allow non-nationals to sue in Canada for acts committed by Canadian corporations abroad" (Oxford 2008, 46).

Circumstances in which host governments do not hold multinationals to account for their human rights and environmental transgressions and in which home governments lack the political will to regulate or provide the conditions for legal redress at home for transgressions perpetrated by their companies overseas, perpetuate an operating environment characterized by effective impunity. This is particularly because there is no

18. I do not mean to imply here that participation by various stakeholders necessarily means that all views are incorporated in an equal manner. There are clear power differences among these stakeholder groups and it is not uncommon to hear civil society organizations note that their inputs are not reflected in final products.

19. The Responsible Jewellery Council, the industry association for downstream consumers of the products of gold and diamond mining, is also developing a code of practices on which to base a certification scheme.

international regulatory system that can fill the void and no international legal system to which aggrieved parties can turn for recourse.

UN Special Representative John Ruggie recognizes effective impunity as a consequence of “governance gaps” and importantly defines this as a lack of sanctioning and reparation: “The root cause of the business and human rights predicament today lies in the governance gaps created by globalization—between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate *sanctioning or reparation*. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge” (2008, 3; emphasis added).

The last ten years have seen an increasing academic focus on the issue of human rights, the obligations of corporations, whether or not there is a basis in international law for extending international human rights obligations to corporations, and whether home states may regulate the behaviour of their corporations operating overseas (International Council on Human Rights Policy 2002; Gagnon, Macklin, and Simons 2003; Deva 2004; Seck 2008). Various studies (Macdonald 2009) have also detailed existing barriers to effecting legal remedies against corporations operating internationally—including resistance by corporations and governments—and have explored options to improve legal avenues to assure corporate accountability for environmental and human rights abuses (Gregor and Ellis 2008).

As each of these studies notes the predilection of governments and corporations for voluntary self-regulation over binding regulatory or legal obligations, it is important to assess whether any of the existing voluntary codes to which mining companies may decide to commit themselves provide for effective sanctioning and remedy.

Human Rights

UN Special Representative John Ruggie (2007, 5) states, “Many claims about business and human rights are deeply contested.” This is also true for some of Ruggie’s own findings to date on this topic. States have the primary responsibility to promote, fulfill, respect, ensure respect for, and protect human rights. This obligation “requires states to play a key role in regulating and adjudicating abuse by business enterprises or risk breaching their international obligations” (7). It is also argued, but disputed, that the preamble of the *Universal Declaration of Human Rights* (adopted in 1948) indicates that transnational corporations and other business enterprises, as “organs of society,” are also responsible for respecting, promoting, fulfilling and protecting human rights and freedoms in their “spheres of influence,”²⁰ and that there is urgent need for international accountability mechanisms to enforce these human rights obligations (see for example Oldenziel 2005; UN Norms 2003).

20. This term was first used in the Global Compact to indicate a spatial zone of corporate influence.

There is no dispute about whether states have the right and ability, under their duty to protect human rights, to impose legal obligations on corporations operating within their territory in accordance with their own international human rights obligations, thereby imposing “indirect” human rights obligations on corporations (although it is unclear whether any states have actually done so). There is, however, disagreement about whether international human rights norms and instruments already directly apply to corporations. Ruggie (2007, 14) has come down on the side of the debate that argues that these obligations on corporations do not currently exist: “It does not seem that the international human rights instruments discussed here currently impose direct legal responsibilities on corporations.”

Mining companies and their associations forcefully argue that they are under no *legal* obligation to respect, promote, fulfill, and protect human rights and freedoms. However, some do agree that human rights need to be taken up in voluntary CSR standards and codes. Voluntary standards and codes can only address respect for human rights if they provide effective guidance to corporations regarding the human rights companies should voluntarily respect. The questions that must be asked here are whether any of the existing voluntary codes to which mining companies may decide to commit themselves provide sufficient guidance with respect to all human rights, and whether they provide mechanisms to assure that companies respect human rights.

Agency

With respect to the mining industry, CSR is in essence a set of voluntary practices to be carried out according to guidelines, or environmental and social standards, *by* mining companies, most commonly *on behalf of* environments and communities (local, national, international) affected by their operations. As mentioned above, the increasing pressure on mining companies to embrace CSR, in the face of regulatory or legal alternatives, has spawned an entire industry of CSR theoreticians and practitioners to assist corporations in areas of CSR that are outside of their traditional competencies.

The fact that both mining companies and the CSR practitioners that engage and contract with them may be motivated by interests that do not coincide with those of community members affected by prospective or operating mines remains under-examined. Corporations are the prime decision makers with respect to CSR. Corporations decide first whether it is in the interest of the company to adopt and implement a given set of standards. They then engage CSR consultants or experts to assist them in carrying out CSR activities, and determine the terms of engagement of these experts. And a corporation can decide to abandon a CSR course of action if it is no longer deemed to be in their interest.

While CSR is voluntary for corporations, it becomes “mandatory” for the communities who must host CSR initiatives and practitioners. In situations of conflict—for example, in which a community is resisting a mine project it perceives as detrimental to its interests or making claims on a company for perceived damages—CSR consultants may be employed specifically to help the company deal with community opposition. There are a growing

number of experts willing to occupy these “spaces of conflict,” presenting themselves to mining companies as CSR “problem solvers” (Coumans 2009). The field includes academics (like anthropologists) contracting out specialized knowledge and skills, socially responsible investment companies that manage shares in problematic corporations, a growing number of specialists in various forms of impact assessment (Human Rights Impact Assessment, Gender Impact Assessment, Peace and Conflict Impact Assessment, etc.), a veritable explosion of professional CSR consulting companies offering a range of services, social auditors, and conservation and development NGOs.

The literature on CSR generally assumes that it will benefit and respond to the needs of communities, and improve the environmental and social behaviour of corporations that voluntarily practice CSR. Consequently, CSR literature is generally not attentive to the ways in which CSR practices that are voluntarily adopted by corporations, and carried out under the direction of corporations, may be strategically employed to undermine community agency, particularly in situations where community interests are in opposition to mining company interests.²¹ CSR literature also insufficiently focuses on the agency of communities themselves in defending social, economic, and environmental values of importance to them, sometimes in ways that conflict with industry goals and interests. Closer attention to the agency of community members, as “related to ideas of intention, to peoples’ (culturally constituted) projects in the world and their ability to engage and enact them” (Ortner 2006, 143), in the context of conflicting interests with a mine project, may provide a more nuanced analysis of the actual impact of CSR projects in particular situations of conflict.

CSR codes, standards, and practices are clearly not designed with the intention of subverting community agency. The extent to which they may be strategically used to further corporate goals requires assessment on a case-by-case basis. However, it is possible to review codes and recommended CSR practices through the lens of community agency to determine to what extent codes and practices explicitly or implicitly consider and promote community decision making in their adoption, adaptation to cite specific circumstances, or rejection.

An Evaluation of CSR Mechanisms

A number of compendiums assess and compare existing CSR codes and standards (Cragg 2002; Abrahams 2004; Goel 2005; Brodeur and Herman 2006). These provide an overview of the main CSR tools and their provisions. A review of these compendiums and literature that comments on particular codes (for example, Oldenziel 2005), as well as key codes themselves that pertain to mining, leads to the following conclusions with regard to the issues of impunity, human rights, and agency.

Only a few codes include grievance mechanisms. These grievance mechanisms are limited to complaints about implementation and compliance with the provisions of the code. For example, the International Finance Corporation (IFC) has a complaints

21. Important exceptions are the work of Welker (2009) and Conley and Williams (2005).

mechanism through a compliance advisor ombudsperson (established in 1999) that allows complaints to be brought against corporations for non-compliance with the provisions of the standards.²² The *OECD Guidelines for Multinational Enterprises* require countries to create a National Contact Point (NCP). The NCP is a government office “responsible for encouraging observance of the Guidelines” and “resolving” issues that may arise “concerning implementation of the Guidelines in relation to specific instances of business conduct.”²³

Most codes do not provide for any form of sanction for non-compliance. This is true even for the few codes that have grievance mechanisms (like the OECD Guidelines). In the case of financial institutions, such as banks that adhere to the Equator Principles (launched in 2003), or the IFC, a potential sanction for lack of compliance is loss of financing. I have not been able to identify an example in which a mining company has lost funding from the IFC or an Equator Principles bank as a result of a community complaint.²⁴

Few codes, like the Global Compact, may de-list companies that are not in compliance. In the case of the Global Compact, compliance is with the requirement to communicate progress in implementing the code, rather than compliance in implementation itself. The Global Compact (launched in 2000) has been joined by some 5000 companies from 130 countries (Global Compact Annual Review 2008). In 2006 the Global Compact began to de-list companies that have not reported on their progress in implementing the standards for more than two years.²⁵

Because participation in CSR codes is voluntary, no codes contain provisions that could compel reparations for harm that has been done by a company as a result of non-compliance with the code. In sum, CSR codes currently do not provide the necessary accountability mechanisms to fill the “governance gap” identified by Ruggie, or the means to respond to the need for sanction and reparation for social or environmental damages.

With respect to human rights, all voluntary codes fall well short in reflecting the totality of international human rights norms and standards that may be impacted by a mining company. Additionally, no CSR codes provide for accountability mechanisms to assure that companies respect human rights. The two codes that most explicitly reference a range of human rights, the Global Compact and the UN Norms, are rooted in the United Nations. There are significant differences in these two codes with respect to their content, the degree to which they provide an accountability mechanism, and the degree to which they have found acceptance.

22. The compliance advisor ombudsperson (CAO) is the independent recourse mechanism for the IFC and Multilateral Investment Guarantee Agency. The CAO responds to complaints from project-affected communities. See <http://www.cao-ombudsman.org/>.

23. For more information on the OECD Guidelines and the NCP, see www.oecd.org.

24. Requests for examples of such cases to the IFC and the Equator Principles contact persons went unanswered in the case of the IFC. The Equator Principles Financial Institutions Secretariat responded that it does not hold information about specific bank funding or deals.

25. For a list of de-listed companies as of 2008, see http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2008_06_25/OVERVIEW_OF_DELISTED_COMPANIES.pdf.

The UN Norms include the broadest range of human rights, and environmental and labour standards by explicitly referencing existing internationally agreed conventions and treaties. They directly reference the *Universal Declaration of Human Rights*, the UN Charter and all UN conventions, and include economic, social, and cultural rights, as well as civil and political rights. The UN Norms also provide the most detailed operational directives for corporations with regard to implementation and reporting. The UN Norms reference the need for internal and external monitoring, and verification procedures. They go further than any other codes in suggesting that monitoring mechanisms that would need to be established should not only assure that “states enforce the norms, but also directly monitor company actions” (Oldenziel 2005, 19). The UN Norms propose an internal complaints mechanism and also require that companies conduct regular evaluations and provide for reparation in cases of inadequate compliance with the UN Norms.²⁶

The UN Norms have been critiqued by corporations, governments, industry associations, and more recently by UN Special Representative John Ruggie, for extending to corporations “essentially the entire range of duties that States have, separated only by the undefined concepts of ‘primary’ versus ‘secondary’ obligations and ‘corporate sphere of influence’” (Ruggie 2008, 15). The Global Compact, on the other hand, enjoys considerable support from corporations and governments. However, civil society groups are highly critical of the Global Compact for its insufficient coverage of human rights. For example, the only reference to ILO standards is with respect to the child labour convention. There is no reference to standards regarding a living wage, health and safety, hours of work, and right to security of employment (Oldenziel 2005, 11). The Global Compact is further critiqued for its lack of accountability mechanisms to sanction companies that do not comply with the code or show progress in compliance, and for its acceptance of companies as members whose human rights records have been called into question.²⁷

Whether it is possible to devise an accountability mechanism that would assure corporate respect for human rights in a voluntary CSR code remains a key question. The inadequate reflection of human rights that may be affected by mining in existing CSR codes should be amenable to remedy now as human rights impact assessment tools have reached a greater level of detail and “operationalizability.”²⁸ The updated Human Rights Impact Assessment model developed by Rights and Democracy (2009) in Canada is particularly important because it provides a participatory approach that allows

26. Member companies of the Business Leaders Initiative on Human Rights have been running a trial in implementing the UN Norms for several years.

27. See in particular critiques of the Global Compact from a network of organizations called Global Compact Critics who are concerned about the “bluewash” of the UN Global Compact (www.globalcompactcritics.net).

28. See, for example, the Human Rights Compliance Assessment (HRCA) model developed by the Danish Institute for Human Rights in 2005. The HRCA is an online, self-assessment tool to be used by corporations and developed by corporations and human rights experts. It was developed on the basis of all major human rights treaties and conventions. For more information, see http://www.dd-rd.ca/site/_PDF/publications/Getting-it-right_HRIA.pdf.

“communities affected by investment projects not only to assess impacts, but also to participate in the decisions that affect them.”

Existing CSR codes that pertain to mining do not reflect sufficient awareness of the role of community agency in corporate accountability and in protecting values of concern to communities. Nor do these codes adequately create provisions that may support or strengthen a community's ability to ensure that corporate practices are protective of social and environmental values. Such provisions would include, for example, requirements for meaningful consultation and community consent ahead of mining and at each new phase of mining; greater transparency regarding social and environmental risks; and provisions for independent scientific review of social and environmental impact assessments or community monitoring programs.

More specifically with respect to the introduction of CSR programs, CSR codes do not reflect an awareness of the ways in which CSR programs may be strategically used to undermine community agency. They do not require that communities be consulted or that they provide consent for the implementation of CSR projects decided upon by corporations, socially responsible investment companies, or others. Nor do CSR codes mandate that community members have a voice in deciding who will carry out a CSR project. In particular, communities do not have a say in the cancellation of CSR projects they may deem harmful to the interests and goals they have identified.

It is not entirely surprising that CSR codes do not adequately reflect community needs, since community actors are typically under-represented in multi-stakeholder processes that develop codes. Lack of participation by community actors in CSR code development can be explained only in part by the fact that they are typically not invited to the table (or are presumed to be represented by NGOs), and in part by the fact that community actors with the skills and insight to provide critical inputs to multi-stakeholder processes are frequently too heavily engaged in their own arenas of struggle to participate in overseas or national processes. More significant may be that many key community leaders involved in mining struggles in weak-governance zones simply do not see voluntary CSR codes and practices as a goal worth their time to pursue. They more typically advocate for regulation and improved legal access.

In this light, it is worth remembering that pressure on corporations to adopt CSR codes and practices does not typically come from mining-affected communities. Such pressure comes from government agencies, the socially responsible investment community, and from other civil society actors.

Deconstructing the Canadian Advantage: Parliament Resumes Leadership Following the Government's Response to the CSR Roundtables Report

Thus far I have argued that international CSR instruments that pertain to mining do not address the need for sanction and remedy, do not assure respect for human rights, and do not support and promote community agency in protecting social, economic,

and environmental values. Existing voluntary CSR instruments do not, then, fill the “governance gap” left by the lack of international legal or regulatory mechanisms. It is time to assess the role of national governments, particularly the home governments of multinational mining companies.

As pointed out above, there is no dispute about whether states have the right and ability to impose legal obligations on corporations operating within their territory in accordance with their own international human rights obligations, imposing “indirect” human rights obligations on corporations. However, it is recognized that weak governments are not living up to their “duty to protect” with respect to the activities of transnational mining companies operating in their countries. That leaves an obligation to ensure respect for human rights and environments with the home states of these companies, as was clearly understood by the Canadian parliamentary committee in 2005.

Building Consensus Regarding Accountability in the CSR Roundtables

In response to the groundbreaking SCFAIT report (2005), the Canadian government decided to implement a series of roundtables called the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries. In 2006 a government steering committee was formed, chaired by DFAIT, in which eight government departments participated. An advisory group was created, made up of persons drawn from academia, labour, civil society, the socially responsible investment community, and industry. I participated in the CSR roundtables as a member of the advisory group.²⁹ The advisory group participated in designing the CSR roundtable process, took part in each CSR roundtable session and drafting of interim reports, listened to presentations by the public, contributed to the selection of invited experts for each CSR roundtable, and authored the final advisory group report (see Canadian Network on Corporate Accountability [CNCA] Advisory Group 2007).

Between June and November of 2006, four national CSR roundtable sessions were held in Vancouver, Toronto, Calgary, and Montreal. The themes and subthemes for the CSR roundtables were drawn from the recommendations of the 2005 SCFAIT report. These included standards, reporting and compliance, tools and incentives (which included a discussion about legal incentives), and resource governance (which included a discussion about corporate access to government financial and political services).

Members of the public presented in open sessions at each CSR roundtable. Thirty-one hours were dedicated to oral presentations by 156 members of the public representing a range of stakeholder groups. One hundred and four written submissions were received and posted to the CSR roundtables website, which was hosted by DFAIT.

29. Members of the advisory group sat as individual experts, not as representatives of their organizations or institutions. The members were Tony Andrews, Andrea Botto, Diana Bronson, Jim Cooney, Craig Forcese, Dennis Jones, David MacKenzie, Reg Manhas, Robert Walker, Gerry Barr, Henry Brehaut, Bonnie Campbell, Catherine Coumans, Pierre Glatton, Karyn Keenan, Audrey Macklin, and Gordon Peeling.

(These written submissions are no longer available on the government website.) The roundtables also invited the participation of 15 international experts. The purpose of the process was to finalize a set of recommendations for the Government of Canada.

At the end of the formal CSR roundtable process, the government steering committee decided that the multi-stakeholder advisory group would write the final report on the roundtables and prepare the recommendations that would go forward to the government. The steering committee also strongly advised that the final report be a consensus report with consensus recommendations; this would greatly increase the likelihood of a positive response from the government.

The drafting process was predictably difficult. The advisory group decided to detail discussion and areas of disagreement in the background sections of the report and only include as recommendations those areas where consensus proved possible. Ultimately, both industry and civil society members of the advisory group made concessions to arrive at 27 consensus recommendations. While a full discussion of the process and deliberations that went into arriving at the final report, including the suite of recommendations put forward, lies beyond the scope of this paper, a number of key areas of debate are relevant.

During the roundtable process, a number of key fault lines that bear on the issues central to this paper became apparent. Whereas civil society members of the advisory group had a strong mandate from the Canadian Network on Corporate Accountability (CNCA)³⁰ to push for mandatory standards and accountability measures, government steering committee members and industry members of the advisory group were adamant that only non-regulatory outcomes would be acceptable. The steering committee argued that the likelihood of speedy implementation of the recommendations by the Government of Canada would be greater if the recommendations did not require new regulation. Industry argued that regulation does not guarantee better performance and may limit social and environmental measures taken by individual companies to what is required by law. Civil society participants forcefully argued that civil society members of the process would not support a roundtable result that did not go beyond advising companies to employ voluntary CSR measures and did not contain a credible accountability mechanism. The argument civil society groups put forward through advisory group members was that CSR codes have existed and been available to extractive companies to employ for over a decade and have not resolved the human rights and environmental abuses that had necessitated the CSR roundtable process in the first place.

Civil society members of the advisory group were also convinced of the need for legal reform in Canada to better facilitate access to sanction and remedy through the courts in Canada for people from overseas who alleged damages as a result of Canadian companies' operations. Government steering committee members and industry par-

30. The member organizations of CNCA came together quite organically in the wake of the SCFAIT report (2005) to advocate for a strong government response to this report. When the CSR roundtables were announced, CNCA became the "focal point" for civil society organizations involved in the process in various capacities. CNCA has some 20 member organizations involved in faith-based, development, labour, and environmental and human rights work in Canada and abroad. For information on CNCA, see www.halifaxinitiative.org.

ticipants in the process strongly opposed legal reform measures. The arguments against legal reform also hinged on the opposition to recommendations that would require regulation, as well as perceived legal and constitutional impediments. In particular, the steering committee and industry participants expressed concern that new regulations would “violate rules against extraterritorial legislation, interfere with Canada’s foreign policy objectives, and would damage international trade and investment” (CNCA Advisory Group 2007, 42), and questioned whether constitutional divisions of powers would constrain the federal government in creating a cause of action.³¹

These impasses on regulation and legal reform forced the quest for an accountability mechanism to ensure compliance with human rights and environmental standards that could straddle the middle ground between pure voluntarism on the one hand and regulation on the other. And they forced the creation of a credible complaint mechanism that would allow for investigation of complaints, reporting on findings, and sanctioning of companies not in compliance with agreed upon standards. The creation of an independent Ombudsperson and Compliance Review Committee became the middle ground that allowed for consensus.³²

The provisions of this complaint mechanism created an accountability mechanism that would be compelling on all Canadian extractive companies. It would also support agency by affected communities who could file complaints in Canada. This accountability mechanism also provided for the possibility of sanction since, “in cases of serious non-compliance” with recommended human rights and environmental standards, the Compliance Review Committee could “make recommendations with regard to the withdrawal of financial and/or non-financial services by the Government of Canada” (CNCA Advisory Group 2007, vii).

The possibility of sanction in the form of loss of taxpayer-funded government support for companies breaching human rights and environmental standards assured not only corporate accountability but also accountability of the Canadian government to Canadians. However, the advisory group report recommendations did not provide for any form of remedy, as would have been possible through legal action.

Another hotly debated issue entailed the standards to which Canadian extractive companies would be expected to adhere when operating in developing countries. From the first roundtable in Vancouver, which focused on standards, civil society members of the advisory group insisted that international human rights norms and principles be incorporated into any standards set that might ultimately be proposed. Industry participants of the advisory group decided early on in the roundtable process that only the International Finance Corporations Performance Standards (IFC PS) and related guidance documents would be acceptable as standards. Civil society members of the advisory group argued that the IFC PS are risk-based instruments that fall short with respect to reflecting international human rights norms. Risk-based instruments take

31. For a more in-depth discussion of the differences between civil society and industry participants in the advisory group, see CNCA Advisory Group (2007, 41-45).

32. For additional detail on the proposed working of the Ombudsperson and the Compliance Review Committee see CNCA Advisory Group (2007).

into consideration those issues that may pose a financial risk to either the company or its lenders or insurers. Since not all abuses of human rights will necessarily pose a financial risk to the company or its lenders or insurers, risk-based instruments do not consider all possible impacts the company may have on human rights. Civil society members of the advisory group sought a standard set that would be rights-based as opposed to risk-based. When the IFC PS are reviewed with respect to human rights using the HRCA tool developed by the Danish Institute for Human Rights, it becomes clear that of 335 points considered by the HRCA, the IFC PS are only in full compliance with two, in partial compliance with four, and in complete failure to comply with the remaining 329 issues considered by the HRCA (Herz et al. 2008, 10; Durbin 2006).

The debate about whether human rights norms were adequately represented in the standards persisted throughout the roundtable process. Ultimately, there was consensus that the IFC PS, even with addition of the Voluntary Principles on Security and Human Rights, did not adequately reflect international human rights norms and principles. Additional language was agreed upon that noted that “the application and interpretation of these standards shall observe and enhance respect for principles of the *Universal Declaration of Human Rights* and other related instruments that are within the sphere of control of companies. Specific guidelines related to the application and interpretation of human rights principles will be developed” (CNCA Advisory Group 2007, v).

Although the core consensus recommendations for the Government of Canada that came out of the CSR roundtables process do not have legal status and are not encoded in regulation, they do include core international human rights norms in the proposed standards, offer a potentially credible complaints/accountability mechanism that is accessible to communities affected by Canadian extractive companies operating in developing countries, and provide for potential sanction in the form of withdrawal of public financial and political support.

The Government’s Response: “Voluntarism as Usual”

In the two years it took the government to respond to the advisory group report that emerged out of the roundtable process, extractive companies opposed to the consensus recommendations of the report, as well as the Canadian Chamber of Commerce, went to work convincing the Government of Canada to abandon the key human rights and accountability provisions in the report, effectively turning back the clock to “voluntarism as usual” (Berthiaume 2009).

The government’s response of March 2009, titled “Building the Canadian Advantage,”³³ proposes to promote voluntary CSR “guidelines” with Canadian extractive companies operating abroad. In addition to the *OECD Guidelines for Multinational Enterprises*, which Canada already supports, the guidelines that will be promoted by the

33. The full title of the report is *Building the Canadian advantage: A corporate social responsibility (CSR) strategy for the Canadian international extractive sector*; see Government of Canada (2009).

government are the IFC PS, the Voluntary Principles, and the Global Reporting Initiative. The language in the advisory group report that assured that Canadian standards for extractive companies operating abroad reflected international human rights norms and practices was not adopted. Collectively, the voluntary guidelines proposed by the Government of Canada do not reflect or assure respect for all international human rights norms and practices that may be affected by Canadian extractive companies operating abroad.

The government's response replaces the proposed Ombudsperson and Compliance Review Committee of the advisory group report with the Extractive Sector CSR Counsellor who is to "*assist stakeholders in the resolution of CSR issues*" (Government of Canada 2009, 5) related to the activities of Canadian extractive sector companies operating abroad. The CSR counsellor's role is to "resolve CSR disputes (11)." The counsellor will only "review" the CSR practices of particular companies with the explicit consent of the company. Regardless of the findings, the counsellor will not "make binding recommendations or policy or legislative recommendation, create new performance standards, or formally mediate between parties" (*ibid.*). The counsellor will prepare an annual report to be tabled in Parliament by the minister of international trade. Since the CSR counsellor is not in a position to recommend sanctions, a key element of the advisory group report has been eliminated—that which provided for government accountability to Canadians in the form of restriction of financial and/or political support by the government of Canada to companies found not to be in compliance with the standards. Conditioning government support to companies on compliance with human rights and environmental best practices was also a key recommendation in the 2005 parliamentary report.

During the CSR roundtables, considerable time was spent on the question of whether Canada's existing NCP, as a dispute resolution mechanism associated with the OECD Guidelines (see footnote 25 of this paper), provided an adequate complaints mechanism and source of accountability. Numerous examples provided in closed-door sessions by Canadians and international guests demonstrated that this mechanism is not effective since it has no express investigative authority, is insufficiently transparent regarding its findings, and cannot provide any form of sanction. The advisory group further discussed whether or not it might be possible to create a recommendation that would strengthen the role of the NCP. In the end, the consensus opinion of the industry and civil society members of the advisory group was that given the strictures of the OECD Guidelines and the history of failure of the NCP function to provide accountability, it would be better to create a new accountability mechanism in the form of the Ombudsperson and Compliance Review Committee.

In spite of the critiques of the NCP as an effective accountability mechanism, the Government of Canada has, with the new CSR counsellor function, created a mechanism that closely mirrors the NCP function and its shortcomings, in effect creating a

duplicate office; the main distinction is that the CSR counsellor will be involved only with extractive industry cases.³⁴

In sum, the government's response to the roundtable process and its consensus recommendations falls short with respect to providing sanction and remedy for human rights and environmental transgressions by Canadian extractive companies operating overseas, ensuring respect for human rights by Canadian extractive corporations operating overseas, and providing an affective accountability mechanism. The government's response assures that control over CSR remains firmly anchored with corporations that can choose, as they could before the CSR roundtables, to employ or not employ CSR tools at will and continue to remain free from scrutiny of their practices. The government's response ensures no loss of agency on behalf of extractive companies but does not provide any support for the agency of communities struggling to protect social, economic, and environmental values in the face of irresponsible mining.

The civil society members of CNCA, labour delegates, and members from academia who took part in the CSR roundtables as members of the advisory group made carefully considered compromises in order to reach meaningful consensus recommendations with their industry counterparts. They were well aware of the fact that some of these compromises took them away from core recommendations of the 2005 parliamentary report that had given rise to the CSR roundtable process. The government's response to the advisory group report removed the very conditions and accountability mechanisms that allowed civil society actors to endorse the report. Support from these civil society groups has now turned to a private member's bill that seeks to encode the key recommendations of the advisory group report in regulation.

Bill C-300: Parliament Steps Back Up to the Plate

On 9 February 2009, a month before the Canadian government released its response to the advisory group report of 2007, Liberal Member of Parliament John McKay introduced a private member's bill to the House of Commons. Bill C-300 (titled "An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries")³⁵ encodes some of the key recommendations from the advisory group report into regulation. The bill represents a critical step forward in Canada's evolving engagement with the issues discussed in this paper and is an internationally

34. Distinctions that do exist between the NCP and the CSR counsellor do not substantially alter my analysis. These are that the CSR counsellor will be housed outside of government (although he or she will be appointed by the Governor in Council and will report to the minister of international trade); the CSR counsellor can engage in fact-finding but only with the explicit consent of the "involved parties"; the CSR counsellor will submit annual reports that will be tabled in Parliament; the CSR counsellor may review complaints brought by a Canadian extractive sector company "that believes it is the subject of unfounded allegations concerning its corporate conduct outside Canada in relation to the endorsed CSR performance guidelines." See Government of Canada (2009).

35. For a copy of Bill C-300, see <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3658424&file=4>.

groundbreaking attempt to address the core problem of the “governance gap” identified by Ruggie (2008) by providing for home state regulation of the activities of Canadian extractive companies in developing countries.

Bill C-300 adequately reflects international human rights norms in its proposed “corporate accountability standards,” provides an accountability/complaints mechanism to assure Canadian extractive companies respect human rights in their operations in developing countries, offers a complaints mechanism that can be accessed by affected community members, and provides the possibility of sanction for non-compliance with the standards in the form of loss of government financial and political support.

Bill C-300 narrowly passed a vote in the House of Commons on 22 April 2009 and is now being debated by the Standing Committee on Foreign Affairs and International Development.

Conclusion

In this paper I have reviewed international CSR instruments as well as a number of high-level Canadian efforts initiated by the legislative and executive branches of government in Canada between 2005 and 2009 in order to assess the degree to which they reflect and assure respect for human rights, provide access to sanction and remedy, and offer support for community agency in protecting social, economic, and environmental values in the face of mining projects by Canadian corporations operating in weak-governance zones.

In the absence of international legal or regulatory regimes that can assert influence over the activities of multinational corporations operating in weak-governance zones, two alternatives remain: voluntary CSR measures taken by corporations and/or binding measures by home states of multinational corporations like Canada. My review of key voluntary CSR instruments has found these inadequate with respect to inclusion of human rights norms, accountability mechanisms to assure respect for human rights, mechanisms for sanction and remedy, and in their support for community agency. The latter is perhaps least well understood in CSR literature.

Corporate social responsibility has been described as a “movement” (Conley and Williams 2008). As such, it is increasingly a movement firmly controlled by the corporations whose abuses it was meant to restrain. And it is a movement that is enthusiastically and largely uncritically engaged in by a growing legion of CSR practitioners interested in partnering with corporations in implementing CSR at the project level. CSR is most commonly critiqued for the fact that its voluntary nature leads to uneven application of CSR practices. In mining, it is clear that this uneven application of CSR prevails across the sector but also within particular corporations across their global operations, depending on local circumstances, and even at the project level. A mine manager may be applying best practice with regard to environmental practices while human rights abuses by security guards go unaddressed. CSR is known to be vulnerable to economic pressures and to the personalities of any given CEO or project manager, so that it may be adopted and dropped again at any given project site. These criticisms

are all valid. However, as pressures to adopt CSR have increased and corporations have turned to CSR as an alternative to regulation or legal reform, corporations have also found ways to strategically use CSR to meet their own ends, particularly in the face of community opposition. Corporate power has been successful in maintaining critical limits on the scope of CSR accountability mechanisms, and corporate agency allows companies to pick and choose between CSR offerings, and adapt CSR into a flexible tool that meets their own goals and interests while sometimes undermining or restricting the agency of community opposition.

In the absence of more effective CSR instruments and accountability mechanisms, we must look to national governments of home states to play a more active role with regard to the activities of their corporations in weak-governance zones. Ruggie notes that

experts disagree on whether international law requires home States to help prevent human rights abuses abroad by corporations based within their territory. There is greater consensus that those States are not prohibited from doing so where a recognized basis of jurisdiction exists, and the actions of the home State meet an overall reasonableness test, which includes non-intervention in the internal affairs of other States. Indeed, there is increasing encouragement at the international level, including from the treaty bodies, for home States to take regulatory action to prevent abuse by their companies overseas.” (2008, 7)

It is clear that quite a few Canadian parliamentarians understand the urgent need for action in Canada to address potential human rights and environmental abuses by Canadian extractive companies operating in zones of weak governance. The Members of Parliament of the 2005 Parliamentary Sub-committee on Human Rights and International Development and the Parliamentary Standing Committee on Foreign Affairs and International Trade, both of which voted unanimously to endorse the 2005 SCFAIT report, certainly did understand this, as did the 137 Members of Parliament who voted in favour of Bill C-300.³⁶

References

- Abrahams, Désirée. 2004. *Regulating corporations: A resource guide*. Geneva: United Nations Research Institute for Social Development.
- Berthiaume, Lee. 2009. Corporate social responsibility rules for mining industry blasted. *Embassy Magazine*. 1 April. Halifax Initiative. <http://halifaxinitiative.info/content/press-responses-april-1-2009>.
- Brodeur, Caroline, and Tamara Herman. 2006. *Summary critique of standards relevant to extractive industries*. Prepared for the Canadian Network on Corporate Accountability. Halifax Initiative. <http://halifaxinitiative.info/updir/Compendiumsummariesfinal.pdf>.
- CNCA (Canadian Network for Corporate Accountability) Advisory Group. 2007. *National roundtables on corporate social responsibility (CSR) and the Canadian extractive industry in developing*

36. For the voting record, see <http://www2.parl.gc.ca/HouseChamberBusiness/ChamberVoteDetail.aspx?Language=E&Mode=1&Parl=40&Ses=2&FltrParl=40&FltrSes=2&Vote=50>.

- countries. Halifax Initiative. <http://halifaxinitiative.info/content/cnca-statement-advisory-round-table-report-monday-april-2-2007>.
- Christian Aid and Philippine Indigenous Peoples Links. 2004. *Breaking promises, making profits: Mining in the Philippines*. London: Christian Aid and PIPLinks.
- Conley, John M., and Cynthia A. Williams. 2008. The corporate social responsibility movement as an ethnographic problem. Social Science Research Network, UNC Legal Studies Research Paper No. 1285631. Presented at a Wenner-Gren Foundation for Anthropological Research and School for Advanced Research International Symposium. 16 October, Santa Fe, Mexico.
- . 2005. Engage, embed and embellish: Theory versus practice in the corporate social responsibility movement. *Journal of Corporation Law* 31:1–38.
- Coumans, Catherine. 2009. *Occupying spaces created by conflict: Anthropologists, development NGOs, responsible investment and mining*. Under review for *Current Anthropology*.
- Cragg, Wesley. 2002. Business ethics and stakeholder theory. *Business Ethics Quarterly* 12 (2): 113–43.
- Deva, Surya. 2004. Acting extraterritorially to tame multinational corporations for human rights violations: Who should 'bell the cat'? *Melbourne Journal of International Law* 5:37–65.
- Doyle, Cathal, Clive Wicks, and Frank Nally. 2007. *Mining in the Philippines: Concerns and conflicts*. Knowle, UK: Society of St. Columban.
- Durbin, Andrea. 2006. *One step forward, one step back: An analysis of the International Finance Corporation's sustainable policy, performance standards and disclosure policy*. Ottawa: Halifax Initiative.
- Forests Peoples Programme, Philippine Indigenous Peoples Links, and World Rainforest Movement. 2000. *Undermining the forests: The need to control transnational mining companies; a Canadian case study*.
- Gagnon, Georgette, Audrey Macklin, and Penelope Simons. 2003. *Deconstructing engagement: Corporate self-regulation in conflict zones; implications for human rights and Canadian public policy*. Ottawa: Social Sciences and Humanities Research Council and Law Commission of Canada.
- Goel, Ran. 2005. *Guide to instruments of corporate responsibility: An overview of 16 key tools for labour fund trustees*. Toronto: Schulich School of Business and York University.
- Government of Canada. 2009. *Building the Canadian advantage: A corporate social responsibility (CSR) strategy for the Canadian international extractive sector*. Foreign Affairs and International Trade Canada. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategie-rse-strategie.aspx>.
- . 2006. *Corporate social responsibility: An implementation guide for Canadian business*. Industry Canada. <http://www.ic.gc.ca/eic/site/csr-rse.nsf/eng/rs00126.html>.
- Gregor, Filip, and Hannah Ellis. 2008. *Fair law: Legal proposals to improve corporate accountability for environmental and human rights abuses*. Brussels: European Coalition for Corporate Justice.
- Herz, Steven, Kristen Genovese, Kirk Hebertson, and Anne Perrault. 2008. *The International Finance Corporation's performance standards and the Equator Principles: Respecting human rights and remedying violations?* August. Center for International Law, Bank Information Center, BankTrack, Oxfam Australia, World Resources Institute.
- International Council on Human Rights Policy. 2002. *Beyond voluntarism: Human rights and the developing international legal obligations of companies*. Geneva: Atar Roto Press.
- Macdonald, Kate. 2009. *The reality of rights: Barriers to accessing remedies when business operates beyond borders*. London: London School of Economics and Corporate Responsibility (CORE) Coalition.
- Oldenziel, Joris. 2005. *The added value of the UN Norms: A comparative analysis of the UN Norms for Business with existing international instruments*. Amsterdam: SOMO Centre for Research on Multinational Corporations.
- Ortner, Sherry B. 2006. *Anthropology and social theory: Culture, power, and the acting subject*. Durham, NC: Duke University Press.
- Oxford. 2008. *Obstacles to justice and redress for victims of corporate human rights abuse*. Oxford Pro Bono Publico. <http://www.law.ox.ac.uk/opbp>.

- Rights and Democracy. 2009. *Getting it right: A step by step guide to assess the impact of foreign investment projects on human rights*. Business and Human Rights Resource Centre. <http://www.business-humanrights.org/Documents/Impactassessment>.
- . 2007. *Human rights impact assessments for foreign investment projects: Learning from community experiences in the Philippines, Tibet, the Democratic Republic of the Congo, Argentina, and Peru*. http://www.dd-rd.ca/site/_PDF/publications/globalization/hria/full%20report_may_2007.pdf.
- Ruggie, John. 2008. *Protect, respect and remedy: A framework for business and human rights*. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. A/HRC/8/5. 7 April.
- . 2007. *Business and human rights: Mapping international standards of responsibility and accountability for corporate acts*. Report of the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises. A/HRC/4/035. 9 February.
- Seck, Sara L. 2008. Home state responsibility and local communities: The case of global mining. *Yale Human Rights and Development Law Journal* 11:177.
- SCFAIT (Standing Committee on Foreign Affairs and International Trade). 2005. *Mining in developing countries: Corporate social responsibility*, 38th Parliament, 1st Session, Fourteenth Report: June. House of Commons. <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1961949&Mode=1&Parl=38&Ses=1&Language=E>.
- Welker, Marina A. 2009. "Corporate security begins in the community": Mining, the corporate social responsibility industry, and environmental advocacy in Indonesia. *Cultural Anthropology* 24 (1): 142-79.

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L'évolution des régimes miniers au Canada : l'émergence de nouvelles formes de régulation et ses implications*

Myriam Laforce

RÉSUMÉ Considérant le recours croissant aux ententes sur les répercussions et avantages comme nouveau mode de régulation des activités minières au Canada, en marge des régimes miniers formels, cet article invite à s'interroger sur la valeur que de tels mécanismes représentent pour une participation améliorée des populations autochtones concernées aux processus décisionnels entourant le développement de leur région. En se penchant sur l'évolution récente de ces régimes, dans les tendances lourdes qu'elle implique au niveau des relations de pouvoir entre acteurs, l'auteure suggère que la marge de manœuvre dont ces populations bénéficient pour faire valoir leurs positions demeure restreinte, et ce, en dépit de la création de ces nouveaux espaces de négociation.

ABSTRACT Considering the growing dependence on Impact and Benefit Agreements (IBA) as a new mode of regulation of mining activities in Canada, at arm's length from formal mining regimes, this article questions the value of such mechanisms as a means of improving the participation of Aboriginal communities in the decision-making process related to the development of their territory. Drawing upon the recent evolution of these regimes, and considering the implications for power relations among the players, the author suggests that the freedom of action that these populations benefit from to assert their views remains quite limited in spite of the creation of new negotiation processes.

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Introduction

Phénomène plutôt inédit au début des années 1990, la négociation d'ententes sur les répercussions et avantages (ERA)¹ entre entreprises minières et populations autochtones dans le Nord canadien a souvent été présentée comme une occasion unique et nouvelle d'inclusion de ces dernières dans les processus de prise de décision concernant le développement économique de leur région (Herz, La Vina et Sohn, 2007, 7-8). De fait, il s'agit d'un mécanisme auquel on a de plus en plus recours, d'abord comme mode de régulation de l'investissement minier, par-delà les législations formelles, mais également comme moyen de légitimation de la présence des entreprises minières sur des terres faisant souvent l'objet d'une occupation ancestrale par ces groupes. Ainsi, entre 1990 et 2000, 18 communautés autochtones de différentes provinces et territoires participaient déjà au processus de négociation d'une ERA au pays (Wolfe 2001, 2).

Alors que les motivations à l'origine de la conclusion croissante de telles ententes ont fait l'objet de nombreuses discussions et analyses (Galbraith 2005; Prno 2007, 5, 89; Gibson 2008, 124), nous souhaitons attirer ici l'attention sur l'évolution connue par les régimes miniers canadiens à la fin des années 1980 et au début des années 1990, qui a fait en sorte de créer un climat favorable à la signature d'ERA. Cette évolution a principalement été marquée par l'intégration progressive de nouvelles valeurs socio-environnementales dans les cadres réglementaires miniers du pays. Nous démontrerons ici que l'intégration de telles valeurs a participé à l'adoption de règles et de procédures nouvelles dans les régimes miniers canadiens, lesquelles ont encouragé la conclusion croissante d'ERA comme nouveaux modes davantage informels de régulation de l'investissement minier au pays. Or, nous verrons que cette mutation a été conduite sans remise en cause des normes et des principes fondateurs des régimes miniers canadiens, toujours centrés sur le système de libre accès à la propriété et à l'exploitation de la ressource (*free mining* ou *free entry system*). Dans ce contexte, l'intérêt présenté par la négociation d'ERA pour valoriser la contribution des populations locales, principalement autochtones, aux processus décisionnels miniers canadiens, ainsi que leur participation même au développement des régions concernées, pourra être interrogé.

Après une brève incursion théorique visant à faire la lumière sur les concepts de régimes et de rapports de pouvoir, nous présenterons tout d'abord, dans la première section de cet article, un aperçu du contexte historique des relations de pouvoir, ainsi que des valeurs et principes ayant présidé à la définition des premières législations minières au Canada dans la seconde moitié du XIX^e siècle. Nous nous pencherons ensuite sur l'évolution plus récente des régimes, avant de nous intéresser, en troisième lieu, aux conséquences de cette évolution, d'abord sur le rôle de l'État dans la régulation de l'investissement minier, puis en ce qui concerne l'apparition de nouveaux espaces de négociation. Finalement, nous analyserons plus en profondeur la structure de pouvoir asymétrique qui en découle.

1. Souvent désignées par leur appellation anglaise d'*Impact and Benefit Agreements (IBAs)*.

Régimes et rapports de pouvoir

Tout en reconnaissant l'importance des débats entourant la définition de la notion de régimes en sciences politiques (Martimort-Asso 2002), nous abordons ceux-ci comme des mécanismes de régulation formels qui dépassent le simple ensemble de dispositions légales régissant un objet particulier (soit, pour le cas qui nous occupe, le secteur minier). Les régimes sont en effet envisagés ici comme des « *sets of governing arrangements [that include] networks of rules, norms, and procedures that regularize behavior and control its effects* » (Keohane et Nye 1997, 19).

Les régimes miniers canadiens institutionnaliseraient ainsi d'abord un ensemble de normes (standards de comportement définis en termes de droits et d'obligations (Krasner 1983)) et de règlements (prescriptions plus spécifiques), prévoieraient ensuite des procédures de prise de décision politique, et officialiseraient enfin des principes, particulièrement celui de *free mining*, qui guideraient la définition des catégories précédentes. Émilie Revil (2001, 104), se référant au régime commercial de l'Organisation mondiale du commerce (OMC), souligne que : « [...] la théorie des régimes révèle comment les principes sont une composante centrale des régimes. Les principes de croissance économique, de compétitivité et de libéralisation des échanges sont importants pour l'identité même du régime commercial; ils définissent, avec les normes, sa nature ».

L'analyse ici conduite privilégie, au point de vue théorique, une approche d'économie politique internationale (EPI) hétérodoxe, principalement inspirée des travaux de Susan Strange². Plaçant en son centre la question des rapports de pouvoir entre acteurs concernés, cette approche nous amène à considérer les régimes miniers canadiens comme des composantes clés d'une structure de pouvoir plus large à laquelle participent différents acteurs qui négocient entre eux en vue de déterminer, à un moment précis, la nature propre des régimes³. Ces régimes, en constante évolution, auraient à leur tour des effets sur les rapports de pouvoir et sur la capacité respective des différents acteurs à faire valoir leurs intérêts.

2. Voir notamment Strange 1994; 1996; 1998; Chavagneux 1998.

3. Selon Strange, les États ne représentent pas les seules entités du système international qui disposent d'autorité et leurs stratégies ne sont pas indépendantes de celles d'autres acteurs, tels que les entreprises transnationales, également capables de produire des normes qui orientent la structure. L'auteure définit la notion de structure comme le cadre précis de pouvoir dans lequel s'opèrent les négociations des autorités en confrontation dans le système économique contemporain en vue d'imposer leurs préférences (Chavagneux 1998, 25). Une structure établirait par là, à un moment donné et à l'intérieur d'un domaine particulier de l'EPI, les modalités de l'exercice de leur pouvoir par ces différentes autorités (Chavagneux 1998, 49). Strange pose donc le problème de la régulation au-delà de l'État (et des régimes qu'il définit), à un niveau qui pourrait englober les différents rapports de force observés à l'intérieur des structures. Ainsi, il apparaît tout à fait pertinent de se pencher sur les rapports de pouvoir (ces négociations) qui existent entre les acteurs participant aux dynamiques propres à la structure de l'industrie minière de manière plus globale, la nature et l'influence des régimes miniers sur ces rapports de pouvoir devenant donc un élément d'analyse parmi d'autres.

De tels rapports de pouvoir sont abordés sous leur forme structurelle, tel que proposé par la branche hétérodoxe de l'EPI. Le pouvoir structurel fait référence au pouvoir d'un acteur de façonner les structures et de définir les règles du jeu dans lesquelles s'inscriront ensuite les comportements des autres acteurs. Ce pouvoir structurel peut être intentionnel ou non et ne relève pas nécessairement de stratégies sciemment définies. Ainsi, l'approche hétérodoxe ne prévoit pas une hiérarchie préétablie entre les acteurs, qui serait basée sur leurs capacités respectives, mais observe plutôt l'expression de relations de pouvoir multiples et changeantes entre eux (Chavagneux 1998, 45).

Par ailleurs, notre approche nous conduit à considérer que les principes présents dans les régimes s'appuieraient à leur tour sur des valeurs prioritaires dont l'identification serait, selon l'analyse développée par Susan Strange, essentielle à la compréhension de la distribution des pouvoirs conférés par les régimes aux acteurs. De telles valeurs, en étant privilégiées par les acteurs détenteurs de pouvoir, contribueraient dans les faits elles-mêmes à favoriser davantage certaines positions. Cette distribution des pouvoirs n'est d'ailleurs pas étrangère au processus par lequel les régimes tendent à projeter, chez les acteurs qui sont concernés par leur opérationnalisation, des identités politiques particulières, que David Szablowski (2007, 303) définit comme « [...] *the kind and degree of political recognition that is conferred by a legal order on those who are subject to it* ». Ainsi, ces identités pourraient correspondre par exemple à la fois à celles d'acteurs politiques autonomes comme, à l'opposé, à celles de sujets passifs, renvoyant à des degrés de reconnaissance politique bien distincts pour les acteurs et alimentant des rapports de pouvoir particuliers entre eux (Szablowski 2007, 304).

Nous suggérons à cet effet que les dynamiques structurelles observées dans le domaine minier au Canada à la fin des années 1980 et au début des années 1990, influencées par des valeurs socio-environnementales en émergence, ont suscité le besoin de nouveaux espaces de négociation, plus informels, qui prennent notamment la forme des ERA. Ceci dit, en nous intéressant aux rapports de pouvoir qui ont façonné les régimes miniers canadiens, ainsi qu'aux valeurs et principes qui ont guidé le développement des activités minières au Canada, notre analyse nous conduira à conclure que l'asymétrie des relations de pouvoir d'abord créée par la mise en place historique des régimes miniers, puis perpétuée par leur évolution dans les années 1980-1990, rend à prime abord difficile une intégration réelle des positions des peuples autochtones concernés par un projet minier dans les processus décisionnels liés à ces activités au pays, et ce, en dépit de l'ouverture de nouveaux espaces de négociation.

Les fondements des régimes miniers canadiens⁴

Bien que cette expérience ait pris place à des centaines de kilomètres des gisements miniers exploités au Canada, il n'est pas anodin de relater l'influence importante de

4. Cette section, inspirée de l'analyse d'Ugo Lapointe (2008), ne représente qu'un bref survol de certains des fondements historiques des régimes miniers canadiens. Pour plus de détails sur ces ques-

la ruée vers l'or californienne de 1849 sur les différents régimes miniers institués dans la plupart des provinces et des territoires du pays⁵ au cours de la seconde moitié du XIX^e siècle. Suite à la conquête du Mexique en 1846, la Californie s'était trouvée dans un état de faible gouvernance pendant près de cinq ans (Alford 1906). En l'absence de cadres législatifs et d'autorité gouvernementale en mesure d'encadrer leurs pratiques, les mineurs affluant dans la région auraient alors mis sur pied leurs propres lois et leurs propres instances juridiques, dans une forme d'autorégulation de leurs activités. Le système se serait par la suite étendu au point où, au moment de définir sa première législation minière, le gouvernement des États-Unis n'aurait fait qu'entériner les procédures mises en place par les mineurs et déjà largement reconnues (Lacasse 1976, 41).

Les législateurs américains créèrent ainsi à cette époque un ensemble de règles et de procédures peu contraignantes pour les promoteurs miniers, instituèrent un mode d'accession et d'aliénation des ressources minières fondé sur le principe du *free mining* (Barton 1993, 149) et consacrèrent l'appropriation unilatérale de la ressource (sans le concours de l'État) via le système du claim minier. Quoique le principe de *free mining* ait été appliqué de façons variées selon les époques et les régions, on peut essentiellement le définir comme un ensemble de mesures qui permet, voire privilégie, le libre accès à la propriété et à l'exploitation des ressources minérales. Dans la plupart des sociétés contemporaines influencées par le droit occidental, le *free mining* se traduit non seulement par la possibilité d'acquérir librement un droit de propriété sur les ressources minérales du territoire, mais également par des garanties de pouvoir les explorer et, en cas de découverte, les exploiter : « *The free entry system consists of three interlinked rights : the right of entry onto lands containing minerals, the right to acquire a claim on those lands, and the right to go to a lease and produce minerals* » (Taggart 1998, résumé).

Ce principe sera également fondamental dans la définition, quelques années plus tard, des premières législations canadiennes dans le domaine (Campbell 2004; Barton 1993; 1998; Paquette 1982). Alors que la multiplication des activités minières au milieu du XIX^e siècle amenait les gouvernements des provinces et territoires à se doter de dispositions législatives visant à encadrer une industrie en émergence, le système du claim comme mode d'appropriation des ressources de la Couronne fut introduit pour la première fois dans le *Goldfields Act* de la Colombie-Britannique en 1859. L'*Acte concernant les mines d'or* du Canada-Uni (1864), l'*Acte général des mines de Québec* (1880), et les *Quartz Mining Regulations* (1898) de la *Loi sur les terres territoriales* du Yukon et des Territoires du Nord-Ouest instituèrent par la suite une série de mesures qui facilitèrent l'accès aux ressources à faible coût et à faible risque pour les entrepreneurs miniers.

Sans pour autant sous-estimer l'importance des mutations qu'a connues l'industrie minière depuis le XIX^e siècle⁶, mutations qui ont eu leur influence propre sur la défini-

tions voir Paquette 2000; 1984; 1982 et Vallières 1989.

5. L'*Acte de l'Amérique du Nord Britannique de 1867* (ou la *Loi constitutionnelle de 1867*, CH. 3 (R.-U.)) consacra aux provinces la propriété des mines et des minéraux (a.109), de même que la compétence de légiférer en la matière.

6. Ces mutations incluent l'apparition de nouvelles technologies d'exploitation et l'accélération de l'industrialisation nord-américaine, qui auront entre autres pour conséquence de favoriser une

tion des politiques minières canadiennes au cours du XX^e siècle et ont rendu nécessaire une certaine adaptation des législations au contexte économique en évolution, notamment au Québec (Paquette 1984), nous reconnaissons que le mode d'accession et d'aliénation des ressources minières fondé sur le principe de *free mining* est somme toute demeuré inchangé au fil des décennies. Marc Vallières (1989, 235) évoque ainsi l'évolution, dans les années 1960 au Québec, de ce domaine de la politique minière qui nous intéresse : « Tout le système d'aliénation progressive du sous-sol subit certaines transformations qui visent de plus en plus à en faciliter l'accès aux exploitants éventuels, les plus sérieux et les plus importants. La configuration générale du système reste la même, mais la nouvelle loi de 1965 introduit une simplification substantielle des activités de prospection ».

Ainsi, si le système québécois d'aliénation des droits miniers par vente de concession fut remplacé, en 1965, par un mode de cession des droits par bail⁷, il semble bien, selon Pierre Paquette (1984, 596), que « [c]ette substitution [serait survenue] après que les zones minéralogiques les plus prometteuses [notamment les principaux gîtes localisés dans la fosse du Labrador au Nouveau-Québec] eussent été cédées aux anciennes conditions, beaucoup plus favorables ». L'auteur avance même que « [q]uoi que le mode d'aliénation devint, vers la fin de la période, la location par bail, les locataires trouvaient toujours en la personne du propriétaire de ce domaine, c'est-à-dire l'État, l'agent le plus disposé à promouvoir leurs propres fins » (152). Le libre accès à la propriété et à l'exploitation des ressources minérales représente donc un principe qui est demeuré inscrit dans la politique minière québécoise, largement incitatrice et essentiellement placée, tout au cours du XX^e siècle, sous le signe de la continuité (Paquette 1984, 596-597; Vallières 1989, 52). Nous reviendrons plus loin sur les implications de l'inscription du principe de *free mining* dans les législations, ainsi que de la philosophie qu'il représente pour le fonctionnement des régimes miniers canadiens, notamment en ce qui a trait à la prédominance de certaines valeurs bien précises, qui participent à une distribution particulière du pouvoir structurel entre les acteurs intéressés par le déploiement d'activités minières au pays.

L'évolution récente des régimes

Alors que l'industrie minière était visée, dès les années 1960 et 1970, par le mouvement pour la protection de l'environnement en Amérique du Nord, notamment sur

restructuration majeure ainsi qu'un processus d'internationalisation de l'industrie (Paquette 1984).

7. Mentionnons également, comme modifications significatives apportées à ce système, les mesures progressivement intégrées à la législation minière québécoise et visant la « récupération graduelle des concessions improductives [ou sur lesquelles les travaux miniers statutaires imposés en vue du maintien du droit à l'accès aux minéraux ne sont pas ou n'ont pas été réalisés], pourtant réputées inaliénables » (Vallières 1989, 233). Ces concessions inactives étaient vues, à partir des années 1950 comme des « entraves à l'exploration », activité que la politique minière de la province visait précisément à promouvoir (Vallières 1989, 235).

la question des pluies acides (Lapalme 2003, 12), c'est vers la fin des années 1980 et le début des années 1990 que les problématiques environnementales et les questions de développement durable ont pris une importance réelle dans les débats portant sur l'exploitation minière au pays. À l'échelle nationale comme internationale, la montée des préoccupations environnementales (Simard et Lepage 2004, 352), ainsi que la reconnaissance croissante des droits des populations autochtones sur leurs territoires (Boisselle 2006; Barsh 1994), allaient en effet alors attirer l'attention sur la nécessaire harmonisation des activités minières avec le milieu social et environnemental dans lequel elles s'implantent.

La montée de telles préoccupations témoigne également, à la lumière des considérations théoriques énoncées en début d'analyse, de l'émergence, dans la structure de l'industrie minière canadienne, de nouvelles valeurs potentiellement concurrentes à celles privilégiées jusqu'alors dans les régimes miniers et illustrées par le principe du *free mining*. Alors que le développement de l'industrie minière a historiquement été encouragé sur la base des principes de croissance, de prospérité et de liberté d'accès au territoire, la montée des préoccupations environnementales risquait de fragiliser les bases mêmes de la légitimité dont jouissait cette industrie. En septembre 1992, l'Association minière du Canada (AMC, citée dans Initiative minière de Whitehorse 1994, iii) reconnaissait la nécessité, pour elle, « de gagner la confiance des Canadiens et de prouver qu'elle peut fonctionner dans une perspective de développement durable et dans un milieu écologiquement sensible ». De même, il semble qu'au début des années 1990, bien que « *[t]he mining industry has served as a traditional pillar of the Canadian economy, yet it no longer engenders the same level of support from the general public and the government that it once commanded* » (McAllister et Alexander 1997, x). Cette tendance allait rendre en ce sens nécessaire une certaine adaptation des régimes miniers aux préoccupations de l'heure.

L'institutionnalisation, dans les régimes miniers, des valeurs socio-environnementales centrées autour du respect de l'environnement et de l'équité sociale allait donc s'opérer progressivement au cours de cette période au Canada. D'abord, on a assisté, depuis le début des années 1980, à un certain resserrement du contrôle environnemental sur l'activité industrielle de manière générale, notamment à travers la promulgation de nouvelles lois environnementales et les modifications apportées aux lois existantes⁸. De même, la mise en œuvre et le renforcement des législations fédérales et provinciales en matière d'évaluation environnementale⁹ allaient permettre d'inclure les préoccupa-

8. Il faut reconnaître que le processus de réforme des législations environnementales canadienne et québécoise a fait l'objet de nombreuses critiques qui ont attiré d'une part l'attention sur l'impact de la « déréglementation » dans le domaine. Voir Halley 1998, 19-49; Lepage 1998, 51-54. D'autres ont également attiré l'attention sur l'effet des pressions politiques sur la qualité des normes environnementales qui en a résulté. Voir Revil 2001; Adkin 1998. Cette déréglementation ne serait d'ailleurs pas étrangère, selon Simard et Lepage (2004, 357), à « l'option de la responsabilisation des acteurs locaux au regard de la gestion environnementale » qui allait être de plus en plus privilégiée à partir des années 1980, notamment au Québec.

9. Il s'agit, d'abord, de la modification apportée au Québec en 1978 à la *Loi sur la qualité de l'environnement* (LQE), en vue d'intégrer l'objectif « d'accorder aux citoyens le droit de participer au processus d'évaluation environnementale des projets importants » (Simard et Lepage 2004, 354) et,

tions sociales et de créer des droits de participation citoyenne aux processus décisionnels entourant l'établissement de projets d'envergure sur le territoire¹⁰.

Ensuite, pour ce qui concerne plus spécifiquement le secteur minier, le gouvernement du Canada a été amené, au milieu des années 1990, d'une part, à revoir un certain nombre de normes environnementales affectant le secteur minier dans le but d'améliorer l'efficacité de la réglementation applicable et de l'harmoniser avec les dispositions provinciales (Ressources naturelles Canada 1998, 18), mais également, d'autre part, à rendre publique, en 1996, sa nouvelle politique minière intitulée *Des partenariats pour un développement durable* (Ressources naturelles Canada 1996; Hilson 2000, 205). De la même manière, au Québec par exemple, divers projets de loi ont visé, dans les années 1990, à apporter des modifications à la *Loi sur les mines* de 1988, en vue de garantir une meilleure protection environnementale des territoires concernés (Assemblée nationale du Québec 1991, 7559). Pour ce qui concerne les Territoires du Nord-Ouest, une loi fédérale, la *Loi sur la gestion des ressources de la vallée du Mackenzie* (LGRVM) était promulguée en 1998, et créait une « structure intégrée pour la cogestion des terres » dans la région (Gouvernement du Canada, ministère des Affaires indiennes et du Nord canadien 2001, 5).

Les législateurs canadiens ont donc développé, à cette période, un ensemble de normes et de structures institutionnelles et politiques porteur de valeurs inédites, qui allait chercher à mieux encadrer les pratiques des entreprises minières au pays. Tout en reconnaissant qu'il s'agit là d'avancées importantes qui ont eu un impact certain sur le mode d'insertion des projets miniers dans leur milieu social et environnemental (Hilson 2000, 210), nous souhaitons attirer l'attention sur les processus de négociation qui sous-tendent l'évolution de ces régimes et dans lesquels réside leur véritable potentiel de transformation (Strange 1998, 10).

Le rôle de l'État et l'apparition de nouvelles formes de régulation

Nous reconnaissons tout d'abord à cet effet que la montée des nouvelles préoccupations socio-environnementales n'allait pas être sans conséquence pour l'État canadien, agent privilégié de la régulation du secteur, qui s'est trouvé ni plus ni moins devant

en second lieu, de l'entrée en vigueur, au Canada, en 1984, du *Décret sur les lignes directrices visant le Processus d'évaluation et d'examen en matière d'environnement* (PEEE) ayant pour objectif d'« étudier les impacts environnementaux – et les incidences sociales – des grands aménagements et projets sur les terres de la Couronne ou cautionnés par le gouvernement fédéral » (Reed 1990, 11). En 1995, le PEEE était remplacé par la *Loi canadienne sur l'évaluation environnementale* (LCEE), par le biais de laquelle le droit du public à participer aux processus d'évaluation était officiellement renforcé. Voir Commission de coopération environnementale 1999, 8, 18-20.

10. Il est intéressant de noter que le régime environnemental de la Convention de la Baie-James et du Nord québécois (CBJNQ, Ch. 23) prévoyait déjà, en 1975, la participation formelle des Cris et des Inuits aux processus d'évaluation environnementale pour des projets d'exploitation minière à la Baie-James et au Nunavik.

un certain dilemme. Celui-ci, toujours dépendant à l'égard de l'entrepreneuriat minier privé (notamment pour ce qui concerne l'accès au capital et à la technologie), et donc en quelque sorte « associé » de l'industrie dans le développement du potentiel minier du pays, était en effet désormais également tenu de veiller à l'application des normes environnementales et au respect des droits des Autochtones découlant entre autres de la *Loi constitutionnelle* de 1982 et de décisions judiciaires de plus en plus favorables à leurs revendications (Boisselle 2006). Si ce dernier mandat implique clairement une intervention discrétionnaire de l'État dans la régulation des activités minières au pays, le système institué sous l'influence du principe de *free mining*, un système qui, malgré l'évolution qu'il a connue sur plus d'un siècle, s'harmonise d'ailleurs toujours difficilement avec le titre autochtone et les droits des Autochtones sur leurs terres (Campbell 2004, 4; Bankes et Sharvit 1998), tend précisément à circonscrire son pouvoir discrétionnaire d'intervenir dans le secteur, notamment en faveur de leurs positions ou de l'intérêt public (Barton 1998, 46). Comme l'observe Taggart (1998, résumé), « *[n]on-free entry systems (e.g. a leasing or a concession system) give the state far more discretionary power in the process of deciding who will develop mineral resources and where* ». En ce sens, l'institutionnalisation des nouvelles valeurs dans les régimes miniers a posé un réel défi à l'État et à sa légitimité même comme régulateur.

Pour résoudre un tel dilemme, l'État tendrait aujourd'hui à développer une stratégie complexe de régulation, de l'ordre de celle observée par David Szablowski (2007, 28) au Pérou à la fin des années 1990 et qu'il qualifie « d'absence sélective ». Dans son analyse, l'auteur démontre que les États riches en métaux et minéraux font face, et ce, de manière particulière depuis le début des années 1990, à des pressions contradictoires qui visent à la fois, d'une part, l'ouverture aux investissements étrangers (pression externe, liée aux valeurs dominantes dans la structure de l'industrie et à la compétitivité qui accompagne l'accélération de la libéralisation) et, d'autre part, la satisfaction des demandes sociales locales (pression interne) (Szablowski 2007, 27). Devant les contraintes posées par ces pressions contradictoires, ces États tendraient non pas tant à se retirer, mais plutôt à développer une stratégie complexe de régulation qui leur permettrait de préserver leur légitimité¹¹. Il s'agirait en effet (1) d'accorder de manière *formelle* des droits aux investisseurs miniers, via les régimes qu'ils mettent en place et (2) de procéder ensuite à une délégation *informelle* ou à une redistribution de parts d'autorité et de responsabilités aux entreprises, entre autres en matière de régulation locale (notamment pour ce qui

11. Pour David Szablowski, régulation et légitimation représentent « *the key products of law* » (Szablowski 2007, 11) La régulation renverrait à deux phénomènes socio-légaux différents mais complémentaires: « (1) *institutionalised processes of norm generation and associated enforcement, and (2) informal processes in which norm generation and norm compliance are closely bound together through social interaction* » (Szablowski 2007, 12). Elle prendrait ainsi la forme de régimes qui, pour fonctionner, doivent « *project a sense of [their] own legitimacy into particular audiences* » (Szablowski 2007, 15). Le processus de légitimation représenterait donc « *a continuous and often imperfect conversation between law-makers and law-takers in which ideology, attention and influence play important roles. Crucially, the process relies upon the existence of legitimating ideas among law-taking populations* » (Szablowski 2007, 20) ».

a trait à la médiation sociale des impacts des activités minières face aux intérêts des populations voisines) (Szablowski 2007, 27).

Suivant cette analyse, nous reconnaissons que l'État canadien tend, en vue de réconcilier les impératifs internes et externes auxquels il fait face depuis le début des années 1990, à privilégier une approche souple en matière de régulation, basée sur les mécanismes de marché et autres initiatives volontaires mises de l'avant par les entreprises. L'établissement de relations directes entre entreprises et populations autochtones en est ainsi venu à représenter un nouveau pôle de régulation-légitimation pour l'industrie, duquel les agences gouvernementales se trouvent parfois volontairement marginalisées, voire, dans certains cas, exclues. Ces relations se sont dernièrement généralement formalisées dans des mécanismes qui vont du protocole d'entente (*memorandum of understanding*), non contraignant, à l'entente sur les répercussions et avantages (ERA) évoquée précédemment (Lapalme 2003, 31), dont la signature est, comme on l'a vu en introduction, de plus en plus encouragée. Les ERA « *are signed between mining companies and First Nation communities in Canada in order to establish formal relationships between them, to reduce the predicted impact of a mine and secure economic benefit for affected communities* » (Sosa et Keenan 2001, 1). Ces mécanismes représentent, selon notre compréhension, de nouveaux modes de régulation des activités minières au pays, davantage informels, et dont la multiplication, loin d'être circonstancielle, répond à un contexte structurel bien particulier, comme nous venons de le suggérer.

Plusieurs auteurs se sont déjà penchés sur les implications des ERA aujourd'hui négociées entre entreprises minières et populations autochtones pour ce qui concerne la participation effective de ces dernières dans la gestion de l'investissement minier (Prno 2007; Hitch 2006; O'Faircheallaigh 2006; Public Policy Forum 2005; Galbraith 2005). Nous proposons, dans la foulée de ces études, de nous intéresser, au-delà des résultats apportés par les ERA, aux *conditions structurelles* dans lesquelles celles-ci émergent, en amont. Alors que les régimes miniers canadiens et québécois, historiquement fondés sur le principe du *free mining*, n'accordaient qu'une place subsidiaire aux positions des Autochtones dans les processus décisionnels, notre analyse nous invite maintenant à nous demander si l'intégration de dispositions issues de nouvelles valeurs dans les années 1990 et l'apparition de formes davantage informelles de régulation a pu offrir à ces populations le levier nécessaire pour que leur soit conféré un pouvoir structurel significatif, susceptible de valoriser leur contribution à la définition ultérieure et à l'opérationnalisation même de ces régimes¹². Car, en accord avec les éléments théoriques apportés par Strange, les ERA présentent le potentiel de marquer un changement dans l'opérationnalisation des régimes, lequel, s'il s'avérait réel, serait

12. Au-delà de l'héritage légué par le principe du *free mining*, nous observons que l'identité politique de ces populations autochtones se trouve également conditionnée par le rapport historique qui s'est développé entre l'État canadien et les Premières nations sur la base d'une relation fiduciaire. Encore dans les années 1990, il semble bien que ce rapport soumet en général la participation des Autochtones à l'élaboration des priorités du développement à un arbitrage entre la détermination de leurs intérêts et ceux de l'ensemble de la société, ce qui a entre autres pour effet de limiter leur capacité à exercer un rôle d'acteurs politiques autonomes. Voir O'Doherty 1999.

susceptible de mener à un nouvel équilibre dans la distribution du pouvoir structurel confié aux acteurs.

La structure de pouvoir asymétrique

Si l'équilibre des pouvoirs entre acteurs engagés dans la régulation du secteur minier demeure en constante évolution, il n'en demeure pas moins que l'institutionnalisation des principes de base du *free mining* dans les régimes miniers canadiens, en contribuant à créer un ensemble de règles et de procédures somme toute peu contraignantes pour les promoteurs miniers, laissera un lourd héritage pour les pratiques de régulation qui seront mises en œuvre dans les décennies suivantes. Selon notre analyse, la définition des premières législations minières au XIX^e siècle a donné lieu à la prédominance de certaines valeurs précises (une philosophie de développement économique qui s'oppose à une philosophie de conservation, par exemple) qui participent à une distribution particulière du pouvoir structurel entre les acteurs intéressés par le déploiement d'activités minières au pays. Alors que l'adoption d'un tel système au XIX^e siècle découlait certes d'une volonté politique de générer de la richesse « dans le cadre de l'idéologie du libéralisme économique », elle témoignait également de la dépendance relative de l'État vis-à-vis du capital, des technologies et de l'expertise issus de l'entrepreneuriat minier privé (Paquette 1982, 110, 546-547). Devant leur souci de développer le potentiel minier du pays, les décideurs publics se seraient montrés très sensibles aux plaidoiries des entrepreneurs miniers (Paquette 1982, 110), et leur auraient conféré, à travers la définition des régimes alors mis en place, une autonomie, une autorité, ainsi qu'une liberté d'action importantes, voire uniques par rapport à d'autres secteurs économiques (Lacasse 1976; Barton 1998). Il apparaît aujourd'hui que ces prérogatives semblent avoir été maintenues, et ce, malgré les réformes adoptées au cours des années 1980-1990.

En dépit des diverses adaptations dont ils ont fait l'objet au fil des décennies, les droits créés par les régimes miniers canadiens pour les entrepreneurs, tels que l'appropriation unilatérale de la ressource via le système du claim, confèrent en effet toujours aujourd'hui à ces derniers un pouvoir structurel important, en premier lieu, en ce qui a trait à l'opérationnalisation des régimes. Par exemple, si les normes en matière d'évaluation environnementale ont permis la création de nouveaux droits de participation citoyenne dans la plupart des juridictions canadiennes, ces processus sont généralement renvoyés à une étape avancée des projets miniers, au cours des travaux d'exploration avancée ou peu avant l'étape de production. Les nouvelles lois ne prévoient en effet ni participation, ni consultation auprès des communautés concernées au moment de l'émission des droits miniers (claims et autres), droits qui confèrent toujours à leurs détenteurs d'autres droits, dont ceux d'accéder au territoire, d'y exécuter tout travail d'exploration et, en cas de découverte, et sous certaines conditions, d'exploiter la ressource.

En second lieu, ces droits confèrent par ailleurs encore aujourd'hui aux entrepreneurs miniers un pouvoir structurel important sur la réforme et la redéfinition même

des régimes. Les pouvoirs discrétionnaires de l'État dans les processus décisionnels relatifs au développement minier demeurent en effet limités pour ce qui concerne, par exemple, l'adaptation de la réglementation de manière à favoriser la mise en œuvre de plans prospectifs en matière de développement du territoire à plus long terme. En se référant au cas des Territoires du Nord-Ouest durant les années 1990, Barton souligne ainsi que :

The leading feature of the free entry system is that government agencies do not have any discretionary power at all over the occurrence of mineral exploration, the location of claims, or the procurement of mining leases for production. Discretionary power over these matters does exist; but it is in the hands of the private sector explorationists and mining company who decide where to locate claims and apply for leases. This affects the work of the Crown land administrators very significantly, in their efforts to accommodate different land uses such as forestry, new parks, recreation, outfitting, wilderness or habitat protection. It affects the third parties who have interests in Crown land use (Barton 1998, 39)¹³.

La part de pouvoir structurel qui incombe ainsi aux entrepreneurs miniers, en comparaison avec celle des autres parties prenantes au processus de régulation des activités minières au Canada, est révélatrice d'une structure de pouvoir essentiellement asymétrique, telle que léguée par l'inscription du principe de *free mining* dans les législations provinciales et territoriales. Cette structure a notamment pour effet de restreindre l'espace de négociation des acteurs locaux quant aux choix de développement du territoire qui sont à faire.

Le processus de régulation ayant mené à l'approbation du projet diamantifère Ekati de BHP Diamonds Inc. dans les Territoires du Nord-Ouest au début des années 1990 témoigne de cette structure de pouvoir asymétrique qui semble prévaloir au Canada en ce qui a trait aux négociations propres à la structure de l'industrie minière. C'est dans le contexte donné par le *Règlement sur l'exploitation minière au Canada (Canada Mining Regulations)* que la négociation d'ERA avec quatre groupes autochtones de la région, de même que les consultations publiques tenues dans le cadre de l'évaluation environnementale, sont intervenues. Ce règlement garantissant aux détenteurs de claims le droit d'exploiter les ressources découvertes ne prévoyait aucun droit à l'information, à la consultation ou au consentement pour les Autochtones potentiellement affectés par un futur projet, *au stade de l'acquisition des titres miniers et de l'exploration*¹⁴. Le *free*

13. Des pouvoirs discrétionnaires bien précis de l'administration sont toutefois prévus à l'intérieur de certains autres régimes miniers régionaux au Canada, notamment au Québec, où le ministre des Ressources naturelles et de la Faune (anciennement de l'Énergie et des Ressources) peut par exemple procéder à l'expropriation d'un claim « à des fins d'utilité publique » (*Loi sur les mines*, L.R.Q. Ch. M-13.1, a.82). Cependant, à notre connaissance, aucun ministre n'a exercé ce droit au cours des dernières décennies.

14. La consultation n'intervient généralement que lorsqu'un promoteur procède à la demande de permis en vue de l'exploitation et que le projet est jugé susceptible de causer des impacts significatifs

mining sur lequel est également fondé ce règlement signifie en effet que les Autochtones ne peuvent interdire l'accès au territoire qu'ils occupent (indépendamment des droits qu'ils détiennent sur celui-ci et à moins seulement que ce territoire fasse l'objet d'une déclaration d'inaliénabilité dans le cadre de négociations sur la résolution des revendications territoriales)¹⁵ à aucun prospecteur minier (Gibson 2008, 57; Qureshy 2006, 1). Comme l'indiquaient des représentants de la nation Lutsel K'e dans le cadre de l'évaluation environnementale du projet Ekati, « [a]lthough prospecting and mineral exploration has been taking place on our lands at Lac de Gras for several years, we were never consulted or informed about these events on our land. It was not until BHP/Diamet had decided to build a mine that they began to consult with us » (cités par Bankes et Sharvit 1998, 9). Il s'agit pourtant là d'une étape du cycle minier qui apparaît cruciale pour le pouvoir structurel des peuples autochtones concernés, tel que le souligne Shauna Qureshy (2006, 2, 86): « *The earlier that a First Nation can establish protocols and negotiate agreements with exploration companies, the better chance it will have of asserting some control over the pace and scale of mineral development* ». À cet effet, Bankes et Sharvit (1998, 54-55) soulignent que les procédures novatrices d'évaluation environnementale prévues dans le cadre de la nouvelle LGRVM de 1998 n'ont modifié en rien les règles d'entrée des promoteurs miniers sur les terres concernées.

Par ailleurs, le caractère stratégique d'Ekati dans le contexte économique régional de l'époque (Couch 2002, 266; Prno 2007, 35) a également contribué à l'expression d'une forme d'asymétrie dans les négociations propres au processus de régulation du projet. Sur la base des avantages projetés, les agences gouvernementales territoriales et fédérales auraient en effet témoigné d'un intérêt clair à voir le projet se réaliser et se seraient donc montrées, dans l'ensemble, nettement favorables à son égard (O'Faircheallaigh 2006, 12). Ainsi, tout en profitant d'un nouvel espace pour exprimer leurs préoccupations en vertu des avancées réglementaires issues de l'émergence des valeurs socio-environnementales dans les régimes, notamment en ce qui a trait aux consultations publiques tenues dans le cadre de l'évaluation environnementale, les populations locales ont reconnu que les décisions fondamentales concernant l'approbation du projet semblaient avoir déjà été prises, avant même leur intervention dans les négo-

sur le milieu d'accueil et/ou fait l'objet de préoccupations particulières du public, tel que fut le cas pour Ekati (Gibson 2008, 127). Le droit au consentement, bien que désormais au cœur des débats nationaux et internationaux portant sur l'insertion des projets miniers dans leur environnement à travers le concept de *Free, Prior and Informed Consent*, n'apparaît pas dans la législation canadienne (Herz, La Vina et Sohn 2007, 7-11).

15. Il faut souligner que les territoires sur lesquels des concessions minières ont déjà été accordées sont automatiquement exclus des zones susceptibles d'être classées inaliénables. Selon Virginia Gibson (2008, 161-162), le *free mining* aurait ainsi pour effet de favoriser encore aujourd'hui le concept de *terra nullius*, lequel contraint les démarches de reconnaissance de l'inaliénabilité des terres, telles que mises de l'avant par les groupes autochtones dans les Territoires du Nord-Ouest : « *The onus is never on the federal government to prove that there are no relevant land claims in the region before mineral rights are granted. Rather, mineral rights are granted and sizeable chunks of land are then extracted from possible land withdrawals* ». En 1996, au moment fort des négociations menées par BHP Diamonds Inc. avec les communautés de la région du Lac de Gras, on estimait que seulement 1,5 à 2 % des terres étaient soustraites à l'exploration minière au Canada, dont 66 % pour cause de revendications territoriales autochtones résolues ou en voie de résolution (Ker 1996, 11).

ciations (Weitzner 2006, 11). L'exemple d'Ekati nous invite à observer à cet égard, dans la structure décisionnelle menant à l'approbation des projets, une certaine hiérarchisation des valeurs en présence.

Selon Susan Strange, les valeurs présentes au sein d'une structure peuvent effectivement entrer en conflit et faire l'objet d'une hiérarchisation témoignant d'un équilibre atteint dans les négociations à l'œuvre dans cette structure. Au début des années 1990, au moment de l'institutionnalisation des nouvelles valeurs dans les régimes miniers canadiens, on faisait face à deux tendances marquées : d'abord un contexte de récession économique, et ensuite un processus de transnationalisation croissante de l'industrie minière et d'émergence de nouveaux pays producteurs, notamment au Sud (Shinya 1998, 95). La première tendance contribuera à faire en sorte que les préoccupations de rationalisation et de performance économique prennent une importance notable dans les processus de révision réglementaire opérés à l'époque et pourtant menés en vue d'assurer une meilleure protection environnementale des territoires concernés par le déploiement de projets miniers (Revil 2001, 83-105; O'Reilly 1998). La seconde aura mis à jour les impératifs de compétitivité qui ont également eu une influence importante sur la portée de ces nouvelles réglementations et joué un rôle certain dans le type de « transformation » que pouvait connaître le régime. Récemment, Denis-Claude Lamontagne et Jean Brisset des Nos (2005, 14, 20) notaient par exemple que les changements apportés à la *Loi sur les mines* du Québec au cours des années 1990 ne modifiaient en rien la volonté de l'État de « favoriser au maximum l'exploitation minière [et visaient au contraire] à simplifier les règles d'acquisition [des droits miniers et] à accroître la sécurité du mode de tenure ».

Tel que l'indique Gérard Kebabdjian (1999, 137) sur la question de la transformation des régimes, « si les règles [ou règlements] et procédures [de prise de décision propres à un régime] se modifient alors que les principes et les normes restent les mêmes, on est fondé de soutenir que le régime n'a pas changé car sa philosophie fondamentale demeure identique ». Cette compréhension propre à la théorie des régimes internationaux nous permet ici de suggérer que, malgré une adaptation des règles et procédures aux préoccupations de l'heure – en ce qui concerne, notamment, les procédures d'évaluation environnementale menant à l'approbation des projets miniers –, les normes inscrites au cœur des régimes miniers canadiens, et surtout, les principes qui guident leur fonctionnement, à commencer par celui de *free mining*, n'ont pas été remis en cause à l'issue des réformes évoquées plus haut. Nous avons en effet observé, dans les rapports entre les acteurs évoluant au sein de la structure de l'industrie minière canadienne, une certaine persistance des relations de pouvoir à tendance asymétrique telles que léguées par le principe du *free mining*.

À travers les valeurs prioritaires qu'il porte et véhicule, ainsi que par les conditions structurelles favorables aux intérêts des entrepreneurs miniers qu'il met en place, et en privilégiant souvent l'activité minière devant des modes alternatifs d'utilisation du territoire, ce principe tend à exclure, comme on l'a vu, l'expression réelle de valeurs concurrentes. L'intégration dans les régimes des valeurs associées aux besoins de protection de l'environnement et d'intégration des positions autochtones pourrait par exemple impliquer de ne pas aller de l'avant avec un projet, une décision qui demeure

difficilement concevable d'un point de vue économique et inadmissible dans le cadre du *free mining*, en vertu duquel les gouvernements ne peuvent généralement refuser à un entrepreneur le droit d'exploiter la ressource découverte lorsque celui-ci satisfait aux principales exigences préalables. Barton (1998, 39) reconnaît à ce titre qu'en vertu du système d'aliénation des droits miniers basé sur ce principe, « *[t]here is no opportunity to impose conditions upon the grant of a mining claim to modify the manner in which it is used, for example to take special measures to protect wildlife values in the area where it is located, or to ensure compliance with land claims policies or training and employment policies* ».

L'État, tout en s'appuyant sur des cadres davantage ouverts aux nouvelles préoccupations, apparaîtrait donc aujourd'hui, jusqu'à un certain point, « absent » de certains aspects clés de la régulation de l'investissement. Il jouerait ainsi, comme le suggère Szablowski (2007, 28), un rôle clair en matière de régulation dans certains domaines, mais fonctionnerait à travers une délégation indirecte d'autorité dans d'autres domaines. Ceci a entre autres pour résultat que la responsabilité des questions sociales au niveau local, notamment la médiation des intérêts parfois contradictoires entre entreprises minières et peuples autochtones, est souvent relayée vers des formes privées de régulation essentiellement gérées par ces entreprises, lesquelles héritent une fois de plus d'un degré important d'autonomie, d'autorité pour définir les règles d'opérationnalisation de ces nouveaux modes de régulation et, par conséquent, de pouvoir structurel (Szablowski 2007, 291). Ainsi, les populations locales sont dans bien des cas contraintes d'évoluer dans les cadres définis selon les valeurs de l'industrie, à une échelle qui souvent les dépasse et dans un espace qui s'inscrit en dehors des institutions démocratiques conventionnelles.

L'expérience de plusieurs communautés autochtones ayant participé, au cours des années 1990, à la négociation de diverses ERA avec des entreprises minières tend en effet à révéler que ces ententes novatrices ont souvent été conclues selon les principes et dans les cadres prévus soit par les structures de gestion du territoire et des ressources en place dans les régions visées par le développement minier – lesquelles, comme on l'a vu, permettent difficilement l'expression anticipée des préoccupations locales –, soit par l'entreprise elle-même, avec peu de place pour une implication des populations dans la détermination des conditions de négociation.

Dans le cas précité du projet minier Ekati, il semble que les communautés autochtones impliquées dans la conclusion des quatre ERA soient entrées dans les négociations avec le promoteur en étant avant tout reconnues comme des partenaires d'affaires et non comme des titulaires de droits sur les territoires envisagés pour le projet. Ainsi, bien que l'affirmation des droits et des titres autochtones ait représenté l'une des motivations les plus importantes pour les populations locales pour conclure les ententes, et un objectif clair, voire le premier objectif des ERA à leurs yeux (Prno 2007, 124), la portée des négociations a généralement été limitée aux questions économiques. Cette tendance serait largement associée, selon Qureshy (2006, 46), aux valeurs mises de l'avant de manière générale par les entreprises minières, lesquelles, en vertu du pouvoir structurel que leur offre le cadre légal en place, définissent les règles selon lesquelles ces négociations vont être conduites : « *I infer from companies' desire to establish a "recipro-*

cal” *business-like relationship with First Nations and their desire for more predictability that they believe a relationship premised on negotiating economic objectives would bring greater certainty than a relationship premised on negotiating political rights to land* ».

Les valeurs d'autonomie et de contrôle du territoire que portent ces groupes auraient donc été plus ou moins prises en compte dans la structure décisionnelle entourant le projet Ekati. Les nations autochtones signataires auraient été intégrées dans les processus de régulation informels davantage comme des parties prenantes (*stakeholders*) plus ou moins actives, porteuses d'intérêts – avant tout économiques – à défendre, mais non comme des acteurs porteurs de droits (*rightholders*) (Szablowski 2007, 118). Ainsi, les préoccupations légitimes des Autochtones quant à la clarification préalable des titres et des droits sur le territoire visé pour le projet minier, grâce à une résolution rapide de leurs revendications territoriales, préoccupations d'ailleurs maintes fois formulées au cours du processus d'approbation du projet (Stiff 2001, 79), n'ont pas été prises en compte dans la décision du gouvernement d'accorder sans plus de délais son approbation conditionnelle au projet (Winds and Voices Environmental Services Inc. 2000, 34). Leur capacité à transformer, par leur participation à des négociations directes avec les entrepreneurs miniers, la structure de pouvoir asymétrique léguée par les régimes en place, ne semble donc pas dans ce cas renforcée par la création de ces nouveaux espaces informels de régulation.

Ultimement, cette analyse nous permet de suggérer qu'en dépit de l'intégration de nouvelles règles et procédures, les contraintes posées par la hiérarchisation des valeurs présentes dans les régimes ont clairement conditionné les négociations à l'œuvre dans la structure minière canadienne et alimenté des dynamiques de pouvoir qui risquent bien de ne pas être à l'avantage des populations locales concernées. Nous pouvons également remettre en question la possibilité que de telles dynamiques donnent lieu à une véritable convergence entre les intérêts des investisseurs miniers privés et ceux des régions et des communautés affectées (Hipwell *et al.* 2002, 10). De fait, les nouveaux espaces de négociation qui semblent s'ouvrir dans les années 1990, en tant que composantes clés du processus de régulation de l'investissement minier au Canada, apparaissent circonscrits dans une large mesure par ces dynamiques structurelles fondamentales.

Conclusion

Au terme de ces constats, nous reconnaissons que l'insertion des projets miniers dans leur milieu social et environnemental, de même que la question de leur contribution au développement des régions concernées, en sont venus à représenter, au Canada comme ailleurs, des défis politiques importants, tant en matière de régulation que de légitimation.

En dernière analyse, nous avons constaté que ces nouvelles formes de régulation qui émergent depuis les années 1990 dans le contexte d'un État « sélectivement absent » s'inscrivent dans le cadre d'une structure qui apparaît encore fortement marquée

par les valeurs liées au principe de *free mining*. L'adaptation des régimes hérités de ces tendances historiques à l'égard des préoccupations sociales et environnementales contemporaines a ainsi été opérée d'une manière qui permettait, tel que suggéré par Strange, une certaine hiérarchisation des valeurs en présence. Bien que l'apparition de telles préoccupations aurait pu laisser croire à de nouvelles évolutions en matière de redistribution de pouvoir structurel dans le domaine minier au Canada, cette hiérarchisation aura ultimement permis de créer les conditions faisant en sorte que certains acteurs demeurent toujours en mesure de prendre des positions dominantes dans les négociations propres à la structure de l'industrie minière, au détriment d'autres acteurs, à commencer par les populations autochtones affectées. Ces populations ne semblent pas pouvoir hériter, dans ce contexte, d'un pouvoir nouveau d'influencer les normes propres aux régimes miniers, ni avoir tiré des nouvelles évolutions des régimes un pouvoir qui puisse s'exercer ultérieurement dans la structure, de manière à promouvoir de nouvelles positions face au développement minier. Au contraire, il apparaît qu'en vertu de l'asymétrie de pouvoir qui semble encore marquer la structure de l'industrie minière canadienne, leurs revendications doivent s'exprimer à l'intérieur de processus qui conditionnent de manière claire les demandes qui sont recevables et celles qui ne le sont pas.

Références

- Adkin L.E., 1998, *Politics of sustainable development. Citizens, unions and the corporations*, Montréal, New York et Londres : Black Rose Books.
- Alford C.J., 1906, *Mining law of the British Empire*, Londres : Charles Griffin & Company.
- Assemblée nationale du Québec, 1991, *Les travaux parlementaires. 34^e législature, 1^{re} session, Index du Journal des débats*, cahier n° 115, 24 avril 1991.
- Bankes N., Sharvit C., 1998, « Free entry mineral regimes and aboriginal title », *Northern Perspectives*, vol. 25, n° 3, 12-15.
- Barsh R.L., 1994, « Indigenous peoples in the 1990s. From object to subject of international law? », *Harvard Human Rights Journal*, vol. 7, 33-86.
- Barton B.J., 1993, *Canadian Law of Mining*, Calgary : Canadian Institute of Resources Law.
- Barton B.J., 1998, *Reforming the Mining Law of the Northwest Territories*, document de travail n° 3, Yellowknife : Canadian Arctic Resources Committee, Northern Minerals Program.
- Boisselle A., 2006, « De la consultation des peuples autochtones : Structure institutionnelle d'un dialogue appelé à renouveler la notion des droits ancestraux », mémoire de maîtrise en droit, Université de Montréal.
- Campbell K., 2004, *Undermining our future : How mining's privileged access to land harms people and the environment. A discussion paper on the need to reform mineral tenure law in Canada*, Vancouver : West Coast Environmental Law.
- Chavagneux C., 1998, « Peut-on maîtriser la mondialisation? Une introduction aux approches d'économie politique internationale », *Économies et Sociétés - Relations économiques internationales*, vol. 34, 25-68.
- Commission de coopération environnementale (CEE), 1999, *Le droit et les politiques de l'environnement en Amérique du Nord*, Cowansville : Les Éditions Yvon Blais.
- Couch W.J., 2002, « Strategic resolution of policy, environmental and socio-economic impacts in Canadian Arctic diamond mining : BHP's NWT diamond project », *Impact Assessment and Project Appraisal*, vol. 20, n° 4, 265-278.

- Galbraith L., 2005, « Understanding the need for *supraregulatory* agreements in environmental assessment: An evaluation from the Northwest Territories, Canada », thèse de maîtrise, département de géographie, Université Simon Fraser.
- Gibson V.V., 2008, « Negotiated spaces: work, home and the relationships in the Dene diamond economy », thèse de doctorat en philosophie, Université de la Colombie-Britannique.
- Gouvernement du Canada, ministère des Affaires indiennes et du Nord canadien, 2001, *Loi sur la gestion des ressources de la vallée du Mackenzie. Guide du citoyen*, Ottawa : ministère des Affaires indiennes et du Nord canadien.
- Halley P., 1998, « Le droit de l'environnement et la déréglementation au Québec », in Lepage L., Gauthier M. (dir.), *Déréglementation et nouvelle gestion de l'environnement*, 19-49, Montréal : Institut des sciences de l'environnement, Université du Québec à Montréal.
- Herz S., La Vina A., Sohn J., 2007, *Development without conflict. The business case for community consent*, Washington D.C. : World Resources Institute.
- Hilson G., 2000, « Sustainable development policies in Canada's mining sector: An overview of government and industry efforts », *Environmental Science & Policy*, vol. 3, 201-211.
- Hipwell W., Mamen K., Weitzner V., Whiteman G., 2002, *Aboriginal Peoples and mining in Canada : Consultation, participation and prospects for change, working discussion paper*, Ottawa : The North-South Institute.
- Hitch M.W., 2006, « Impact and benefit agreements and the political ecology of mineral development in Nunavut », thèse de doctorat, Université de Waterloo.
- Initiative minière de Whitehorse (IMW), 1994, *Rapport final du Groupe d'étude sur l'accès au territoire*, L'Initiative minière de Whitehorse.
- Kebabdjian G., 1999, *Les théories de l'économie politique internationale*, Paris : Seuil.
- Keohane R.O., Nye J.S., 1997, *Power and interdependence*, Toronto : Brown.
- Ker A., 1996, *Shifting ground: Aboriginal-mining industry relations in Canada, summary report*, Compass Consulting.
- Krasner S.D. (dir.), 1983, *International regimes*, Ithaca : Cornell University Press.
- Lacasse J.-P., 1976, *Le claim en droit québécois*, Ottawa : Université d'Ottawa.
- Lamontagne D.-C., Brisset des Nos J., 2005, *Le droit minier*, Montréal : Éditions Thémis.
- Lapalme L.-A., 2003, *La dimension sociale du développement durable dans l'industrie minière. Document d'information*, Ottawa : Ressources naturelles Canada, secteur des minéraux et des métaux.
- Lapointe U., 2008, *De la ruée vers l'or californienne au Québec minier contemporain : Le système du free mining et le pouvoir des communautés locales*, Montréal : Groupe de recherche sur les activités minières en Afrique, chaire C.-A. Poissant sur la gouvernance et l'aide au développement, Université du Québec à Montréal, http://www.icim.uqam.ca/IMG/pdf/Note_de_recherche_-_ULapointe_FreeMining_dec_2008_.pdf.
- Lepage L., 1998, « La déréglementation du secteur de l'environnement au Québec : changement ou continuité? », in Lepage L., Gauthier M. (dir.), *Déréglementation et nouvelle gestion de l'environnement*, 51-54, Montréal : Institut des sciences de l'environnement, Université du Québec à Montréal.
- Martimort-Asso B., 2002, « Régime international », in Macleod A., Dufault E., Guillaume Dufour F. (dir.), *Relations internationales : Théories et concepts*, 154-156, Montréal : Athéna Éditions.
- McAllister M.L., Alexander C., 1997, *A stake in the future : Redefining the Canadian mineral industry*, Vancouver : University of British Columbia Press.
- O'Doherty C., 1999, « Femmes autochtones et déterminants sociaux de la santé : le rôle du droit », mémoire de maîtrise en droit social et du travail, Université du Québec à Montréal.
- O'Faircheallaigh C., 2006, *Environmental agreements in Canada : Aboriginal participation, EIA follow-up, and environmental management of major projects*, Calgary : Canadian Institute of Resources Law.
- O'Reilly K., 1998, « Staking our claim : Reform of northern mining law », *Northern Perspectives*, vol. 25, n° 3, <http://www.carc.org/pubs/v25n03/1.htm>.
- Paquette P., 1982, « L'extraction de matières premières et la politique minière de l'État : une analyse de leur évolution et de leur contribution au développement économique du Québec, 1867-1975 », thèse de doctorat en philosophie, département des Sciences économiques, Université McGill.

- Paquette P., 1984, « Industries et politiques minières au Québec, une analyse économique 1896-1975 », *Revue d'histoire de l'Amérique française*, vol. 37, n° 4, 573-602.
- Paquette P., 2000, *Les mines du Québec. 1867-1975*, Outremont : Les Éditions Carte blanche.
- Prno J., 2007, « Assessing the effectiveness of impact and benefit agreements from the perspective of their aboriginal signatories », thèse de maîtrise, Université Guelph.
- Public Policy Forum, 2005, *Sharing in the benefits of resource developments : A study of First Nations-industry impact benefits agreements. Roundtable discussion paper*, Ottawa : Public Policy Forum.
- Qureshy S., 2006, *Landlords and political traps : How mineral exploration companies seek access to First Nation territory*, Ottawa : The Norman Paterson School of International Affairs, Université Carleton.
- Reed M.G., 1990, *L'évaluation environnementale et les revendications des peuples autochtones : mise en œuvre de la convention définitive des Inuvialuit*, Hull : Conseil canadien de la recherche sur l'évaluation environnementale.
- Ressources naturelles Canada, 1996, *La politique des minéraux et des métaux du gouvernement du Canada : Des partenariats pour un développement durable*, Ottawa : Ressources naturelles Canada, secteur des minéraux et métaux.
- Ressources naturelles Canada, 1998, *Rapport global sur l'examen fédéral-provincial-territorial de la réglementation environnementale fédérale touchant le secteur minier au Canada*, Ottawa : Ressources naturelles Canada.
- Revil É., 2001, « L'OMC et le régime commercial multilatéral : analyse en trois temps de leurs répercussions sur la protection de l'environnement », mémoire de maîtrise en science politique, Université du Québec à Montréal.
- Shinya W.M., 1998, « Canada's new minerals and metals policy. Advancing the concept of sustainable development in the minerals and metals industry », *Resources Policy*, vol. 24, n° 2, 95-104.
- Simard L., Lepage L., 2004, « Gestion publique de l'environnement au Québec : quel bilan à l'heure de la concertation? », in Bernier R. (dir.), *L'État québécois au XXI^e siècle*, 351-380, Québec : Presses de l'Université du Québec.
- Sosa I., Keenan K., 2001, *Impact benefit agreements between aboriginal communities and mining companies: Their use in Canada*, Environmental Mining Council of British Columbia, Canadian Environmental Law Association, CooperAcción : Acción Solidaria para el Desarrollo.
- Stiff K., 2001, « Cumulative effects assessment and sustainability : Diamond mining in the Slave Geological province », thèse de maîtrise en études environnementales, Université de Waterloo.
- Strange S., 1994, *States and markets* (2^e éd.), Londres et New York : Continuum.
- Strange S., 1996, *The retreat of the State: the diffusion of power in the world economy*, Cambridge : Cambridge University Press.
- Strange S., 1998, « International political economy: beyond economics and international relations », *Économies et Sociétés - Relations économiques internationales*, vol. 34, 3-24.
- Szablowski D., 2007, *Transnational law and local struggles. Mining, communities and the World Bank*, Oxford et Portland : Hart Publishing.
- Taggart M., 1998, « The free entry mineral allocation system in Canada's North : Economics and alternatives », document de travail n° 6, Yellowknife : Canadian Arctic Resources Committee, Northern Minerals Program.
- Vallières M., 1989, *Des mines et des hommes. Histoire de l'industrie minière québécoise*, Québec : Les Publications du Québec.
- Weitzner V., 2006, « Dealing full force ». Lutsel K'e Dene First Nation's experience negotiating with mining companies, Ottawa : North-South Institute.
- Winds and Voices Environmental Services Inc., 2000, *Determining significance of environmental effects : An aboriginal perspective*, Hull : Canadian Environmental Assessment Agency, Research and Development Monograph Series.
- Wolfe W.J., 2001, *Socio-economic impact agreements in Canada 1990-2001. Aboriginal expectations meet conventional legal, financial and business practices*, Toronto : Prospectors and Developers Association of Canada.



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Aboriginal–Mining Company Contractual Agreements in Australia and Canada: Implications for Political Autonomy and Community Development

Ciaran O’Faircheallaigh

ABSTRACT The negotiation of contractual agreements between Aboriginal communities and mining companies is now standard practice in Australia and Canada and increasingly common in developing countries. The widespread use of such agreements indicates that they offer significant economic and social opportunities. However, such agreements also raise major issues for Aboriginal relations with other political actors and institutions, including government, environmental groups, and the judicial system. The paper considers these implications and identifies strategies to address them and so maximize the contribution of contractual agreements to community development.

RÉSUMÉ la négociation d’accords contractuels entre les communautés autochtones et les compagnies minières est devenue une pratique courante en Australie et au Canada, et elle est de plus en plus répandue dans les pays en développement. L’utilisation généralisée de telles ententes indique qu’elles permettent des percées économiques et sociales considérables. Toutefois, de telles ententes soulèvent également des questions majeures en ce qui concerne les relations des Autochtones avec les autres acteurs et institutions politiques, incluant le gouvernement, les groupes environnementaux et le système judiciaire. Ce texte examine ces répercussions et formule des stratégies visant à les atténuer et ainsi à optimiser la contribution des accords contractuels au développement des communautés.

Introduction

Legally binding agreements between mining companies and Aboriginal groups are negotiated in relation to nearly all new major mining projects in Canada and Australia and, increasingly, in the United States, New Zealand, and developing countries (Adler, Brewer, and McGee 2007; Banks and Ballard 1997, Appendix 1; ICMM 1999; IIED 2002; Langton et al. 2004; Public Policy Forum 2005). Negotiated agreements have obvious and potentially substantial benefits for Aboriginal communities that are often seriously disadvantaged in access to economic opportunities, social services, and infrastructure,

and face serious social problems such as family violence, child abuse, and youth suicide (Findlay and Wuttunee 2007; Mihesuah 2003, xi, xiv; United Nations Permanent Forum on Indigenous Issues 2004). In particular, agreements can allow Aboriginal people to share in the wealth generated by mining on Aboriginal lands, and give them a say in the manner in which mines are developed and operated (Environmental Law Institute 2004, 11, 13–14; ICMM 1999; Miranda, Chambers, and Coumans 2005, 69–70; O'Faircheallaigh 2006b). But agreements with mining companies can result in significant changes to the relationships of Aboriginal communities with the state, including its legal, judicial, and regulatory frameworks; with other political actors; and with civil society. These changes can have significant implications for other strategies available to Aboriginal peoples in seeking to maximize their control over mining on their ancestral lands and mining's contribution to community development.

This paper begins by illustrating, using examples from Australia and Canada, how contractual agreements with mining companies can contribute to Aboriginal community development. It then explores the wider legal, political, and economic ramifications of agreement making for Aboriginal groups. It identifies strategies that Aboriginal people can utilize to ensure that they recognize and address the broader consequences associated with agreement making, while at the same time maximizing the specific benefits that agreements can bring. Critical in both regards is the need to address aspects of contracts that rarely attract attention when Aboriginal communities and their advisers discuss proposed agreements, including confidentiality, Aboriginal support for projects, and Aboriginal access to judicial and regulatory systems. Also vital is the need to break down the barriers that often exist between processes for negotiating project agreements and broader processes for community planning and decision making.

The article draws on an extensive review of scores of contractual agreements in Australia and Canada, undertaken as part of a large-scale study of commercial negotiations between Aboriginal communities and mining companies in both countries conducted over the period 2001–2008 (for details, see O'Faircheallaigh 2004b, 2006a, 2006b, 2008a). Many of these agreements are confidential, and access to them was achieved either as a result of the author's role as a negotiator or through research agreements negotiated with Aboriginal organizations. The confidentiality of agreements has important implications for Aboriginal groups, discussed later in the paper. It means that, while specific agreements used as illustration are identified wherever possible, the need to respect confidentiality has ruled this out in some cases.

Benefits from Agreement Making

Binding agreements between mining companies and Aboriginal communities offer opportunities to share in the economic benefits generated by resource extraction. For instance, they can offer Aboriginal groups access to an income stream in the form of royalty or other payments. This can assist in meeting a community's short-term and often urgent need to fund services such as housing, health and education, and to augment Aboriginal incomes that are usually well below the national average. The Aborigi-

nal traditional owners of the Argyle diamond mine in Western Australia, for instance, have utilized revenues from an agreement signed in 2005 with Argyle Diamonds Ltd. to help establish and expand Aboriginal businesses; to enhance services in areas including health, secondary and university education, adult literacy, and sport and other initiatives for youth; and to support cultural initiatives such as the recording of oral history (Gelganyem and Kilkayi Trusts 2008).

There is a risk that government will cut its expenditure on communities in receipt of royalties under agreements, negating some of this positive impact, but on the other hand, if used judiciously, mining revenues can be used to leverage additional public expenditure. For example the Gagudju traditional owners of the Ranger uranium mine in Australia's Northern Territory used their royalties to start new education and health initiatives that government had refused to fund but, once these were operational, negotiated for government to take over their funding (O'Faircheallaigh 2002, chap. 9). The Argyle traditional owners fund most service delivery initiatives from a "Partnership Fund," which receives a proportion of royalty payments, but which can fund initiatives only where a contribution of at least an equal amount is available from government or the private sector. Thus, for instance, in 2008 a business development initiative involved a commitment of AUS\$1.50 by the Australian and Western Australian governments for each dollar committed by the traditional owners, while more than \$5 was contributed by government and private groups for each \$1 committed by traditional owners for a development program for teenage girls (Gelganyem Trust 2009).

At a broader level, access to mining income can provide Aboriginal groups a degree of autonomy from the state, allowing them to establish their own priorities rather than having to accept the state's priorities as a condition for access to public funding; and adding to their negotiating power in dealing with the state in relation, for instance, to service delivery, land title and management, and governance. For example, the Gagudju Association used part of its royalty income to employ an environmental officer, who helped its members have substantial input into federal decision making in management of Kakadu National Park, which occupies a large part of their traditional lands. Access to this expertise, which could not have been obtained through standard government funding programs, helped Gagudju challenge government decisions and, for example, retain the ability to hunt game that were important in their diet (O'Faircheallaigh 2002, 148-49).

In the longer term, income streams from mining create the potential for Aboriginal groups to establish capital funds that will generate income into the future and indeed long after mining has ceased. For instance, the Aboriginal signatories of a 2001 agreement in Cape York, in the far north of the state of Queensland, decided to invest in excess of 50% of their revenues in a long-term investment fund. Income is reinvested for 20 years, after which the capital base is preserved and interest is available to fund current spending. The capital fund already sits at some US\$40 million and by 2021 will have the capacity to generate ongoing and substantial income. Inuit communities that are signatories to an Impact and Benefit Agreement (IBA) for the Voisey's Bay nickel project in Labrador have similarly allocated a share of revenues to a sustainability trust, designed to ensure an ongoing source of income after the end of project life. Fixed

guaranteed annual payments under the IBA ensure that some money will always flow to the trust throughout project life, while additional payments occur when the nickel price is above a certain level. The rapid rise in prices in the years after the mine commenced production in 2005 meant that revenue flowing into the trusts was significantly higher than originally anticipated.

Agreements can also offer preferential access to employment and training and business-development opportunities for members of Aboriginal groups or for Aboriginal corporations. Income levels tend to be considerably lower, and unemployment levels considerably higher, in Aboriginal than in mainstream communities, and access to such opportunities can be critical in helping to overcome Aboriginal economic disadvantage. To take one example, while Aboriginal people accounted for less than 5% of the workforce of Argyle Diamonds Ltd. when negotiations for an agreement with Aboriginal traditional owners commenced in 2001, today they account for over 20% of the workforce, generating employment for some 100 additional Aboriginal employees. At average annual 2007 mining industry earnings of US\$70,000, this represents additional income of some US\$7 million annually for Aboriginal workers, families, and communities. Similarly, agreements in relation to the Voisey's Bay project, where Aboriginal people currently account for 54% of the total workforce, and Northwest Territory diamond mines operated by BHPBilliton and Rio Tinto have generated substantial employment opportunities. These can benefit not only the individuals concerned and their families, as income from mine employment helps to support traditional land-based activities and stimulates business activity in Aboriginal communities where mineworkers live (Barker 2008, 149, 151).

The skills and experience gained by Aboriginal workers in mining projects can also enhance their employment prospects more generally, and at the same time can add to the supply of skilled labour available to their home communities. For instance, a survey of former Aboriginal employees and trainees of Argyle Diamonds Ltd. found that the vast majority (91%) were working at the time of the survey—a strongly positive outcome, given the high levels of Aboriginal unemployment in the Kimberley region where the mine is located (Taylor 2006). The survey also found that Argyle's training programs had helped Aboriginal people find new jobs both in other mining projects and in other economic sectors. For instance, while 29% of trainees and apprentices were not in the workforce before being recruited by Argyle, only 14% of those who had left the company were unemployed at the time of the survey (CSR 2007, 14–17; see also Barker 2008, 152–56; Barker and Brereton 2005).

Economic opportunities are also created by agreement provisions that give Aboriginal signatory communities preferential access to contracts to provide goods and services to mining projects. This has been a major factor in Canada, where Aboriginal groups have in many cases been very successful in winning major contracts, initially in joint ventures with non-Aboriginal businesses and, as their business skills develop, as "sole operators." For instance, during the first six years after its construction started in 2000, the Diavik diamond mine in the Northwest Territories spent in excess of C\$1 billion with Aboriginal businesses. At Voisey's Bay, contracts won by Inuu and Inuit businesses include provision of site services, catering, housekeeping, security,

explosives, and air transport. A substantial number of Aboriginal businesses have been established in Australia's Pilbara iron ore region, with one, Ngarda Construction and Civil Mining (Ngarda), recently winning a five-year mining contract with BHP Billiton estimated to be worth more than \$300 million. The success of Aboriginal businesses is also important in generating jobs for Aboriginal people, as they tend to have higher rates of Aboriginal employment than either mining companies or non-Aboriginal contractors. For example, Ngarda's Aboriginal employment levels have reportedly been above 80% (Barker 2008, 154-55).

Contractual agreements can contribute to cultural and social as well as economic development by providing opportunities for Aboriginal landowners and communities to be involved proactively, and continuously, in managing the cultural, social, and environmental impacts of resource extraction. These opportunities can include a key and possibly leading role in defining, identifying, and protecting Aboriginal cultural heritage; participation in joint company-Aboriginal environmental management regimes; and involvement in decisions regarding project expansions and project closure. For instance, under the Cape York agreement mentioned earlier, Aboriginal traditional owners are funded to operate a cultural heritage-protection system to avoid damage to sites of significance; receive annual payments to help support a ranger program designed to control impacts associated with the activities of mining town residents and tourists; have an opportunity to comment on all applications for environmental permits; and must be consulted by the mine operator regarding implementation of its environmental management system and any major project changes that may have a significant impact on the environment.

In Canada, contractually binding environmental agreements negotiated between Aboriginal groups and provincial/territorial and federal governments, and in some cases project operators, allow for Aboriginal involvement in consideration of environmental permits; in design and conduct of environmental monitoring systems; in development of remediation measures; and in mine closure planning. One example is the creation of the Environmental Management Advisory Board (EMAB), established pursuant to an environmental agreement between Diavik Diamond Mines Incorporated (DDMI), a subsidiary of Rio Tinto and operator of the Diavik diamond mine, five Aboriginal groups, and the governments of Canada and of the Northwest Territories. Among the agreement's purposes are to ensure that environmental mitigation measures are appropriately implemented; to undertake additional monitoring to verify the accuracy of environmental assessment and the effectiveness of mitigation measures; and to facilitate effective participation of the Aboriginal peoples in the achievement of these purposes. The Board consists of one representative nominated individually by each of the five Aboriginal groups, the governments of Canada and the Northwest Territories, and DDMI.

Since its establishment in 2002 the Board has, for instance, been involved in improving DDMI's wildlife monitoring and aquatic-effects monitoring programs, its contribution to cumulative-effects monitoring, and the participation of Aboriginal elders in environmental monitoring and remediation. The Board has also pressed government regulators to maintain adequate inspection of Diavik's operations and to provide suf-

ficient opportunity for the Aboriginal communities to comment on licence applications. Thus the Board plays an important role in seeking to ensure that the negative environmental impacts are minimized and that Aboriginal people will have a real say in environmental management (EMAB 2004, 2007).

Negotiated agreements can also provide for direct, "hands on" Aboriginal participation in site-based environmental management and planning. The IBAs for Voisey's Bay, for example, provide for the creation of monitoring partnerships between the mine's operator, the Voisey's Bay Nickel Company (VBNC), and the Inuit and Innu. These require that the Aboriginal groups be involved in all phases of the development of a comprehensive monitoring program for the project; the integration of traditional knowledge into the monitoring program; Inuit/Innu participation in all biophysical monitoring activities of interest to them; and an annual review of the company's management plans for the monitoring program and its emergency response and contingency plans. The company undertakes to fund full-time Aboriginal environmental monitors for six years. One monitor from each group is present on site at all times. Upon permanent closure of the project, VBNC undertakes to prepare a reclamation plan in consultation with the Innu/Inuit (O'Faircheallaigh 2006a, 56–57).

In the absence of specific contractual arrangements, opportunities for pursuing ongoing Aboriginal involvement in managing environmental and cultural impacts are likely to be limited. Statutory environmental impact assessment processes do not generally provide such opportunities, because they allow indigenous input only into one-off decisions regarding project approvals and conditions, rather than into the ongoing management of environmental and cultural impacts (Galbraith, Bradshaw, and Ruthford 2007; Joyce and MacFarlane 2001, 3, 12; O'Faircheallaigh 2006a, 1–3).

Wider Implications of Agreement Making

Thus contractual agreements offer clear and substantial benefits for participating indigenous communities or groups. They also have implications beyond the contractual relationship they create between a developer and a community that must be addressed if their contribution to community development is to be maximized. These implications are generally ignored in what is now a large literature on negotiated agreements. In a rare and recent exception, O'Faircheallaigh (2008b) sought to identify some of the wider implications of agreement making by comparing a "counterfactual"—a situation in which there is no contractual arrangements between affected Aboriginal groups and mining companies wishing to develop resources on Aboriginal land—with a situation in which there is an agreement. This approach highlighted how negotiation of project-based agreements between Aboriginal groups and mining companies (and in certain cases government also) affects the legal and political status of Aboriginal groups and the nature of their relationship with other elements of the political system (O'Faircheallaigh 2008b, 72–76). These implications can be highlighted further by considering the effects of contractual agreements in four specific areas: the access of Aboriginal people to the judicial and regulatory systems, their capacity to pursue wider political strategies in

relation to mineral development, their interaction with the state, and the nature of their overall relationship with mining companies.

Access to the Judicial and Regulatory Systems

In the absence of an agreement, Aboriginal access to components of the judicial and regulatory system that are relevant to project approval and management remain unconstrained by any contractual obligations to a mining company. In this case, Aboriginal people can exercise rights available to citizens generally or rights arising from any specific property or other Aboriginal interests they hold. Those rights may allow them, for instance, to challenge the level of environmental assessment proposed for a project, to take legal action to prevent damage to Aboriginal cultural heritage or the environment, or to sue for compensation if such damage occurs. Using legal and procedural rights and political strategies, Aboriginal groups may be able to influence the terms of contractual and regulatory instruments negotiated between the state and the developer, such as by helping to shape the conditions attached to environmental approvals and mining leases.

In contrast, situations where a negotiated agreement is in place may create a fundamental shift in the ability of Aboriginal groups to exercise legal rights they would otherwise have available and more generally to access legal and regulatory regimes relevant to resource extraction. For instance, at least three features of negotiated agreements can constrain Aboriginal access to the judicial and regulatory systems. First, recent agreements in Australia and Canada almost always require Aboriginal support for the project concerned, and/or for the grant of specific titles or approvals required for the project to proceed. For example, Kennett (1999, 45-46) notes that many agreements in Canada contain specific provisions that commit the Aboriginal party either to support the project involved or to refrain from opposing it in environmental assessment or regulatory proceedings. A number of agreements commit the Aboriginal parties not to oppose projects in the event that they become subject to an environmental assessment as a result of actions taken by non-signatories to the agreements.

It follows that Aboriginal groups may be contractually constrained in their ability, for instance, to object to government approval of a project either in principle or in its current form. Thus the operator of one project in Canada utilized the existence of such clauses to argue that an Aboriginal signatory to the agreement was prohibited from objecting to the grant of a water licence required to allow expansion of the project.

Some agreements contain provisions preventing Aboriginal groups from utilizing specific legal or regulatory avenues that would otherwise be available to them. For example, under one recent Australian agreement the Aboriginal parties undertake not to "lodge any objections, claims or appeals to any Government authority ... under any [state] or Commonwealth legislation, including any Environmental Legislation." Third, agreements may contain dispute-resolution processes that preclude the parties from initiating legal proceedings to resolve disputes or require all other potential avenues for resolving disputes to be exhausted before they do so.

Freedom to Pursue Political Strategies

Demographically, indigenous peoples generally constitute minorities, and often small minorities, with limited capacity to exert electoral power and political influence in their own right. Thus, their capacity to form broader political alliances is critical in allowing them to achieve political leverage (Blaser, Feit, and McRae 2004; Evans, Goodman, and Lansbury 2002). Against this background, any limitations on their political freedom created by contractual agreements are particularly serious, and their ramifications deserve careful consideration.

In the absence of an agreement, Aboriginal people are unconstrained in pursuing political strategies designed to halt project development or change the nature or timing of development that does occur. They can, for instance, seek public support through the media, build political alliances with NGOs such as environmental and church groups, lobby government, and mobilize pressure on corporations and their shareholders. For example, Innu and Inuit landowners in Labrador used a number of these strategies to delay the development of the proposed Voisey's Bay nickel project in the late 1990s and prior to the conclusion of IBAs in 2002 (Gibson 2006). The Mirrar—Aboriginal traditional owners of the land on which the proposed Jabiluka uranium project in Australia's Northern Territory is located—used a combination of all of them to oppose development of the deposit. They were ultimately successful, with Rio Tinto agreeing to refill a portal that had been constructed to start mine development and committing not to re-commence development without the consent of the Mirrar (Katona 2002).

In contrast, the common requirement for Aboriginal groups to support a project immediately limits their capacity to manoeuvre politically, particularly in relation to environmental and other groups that might otherwise be valuable political allies. Furthermore, agreements very commonly (indeed almost universally) include confidentiality provisions that prevent Aboriginal groups from making public any information about negotiations and agreements. Confidentiality clauses may be included not only in final agreements but also in negotiation protocols under which companies provide funds to support negotiation processes, and they may continue to be legally binding even where the parties agree to terminate a negotiation protocol or an agreement as a whole.

Confidentiality provisions can severely constrain the capacity of Aboriginal groups to communicate with the media and with other political groups. The requirement to support a project combined with confidentiality provisions can also significantly constrain an Aboriginal group's ability to lobby or otherwise place political pressure on a government in relation to a project. In dealing with government, most Aboriginal groups have two powerful weapons, often used in tandem. The first involves any capacity they have to delay or halt a project, either by accessing the legal and regulatory systems and, for example, obtaining injunctions on project construction or delays in project approvals; or through direct action aimed at halting or delaying development on the ground. The second involves the ability to embarrass government politically by using the media to appeal to its constituents (Gibson 2006; Trebeck 2008). If contrac-

tual agreements preclude or inhibit the use of both weapons, this may substantially reduce Aboriginal capacity to influence government decision makers.

Relations with the State

This last point raises the broader issue of the relationship between Aboriginal groups and the state. The legal and constitutional basis for this relationship varies considerably between settler states such as Australia, Canada, New Zealand, and the United States, and in some cases also varies within individual countries, depending on the legal status of particular Aboriginal groups. However, it is clear that in general negotiation of agreements between Aboriginal groups and mining companies have the potential to influence Aboriginal relations with the state in a number of ways. First, as mentioned earlier, states may seek to reduce their budgetary allocations to Aboriginal communities on the basis that the latter now obtain revenues from commercial sources as a result of their agreements with mining companies. This has certainly occurred in Australia (O’Faircheallaigh 2004a), and the prevalence of confidentiality provisions in agreements may reflect, in part, a desire by Aboriginal groups to withhold information on their revenues from government and so reduce the likelihood of a cut in government funding (Public Policy Forum 2005, 9).

Another area in which significant impacts can occur involves attempts by Aboriginal peoples to win legal recognition from the state of their inherent rights to their ancestral states. Both Australia and Canada, for instance, have been and continue to be extensively involved in negotiations and/or litigation with Aboriginal groups regarding either recognition of their “native title” for the first time through negotiation of comprehensive land claim settlements (Canada) or determinations of native title (Australia); or regarding implementation of treaty obligations that the state has historically ignored. The discovery of a major mineral deposit on an Aboriginal group’s land often focuses state attention on land tenure issues, in many cases in response to corporate pressure on state agencies and on political leaders to have these issues resolved as a precondition for undertaking major capital investments. The implications of a stronger state focus on resolving land tenure issues as a result of major mineral discoveries are unclear and require further research (see O’Faircheallaigh 2008b for a preliminary discussion).

Relations with Developers

Agreement provisions regarding Aboriginal support and confidentiality can also result in fundamental changes in the way in which Aboriginal groups relate to mining companies. As Trebeck (2008) highlights, the willingness of corporations to undertake corporate social responsibility (CSR) initiatives in relation to any social group depends, in large measure, on the capacity of that group to inflict damage on the corporation by threatening its social licence to operate. Groups must apply “an ever-present threat of the loss of social licence to operate to ensure that companies recognise and address [their] demands ... civil society organisations need to maintain surveillance and pressure to ensure it is always in the corporate interest to respond to community demands” (Trebeck 2008, 20). She notes in particular that the capacity of groups to threaten the

reputation of corporations is a "crucial lever." Where agreements bind Aboriginal groups to support corporate activities and silence them through confidentiality provisions, they have substantially surrendered their ability to threaten a company's licence to operate.

It may of course be the case that this threat is no longer needed, because agreements contain legally enforceable provisions that ensure the ongoing performance by a company of certain CSR obligations. Two points remain. First, the nature of the relationship between Aboriginal groups and companies has profoundly changed. Second, the question of whether obligations taken on by corporations through agreements with Aboriginal groups are both substantial and enforceable and so represent a "fair trade," for the forbearance promised by those groups cannot be resolved *a priori*, but only through examination of the provisions of individual agreements. Another important issue here involves the length of time over which agreements apply, which is typically for the whole of project life and for major projects is often measured in decades rather than years. If Aboriginal groups discover after the event that the trade-off they have made is not to their advantage, it may be a very long time before they have an opportunity to change the situation.

Strategies for Dealing with the Wider Implications of Mining Agreements

A number of strategies are available to Aboriginal groups seeking to deal with these wider and potentially negative effects of agreements with mining companies, while at the same time gaining the benefits that such agreements have to offer.

Map Wider Relationships

One obvious but important approach is for Aboriginal groups to undertake, at an early stage in project development, a "mapping" exercise to identify the ways in which a contractual relationship with a mining company may affect their engagement with the political and judicial/regulatory system as a whole, including their existing interaction with government in areas such as service provision and land claim negotiations (see O'Faircheallaigh 2008b, figure 1, p. 70, and figure 2, p. 73, for a graphic representation of such an exercise). In my experience of negotiations in Australia and Canada, this is in fact rarely done. Such an exercise can both reveal threats (such as a group's inability to maintain valued political alliances, a decline in government service provision), opportunities (for example, an increased capacity to engage with government decision makers), and challenges (such as the need to develop a capacity to enforce contractual obligations and ensure effective implementation). In the absence of such an exercise and of preparatory work following from it, Aboriginal groups may be poorly prepared to deal with threats, and poorly placed to grasp opportunities and meet challenges.

Focus Attention on Key Agreement Provisions

As is obvious from the earlier discussion, agreement provisions, such as in confidentiality and project support, can be critical in deciding the broader implications of agreements for Aboriginal groups. Yet these provisions, in my experience, rarely receive attention during preparations for negotiations. Community members, community leaders, and negotiators tend to focus their attention almost exclusively on what are regarded as “substantive” issues, on the scale and nature of the project, the economic benefits it is expected to generate, and the environmental and cultural risks it is expected to pose. Over the 15 years I have worked for Aboriginal communities as a negotiator, I have been involved in scores of discussions about employment and training, and financial and environmental management provisions, but do not recall one occasion on which confidentiality provisions were discussed as a strategic issue rather than a procedural one. The usual approach is to use standard confidentiality clauses, often drawn from other agreements, and as long as they apply equally to both parties and exclude material already in the public domain, not a great deal of attention is paid to them.

For reasons discussed above, confidentiality provisions deserve much more careful attention. One critical issue involves the point in negotiations at which they take effect, and how long they stay in place. It may be inadvisable, for instance, for Aboriginal groups to accept confidentiality provisions in a negotiation protocol, as this may prevent mobilization of the media and of political allies during negotiations. Similarly, it may be inadvisable to accept that they stay in place after an agreement is terminated, because this may prevent Aboriginal groups from getting out their side of the story on reasons for termination, or reduce their capacity to take legal action to address issues arising from termination.

Another key issue involves the question of who is constrained from receiving information classified as confidential. Some negotiation protocols and IBAs in Canada place restrictions on provision of information to community members (Hitch 2006). This is a very onerous and possibly dangerous constraint, for two reasons. First, it is likely to cause suspicion, friction, and disunity in communities, which themselves constitute negative social impacts from development, are likely to undermine the community’s negotiation effort, and may in the longer term undermine its social capital and its capacity to foster community development. Recent events in the Fort Good Hope community’s consideration of a proposed agreement in relation to the Mackenzie Valley natural gas pipeline in Canada’s Northwest Territories highlight these points. The community’s chief, Frank T’Seleie, reportedly refused to accept the results of the vote because fewer than 25% of band members voted—an outcome the chief attributed largely to the fact that community members were not allowed to see details of the proposed agreement. As T’Seleie commented, “Some of us were sworn to secrecy or confidentiality, and that makes it very, very difficult to talk about it objectively.” Community members were uncertain regarding the project’s environmental impacts and what jobs and economic opportunities it might offer, adding to divisions within Fort Good Hope about the project (CBC 2009).

Second, preventing community access to information runs contrary to democratic principles, and specifically to the norm of indigenous, free, prior informed consent. The latter suggests that mining projects should proceed only if they have the informed consent of indigenous owners. Adherence to this principle would place indigenous communities in a very strong position in negotiating contractual agreements, because projects could not proceed unless companies offer them benefits and mitigation measures sufficiently attractive to win their consent. National or provincial legislation rarely places indigenous people in such a strong position, except in those rare cases where land claim settlements include ownership of minerals. Reflecting this fact, indigenous people have long mounted national and international campaigns to win acceptance of the principle of indigenous, free, prior informed consent by companies, governments, and international organizations (Environmental Law Institute 2004; UNDESA 2004). Acceptance by indigenous groups of confidentiality provisions that constitute a fundamental departure from the principle can only undermine their efforts to win recognition of it by others.

In Australia, restrictions on community access to information on negotiations and proposed agreements restrictions are rare. Confidentiality provisions usually relate to third parties such as the media, and negotiators are commonly permitted to reveal all matters involved in agreements, other than commercially sensitive information (see next point), to members of relevant Aboriginal communities or groups. Given that many of the same multinational mining companies are involved in negotiations in both countries, this strongly suggests that there is no valid reason for restricting information flows to communities.

A third issue involves the categories of information regarded as confidential. In some cases even the fact of negotiation or of an agreement may be declared confidential, as well as all communication between negotiation parties and all documentation generated by the negotiations. In others, confidentiality is restricted to a narrow class of information, typically involving commercially sensitive material relating to project economics. In some negotiations in Australia, Aboriginal leaders have chosen to restrict access to such material to their commercial advisers, who are free to offer advice to community leaders and members on the basis of confidential information but not to disclose it. This means that the leaders are unconstrained in communicating with community members and cannot be accused of withholding information from them.

Provisions for consent and support are also critical. It may not be commercially realistic to take the position that an Aboriginal community should obtain the benefits available under an agreement without consenting to the grant of licences or approvals without which a project cannot proceed. But even accepting this point, a wide range of approaches is possible in this area, with each having quite different implications for Aboriginal signatories. This is illustrated by the fact that, in developing criteria for evaluating agreements, O'Faircheallaigh (2004b) identified seven separate points on a scale for assessing provisions dealing with indigenous consent and support for a developer's activities (see table 1). These range from recognition of specific mining tenures, which may have few ramifications for Aboriginal access to regulatory processes and do little to

constrain the political freedom of Aboriginal groups, to open-ended commitments that may severely constrain the legal and political options available to Aboriginal groups.

Table 1. Criteria for assessing agreement provisions related to indigenous consent and support

1. The indigenous parties recognize the validity of, and undertake not to challenge, identified mining or other related tenements already granted to the developer.
2. The indigenous parties consent to and undertake to facilitate the issue of identified mining or other related tenements.
3. The indigenous parties undertake not to impede or prevent the developer from the enjoyment of existing or newly granted mining tenements or related interests. However, such a commitment is qualified, such as by not precluding the application of cultural heritage or environmental protection legislation.
4. The indigenous parties have a positive obligation to support development once mining tenements or interests are granted. However, such a commitment is qualified, such as by not precluding the application of cultural heritage or environmental protection legislation.
5. Indigenous people make an unqualified commitment that they will do nothing to hinder the efficient development or operation of a particular project. This could prevent them, for instance, from taking action under relevant cultural heritage protection legislation.
6. Indigenous people consent to the grant of unspecified interests to the developer beyond those identified in an agreement. For example, they may be asked to approve the grant of future mining interests in an area the developer is currently exploring.
7. Indigenous parties make an open-ended and general commitment to support the developer's activities.

Source: O'Faircheallaigh 2004b

Negotiators and communities should think carefully about exactly what level and type of consent and support they *need* to offer a company to secure the benefits they desire, and about what they are *prepared* to offer. In some circumstances, the price required in terms of indigenous support may be too high, in that it places excessive restrictions on the political freedom of communities, and on their access to judicial and regulatory systems. If this is the case, a "no agreement" option may be preferable.

Avoid the "Negotiation Bubble"

At a broader level, it is important for communities to avoid isolating agreement negotiations from wider community planning and decision making.

This point is critical, both to ensure that the wider implications of contractual agreements are considered, and that negotiators attach appropriate weight to a community's key central goals and values, increasing the likelihood that agreements can make a major and positive contribution to community development. It is particularly important to stress these points because there is an inherent tendency for negotiation of mining agreements to develop as an isolated "bubble," for a number of reasons. First, confidentiality provisions can hamper the flow of information between leaders and negotiators and the wider community. Second, negotiations with mining companies call for significant technical skills. These are seldom available in Aboriginal communities, and so substantial components of negotiations are undertaken by outsiders who have infrequent contact with community members. Third, funding for negotiations is

usually provided by the company involved or by government grants tied specifically to the negotiations. This limits the extent to which negotiations can be used as a platform to address wider community issues. Finally, agreement negotiations are often driven by project time frames, with the result that it is difficult to integrate them into community planning and decision making. For instance, decisions on negotiations may have to be taken before a community planning exercise is completed or before scheduled meetings of community groups are held.

The development of "negotiation bubbles" has a number of unfortunate effects in the wider implications of negotiations. They may mean that negotiators are driven solely or largely by the desire to reach an agreement, with the result that a "no agreement" option is not even contemplated. Yet as illustrated in the previous section, this option may need to be seriously considered if, for instance, the consent and support required by a mining company is deemed too onerous. In addition, when negotiators are isolated, it is much less likely that the wider political ramifications of negotiations, and the implications of agreements for relations with other political actors and with state institutions, will be taken into account. It is also less likely that opportunities for enhancing the community's negotiating position available within the wider political, legal, and regulatory environment will be identified.

Isolation of agreement negotiations may also mean that negotiators may expend considerable negotiating capital in pursuing agreement provisions that are not closely aligned with community objectives or whose implementation will be problematic, given prevailing economic, social, and cultural conditions. For instance, in a number of cases negotiators have pushed for inclusion of employment and training opportunities when community members were either disinterested in pursuing these opportunities or lacked the education and training to pursue them (O'Faircheallaigh 2002, chap. 4). Negotiators may also neglect to negotiate provisions and so undermine community goals, such as where the absence of restrictions on alcohol use by mineworkers undermines community initiatives to counter alcohol abuse.

A number of (complementary) strategies are available to help ensure that negotiations do not occur in isolation but rather are conducted with an awareness of, and are linked to, wider legal and political considerations and strategies, and pursuit of community goals. One involves the formation of community-based steering groups that oversee negotiations, and act as a sounding board for company proposals and responses proposed by negotiators. These have been used extensively in Cape York, where they typically consist of representatives of affected land-owning groups, elected community councils, and Aboriginal service-delivery and land-management organizations. Another approach involves provision in negotiation budgets of funding for regular community meetings and for ongoing communication of information on negotiations. This is critical, both to ensure that negotiators are aware of community concerns and priorities, which may change as negotiation proceeds and additional information about a proposed project becomes available, and so that provisions that negotiators intend to pursue can be subject to regular reality checks by exposing them to the intended beneficiaries. A third strategy involves secondment of permanent staff from community organizations or Aboriginal governments to negotiation teams. This

helps ensure that negotiators are informed of existing sources of information on community goals and priorities, such as planning studies; are aware of prevailing economic, social, and organizational realities; and that the implications of agreements for the ongoing political relations of Aboriginal governments are taken into account. It can also be critical in providing a basis for successful implementation of agreement provisions, because permanent staff, unlike many negotiators, do not depart when an agreement is signed. The availability of people with an understanding of agreement provisions and the rationale for them can be critical in ensuring that both companies and communities perform the tasks critical to successful implementation.

At a more strategic level, community-controlled economic and social impact assessments (ESIAs) can be used to ensure that negotiating positions are responsive to broader community goals and concerns, and take wider political considerations into account. ESIAs involve both extensive consultation to identify and prioritize community goals and, where necessary, strategies for reconciling conflicting goals; communication of information regarding potential opportunities and impacts associated with proposed projects; and on this basis development of negotiating positions designed to reflect community goals, and maximize the contributions of a project and a negotiated agreement toward them (for a detailed discussion of the process involved and the way it links to project negotiations, see O'Faircheallaigh 1999).

These strategies demand substantial resources and are unlikely to be maintained without strong commitment from Aboriginal political leaders. But they are essential if the wider implications of agreement making are to be identified and addressed, and are indispensable if the benefits created by agreements are to align with community aspirations and priorities.

Conclusion

Agreements with mining companies can offer substantial benefits for Aboriginal communities and enhance the prospects for community development. But entering into contracts with corporate interests has wider and important implications for relationships between Aboriginal groups, the state, and civil society. These implications need to be carefully considered both in shaping negotiation strategies and, ultimately, in determining whether contractual relationships represent the best way of pursuing Aboriginal interests in relation to mineral development.

In particular, careful attention must be paid to agreement provisions that can be critical in shaping the wider political ramifications of contractual arrangements, such as those dealing with confidentiality, with Aboriginal support for the projects involved, and with ongoing Aboriginal access to judicial and regulatory systems. More broadly, care needs to be taken to ensure that negotiations do not occur in isolation from community planning and decision making, not only to ensure that the wider implications of contractual agreements are considered, but also that the potential contribution of contractual agreements to community development is realized. Failure to do so may mean that the wider ramifications of contractual arrangements are not identified; that

opportunities to harness legal and political opportunities outside the negotiation process are not exploited; that a "no agreement" option is not seriously considered, to the community's detriment; and that there is a failure to align agreement benefits with community priorities.

How applicable is this discussion to the developing countries where, as noted in the introduction, negotiated agreements are becoming more common? Some obvious differences between Australia and Canada, and developing countries might suggest that its applicability is limited. For example, access to the regulatory and judicial systems of Australia and Canada can offer indigenous groups significant leverage in dealing with mining companies, and any loss of this access represents a commensurate loss in leverage. If developing countries lack robust and independent judicial and regulatory systems, then limitations on the access of indigenous groups to them as a result of contractual agreements may not be a significant disadvantage. Similarly, limitations on the freedom of indigenous groups to engage in formation of political alliances may be of limited significance in non-democratic political systems where political freedom is in any case constrained. The possibility that the state may withdraw funding from indigenous people in the belief that mining companies are providing indigenous people with adequate resources may not even be relevant if the state is failing to provide resources in the first place—a situation that is common in developing countries (Filer, Burton, and Banks 2008; May 2006; Mazalto 2009).

On the other hand, it can be argued that effective regulatory and judicial systems evolve in developing countries, in part, in response to attempts by indigenous people and other marginalized groups to mobilize politically and generate a demand for such structures (see, for example, Walsh 2008). Constraints on the freedom of indigenous groups resulting from contractual agreements may mean that such mobilization is made more difficult, reducing the likelihood that more robust regulatory systems will emerge. It is certainly the case that the ability to form political alliances with international, non-government organizations is often critical to the capacity of indigenous people to apply leverage to multinational mining companies and so achieve recognition of inherent indigenous rights and benefits from development on their ancestral lands (McAteer, Cerretti, and Ali 2008). Against this background, limitations on the political freedom and flexibility of indigenous groups arising from contractual agreements with these same companies is likely to significantly reduce the capacity of indigenous peoples to achieve equitable outcomes from resource development on their traditional lands. Thus, despite significant differences in context, the issues discussed here, and the experience of Aboriginal groups in Australia and Canada are certainly relevant to indigenous peoples in developing countries. Exactly how those issues will emerge, and what specific strategies indigenous people in developing countries can pursue to address them, deserves systematic study.

References

- Adler, P.S., J. Brewer, and C. McGee. 2007. *The Ok Tedi negotiations*. Keystone, CO: Keystone Centre.
- Banks, G., and C. Ballard, eds. 1997. *The Ok Tedi settlement: Issues, outcomes and implications*. Canberra: National Centre for Development Studies and Resource Management in the Asia-Pacific, Australian National University.
- Barker, T. 2008. Indigenous employment outcomes in the Australian mining industry. In O'Faircheallaigh and Ali, 142-62.
- Barker, T., and D. Brereton. 2005. *Survey of local Aboriginal people formerly employed at Century Mine*. <http://www.csr.uq.edu.au/docs/CSR%20Research%20Paper%204.pdf>.
- Blaser, M., H. Feit, and G. McRae, eds. 2004. *In the way of development: Indigenous peoples, life projects and globalization*. London: Zed Books.
- Canadian Broadcasting Corporation (CBC). 2009. Fort Good Hope chief rejects vote on pipeline benefits deal. <http://www.cbc.ca/canada/north/story/2009/05/25/fgh-benefits-vote.html>.
- Centre for Social Responsibility in Mining (CSR.M). 2007. Survey of Aboriginal former employees and trainees of Argyle diamond mine. <http://www.csr.uq.edu.au/docs/Argyle%20former%20employees%20final%20report.pdf>.
- Environmental Advisory Management Board (EMAB). 2004. *Annual report 2003/2004*. Yellowknife: EMAB.
- . 2007. *Annual Report 2006/2007*. Yellowknife: EMAB.
- Environmental Law Institute. 2004. *Prior informed consent and mining: Promoting the sustainable development of local communities*. Washington DC: Environmental Law Institute.
- Evans, G., J. Goodman, and N. Lansbury, eds. 2002. *Moving mountains: Communities conflict mining & globalisation*. London: Zed Books.
- Filer, C., J. Burton, and G. Banks. 2008. The fragmentation of responsibilities in the Melanesian mining sector. In O'Faircheallaigh and Ali, 163-79.
- Findlay, I.M., and W. Wuttunee. 2007. Aboriginal women's community economic development: Measuring and promoting success. *IRPP Choices* 13 (4): 4-24.
- Galbraith, L., B. Bradshaw, and M.D. Rutherford. 2007. Towards a new supraregulatory approach to environmental assessment in Northern Canada. *Impact Assessment and Project Appraisal* 25 (1): 27-41.
- Gelganyem and Kilkayi Trusts. 2008. *Annual report July 2007—June 2008*. Kununurra, Western Australia: Gelganyem and Kilkayi Trusts.
- Gelganyem Trust. 2009. *Project factsheets, updated June 2009*. Kununurra, Western Australia: Gelganyem Trust.
- Gibson, R. 2006. Sustainability assessment and conflict resolution: Reaching agreement to proceed with the Voisey's Bay Nickel Mine. *Journal of Cleaner Production* 14 (3-4): 334-48.
- Hitch, M.W. 2006. *Impact and benefit agreements and the political ecology of mineral development in Nunavut*. PhD diss., University of Waterloo.
- International Council on Mining and Metals (ICMM). 1999. Mining and Indigenous peoples: Case studies. http://www.goodpracticemining.org/documents/jon/ICMM_IndigPeop-CseStd.pdf.
- International Institute for Environment and Development (IIED). 2002. *Breaking new ground: Mining minerals and sustainable development: Final report*. London: IIED.
- Joyce S.A., and M. MacFarlane. 2001. *Social impact assessment in the mining industry: Mining minerals and sustainable development*. London: MMSD.
- Katona, J. 2002. Mining uranium and Aboriginal Australians: The fight for Jabiluka. In Evans, Goodman, and Lansbury, 195-206.
- Kennett, S.A. 1999. *A guide to impact and benefits agreements*. Calgary: Canadian Institute of Resources Law, University of Calgary.
- Langton, M., M. Tehan, L. Palmer, and K. Shain, eds. 2004. *Honour among nations? Treaties and agreements with Aboriginal people*. Carlton: Melbourne University Press.
- May, R., ed. 2006. *State and society in Papua New Guinea: The first 25 years*. Canberra: Australian National University Press.
- Mazalto, M. 2009. Governance, human rights and the Democratic Republic of Congo. In *Mining in Africa: Regulation and development*, ed. B. Campbell, 187-242. London: Pluto.

- McAteer, E., J. Cerretti, and S. Ali. 2008. Shareholder activism and corporate behaviour in Ecuador. In O'Faircheallaigh and Ali, 180–97.
- Mihesuah, D.A. 2003. *Indigenous American women: Decolonization, empowerment, activism*. Lincoln: University of Nebraska Press.
- Miranda, M., C. Chambers, and C. Coumans. 2005. Framework for responsible mining: A guide to evolving standards. <http://www.frameworkforresponsiblemining.org>.
- O'Faircheallaigh, C. 1999. Making social impact assessment count: A negotiation-based approach for Indigenous peoples. *Society and Natural Resources* 12:63–80.
- . 2002. *A new model of policy evaluation: Mining and Indigenous people*. Aldershot: Ashgate.
- . 2004a. Denying citizens their rights? Aboriginal people, Mining payments and service provision. *Australian Journal of Public Administration* 63 (2): 42–50.
- . 2004b. Evaluating agreements between Aboriginal peoples and resource developers. In Langton et al., 303–28.
- . 2006a. *Environmental agreements in Canada: Aboriginal participation, EIA follow-up and environmental management of major projects*. Calgary: Canadian Institute of Resources Law, University of Calgary.
- . 2006b. Mining agreements and Aboriginal economic development in Australia and Canada. *Journal of Aboriginal Economic Development* 5 (1): 74–91.
- . 2008a. Negotiating protection of the sacred? Aboriginal–mining company agreements in Australia. *Development and Change* 39 (1): 25–51.
- . 2008b. Understanding corporate–Aboriginal agreements on mineral development. In O'Faircheallaigh and Ali, 67–82.
- O'Faircheallaigh, C., and S. Ali, eds. 2008. *Earth matters: Indigenous peoples, the extractive industries, and corporate social responsibility*. Sheffield: Greenleaf.
- Public Policy Forum. 2005. *Sharing the benefits of resource developments: A study of First Nations–industry impact benefits agreements*. Ottawa: Public Policy Forum.
- Taylor, J. 2006. *Indigenous people in the West Kimberley labour market*. Canberra: Centre for Aboriginal Economic Policy Research, Australian National University.
- Trebeck, K. 2008. Corporate social responsibility and democratisation: Opportunities and obstacles. In O'Faircheallaigh and Ali, 8–23.
- United Nations Department of Economic and Social Affairs (UNDESA). 2004. *An overview of the principle of free, prior and informed consent and Indigenous peoples in international and domestic law and practice PFII/2004/WS.2/8*. New York: UNESDA.
- United Nations Permanent Forum on Indigenous Issues. 2004. Indigenous women today: At risk and a force for change, third session, New York, 10–21 May 2004. <http://www.un.org/hr/indigenous-fourm/women/html>.
- Walsh, S.D. 2008. Fighting for life: Implementing laws to protect women from violence in Latin America. Paper presented at the American Political Science Association Annual Meeting, 28 August 2008. http://www.allacademic.com/meta/p279675_index.html.

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Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons Can Canada and Others Share?*

Viviane Weitzner

ABSTRACT This paper analyzes literature on the Whitehorse Mining Initiative (WMI) and subsequent multipartite dialogue processes in the extractive sector in Canada and overseas to critically assess Indigenous participation. It synthesizes design elements for more meaningful Indigenous participation and identifies implications for Indigenous-led, national, multipartite policy dialogue. While the WMI did bring about more inclusive and democratic decision-making, there are serious weaknesses in Indigenous participation, lack of concrete outcomes, and little evidence of institutional learning about strengthening Indigenous participation in subsequent processes. Adapting the WMI model without addressing these issues will perpetuate power asymmetries and marginalization of Indigenous and Tribal peoples.

RÉSUMÉ Cet article analyse la documentation relative à l'Initiative minière de Whitehorse (IMW) et aux processus subséquents de dialogue multipartite touchant le domaine de l'exploitation minière au Canada et à l'étranger afin d'évaluer d'un œil critique la participation des peuples autochtones. Il synthétise les éléments de conception favorisant une meilleure participation autochtone et il cerne les impacts d'un dialogue multipartite national sur les politiques piloté par les Autochtones. Alors que l'IMW a contribué à des prises de décisions plus inclusives et démocratiques, on observe toutefois des faiblesses importantes dans la participation des Autochtones, une absence de résultats concrets et peu d'indices d'un apprentissage organisationnel en vue de renforcer la participation autochtone dans les processus subséquents. Une adaptation du modèle de l'IMW qui ne tiendrait pas compte de ces questions risque de perpétuer les asymétries de pouvoir ainsi que la marginalisation des populations autochtones et tribales.

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Introduction: Learning from Multipartite Dialogues in the Mining Sector

Seventeen years ago, representatives from Canadian industry, government, environmental groups, labour unions, and Aboriginal organizations came together in a precedent-setting, 18-month, national dialogue to seek consensus on how best to make mining in Canada contribute to sustainable development. Known as the Whitehorse Mining Initiative (WMI), the process—and its outcomes—have been hailed by advocates like the Environment Law Institute (ELI) as extremely far-reaching, both for its recognition of “the legitimacy of community consultation in national mining policy and decisions” and for providing “persuasive justification for recognizing the right to prior informed consent” (ELI 2004, 9–10).²

Indeed, the WMI is often hailed as a governance blueprint for others to follow. Gary Nash, former assistant deputy minister of Natural Resources Canada, stated that the initiative can be “replicated anywhere in the world” and is continuing “to bear fruit.”³ Since its conclusion, the WMI multipartite⁴ approach has not only influenced subsequent national dialogues in the mining sector in Canada, but it reportedly has been adapted and considered in other countries, such as South Africa and Brazil. Several international efforts to bring together community, non-governmental organizations (NGOs), government, and mining industry representatives have also taken place in the wake of the WMI, such as the Mining Minerals and Sustainable Development (MMSD) initiative⁵ and the World Bank-commissioned Extractive Industries Review.⁶ It is likely that these processes drew at least in part on the WMI’s lessons and legacy.

But while Canadian government officials and others promote the WMI model internationally, there is need for a critical assessment of the process and its adaptations, particularly the participation of Indigenous people.⁷ Such a critical assessment could inform the design and potential outcomes of current and future multipartite processes in the minerals sector in Canada, as well as Canadian efforts to encourage—and undertake—multipartite dialogue in the minerals sector abroad.

1. Throughout this paper, the terms *Indigenous* and *Aboriginal* are used interchangeably, with *Aboriginal* used mostly in the Canadian context. In Canada, Aboriginal peoples include First Nations, Inuit, and Métis.

2. The case for FPIC, ELI argues, arises from the fact that the WMI recommendations were “negotiated and adopted through a national, well-recognized, multi-stakeholder initiative” (2004, 9–10).

3. Gary Nash to Emil Salim, Eminent Person, Extractives Industries Review, n.d. On file at the NSI.

4. While it is more common to refer to this as a “multi-stakeholder” process, the term *multipartite* is used throughout this paper to acknowledge the position of Indigenous peoples who argue they are rights holders rather than stakeholders.

5. Spearheaded by the World Business Council for Sustainable Development. See IIED 2009.

6. See <http://www.ifc.org/eir>.

7. Research conducted by The North-South Institute (Hipwell et al. 2002) has revealed that while there has been a comprehensive evaluation of the WMI (McAllister and Alexander 1997), there is need for a more targeted evaluation of the challenges and opportunities of Aboriginal participation.

However, my primary audience for this analysis—and indeed the catalysts behind it—are the Indigenous and Tribal organizations that have partnered with the North-South Institute (NSI) on collaborative research into Indigenous and Afro-descendent perspectives to participation and decision making in the mining sector in Latin America, the Caribbean, and Canada. NSI partners in Colombia, Suriname, and Guyana are considering spearheading Indigenous-led tripartite dialogue at the national level as a means to scale up research results with a view to developing and implementing policies and practices more aligned with Indigenous and Tribal peoples' decision-making processes, rights, and aspirations.⁸

Each partner has proposed a different approach, in keeping with contextual realities. For example, in Guyana, where recent gains have been made in the 2006 *Amerindian Act* to guarantee Indigenous rights to free, prior, and informed consent, at least in certain instances, with regards to small- and medium-scale mining, there is still much work to be done to enforce these rights and ensure they cover large-scale mining as well. In this context, the Amerindian Peoples Association has considered several strategies, including a series of national workshops—both Indigenous-only and multi-actor—leading to the adoption of a legally binding protocol on free, prior, and informed consent. In Colombia, which has some of the most progressive Indigenous and Tribal rights legislation in the world (Jimeno Santoyo 2002; OACNUDH 2009), but which is rarely implemented in practice, initial considerations included national workshops, among other strategies, with a view to bringing back into public and policy debate issues around prior consultation and free, prior, and informed consent. And in Suriname, where Indigenous peoples have no rights recognized constitutionally or otherwise, and where there is no legislation on environmental impact assessment to ensure Indigenous participation, the Association of Indigenous Village Leaders in Suriname (VIDS) is working locally to support communities affected by proposed large-scale bauxite mining and related activities in West Suriname. However, VIDS ensures that research and capacity-strengthening results are presented nationally through workshops with industry, government, and other actors to raise awareness, and push for change in policy and practice.

For these and other Indigenous and Tribal organizations embarking on, or considering undertaking, national policy dialogue, what are the lessons of the WMI, subsequent national dialogues in Canada, and adaptations abroad to enable dialogue that builds in strong Indigenous participation? How feasible is the proposition of Indigenous and Tribal organizations that they *lead* tripartite national dialogue, and how useful is the WMI model in this respect?

This paper takes a first step toward identifying key lessons on Indigenous participation in the WMI and subsequent processes, paving the way for in-depth, primary research to be undertaken on select initiatives. Following a brief description of methodologies used for gathering information and a sketch of concepts grounding the analysis, the paper presents key findings on Indigenous participation in the WMI, subsequent

8. For more information on our partners and collaborative research, please see Indigenous Perspectives project at <http://www.nsi-ins.ca>.

initiatives in Canada, and select WMI adaptations overseas. It concludes by synthesizing critical considerations and enabling conditions for Indigenous-led tripartite national dialogue in the minerals sector, and reflecting on how the preliminary results from such analysis—among other factors—have influenced the thinking and strategizing of Indigenous and Tribal partners engaged in collaborative research with The North-South Institute.

Methodologies, Concepts, and Initiatives Reviewed

The analysis in this paper draws on an extensive literature review, as well as select preliminary information-clarifying interviews (Weitzner and Wilson 2009). The conceptual framework grounding the preliminary research was based very loosely on the literature of public participation, social learning, Indigenous rights, and gender analysis.

Indeed, one of the purposes of the review was to determine from the literature an appropriate conceptual framework for follow-up research, as well as initiatives on which future primary research should focus.

Very briefly, from a conceptual perspective, evidence was sought on the type of participation that took place in each initiative: whether it was simply tokenistic and manipulative (Arnstein 1969), or whether participation was meaningful, with Indigenous participants having a say in the design of the initiative right from the start and throughout, and whether or not their input was reflected in the outcomes (Sinclair, Diduck, and Fitzpatrick 2007). The analysis also focused on identifying evidence of institutional learning between initiatives, and particularly double-loop learning about Indigenous participation. In double-loop learning, problems are solved by re-examining premises and goals of organized co-operation, with some learning requiring conflict or threatening loss of managerial control: “When successful, real learning occurs—institutional theories of reality are improved, and the cybernetic disconnection of goals can be revised into a more accurate reflection of overall priorities” (Lee 1993, 157). In short, double-loop learning leads to organizational and systems change, and a key question is to what extent the initiatives examined led to this type of change, with learning informing subsequent processes. The preliminary analysis was informed also by conceptions of Indigenous rights, examining the extent to which the right to participation and free, prior, and informed consent—which are minimum standards according to the *UN Declaration on the Rights of Indigenous Peoples* and other international instruments—were respected. And finally, the research sought to identify issues of inclusion—in particular the participation of Indigenous women and the representation of their concerns.

The Canadian initiatives examined included:

- The Whitehorse Mining Initiative (WMI) (1992–1994);
- The government of Canada’s *Minerals and Metals Policy* (1996) and the Minerals and Metals Indicators Initiative (1999–2004/5);

- The National Round Table on the Environment and the Economy (NRTEE) Task Force on Aboriginal Communities and Non-Renewable Resource Development (1998–2001);
- The National Orphaned/Abandoned Mines Initiative (NOAMI) (2002–present);
- The Mining Sector Sustainability Table (MSST) (2005–2007/8);
- The National Round Tables on Corporate Social Responsibility (CSR) and the Canadian Extractive Sector in Developing Countries (2006–2007); and
- The Mining Association of Canada's Community of Interest (CoI) Panel (2004–present).

International initiatives reviewed included in South Africa, the KWAGGA Programme (1996–1999); in Brazil, the Ouro Preto Process (1998) and the Brazilian Component of the Mining, Minerals and Sustainable Development (MSSD) South America Initiative (2000); and in Peru, the Mesa Nacional de Dialogo (1999–present), MMSD Peru (2000), and the Tintaya Dialogue Table (2002–2004).

For each initiative, available information was collected about who spearheaded the initiative; the initiative's objective; funding for the process (and its availability for Indigenous participants); operational structure and facilitation of the process; criteria for selection of Indigenous participants, including Indigenous women; Indigenous concerns, and opportunities and challenges in Indigenous participation; gender considerations; links to the WMI; and relevant outcomes.

While it is beyond the scope of this paper to describe each of the initiatives reviewed and present individual analysis of each, the following section provides a snapshot of the WMI and Indigenous participants' concerns regarding the process in light of its importance as the "founding initiative" or baseline against which to examine other initiatives. Subsequent sections of this paper highlight a synthesis of findings flowing from a comparative analysis of the initiatives at the national and international levels.

A Snapshot of the WMI and Indigenous Participants' Concerns

The WMI was a landmark, industry-led initiative that sought to involve key players in dialogue on how to revitalize the competitiveness of Canada's mining sector. First proposed by the Mining Association of Canada (MAC) at a mines ministers' meeting in 1992, the WMI was to produce a plan of action, "underpinned by political and community consensus," to help Canada "move toward a socially, environmentally and economically sustainable and prosperous mining industry" (WMI Leadership Accord 1995).

Main issues on the industry's agenda included regulatory and political considerations, such as harmonizing environmental impact assessment requirements, and uncertain access to minerals in the context of unsettled Aboriginal land claims and protected areas. However, each party also brought different perspectives to the table on what the key concerns were and how they should be addressed. Some Aboriginal

groups, for instance, saw the WMI as a forum to mutually share information, seek widespread consultation, and present the aspirations, issues, and concerns of their people (McAllister and Alexander 1997, 80).

The WMI process ultimately resulted in over 150 recommendations, which were compiled into the WMI Leadership Council Accord and presented to mines ministers at their annual meeting in 1994. Many of the principles and goals contained in the accord recognized the importance of Aboriginal participation in decision making about mining.

The costs for national and regional consultation and support were shared evenly by the federal government, the 10 provincial and two territorial governments (according to the ratio of their mineral production), and the Mining Association of Canada. An estimated \$750,000–800,000 supported national efforts, with the provinces and territories supporting their own regional activities (McAllister and Alexander 1997, 81–82). Approximately \$450,000 was provided to support participant expenses related to meeting preparation, staffing, travel costs, etc. (ELI 2004, 10), but no figures are readily available on the amounts of funding that flowed to Indigenous participants.

The work of the WMI was coordinated by a two-person Secretariat, a WMI Leadership Council (some 40 people, including Aboriginal representatives), a working group and four issue groups, which addressed finance and taxation, land access, workplace/workforce, and the environment. Issues relevant to Aboriginal peoples were considered in all four of these self-organized groups.

Indigenous Concerns

Aboriginal participants expressed serious concerns with the WMI process and outcomes.

Two of these concerns were addressed at the outset. First, the Assembly of First Nations (AFN), the only organization that was approached to participate in the WMI, argued for the inclusion of all four national Aboriginal groups then recognized: the AFN, Métis National Council, Inuit Tapirisat of Canada (now Inuit Tapiriit Kanatami), and the Congress of Aboriginal Peoples. Eventually, this was accomplished, although these groups participated only to varying degrees (and there was still concern that certain jurisdictions were not represented at the table; for example, Aboriginal representatives from Alberta and Newfoundland/Labrador were absent, despite pressure for large-scale nickel mining in Labrador's Voisey's Bay). Second, Aboriginal participants wanted their concerns to be highlighted in each of the four Issue Groups, rather than isolating Aboriginal issues within a separate group. This too was accommodated.

However, certain procedural and also fundamental process issues were not addressed at all. The outcome, moreover, was less than satisfactory.

On procedural questions, the process was characterized by rushed timeframes, overly generalized discussion, and inadequate resources. There was a sense that the WMI was trying to address a 100-year legacy of doing business in less than two years, and limited time and resources meant that minimal substantive research was carried out to inform the discussion and outcomes of the WMI. A more focused discussion—for example, on a specific geographical area or particular issue—backed up by good

research could have been more productive (Indigenous organization representative, personal communication, 2006).⁹ As well, a lack of access to adequate technical and other resources—including staff—inhibited effective participation. According to one Aboriginal participant, “The resources were not available to do preparatory work, research, analysis of options, examination of existing case studies and finally, development of recommendations” (Keith Conn in McAllister and Alexander 1997, 82). Instead, NGOs and Aboriginal organizations had to commit much of their limited time and resources to the WMI process (Indigenous organization representative, personal communication, 2006).

On fundamental issues, the process did not allow for appropriate consultation with Aboriginal communities on the substance of recommendations and outcomes. Participants noted a fundamental difference in decision-making structures and processes between Aboriginal and industry/government representatives. While the latter were able to make decisions with authority at the table, Aboriginal leaders wanted to consult extensively with their constituents before decisions were taken, in order to ensure that the product would reflect the vision of whole communities, not just the negotiating individual. In the words of Hans Matthews of the Canadian Aboriginal Minerals Association,

The Chief or community leader is not the key decision-maker, unlike the company or government where the leaders are decision-makers. A Chief is a “vehicle” by which community messages or decisions are voiced. How can we establish a WMI Leadership or Working Group comprised of Aboriginal leaders, business and government leaders and make decisions when one participant group can’t make decisions at the table? ... “National,” especially politically driven, initiatives are out of touch with the “grassroots community level.” (McAllister and Alexander 1997, 77)

Indeed, the AFN did not sign the final Leadership Accord because it argued there were no grassroots “reality checks” on the substance of the document. Engaging in a process with in-depth grassroots consultation would have required significant additional financial resources.

Another fundamental problem with the process was its failure to acknowledge that Aboriginal peoples are not just stakeholders or interest groups at the table; they are nations, and as such their authority to deal with the appropriate government levels on a government-to-government basis should have been recognized. Indigenous representatives on the issue groups “saw themselves as government leaders and queried why they were dealing with ADMs and technical people sent by provincial governments” (McAllister and Alexander 1997, 112). As Keith Conn, representative of the

9. In order to ensure confidentiality, the identity of interviewees for this paper has not been revealed; and instead they are referred to as representative of sectors or parties. All other quotes attributed to individuals are taken from publications that have published names, or when the citation involved a public discussion.

AFN, summed up, "We're not 'stakeholders'. That term has been used and abused" (in McAllister and Alexander 1997, 77).

A third fundamental problem was that recommendations in the WMI Leadership Accord were too vague on land rights. For example, it was recommended that land claims should be settled, but no specifics were outlined on how this could or should be achieved, or on what actors would be responsible for ensuring that settlements were reached (Indigenous organization representative, personal communication, 2006).

As for unsatisfactory outcomes, the Leadership Accord was the main result of the WMI, but the process did not yield sufficient, concrete outcomes, and no implementation plan was developed or carried out. Specific commitments need to come out of such discussions to make them legitimate (Indigenous organization representative, personal communication, 2006). In addition, the WMI conferred false legitimacy without extracting real promises. The inclusion of other "stakeholders" in a multipartite process allowed industry and government to legitimize their activities and policies without having to commit to specific or groundbreaking actions (Indigenous organization representative, personal communication, 2006).

The concerns outlined above highlight the point that from Indigenous perspectives the WMI was far from adequate as a stand-alone initiative, procedurally and substantively. But was the WMI a critical first step, a launching pad, enabling more meaningful Indigenous participation in subsequent national dialogues? Were the lessons learned from the WMI woven into the design of subsequent initiatives?

Preliminary Conclusions from Subsequent Canadian Initiatives

A review of the literature on the WMI and subsequent Canadian initiatives leads to one key conclusion: the WMI opened the door to a new type of dialogue within the minerals sector of Canada. Whether government, industry, or community initiated, it is now difficult to imagine policy discussions about mining that are not based on a multipartite approach. However, there is very little evidence to suggest that institutional learning has taken place or progress has been made in Indigenous participation. Indeed, issues that emerged in the WMI process continue to plague follow-up initiatives.

For example, limited representation of Aboriginal peoples and communities in national dialogues continues to be problematic. Instead, most national dialogues—such as the National Orphaned/Abandoned Mines Initiative (NOAMI)—rely on participation from national Aboriginal organizations with little time and no funding available to consult with their constituents. This limitation makes grassroots accountability difficult, and it runs counter to Aboriginal decision making and authority structures. The diversity of Aboriginal experiences and perspectives has been ignored by the tendency of multipartite processes, like the National Round Tables on CSR and the Canadian Extractive Sector in Developing Countries, to reserve limited seats for Aboriginal organizations, despite the

fact that there are five such representative bodies in this country.¹⁰ When only one or two seats are allotted to Indigenous representatives—as in the case of the National Round Tables on CSR—it is understandable that these seats remain unfilled.¹¹

The one initiative that begins to address some of the shortcomings in representation is the Mining Association of Canada's Community of Interest Panel, which may indicate that lessons from the WMI were built into its design. This panel includes national and regional representation of Inuit, Métis, and First Nations, and it is ongoing, therefore avoiding some of the timeframe issues of other multipartite forums. However, while the design and process may be on the right track, the influence of Indigenous participants' interventions on the outcomes of discussion, and the influence of the panel's work on the actions of MAC members, has yet to be analyzed.

In addition to issues in representation of diverse Aboriginal perspectives, national dialogue processes in the extractive sector following the WMI continue to pay inadequate attention to gender and participation by Indigenous women. None of the initiatives reviewed here promoted Indigenous women's participation in multipartite dialogues in the minerals sector. Key questions in representation of Indigenous women include whether and how their concerns are reflected by participating national organizations,¹² and whether national Aboriginal women's groups have been asked to participate directly or, in the absence of such an invitation, were consulted by the national organizations that did.¹³

Moreover, enduring power asymmetries between Indigenous participants and other actors in tripartite dialogue in the minerals sector continue to be perpetuated through lack of appropriate funding, resources, and opportunities to enable meaningful participation. Meaningful participation entails involvement that is early, inclusive, deliberative, transparent, and empowering (Sinclair, Diduck, and Fitzpatrick 2007). All national multipartite processes reviewed were driven by government and/or industry (with the exception of the National Round Table on the Environment and the Economy, which, although government-funded, bills itself as an independent advisory body). Indigenous people were rarely involved in conceptualizing or designing how these processes should take place. These power asymmetries are heightened by a lack of human, technical, and financial resources for meaningful and effective Aboriginal participation.

10. These include the Native Women's Association of Canada, the Métis National Council, the Assembly of First Nations, the Inuit Tapiriit Kanatami, and the Congress of Aboriginal Peoples.

11. Note that in the National Round Tables on CSR, Canada invited a member of the Canadian Aboriginal Minerals Association to be a member of the advisory group. One seat was therefore left for individuals from national Indigenous organizations, and this remained unfilled. Besides the difficulty in choosing which person should sit on such an advisory group, given the range of national Indigenous organizations, there are likely other issues underpinning Indigenous organizations' decisions not to participate in these initiatives, which will be uncovered in follow-up research.

12. In the case of the participation of the Inuit Tapiriit Kanatami involvement in the Mining Association of Canada's CoI Panel, discussions in minutes indicate that ITK purports to explicitly represent Inuit women's concerns (Stratos 2004).

13. One NGO member interviewed noted, "Where decisions are made in the mining sector, Aboriginal women tend not to be at the Table unless they are chiefs—and there aren't many female chiefs."

The absence of concrete outcomes continues to be an issue in subsequent national multipartite dialogue following the WMI. There appears to be relatively scant “fruit”—to borrow Gary Nash’s metaphor above—aside from process innovations, borne from multipartite dialogues at the national level, particularly with regards to recommendations concerning—or put forward by—Aboriginal participants. Lack of concrete outcomes has been brought up time and again in evaluations of the WMI. Most recently, a government presentation on the WMI noted: “The WMI has been lauded more for its establishment of stakeholder trust and partnerships than its substantive implementation.”¹⁴ Several analysts link the positive outcomes of the WMI mostly to the process itself.

These analysts note that over the 18 months of the WMI, the process made possible a previously unprecedented level of networking and dialogue among diverse participants, which in turn created a qualitative shift in relationships marked by increased understanding of “language, concepts, ideas, values, objectives and personalities” (McAllister and Alexander 1997, 113). This knowledge offers an important foundation for future interactions among the sectors (*ibid.*).

Positive commentators also commend the WMI process for contributing to increased social and political capacity among the parties involved; providing a forum for the synthesis of different types of knowledge and perspectives on mining (McAllister and Milioli 2000, 12), and setting an “an important precedent of public consultation, particularly in the setting of national policies toward sustainable development” (government official, personal communication, 2006). These include government legislation on environmental assessments, which requires consultation with local peoples on issues related to all stages of the mining life cycle until a company-community agreement is reached; more progressive engagement by mining companies with local communities; increased international attention for Canada: from South Africa, Brazil, Peru, Chile, Bolivia, Australia, and the United States, as well as from the United Nations Sustainable Development Committee (Hooge 2000).

Returning, however, to concerns over the lack of concrete outcomes, it appears subsequent dialogues have tried to solve this problem by narrowing the scope and goals of the process, with varying degrees of success. For example, the National Round Table on the Environment and the Economy (1998–2001) focused on the minerals sector and Aboriginal communities in a specific region—the NWT—and yet apparently none of the well-researched and concrete recommendations in the report have been implemented, causing frustration (Indigenous co-chair, personal communication, 2001).

The National Orphaned/Abandoned Mines Initiative (2002–present) is focused on a key issue within the minerals sector—abandoned and orphaned mines—and it is still too early to tell whether it will have positive results. The fact that it is a long-standing initiative with ministerial endorsement gives this initiative a leg up with potential translation of policy dialogue into concrete results.

14. NRCan (2006, 4–5). Feiler (2002) has argued that the WMI may have in fact *increased* frustration and mistrust among the parties precisely because it led to no concrete results.

The Mining Sector Sustainability Table (2005–2007/8) may indeed have been a good forum for ongoing, multipartite discussion, but its lack of political buy-in has hampered its potential influence and viability (government official, personal communication, 2009). In addition, there are questions about the reach and voice of Aboriginal participants in the process: although an Aboriginal participant initially presented Aboriginal rights and consultation requirements as a priority, this theme was first watered down to “community involvement” and then discarded from the final list of priorities (Lloyd 2006).

The Mining Association of Canada’s Community of Interest Panel (2004–present) guides a specific technical program and provides input into the design and implementation of MAC policies, but whether these will be translated into practice remains to be seen. Despite its advisory nature, the Community of Interest panel has positively influenced MAC’s policy direction, particularly for Indigenous peoples. A preliminary CoI-driven outcome was the creation of a draft Aboriginal Framework to guide MAC members. If implemented by all of MAC’s 25 members at home and abroad, MAC’s TSM guiding principles and Aboriginal framework could be very far-reaching. However, currently MAC requires its members to implement these policies only in Canada and is still considering making the TSM mandatory for overseas operations (Peeling 2009).

Overall, the constraints on multipartite dialogue to resolve deeply controversial or systemic issues surfaced in the review of Canadian initiatives, as did the lack of political will to implement the voluntary agreements that result. For example, the National Round Table on the Environment and the Economy initiative failed to achieve consensus on the controversial free entry system, highlighting that while consensus might be possible on some key issues, others may be more appropriately resolved through legal interventions. And lack of political will to implement the voluntary agreements that do result have led many Canadians to regard multipartite processes as a tactic through which the government pretends to resolve issues through dialogue, when essentially these processes help maintain business as usual (Gibson 2002, 10). This is certainly the case with the outcomes of the National Round Tables on CSR, where the official government response in 2009 to the March 2007 multipartite advisory group consensus report ignored most of the far-reaching recommendations, leading to the conclusion that very little will change and business will continue as usual with Canadian companies operating overseas (see Coumans in this issue). This lack of political will may also be exacerbated by the global economic crisis and pressure from industry to stay the course. In the face of lack of political will and poor implementation records of multipartite dialogue results, some authors are of the view that committing from the outset to legally binding outcomes might lead to stronger outcomes (Feiler 2002; Gibson 2002).

In short, the above analysis of the WMI model and subsequent Canadian adaptations questions this model’s success in implementing recommendations and substantial outcomes. Indeed, to a large extent the model’s success depends on the perspective of the observer (McAllister and Milioli 2000, 12). And the Canadian Indigenous perspectives highlighted here underscore deep issues in process and outcomes. There is also little evidence of institutional learning or of political will to enable meaningful participation

by Indigenous participants. In light of this seeming lack of learning and strengthening of processes at home, it is somewhat ironic that the WMI model for dialogue is continuously highlighted and promoted by the Canadian government and industry as one that should be considered and adapted overseas.

Preliminary Conclusions from International Initiatives

At the international level, several WMI-inspired processes have taken place. The initiatives reviewed for this paper included a number backed by Canadian technical assistance and funding, with the CIDA-funded KWAGGA initiative of South Africa described directly as an adaptation of the WMI, while others clearly drew from the WMI legacy. In light of the fact that some international adaptations focused also on the regional level—such as the KWAGGA initiative—we chose also to briefly examine the local dialogue table at the Tintaya mine site in Peru, to gain a better sense of salient differences and potential synergies or tensions between local/regional and national dialogue.¹⁵ It is also important to highlight that there is very little information available on international adaptations, making it difficult to identify Indigenous—or in the case of South Africa, Black—perspectives.

The available literature on the international experiences reviewed highlights that none of the processes took the WMI as a blueprint. Instead, each initiative appears to have adapted the approach. Indeed, McAllister and Milioli offer a key insight—and caution—on the cross-country “replicability” of processes such as the WMI, underscoring the need to adapt and tailor these processes to local contexts.

While the idea for developing consensus amongst competing entities and public consultation is an important one for a more equitable and sustainable approach to mineral development ... one must always be cautious ... when attempting to apply one policy approach (designed to fit the social-economic, political and cultural needs of one country) to that of another. The cooperative approach of the Whitehorse Mining Initiative follows a policy history in Canada that includes public consultation and some familiarity with round-table approaches. As a mature liberal-democracy, various non-government organizations, Aboriginal governments, and unions, etc., have developed in well-established, recognized pressure groups that have a place at the negotiating table. Brazil has a very different political culture [and] will need to develop approaches tailored to its own specific needs. (McAllister and Milioli 2000, 12)

15. At a more programmatic level, we were also interested in the fact that this dialogue initially involved BHPBilliton, a company proposing large-scale bauxite mining in West Suriname, where The NSI was requested to assist affected Indigenous communities. Lessons from Tintaya could therefore also potentially feed into the discussions in West Suriname.

Gibson (2002, 6) makes a similar point in her review of Canadian multipartite processes, noting that she does not assume that lessons from conflicts in Canada can be transferred directly to the Peruvian context. Instead she notes that a key lesson from the Canadian experience is that each process and its achievements are unique.

Moreover, the literature on the select international adaptations reviewed makes clear that national multipartite dialogues are not yet part of the culture of policy-making in countries where these types of dialogues were initiated. Where tripartite dialogue is not the norm, questions arise about how to grow this potential. Ideally, local multipartite dialogues that begin building relationships and encourage a more inclusive approach to decision making could lead to government and industry buy-in, and to scaling up the approach to influence national policy-making.

However, two issues arise: First, there is tension between local and national initiatives, including a concern that national initiatives may constrain what could be achieved locally. For example, in Peru, the relative success of the Tintaya Dialogue Table has been attributed in part to the two key actors—industry and communities—being able to put aside government policies in an effort to arrive at mutually acceptable resolution of conflicts (Palacin in Mego 2005).¹⁶ Could national policy agreed to by all actors through a formal, national multipartite dialogue curb this type of creative approach? But the second issue is that there may be a disconnect between the objectives of local and national dialogue—especially if local dialogue is focused on conflict resolution around a specific development—questioning whether scaling up local dialogue tables could lead to meeting objectives for national policy forums. On the other hand, while it is true that local dialogue tables like Tintaya are primarily venues for conflict resolution rather than for policy dialogue per se, they emerge precisely because of conflicts engendered by inadequate national regulation and policy. Consequently, feedback loops and constraints between these two types and levels of dialogue would be interesting to examine.

A key finding from examining international multipartite initiatives is that outsiders have largely encouraged this approach, with Canada playing a key role in driving or financing the reviewed cases. Through various agencies, the government of Canada was involved in financing and providing technical support to the KWAGGA initiative in South Africa (funded by CIDA), to the Peruvian national dialogue, and to workshops in Brazil, including the MMSD process that took place in several South American countries (funded by IDRC). Discussion with CIDA officials has revealed that encouraging and undertaking multipartite processes will continue to inform Canada's CSR strategy abroad (government official, personal communication, 2009).¹⁷ While there is clearly

16. De Echave et al. (2006) discuss other factors that contribute to the success of local level processes such as the Tintaya Dialogue Table, including international opportunities such as the involvement of Oxfam America and Oxfam's ombudsperson in accompanying the process, adequate preparation before entering the dialogue, having a consensus-based agenda rooted in the communities' real interests, strong communication strategies, appropriate community representation, and using the dialogue to channel and address conflicts.

17. In light of this assertion that Canada will continue to encourage multi-stakeholder dialogue in the extractive sector overseas, it is ironic that the government of Canada decided not to allow any

much to be said for encouraging inclusiveness and democratic values, it is unclear to what extent officials involved in these strategies are learning from—and building on—the lessons from the Canadian experience, especially in Indigenous participation. Without targeted attention to increasing the voice of marginalized peoples in these forums—and ensuring appropriate representation, funding, and capacity-building on their rights and the issues at stake to enable strong, effective, and meaningful participation—the processes that Canada is encouraging could be seen as “greenwashes” that enable Canadian industry to continue to operate overseas, under the pretext that something is being done to resolve conflict, while in fact business continues as usual. As well, for all of these mostly project-based, donor-funded, multipartite initiatives, there are lasting uncertainties about the long term, especially with regards to financial and technical sustainability and government and industry buy-in.

Finally, a surprising finding from the cases reviewed was that in at least one case—the South African KWAGGA initiative—gender appears to have been given greater consideration than in the WMI or subsequent Canadian processes. This may be attributed to reflection on—and learning from—the lack of gender consideration in the WMI, or it may be simply a strategic response to CIDA’s funding requirements. Yet this finding raises questions about potentially higher standards for gender in overseas programming than those applied to policy processes in Canada. Key questions are to what extent gender-based analysis and frameworks now in place for several Canadian government departments—and in several Indigenous organizations—might change how multipartite processes in the minerals sector take place in Canada (Wolski 2007).

Synthesis: Enabling Conditions for Indigenous-Led Tripartite National Dialogue in the Minerals Sector

This review of Indigenous participation in the Whitehorse Mining Initiative and subsequent multipartite processes in the minerals sectors of Canada and overseas, underscores the fact that while the trend toward inclusive dialogue marks an important step toward more democratic and representative political processes, there are many shortcomings to the WMI model and others—particularly in the involvement of Indigenous and Tribal peoples.

Below, some of the core enabling conditions for more balanced and effective multipartite dialogue are highlighted. They flow from the literature and analysis, and reflect on the implications of such dialogue for Indigenous or Afro-descendent organizations

of its representatives to present at or indeed participate in a 3 November 2009 workshop geared to engage in such national dialogue in Canada, organized jointly by the Canadian Network on Corporate Accountability, a coalition of Canadian civil society organizations, and the Mining Association of Canada. The government’s decision to withdraw participation from this national workshop on the corporate accountability of Canada’s extractive industries operating abroad came as a surprise to many, particularly in light of the many discussions prior to this event with government officials, and the fact that industry was co-hosting.

that may be considering spearheading their own multipartite processes in the minerals sector, as is the case with NSI's partners in Guyana, Colombia, and Suriname.

Government/Industry Buy-In Is Essential

For an Indigenous-led dialogue process to be successful, the literature strongly suggests that government and industry need to buy into the process and its implementation. Not one of the national multipartite initiatives reviewed was spearheaded by an Indigenous or Tribal organization. The closest was the NRTEE's program that examined issues at the crossroads of Indigenous communities and the minerals sector in Canada's Northwest Territories, and that examination was catalyzed by the request of an Indigenous member of the NRTEE. This initiative included participation by government and industry, was coordinated by a well-respected, independent advisory body that provides government decision makers with advice and recommendations for promoting sustainable development, and was supported through government funding. Nonetheless, the program has so far failed to have any impact on mining-affected communities in that none of its recommendations have yet been implemented.

National multipartite dialogues spearheaded by Indigenous/Tribal organizations will raise expectations in mining-affected communities that the situation will change. It is critical from the outset to ensure that government and industry have the political will to engage in such a dialogue, and to include discussions with high-level representatives in the planning and design of the dialogues. The literature suggests that willingness, particularly by governments, to engage in ways that facilitate Indigenous participation cannot be taken for granted (O'Faircheallaigh 2005). Moreover, commitment to engage in a process does not necessarily translate into a commitment to implement the resulting recommendations. As Lee (1993, 14) has pointed out, "A process is not a result, nor is the existence of a process the same as the will to use it." There are clearly risks that an Indigenous-led process that does not lead to any positive changes could undermine the spearheading organization's credibility.

Narrow the Focus of the Dialogue and Negotiate a Legally Binding Outcome

All of the multipartite processes reviewed have resulted in voluntary agreements and recommendations that have failed to be fully implemented. Negotiating a legally binding agreement may in part remedy this situation (Feiler 2002; Gibson 2002), although, according to one industry consultant, industry and government will likely not support the process if they know that the goal is for a legally binding outcome (personal communication, 2008). Even if Indigenous-led multipartite dialogue leads to the negotiation of a legally binding outcome, enforcement and implementation is clearly critical. This goal may not be a realistic expectation in many developing countries where there are weak governance structures and judicial systems.¹⁸ Aside from the matter of enforceability, the review of Canadian and international initiatives highlighted that the

18. For example, NSI's Guyanese partner, the Amerindian Peoples Association, initially aspired to dialogues with legally binding outcomes. However, putting aside issues of political will to engage in

more narrow the focus of the dialogue, the greater the potential for achieving agreements that can be translated into action.

Ensure Sufficient Funding, Human Resources, and Time to Undertake an In-Depth Process

Multipartite dialogue at the national level is extremely costly. Indigenous or Tribal organizations that coordinate a national multipartite dialogue involving the minerals sector will need to secure sufficient funds to hire additional staff to form a secretariat and to cover all associated costs, such as travel to and from remote Indigenous/Tribal villages, and research to inform the dialogues. Building the foundations for a unified Indigenous vision prior to the dialogues is also important. In addition, it will be imperative to identify funding sources for implementation, follow-up, and monitoring of outcomes. Funding constraints that do not allow for an "iterative" process that includes good, two-way communication between the national and local levels could severely compromise the dialogue and the organization coordinating it.

Ensure Appropriate Indigenous Representation, Particularly from Indigenous Women

As highlighted in comments made by Canadian Indigenous participants in the WMI, Indigenous representation in national multipartite policy dialogues poses distinct design challenges. First, Indigenous leaders must return proposals to their constituents in order to get feedback and approval. An appropriate number of seats to represent the diversity of Indigenous peoples across a country is also needed. Finally, particularly because of the disproportionate impact of mining on women (Colchester, La Rose, and James 2002; Weitzner 2002), it is critical that Indigenous women be represented, and their concerns be heard and incorporated in outcomes. Inclusion of youth and elders is similarly crucial to ensuring intergenerational diversity and perspectives.

Engage an Independent Facilitator

How cultural differences are acknowledged and power imbalances addressed is clearly critical for enabling equitable outcomes. An independent facilitator offers one possible way to help level the playing field (Robinson 1993 in McAllister and Alexander 1997, 71), and it was cited as an important element in the perceived success of the WMI.

Educate All Parties Regarding Transforming Conflict, Indigenous Rights, and International Leading Practice

Lessons from the Tintaya Table in Peru highlight the importance of building capacities among all parties on a variety of issues, including conflict resolution, to facilitate dialogue and ensure implementation of agreements that the dialogue produces. However, for obvious reasons, Indigenous and Tribal organizations often focus inward upon strengthening capacity and raising awareness. NSI's Indigenous and Tribal partners,

such a dialogue, a key issue in the context of Guyana is the strength of the judicial system to address possible violators of any nationally negotiated, legally binding agreement with Indigenous peoples.

for example, focus much of their attention on building the capacities of Indigenous communities and leaders in Indigenous rights and international leading-edge practice in the minerals sector to prepare for negotiation and dialogue. Nonetheless, for Indigenous-led multipartite dialogue to be more productive, it would be beneficial to raise the awareness of other actors about these same issues (Weitzner 2000). This clearly has financial and human resources implications.

Be Willing to Compromise

The term *national dialogue* is a misnomer, as one NGO representative interviewed for this paper pointed out. Dialogues are in effect negotiations, and while parties at the table need to be well prepared, and ideally have a unified vision prior to multipartite discussions, there also needs to be a willingness to compromise.

Establish an Implementation and Monitoring Mechanism

With the possible exception of MAC's CoI Panel, indicators of success and established mechanisms for implementation, monitoring, and verification appear to be non-existent in the initiatives reviewed. This is a critical element for effective dialogues, as underscored by Feiler (2002) and Gibson (2002), among others.

Other Critical Elements

Other critical elements and lessons emerge from the literature for consideration, including those identified by Penrose, Day and Roseland (1998), and Feiler (2002), along with the NRTEE's (1993) "10 Guiding Principles" for achieving consensus. In addition, Phase I of the "Indigenous Perspectives" project identified several contextual criteria that, if in place, could help balance the power asymmetry between Indigenous peoples, government, and companies toward more equitable interactions (Weitzner 2002). Aside from considering these and the lessons learned through this analysis, any Indigenous-led dialogue should begin by assessing what has worked—and what has not worked—in Indigenous participation and multipartite dialogue in their own country.

Conclusion

To Dialogue at the National Level, or Not to Dialogue?

Previous experience with national multipartite dialogue has bred much skepticism among Indigenous and non-Indigenous actors alike regarding whether these forums can lead to positive change for mining-affected communities. Multipartite initiatives—usually driven by industry or government—are commonly seen as public relations exercises and attempts to greenwash industry/government policy and practice; they distract and appease opposition from NGOs and Indigenous peoples, while business in the minerals sector continues as usual.

According to one Indigenous organization representative who participated in the WMI, Indigenous peoples do not need to initiate multipartite dialogue because they do not have to prove their legitimacy in the same way that industry and government

do (personal communication, 2006). Others (e.g., Gibson 2002) express concerns that dialogue can be a dangerous strategy for Indigenous peoples who become drawn into participating, while putting aside critical issues for resolution, such as obtaining recognition for their traditional territories. In these scenarios, multipartite dialogue in the minerals sector may actually compromise future negotiations over Indigenous territories. Indeed, in the context of limited human and financial resources, there are many pitfalls to engaging in multipartite dialogue, making priority setting and “reality-checking” imperative.

But can national multipartite dialogue be a tool for Indigenous peoples to effect change? By all accounts, proposals by NSI’s Indigenous and Tribal partners to spearhead and coordinate multipartite dialogues in the minerals sector toward concrete outcomes are cutting edge and charting new territory. Yet it will take careful planning, and appropriate levels of funding and human resources to ensure that these initiatives do not perpetuate the weaknesses and problems of previous experiences—levels of funding and resources that are beyond the reach of most Indigenous and Tribal organizations. And while Indigenous drivers may be able to establish better operating contexts for Indigenous participants, in terms of balancing power asymmetries and remaining in control of the process and agenda, uptake of process and outcomes is clearly subject to government and industry buy-in.

Finally, a key issue that emerges from the literature is whether launching into national dialogue is the best step to take in countries where multipartite dialogue in policy-making is not the norm. A more incremental approach that supports local negotiations and dialogue among affected communities, companies, and government (as appropriate), and then considers bringing these local forums and negotiations to national attention and national dialogue, may lead to more effective results, building up a culture of interaction in the minerals sector.

Sowing a Culture of Inclusion

Indeed, this incremental approach has been adopted by NSI’s Indigenous and Tribal partners in part as a result of sharing the preliminary findings of the analysis on which this article is based.

In Guyana, the Amerindian Peoples Association has reassessed its initial proposal to engage in national multipartite dialogue toward a legally binding protocol on consent, and reoriented its work program and scarce resources instead to directly supporting mining-affected communities in their dealings at the community level.¹⁹ This reorientation was fuelled in part by the outcomes of analysis of multipartite dialogue in the extractives sector, and the realization that there simply were not enough resources (financial or human) for an in-depth iterative process with follow-up, and monitoring of implementation of any negotiated agreements. However, this reorientation also re-

19. This work program is being adapted even further in light of the increased pressure Indigenous communities in Guyana are experiencing with regards to the Low Carbon Development Strategy (LCDS) and Reduced Emissions from Deforestation and Degradation (REDD), and related consultations.

sponded to the urgencies and requests of APA's constituents seeking support for select, local negotiations, together with an assessment and reality check of the possibilities of successful, Indigenous-led multipartite dialogue in Guyana's current political climate.

Mining-affected communities in West Suriname drive the work program, and research has supported community-based research, capacity strengthening, and interactions on proposed large-scale bauxite mine and related developments. Nonetheless, several Indigenous-organized events have taken place at the national level to bring to the attention of government, industry, NGOs, and members of the media the issues at stake. Most recently, for example, the Association of Indigenous Village Leaders in Suriname spearheaded an independent review of company-commissioned environmental and social impact assessments, and in October 2009 it organized a national workshop to share results (Goodland 2009; Kambel 2009; Weitzner 2008) with government and industry as a critical stepping stone to help ensure lessons are learned for future assessments.

And in Colombia, the idea of national multipartite dialogues has also been reoriented toward a program of capacity-strengthening and community research involving Indigenous and Afro-descendent communities, which includes national events organized by Indigenous and Afro-descendent people, as well as some events with local government officials. Where there is armed conflict, the issues at stake are different, and while dialogue is still considered an important element and strategy, this will take place once community organizations have increased knowledge about their rights, have worked on their own policies and protocols, and have sufficient information and resources to enter into dialogue on terms they feel are equitable. Even so, the organizations leading the Colombian work program—Proceso de Comunidades Negras (PCN, Process of Black Communities, a national organization) and Resguardo Indígena Cañamomo Lomapieta (RICL, an Indigenous reserve representing 32 Embera Chami Indigenous communities in the Caldas area)—are planning to organize up to three national modular workshops on key issues (environmental, social, and human rights impact assessment; Indigenous and Tribal rights; and conflict resolution), where industry and government representatives among other actors will be invited.²⁰

20. Clearly, these modular workshops will not have the same sustained engagement that following a WMI model might enable, and there is always a risk that industry or government will choose not to participate. This has been the case in Australia, where a workshop organized to help establish principles around a human rights-based approach to CSR and designed to maximize Indigenous participation, with industry invited to participate on the third day to comment and provide feedback, resulted in very poor participation by resource companies. This lack of participation by industry was likely a result of the event being organized by traditional landowners (O'Fairchealleigh, personal communication 2009). In Canada, the Canadian Aboriginal Minerals Association (CAMA) has organized annual conventions including industry and government for several years. While this event has drawn industry and government representatives, these annual events cannot be characterized as multipartite policy dialogue per se, but rather as a showcase for Canadian Aboriginal industry, where policy issues are touched on from time to time. It is likely far more comfortable for government and industry representatives to participate in such industry-oriented events than in policy dialogue tackling difficult questions about the role of minerals activities in the first instance (see note 15).

These efforts can be seen as small steps toward a culture of inclusion—steps more in line with priorities expressed at the community level, program resources available, and political realities. However, it is important to highlight that, following assessments and internal consultations, partners and communities may choose strategies other than dialogue—whether local or national—to further their (policy-oriented) goals.

Deepening the Research, Providing Opportunity for Reflection

This broad preliminary analysis of available materials on the WMI and subsequent multipartite dialogue processes in Canada and overseas underscores the need for additional research to rigorously assess the potential for multipartite dialogue in the minerals sector to lead to social and transformative learning about the participation of Indigenous peoples and other ethnic minorities. In particular, research needs to be undertaken on the type of individual and institutional learning that these dialogues engender about Indigenous participation, and how this learning is woven into subsequent dialogue in Canada and overseas.

To this end, the NSI proposes to undertake follow-up, primary research on four Canadian initiatives²¹ in addition to the WMI, using criteria for assessment drawing on the literature of transformative and social learning (following Sinclair and Diduck's 2001 adaptation for environmental assessment of Mezirow's 1995, 2000, ideal criteria for adult learning, and considering also current debate around triple-loop learning); deliberative democracy (in particular, Habermas's 1990 conditions for ideal discourse and especially the principle of power neutrality); public participation (Arnstein's 1969 ladder of citizenship participation and Diduck's 2004 characterization of public participation); and gender analysis (drawing on the work of Meentzen 2000 and gender analysis frameworks developed by the AFN, NWAC, and other Indigenous organizations). NSI will also be examining Canada's role in the Peruvian initiatives, particularly given that this country is the subject of increased program attention by CIDA and other government departments primarily on account of Canadian interest in Peru's minerals sector.

Ultimately, NSI will share the results of its assessment of Indigenous participation in multipartite processes in Canada and Peru with industry, government, and Indigenous organizations, with the hope that this leads to further reflection, institutional learning, and change to maximize meaningful participation of Indigenous peoples in current and future dialogues.

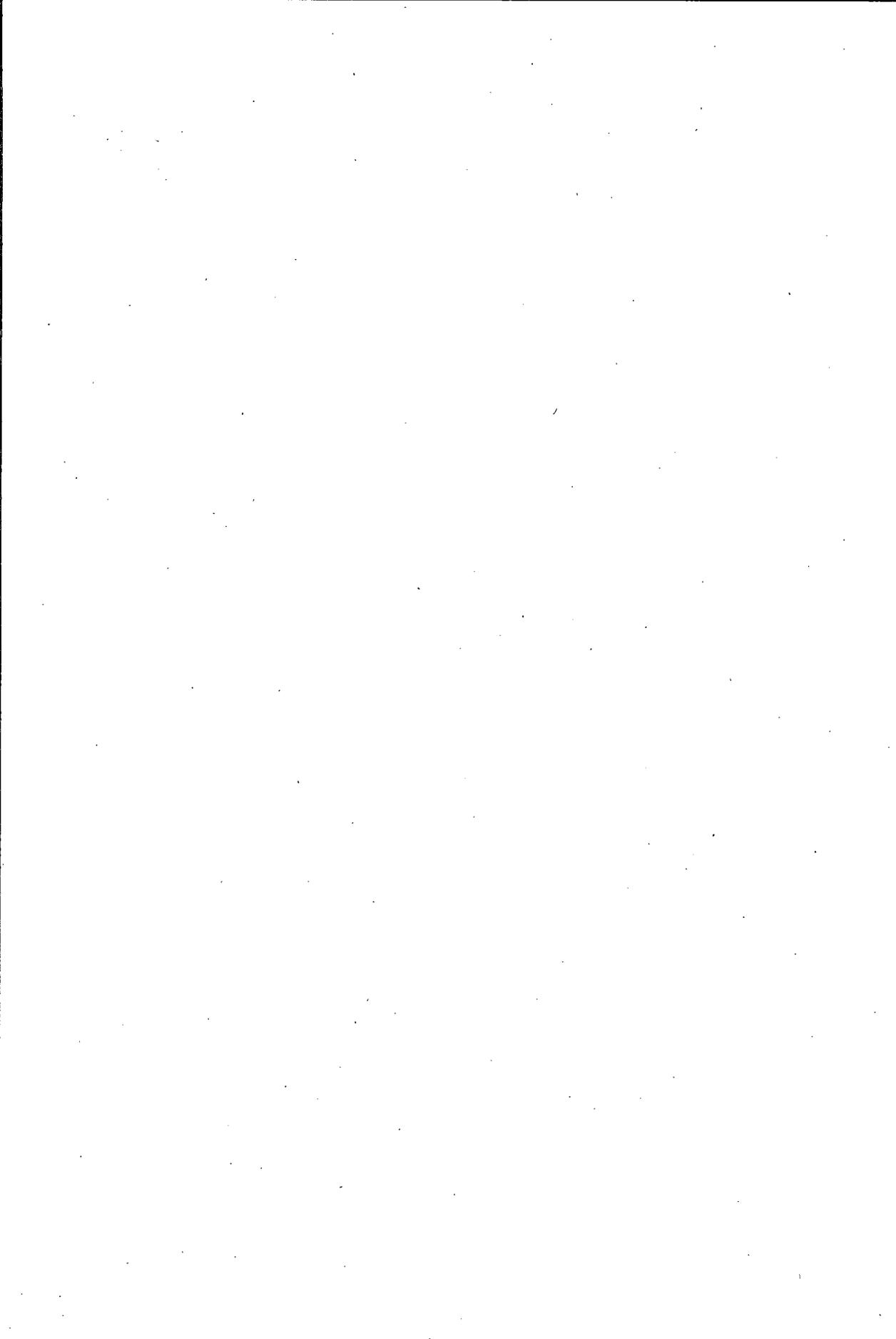
21. These include NOAMI, MAC's CoI Panel, the National Round Tables on Corporate Accountability (CSR) and the Canadian Extractive Sector in Developing Countries, and the NTREE initiative for the Northwest Territories.

References

- Arnstein, S. 1969. A ladder of citizenship participation. *Journal of the American Institute of Planners* 35 (4): 216–24.
- Colchester, Marcus, Jean La Rose, and Kid James. 2002. Mining and Amerindians in Guyana: Final report of the APA/NSI project on exploring Indigenous perspectives on consultation and engagement within the mining sector in Latin America and the Caribbean. Ottawa: The North-South Institute.
- De Echave, José, Karyn Keenan, Maria Kathia Romero, and Angela Tapia. 2006. *Dialogue and management of conflicts on community lands: The Case of the Tintaya Mine in Peru*. Lima: CooperAccion.
- Diduck, Alan. 2004. Incorporating participatory approaches and social learning. In *Resource and environmental management in Canada: Addressing conflict and uncertainty*, ed. Bruce Mitchell, 497–527. New York: Oxford University Press.
- Environmental Law Institute (ELI). 2004. *Prior informed consent and mining: Promoting the sustainable development of local communities*. Washington, DC: Environmental Law Institute.
- Feiler, Jozsef. 2002. Mining after Johannesburg: An assessment of post-WSSD political options. Mineral Policy Center Discussion Paper. <http://www.earthworksaction.org/publications.cfm?pubID=67>.
- Foreign Affairs and International Trade Canada. 2009. Building the Canadian advantage: A corporate social responsibility (CSR) strategy for the Canadian international extractive sector. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx>.
- Gibson, Ginger. 2002. Applying lessons learned from Canadian multi-stakeholders processes to the current Peruvian situation. Vancouver: CoDevelopment Canada.
- Goodland, Robert, ed. 2009. *Suriname's Bakhuis bauxite mine: An independent review of SRK's impact assessment*. Paramaribo, Suriname: Vereniging van Inheemse Dorpshoofden in Suriname.
- Habermas, J. 1990. *Moral consciousness and communicative action*. Cambridge: Polity.
- Hipwell, William, Katy Mamen, Viviane Weitzner, and Gail Whiteman. 2002. Aboriginal peoples and mining in Canada: Consultation, participation and prospects for change. Working Discussion Paper. Ottawa, ON: The North-South Institute. <http://www.nsi-ins.ca/english/research/archive/2003/10.asp>.
- Hooge, Lois. 2000. Mining's impact on community development in South Africa: The KWAGGA Programme. Paper prepared for the Workshop on Growth and Diversification in Mineral Economies organized by the United Nations Conference on Trade and Development (UNCTAD). Cape Town, 7–9 November. <http://www.unctad.org/infocomm/diversification/cape/pdf/hooge.pdf>.
- International Institute for Environment and Development (IIED). 2009. Mining, minerals and sustainable development. http://www.iied.org/mmsd/what_is_mmsd.html.
- Jimeno Santoyo, Gladys. 2002. *Possibilities and perspectives of Indigenous peoples with regard to consultations and agreements in Latin America and the Caribbean: Thematic exploration*. Ottawa, ON: The North-South Institute.
- Kambel, Ellen-Rose. 2009. *De sociale en milieueffecten van het Bakhuis mijnbouwproject in West-Suriname: Conclusies van het panel van onafhankelijke deskundigen. Nederlandse samenvatting*. Paramaribo, Suriname: Vereniging van Inheemse Dorpshoofden in Suriname.
- Lee, Kai N. 1993. *Compass and gyroscope: Integrating science and politics for the environment*. Washington DC: Island.
- Lloyd, Brennain. 2006. Mining sector sustainability table's third meeting, 11 April 2006. Draft report sent to CEN Mining Caucus/MSST Task Group (email).
- McAllister, Mary Louise, and Cynthia Jacqueline Alexander. 1997. *A stake in the future: Redefining the Canadian mineral industry*. Vancouver: UBC Press.
- McAllister, Mary Louise, and Geraldo Milioli. 2000. Mining sustainably: Opportunities for Canada and Brazil. *Minerals and Energy* 15 (2): 3–14.
- Meentzen, Angela. 2000. Estrategias de desarrollo culturalmente adecuadas para mujeres indígenas. Unidad de Pueblos Indígenas y Desarrollo Comunitario, Banco Interamericano de Desarrollo, Departamento de Desarrollo Sostenible.

- Mego, Andrés. 2005. Experiences with dialogue: Relations based on mutual respect between companies and communities are built on dialogue. *Latin America Press* (2): 15–16.
- Mezirow, J. 1995. Transformation theory of adult learning. In *In defense of the life-world*, ed. M.R. Welton, 39–70. Albany, NY: State University of New York Press.
- Mezirow, J., and Associates. 2000. *Learning as transformation: Critical perspectives on a theory in progress*. San Francisco: Jossey-Bass.
- Natural Resources Canada (NRCAN). 2006. The Whitehorse Mining Initiative (WMI). Report and presentation given to members of the Mining Sector Sustainability Tables (MSST), 11 April.
- National Round Table on the Environment and the Economy (NTREE). 1993. *Building consensus for a sustainable future: Guiding principles: An initiative undertaken by Canadian Round Tables*, August 1993. <<http://acrnet.org/pdfs/sustainable.pdf>>.
- National Round Tables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries. 2007. *Advisory Group Report*. <http://acrnet.org/pdfs/sustainable.pdf>.
- O'Faircheallaigh, Ciaran. 2005. Creating opportunities for positive engagement: Aboriginal people, government, and resource development in Australia. Paper presented to the International Conference on Engaging Communities, Brisbane, 12–17 August.
- Oficina en Colombia del Alto Comisionado de las Naciones Unidas Para los Derechos Humanos (OACNUDH). 2009. El Derecho de los Pueblos Indígenas a la Consulta Previa, Libre e Informada: Una guía de información y reflexión para su aplicación desde la perspectiva de los Derechos Humanos. Bogotá, Colombia.
- Peeling, Gordon. 2009. Intervention at "Up to the challenge: A multi-stakeholder conference on corporate accountability in Canada's extractive industries operating abroad." Co-hosted by the Canadian Network on Corporate Accountability and the Mining Association of Canada, 3 November, Ottawa.
- Penrose, Robert Weir, J.C. Day, and Mark Roseland. 1998. Shared decision-making in public land planning: An evaluation of the Cariboo-Chilcotin CORE process. *Environments* 25 (2/3): 27–47.
- Sinclair, A.J., and A.P. Diduck. 2001. Public involvement in EA in Canada: A transformative learning perspective. *Environmental Impact Assessment Review* 21 (2): 113–36.
- Sinclair, A.J., Alan Diduck, and Patricia Fitzpatrick. 2007. Conceptualizing learning for sustainability through environmental assessment: Critical reflections on 15 years of research. *Environmental Impact Assessment Review* 28 (2): 415–28.
- Stratos. 2004. Mining Association of Canada towards sustainable mining initiative: Community of interest advisory panel opening meeting, 10–11 March.
- Weitzner, Viviane. 2008. *Missing pieces: An analysis of the draft environmental & social impact reports for the Bakhuis bauxite project*, West Suriname. Ottawa: The North-South Institute.
- . 2002. *Through Indigenous eyes: Toward appropriate decision-making processes regarding mining on or near ancestral lands*. Ottawa: The North-South Institute.
- Weitzner, Viviane, and Emily Wilson. 2009. Indigenous participation in the Whitehorse mining initiative and subsequent multi-party dialogues in Canada and overseas. Working paper. Ottawa: The North-South Institute.
- Whitehorse Mining Initiative: Leadership Council Accord. 1995. <http://www.nrcan.gc.ca/mms-smml/poli-poli/pdf/accord-eng.pdf>.
- Wolski, E. 2007. *Exploring the relevance of gender-based analysis to Indigenous realities in Canada: A comparative analysis*. Ottawa: Aboriginal Women's Health and Healing Research Group.

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Operationalizing Free, Prior, and Informed Consent in the Extractive Industry Sector? Examining the Challenges of a Negotiated Model of Justice*

David Szablowski

ABSTRACT Free, prior, and informed consent (FPIC) is a key principle being promoted in an attempt to reshape a broad family of governance regimes designed to address the local consequences of extractive industry development in indigenous territory. This article explores the development of the principle of FPIC and the challenges that it presents to conventional forms of governance. FPIC is examined as a form of negotiated justice that aims to produce regulatory decisions through horizontal and decentralized forms of engagement. The article seeks to develop and clarify issues in building a critical research agenda on the operationalization of FPIC.

RÉSUMÉ Le consentement préalable libre et informé (CPLI) est un principe clé mis de l'avant dans le but de restructurer un large éventail de régimes de gouvernance conçus pour remédier aux conséquences locales du développement de l'industrie extractive en territoire autochtone. Cet article explore le développement du principe de CPLI et les défis qu'il représente pour les formes classiques de gouvernance. Le CPLI y est examiné comme un type de justice négociée visant à générer des décisions de réglementation à travers des modèles d'engagement horizontaux et décentralisés. L'article vise à développer et à clarifier certaines questions à considérer lors de l'élaboration d'un programme de recherche critique sur l'opérationnalisation du CPLI.

Introduction

Free, prior, and informed consent (FPIC) refers to engagement and decision making in which the free and informed consent of an indigenous people is obtained in advance for a course of action. FPIC is invoked in decisions that affect indigenous land, livelihoods, culture, or resources. It is a key principle promoted globally by the indigenous

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rights movement and has been used to inform many aspects of the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP). The Declaration calls for informed consent in relation to development within indigenous territories, resettlement, the acquisition of cultural artifacts, and legal or administrative decisions affecting indigenous peoples.

In this article I propose to explore the principle of FPIC and its development as a globalizing regime of negotiated justice. The latter part of the article is divided into two parts. The first provides examples to explore how the concept of consent is operationalized in contemporary regimes. The second part examines the requirement to inform affected communities and its dimensions and implications. Together, this discussion aims to develop and clarify issues in building a critical research agenda on the operationalization of FPIC.

FPIC and the Contest to Regulate EI Development

FPIC has become an increasingly prominent principle in global policy circles in relation to resource extraction and other activities that affect indigenous lands and territories (such as infrastructure development and national parks). It is gaining increasing attention as a result of the support it has received in expert global policy-making (EIR 2003; WCD 2001), by its discussion in multi-stakeholder forums (IUCN/ICMM 2008), and from its increasing profile in international law.¹ The assertion of FPIC represents an attempt to reform governance on a global scale. Globally, the regulation of extractive industries (EI) is a field of considerable innovation (particularly in social and community issues) where overlapping regimes and competing regulatory models are being produced by states, lenders, non-governmental organizations (NGOs), and extractive firms and associations (see Szablowski 2007). Against this background of competing regulatory models, the principle of FPIC is asserted as a standard against which regimes may be measured.

The promotion of FPIC is an attempt to reshape a broad family of governance regimes that have become prevalent in sites facing EI-related natural resource and environmental conflicts. While these regimes may differ substantially in some respects, broadly speaking each seeks to promote forms of direct "horizontal" engagement between EI firms (or states) and affected communities in order to influence decision making on EI development. By *horizontal* I mean that, to varying degrees, these regimes structure engagement as an interaction between nominally equal parties. The proliferation of direct engagement has arisen in part out of recognition of the failure of many states to protect the interests of marginalized peoples, and especially indigenous

1. Recent support for the principle of FPIC in international law includes its adoption by the following bodies and instruments: the 2007 decision by the Inter-American Court of Human Rights in *The Saramaka People v. Suriname* (2007); the 2007 *Declaration of the Rights of Indigenous Peoples* by the UN General Assembly; the *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment* issued by the Secretariat of the Convention on Biological Diversity in 2004; and the interpretation given by Conference of the Parties to s. 8(j) of the 1992 *Convention on Biological Diversity* (see UN Economic and Social Council 2005, 9).

peoples, from the negative consequences of extractive industry development. Many of these regimes also reflect a concern for the risks involved in unregulated negotiations involving extractive firms and local communities. Accordingly these regimes aim to check corporate power by promoting a sphere of structured engagement between firms and community actors that is backed by certain principles and processes. Proponents of FPIC argue that appropriate, procedural protections need to meet rigorous standards and that these direct engagement regimes should be refined into regimes of negotiated justice—regimes in which decision making is to a material extent the result of negotiations rather than the product of adjudication, administrative decision making, or purely private, individual decision making (Dezalay 1994).

The global emergence of this loose family of regimes reflects a move away from conventional forms of regulatory governance involving “top-down control using fixed statutes, detailed rules, and judicial enforcement” (Trubek and Trubek 2006, 5), and toward new governance models in which normative authority is pluralized and multiple actors are engaged in horizontal relationships (Lobel 2004, 293–326). This shift toward direct engagement and negotiated justice regimes in the field of extractives can be traced to changes in the global political economy of extractive industry investment and to ideological shifts in thinking about governance. Widespread liberalization of investment rules since the 1990s and subsequent mineral booms have propelled extractive firms into new and more remote areas, often with limited state presence, and often inhabited by marginalized groups and indigenous peoples. These populations face the potential massive remaking of their physical, social, and economic environments. The result has been increasing conflict and calls for the social mediation of mining investment at a time when states have made legal and ideological commitments to limit the formal regulatory burden placed on extractive firms. Thus many states have responded to conflicting economic and political pressures arising from disaffected communities by developing regimes to promote and constrain engagement between extractive firms and affected communities in order to delegate (often informally) the responsibility of social mediation onto extractive projects themselves (Szablowski 2007, 43–45).

However, direct engagement regimes are not only encouraged by states. While these regimes may release pressures on governments arising from contentious development projects, they also have the potential to accomplish goals for other actors. For extractive firms, direct engagement regimes provide opportunities to avoid or solve local problems that might disrupt operations. They may also help firms to project positive messages to important audiences abroad (such as lenders, shareholders, and the business media). Civil society actors such as members of the transnational indigenous movement and their allies tend to seek direct engagement to promote indigenous self-determination and local control over resources and livelihoods. Needless to say, although these three broad groups of actors may appear to agree on the desirability of engagement, they are motivated by very different visions of direct engagement regimes. The indigenous movement has articulated the most rigorous and demanding of the proposed or actual direct engagement regimes: FPIC.

FPIC and the Politics of the Transnational Indigenous Movement

FPIC is contentious because of its implications for state sovereignty and control over natural resource development. Many perceive FPIC as a potential indigenous veto over development projects that serve the national interest.² Even where a veto is not threatened, FPIC proposes to allow indigenous peoples to negotiate conditions under which development can take place. This appears to run counter to state claims of exclusive and “permanent sovereignty” over natural resources.³ For example, speaking before the UN General Assembly, Canada’s representative explained that country’s opposition to the *UN Declaration on the Rights of Indigenous Peoples* as due in part to concerns over “free, prior and informed consent when used as a veto” (United Nations General Assembly 2007, 12).

For the transnational indigenous movement, FPIC forms part of an attempt to re-define notions of national sovereignty, citizenship, and the nation-state in order to make room for the meaningful recognition of indigenous political institutions, indigenous sovereignty, and indigenous citizenship. This is a political project that speaks to similarly situated populations around the globe, including many located in regions not commonly thought of as home to indigenous peoples (see Kingsbury 1998; Marschke, Szablowski, and Vandergeest 2008). It proposes to counter the multifaceted and enduring forms of marginalization and oppression experienced by these groups in national societies by asserting the primacy of a sphere of traditional (although possibly renewed or retooled) self-governance.

Activism at the UN has provided the transnational, Indigenous movement with the conceptual lexicon for this struggle based on international law (Muehlebach 2003). Indigenous peoples claim the right to self-determination: the right to freely determine their own political, economic, and social future—a right owed to all “peoples” under international law.⁴ Many Indigenous movements claim rights to land and territory that are prior to those of the colonial and post-colonial states that have grown up around them. They argue that they remain colonized peoples, left out of the decolonization of the postwar period (Muehlebach 2003). Yet contemporary indigenous movements tend not to seek secession from established states. The goals of different national and sub-national indigenous movements may vary significantly; however, in general what is sought is a new constitutional order in which states recognize their overarching obligations to indigenous peoples. FPIC is an important part of this order. It expresses part of what is meant by indigenous self-determination: the recognition by states and

2. In Peru, for example, senior government officials including the president have bitterly criticized Amazonian indigenous groups opposed to hydrocarbon development as “dogs in the manger” (*perros del hortelano*) (see Garcia Perez 2007).

3. See, for example, General Assembly Resolution 1803 (XVII), 1962, “Declaration on Permanent Sovereignty over Natural Resources.”

4. Both the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* state, “All peoples have the right of self-determination.”

other actors of an effective sphere of indigenous governance that must be engaged meaningfully.⁵

Indigenous peoples' organizations and their allies have argued in favour of FPIC by pointing to the often disastrous legacy of state-sponsored resource exploitation and development policy that has ignored both the institutions and the interests of indigenous peoples. All too often, indigenous peoples have been left with the negative consequences of these development decisions and few of their benefits (e.g., see WCD 2001, 97–130).

Claims to FPIC are also made using the language of human rights. In the recent *Saramaka* decision issued by the Inter-American Court of Human Rights, the court accepted the argument that rights to FPIC may be owed to ensure that development decisions that affect an indigenous or tribal peoples' collective rights to land do not threaten their survival as an indigenous or tribal people.⁶ Interestingly, this decision concerned the rights of tribal Maroon communities in Suriname whose members are regarded as non-indigenous because of their descent from escaped African slaves. The court found that these communities were owed a right to FPIC by the state before it could authorize a large-scale extractive project that would have a major impact within their territory.⁷ While some commentators discuss FPIC as an exclusively indigenous right, observers such as Goodland have argued that the rationale for FPIC is grounded upon the degree to which livelihood and culture are dependent on customary lands. Goodland (2004, 69) sees a "a continuum of dependence ... with indigenous peoples clustered at one end, peasants and the rural poor in between, and the urban poor less connected."

Translating FPIC into Practice

Considerable work has been put into promoting the principle of FPIC in a wide number of international and transnational forums. FPIC continues to be raised and debated in, for example, consultations on the internal policies of multilateral development banks (e.g., IADB 2006, 5–6), meetings at the UN Permanent Forum on Indigenous Issues (United Nations Economic and Social Council 2005), the working groups of the Convention on Biological Diversity, and multi-stakeholder meetings convened by the

5. For example, the Indian Law Resource Center, an influential US-based indigenous rights NGO, expresses it thus:

As a part of their collective rights to ownership of their property and self-determination, indigenous peoples have the right to protect and to determine the use and disposition of their lands, territories and resources. Indigenous peoples' right of free prior informed consent is one of the particularly important incidents of their collective rights to property and self-determination. The right of free prior informed consent refers to two things: 1) the right of indigenous peoples to forbid, control or authorize activities that are on their lands and territories or that involve their resources, and 2) the right of indigenous peoples to forbid, control or authorize activities not on their lands, but which may substantially affect their lands, territories and resources or may affect their human rights. (ILRC n.d., 1)

6. *Saramaka People v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 172 (28 November 2007).

7. *Ibid.*, para. 134–35.

International Union for Conservation and the International Council on Mining and Metals (IUCN/ICMM 2008). The key questions being asked in these forums concern what FPIC means in practice, and how the principle can and should be operationalized.

The literature on the subject reflects the fact that there is little consensus regarding what FPIC ought to mean in practice. The increasing profile and credibility of FPIC have raised the stakes in the competition to further define the principle. Members of the transnational indigenous movement aim to maintain it as a demanding standard. Other actors, such as states and extractive firms, sometimes show a willingness to appropriate and re-characterize the principle. Canada, for example, at a UN meeting on FPIC methodologies, referred to its constitutional duty to consult Aboriginal peoples as a good example of FPIC and an appropriate model to follow (Canada 2005). However, while the judicially developed duty to consult in Canada includes a possible duty to accommodate First Nations, it clearly does not require Aboriginal consent.⁸ Similarly some extractive firms claim to be implementing FPIC processes voluntarily, case by case. In contrast, indigenous representatives point to the difficulty of finding a single example where they feel that FPIC has been successfully operationalized (see IUCN/ICMM 2008, 8, 20).

Very little is known about the actual institutional arrangements required to give the principle an effective meaning in different contexts around the world. Encouraging efforts have been begun in this regard (Bass et al. 2003; Colchester and Ferrari 2007; Hertz, La Vina, and Sohn 2007; Lewis, Freeman, and Borrelli 2008), but there is a marked need for further systematic and critical empirical research that can enable actors to learn from experiences. The best prospect for developing a useful understanding involves research on contemporary practices and comparative case studies relating to the broad family of FPIC and FPIC-like regimes operating around the world.

Exploring Consent in Contemporary Practice

Globally, the broad family of governance regimes that FPIC has been deployed to modify fall into two general categories: consent regimes and consultation regimes. As advocates for FPIC affirm, the distinction between the two is important. Consultation refers to a two-way exchange of information and dialogue on a proposed project. To qualify as consultation, and not simply as a one-way dissemination of information, this process must involve real exchange; in other words, it must be capable of influencing decision making in relation to the development of the project (see Sinclair and Diduck 1995, 222–26). However, the nature and degree of this influence is outside the control of the consulted party. Typically it is at the discretion of the project proponent,

8. This is a reference to the constitutional duty of the Crown in Canada to consult with First Nations on actions that may affect claimed Aboriginal rights. The duty may require that the Crown take measures to accommodate the First Nations' concerns, but it does not require Aboriginal consent. The duty is set down in a series of judicial decisions beginning with the Supreme Court of Canada's 2004 ruling in *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511.

although it may be subject to review by a regulatory official. As Hertz, La Vina and Sohn (2007, 7) observe, consultation processes “do not involve sharing or transferring decision-making authority to those who will be directly affected” by a project. In contrast, consent does involve sharing or transfer of authority. As a result, it can be used by affected communities as leverage to “facilitate more inclusive and collaborative decision making” (ibid.) or simply to avoid projects that appear to present them with greater risks than benefits.

Despite its importance, the clear distinction between consent and consultation regimes can be difficult to make in practice. This is so for at least three reasons discussed further below: (1) the regime’s formal requirements may be ambiguous or a hybrid, (2) a consent rule may lack sufficient institutionalized enforcement to be effective, and (3) consent processes may exist where no formal rules are present to support them.

Ambiguous or Hybrid Consent Requirements

Much of the blurring of consent and consultation regimes is the product of the global proliferation of hybrid regimes or temporary arrangements that ambiguously combine consultation and consent elements. One example can be seen in the ad hoc process adopted during the approval of the Ekati diamond mine in Canada’s Northwest Territories during the mid- to late 1990s. BHP (now BHP Billiton) sought to develop Canada’s first diamond mine in a traditional Aboriginal hunting, trapping, and fishing area that was the subject of a number of unresolved and overlapping land claims (Keenan, De Echave, and Traynor 2002). Despite the absence of statutory authority to mandate consent, the federal government sought to compel engagement between the mine proponent and affected Aboriginal peoples. The federal minister of the Department of Indian Affairs and Northern Development indicated he would make the granting of a water licence contingent on “satisfactory” progress within 60 days on a series of regulatory agreements, including four Impact and Benefit Agreements (IBAs) between BHP and First Nations affected by the proposed project (O’Reilly 1998). IBAs are private contracts made between Aboriginal peoples and extractive firms. They contain measures to minimize the negative impacts of mining and to secure benefits for Aboriginal peoples such as employment, training, health and education programs, and annual payments. In return, Aboriginal peoples often agree to support the project and may give up the right to make future claims (see O’Faircheallaigh, this volume). All four agreements were eventually concluded—two of them before the water licence was issued five months later.

Given the onus placed on BHP to obtain the agreements, this would appear to be an example of a consent regime that placed Aboriginal peoples in a strong bargaining position. However, inexperience, a lack of information, and very short timelines placed limitations on what they could achieve (Weitzner 2006, 9–11). Furthermore, Aboriginal peoples understood that they would not be allowed to reject the Ekati project by withdrawing from IBA negotiations (Bass et al. 2003, 17; Weitzner 2006, 10–11). Thus, although they were able to negotiate certain conditions with BHP, the influence they could exercise was also substantially constrained by the nature of the regime. Their consent was sought but not required. A similar assessment cited by Weitzner is made

by a resource person who was familiar with the IBA and EA negotiations and worked with one of the affected First Nations.

I don't think I'd call it consent ... I mean they did the best they could to respond to it, but everything was so rushed through ... and you look at the agreement ... the EA and the IBA and they're horrible! If you look at some of the stuff that's been done since then and compare it to that, obviously people didn't understand what they should be asking for, or monitoring, or keeping an eye on, just because it had never been done before ... Consent is when you have all the information, you understand it and you make a decision based on that. With it being rushed through and people not having the understanding, I don't see that as consent at all. (quoted in Weitzner 2006, 11)

A second example is provided by the World Bank Group's recent adoption of what might be thought of as an "almost-FPIC" standard. In 2006, the World Bank's International Finance Corporation (IFC) made changes to its influential social and environmental governance procedures to require its clients to ensure "free, prior and informed *consultation*" and "informed participation" of affected communities leading to their "*broad community support*" (emphasis added).⁹ IFC provides loans and equity to private sector firms that invest in the global South. Extractive firms that apply for its services must contract to comply with IFC's environmental and social performance standards. IFC's rules impose its almost-FPIC requirement on projects with "significant potential adverse impacts to affected communities." Like other WBG agencies, IFC has come under considerable pressure to adopt the full FPIC standard, particularly following the results of two successive, high-profile expert and multi-stakeholder policy reviews—the World Commission on Dams and the Extractive Industries Review—both of which recommended the adoption of FPIC (EIR 2003; WCD 2002). IFC's response to this pressure is an ambiguous compromise.¹⁰ What is the significance of the substitution of "broad community support" (BCS) for consent? This will no doubt depend on how BCS comes to be interpreted and upon the procedures developed to identify it. A few provisional conclusions may be drawn, however, based on the language used. Consent suggests a positive personal and legal act, something that must be solicited and actively given or withdrawn in a demonstrable way—evidenced perhaps by signatures, ballots, a show of hands, official documents issued by representatives, etc. Broad sup-

9. See IFC Sustainability Policy, para. 19–20; IFC Performance Standard 1: Social and Environmental Assessment and Management Systems, para. 21–22; and IFC Guidance Note 1: Social and Environmental Assessment and Management Systems, para. G53–G54.

10. The free, prior, and informed criteria are adopted and elaborated upon in the IFC's guidance notes. In addition, consultation is conceived of as a "two-way communication" that "should continue through the entire life of the project" (IFC Guidance Note 1, para. G51). It is an "organized and iterative" process, "leading to the client's incorporating into their decision-making process the views of the affected communities on matters that affect them directly," including "proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues" (IFC Performance Standard 1, para. 22). It requires efforts to promote the inclusion of women and vulnerable groups in consultations (IFC GN 1, para. G51).

port, on the other hand, refers to a more diffuse and interpretable phenomenon that can be expected to fluctuate over time. It may be evidenced by polling, focus groups, or other methods of gauging the state of popular opinion. Consent processes are clearly political events that mobilize affected community members in a collective experience of active decision making about the future. They take place in public spaces. As a result, they are more likely to galvanize attention, and generate discussion and deliberation within a group. In contrast, efforts to measure BCS are likely to engage a representative sample of the affected population in a less visible and more passive process of identifying personal preferences. If so, these processes are less likely to stimulate forms of active public deliberation and engagement with development decision making.

These two examples, the Ekati and IFC processes, manifest regulatory requirements that are less than consent but also more than bare bones forms of consultation. They reflect an increasing recognition of a local right to meaningful involvement in decision making. However, they also demonstrate a wish to constrain and contain that right within what are taken to be manageable limits. If current trends continue, stronger calls for FPIC are likely to increase the number of ambiguous and hybrid regimes as regulators are pushed to seek the increased legitimacy of consent processes but look nevertheless for ways to limit community bargaining power and facilitate project development.

A Clear Consent Rule with Insufficient Institutional Commitment or Support

There may be further ambiguity even where there are ostensibly clear and formal requirements concerning consent. If the institutional conditions to support a rigorous process are absent, a formal requirement of consent may be less than effective in practice. In a recent report published by the Forest Peoples Programme, the authors use a case study to assess the effectiveness of the Forest Stewardship Council's implementation of an FPIC standard. The Forest Stewardship Council (FSC) is an innovative, non-profit and non-governmental, voluntary certification initiative that aims to promote responsible forestry worldwide.¹¹ FSC was founded in 1993 by a coalition of environmental NGOs such as the World Wildlife Fund. It sets sustainable forestry standards, accredits auditors responsible for monitoring the compliance of its members, and authorizes the certification of wood products that meet its standards. Firms that are found to comply with FSC rules are allowed to use the FSC logo and access niche markets available for certified wood. FSC states that more than 117 million hectares of forest in over 82 countries are certified to its standards.¹² FSC has adopted a clear FPIC standard for forestry practices in the lands and territories of indigenous peoples. Criterion 3.1 of FSC's *Principles and Criteria* states, "Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies."

Colchester and Ferrari (2007, 14–19) assess FSC's performance of FPIC in several logging operations in East Kalimantan, Indonesia. The authors' findings suggest that

11. See Forest Stewardship Council 2009a.

12. See Forest Stewardship Council 2009b.

the regime does not reliably mandate a meaningful community consent process. They observe that the members of indigenous communities affected by the logging operations were divided and relatively disorganized. Community members were reluctant to challenge the forestry firm (described locally as a powerful operator), given the weakness of their legal rights to land, local government recognition of the company, and their lack of access to alternative employment or means of generating cash incomes. The authors further noted that the forestry companies included in their study appeared not to accept the notion that local indigenous peoples could say no to a project. With this issue kept off the table, the firms were able to negotiate from a position of strength, while the bargaining power of indigenous communities was undermined by their lack of legal rights to land or forest resources and by their relative disorganization. The authors note that community leverage is further eroded by the fact that a firm's failure to obtain formal community consent did not result in the withholding of an FSC certificate. Instead firms were provided with time frames of up to two years to negotiate and implement agreements on regularizing land tenure and payment of compensation (Colchester and Ferrari 2007, 16–19). In these circumstances, communities may achieve gains they would not have realized without the FSC regime; however, the operational reality described by the authors' report falls short of consent. Colchester and Ferrari conclude that "communities are thus obliged to settle for what they think they can get in the circumstances" (19).

No Consent Rule, but Leverage Is Developed to Require Consent

Lastly, consent processes may occur even where no formal regime exists. The absence of formal rights to FPIC in a jurisdiction does not foreclose the possibility that communities may find ways to express or withhold their consent to a project. A number of communities have used inventive and extra-legal strategies to withhold their consent and veto a project by making it politically or economically unfeasible—even in the absence of officially recognized rights.

Beginning with the community of Tambogrande, Peru, in 2002, a number of municipalities and indigenous communities have sought to use local referendums to indicate community disapproval of a proposed project. Tambogrande is an export-producing agricultural area in northern Peru in which a Canadian junior firm, Manhattan Minerals, sought to develop a large gold deposit located beneath the district's major population centre. Local opposition to the project was generated by Manhattan's poor community relations practices, by concern about environmental threats and water contamination, by the expected resettlement of 8,000 people to make way for the mine, and by the murder of a leading mine critic in 2001 (Bass et al. 2004; Rousseau and Meloche 2002). Community actors made alliances with national and international NGOs. Through these networks they were able to obtain support, information, advice and resources, and to participate in national and international campaigns against the project. A local referendum by secret ballot on whether to accept or reject Manhattan's project was organized by the district municipality of Tambogrande and funded with

a grant of US\$20,000 from Oxfam Great Britain (Rousseau and Meloche 2002).¹³ The turnout was approximately 74% of the voting population, with 98% voting against the mine (Rousseau and Meloche 2002). In the run-up to the referendum, the Peruvian national government had signalled its opposition to the process and asserted that the vote was without legal foundation or effect (Bass et al. 2004, 22). However, following further disturbances, including a local general strike and a demonstration of over 10,000 people in the district in 2003, the Peruvian government effectively shut down Manhattan's bid to develop the mine.¹⁴

Tambogrande's referendum strategy has since been replicated many times. While it has been successful in some cases—notably in Esquel, Argentina, in 2003 (see Walter and Martínez-Alier in this issue)—it has failed to produce results in others. For example, referendum efforts in Sipakapa, Guatemala, in 2005 and Rio Blanco, Peru, in 2007 have not halted official support for controversial projects (Imai, Mehranvar, and Sander 2007; J. Moore 2008). Other strategies reliant to a greater degree on confrontation or direct action, however, have enabled some communities to obstruct controversial mining operations. For example, large demonstrations prevented the expansion of a large US-owned gold mine in northern Peru into an area regarded as a vital and sacred aquifer (Hertz, La Vina, and Sohn 2007, 40–44). These strategies are often dangerous, and risk provoking violence and continuing civil unrest. They can also be met with state-sponsored strategies of criminalization of dissent (e.g., see Reuters 2009; Vasquez 2009).

In general, these community-driven consent (or rather, rejection) processes have arisen from particularly contentious and poorly managed projects. They are typically the product of the collapse of dialogue and tend to lack meaningful exchange between local communities and extractive firms. In these cases, where states and extractive firms have failed to provide the supportive conditions for FPIC processes, community actors often struggle to realize them. In particular, they seek the leverage needed to impose community consent as a requirement for the project. Some also pursue alliances with external actors involved in NGO or social movement networks to gain access knowledge and expertise to assist with informed decision making. In general, these extra-legal strategies appear to be successful for communities with strong organizational capacities and that exhibit considerable unity on issues related to mine development.

Regulatory Consent

The examples reviewed in the discussion above give an idea of the complexity involved in regulatory processes for governing corporate and community engagement. Clearly the presence or absence of a formal rule requiring consent is an important factor in determining whether an effective consent regime exists, but alone it is not determina-

13. The question asked on the secret ballot was, "Do you agree with the development of mining activities in the urban, urban expansion, agricultural, and agricultural expansion zones in the district of Tambogrande?" (Rousseau and Meloche 2002).

14. In December 2003, Centromin, the state-owned mining company and the entity holding the Tambogrande mining concession, advised Manhattan Minerals that it had lost its right to acquire the concession as a result of its failure to fulfill the requirements of its contract (De Echave 2005, 4).

tive. How then should we examine consent and consultation regimes? The practice of FPIC in any particular case can be thought of as the product of a conjuncture of forces.

1. First there is the formal institutional structure of regimes that regulate extractive industry development and relations with affected communities. These are the written rules, bureaucratic procedures, and formalized practices of each regime. This institutional structure helps to shape the conditions, spaces, timelines, and resources available for corporate–community engagement—it forms the skeleton that supports and structures of the engagement process. This structure may provide valuable resources and bargaining entitlements to communities (such as disclosure requirements through an environmental assessment regime).
2. The second group of forces concerns the informal patterns of behaviour exhibited by each of the major parties involved in the consent/consultation process. This could include how a party views obligations under the regime (such as forestry firms that do not recognize a community's right to reject an FSC-certified project) or what a party perceives to be legitimate ways of administering the regime (such as the practice among auditors of granting FSC certification before local consent is obtained). This set of forces helps to shape how different actors interpret, apply, modify, or disregard the formal rules and practices of the relevant regimes.
3. The third group of forces concerns the broader contextual background against which the consent/consultation process takes place. These include material and ecological conditions, political economic factors, and social relations within which different actors are enmeshed. The characteristics of the community are particularly important. Factors such as education levels, degree of community, political organization and participation, and nature and viability of the local economy are likely to all play a role. It is surely no accident that the successful referendum cases occurred in communities viewed as non-indigenous, with higher levels of education, and with significant economic alternatives to extractive industry development (tourism, export-oriented agriculture).

These three groups of forces come together to structure the terrain on which corporate and community engagement will take place. They provide not only the “lay of the land” but also the resources and opportunities available to be used by different actors in their efforts to influence this engagement. Socio-legal scholarship has shown that law and legal institutions are rarely fully successful at ordering from above. Rather, actors tend to negotiate relationships “in the shadow of the law” (Mnookin and Kornhauser 1979), where beliefs about legal rights and duties provide bargaining chips used to structure private forms of ordering. Actors also mobilize legal rights “in the shadow of social institutions” (Albiston 2005), where prevailing social norms tend to structure how these rights are understood and translated into practice.

In this context, FPIC regimes face a considerable challenge. As the discussion in this section has suggested, to be successful, FPIC regimes must provide an effective and comprehensive facilitative structure to encourage productive and informed processes of engagement, deliberation, and negotiation between corporate and community actors. Rushed timelines, unprepared communities, and poor information transfer serve to vitiate consent. In order to project a sufficiently strong “shadow,” FPIC regimes

need to be built and especially *administered* with attention to the dynamics taking place amid the three sets of forces outlined above, including the other legal regimes that regulate extractive industry development and relations with affected communities (e.g., environmental assessment, agrarian law), the relevant prevailing social norms and institutions likely to influence how different groups interpret and apply the rules, and the background of social relations, political economy, and ecology, etc. To advance our knowledge of these processes, researchers would do well to study how different actors and groups (community actors, regulatory officials, and corporate actors) operate in the shadow of legal rules in order to expand their ability to advance particular social, political, or economic projects. Critical insights into the exercise of power in the construction of corporate and community relationships would be particularly valuable.

Exploring the Right to Be Informed in a Model of Negotiated Justice

The FPIC Model of Negotiated Justice

The FPIC governance model represents a form of negotiated justice that is closely tied to core notions of liberal theory. Again, by *negotiated justice* I mean a regime in which decision making is to a material extent the result of negotiations rather than the product of adjudication, administrative decision making, or purely private individual decision making. Negotiated justice models differ from these other forms of decision making in that they emphasize the rights of parties to personal autonomy and free choice combined with the right to bind themselves and others through formal agreement (Dezalay 1994).

Negotiated justice models are deployed out of a concern for personal autonomy and often from a lack of confidence in the state's capacity to act as an appropriate or legitimate arbiter in relation to the rights and interests at stake. The emphasis on negotiation and consent in the indigenous movement is based on the notion of collective self-determination of peoples. For liberal theorists, negotiation allows individuals to define and pursue their own values and vision of the good. Facilitating negotiated justice may also be a convenient way for the state to avoid assuming responsibility for managing the social claims, and social and environmental consequences of extractive industry development.

Negotiated justice can be a double-edged sword, of course. Included within the liberal idea of the right to personal self-determination is the right to live by the consequences of one's own actions. Traditionally, liberal legal theory has recognized a broad sphere of personal responsibility for conduct of private negotiations. The consequences of poor decision making, in the absence of some wrongdoing, tend to be left undisturbed. Liberal legal theory, particularly in the common law tradition, tends to police procedure more than substantive outcomes. However, the FPIC principle signals a departure from the standard liberal legal approach that recognizes a broad sphere of personal responsibility for the conduct of private negotiations. It imports a fiduciary component to the form of engagement prescribed, based presumably on the sharp in-

equality in power, resources, and knowledge between the parties (see O'Faircheallaigh, this volume).

Considering the "I" in FPIC: Why Should Consent Be "Informed"?

The "informed" requirement in FPIC is an interesting one. It indicates a fiduciary character to the relationships involved in the FPIC process. Conventionally, in liberal legal theory, a party to a transaction is required chiefly to follow proper procedure and form. Misrepresentation and other acts of active dishonesty are forbidden. However, the parties to a contract are not bound to disclose any information to one another unless they agree to do so. Indeed, a party with superior market knowledge is expected to use it to her advantage, and to increase her profit at the other party's expense. In this way, exchange relationships in properly functioning markets reward the industrious and encourage assets to flow toward those best able to put them to productive use. Recent legal reforms in the global North have steadily increased disclosure requirements and basic warranties for the benefit of consumers (e.g., product safety information, food ingredients, country-of-origin labelling, and warranties of merchantability). However, the core tradition of liberal legalism, as reflected in the common law doctrine of *caveat emptor*, emphasizes the duty of parties to fully and properly inform themselves.

The notion of informed consent to a transaction is borrowed from fiduciary contexts, most familiarly the doctor-patient relationship. In a medical context, the requirement that a patient's consent to treatment be "informed" stems from the principle that responsibility for intimate personal decisions of this nature must ultimately lie with the patient. A duty to inform is required in this case because, without the benefit of the specialized knowledge possessed by the doctor, the patient is not able to exercise a meaningful right to self-determination. The requirement also recognizes the potential for conflict of interest between patient and doctor. Undoubtedly, there is much scope for conflict of interest in certain cases (risky experimental trials, costly procedures that provide marginal benefits, etc.). A doctor is subject to legal liability if the duty to inform is not properly carried out. Thus the informed consent requirement is an effort to insulate these relationships from conflicts of interest while reinforcing individual autonomy in decision making.

It should be said, however, that the relationships involved in FPIC processes are quite different from those involved in obtaining consent to medical treatment. Extractive industry firms and mining-affected communities are to a much greater degree involved in oppositional bargaining. The conflict between the interests of the parties is much more pronounced and is less tempered by shared goals, or the influence of a professional ethic of service and care, as in the medical case. Concessions to communities can present extractive industry firms with substantial costs and obstacles. Notably, collective bargaining, a case arguably more comparable to FPIC, is not distinguished by fiduciary duties. Instead the parties owe one another a duty to bargain in good faith—a much lesser standard.

A strong conflict of interest between parties gives rise to two kinds of problems that might be addressed by imposing a fiduciary duty to inform. These problems are dis-

cussed below. As we shall see, each is related at least in part to asymmetries in information between the parties.

The Problem of Power

Negotiations subject to FPIC are characterized by a stark imbalance of power among the participants. Extractive industry firms have vastly superior economic resources, very often they enjoy the active support of host country governments eager to promote investment, and they have access to advanced technical and legal advice. In contrast, mining-affected communities are typically located in remote regions with poor and marginalized populations. In addition, these populations often include significant numbers of indigenous peoples or groups who are deeply marginalized from the institutions of national society. These marginalized populations are often culturally identified by dominant groups in such a way as to be considered ineligible as beneficiaries of newly valuable resources discovered in their territories. As Li (2001, 161) observes, "Poverty, powerlessness, and exclusion from valuable resources are integrally related".

This imbalance of power has two major negative effects in the context of FPIC. First, it creates unbalanced negotiations that are prone to be dominated by extractive industry firms. Second, it creates a context in which these firms are also able to exercise undue influence over how the rules designed to promote FPIC are implemented (Szablowski 2007). Socio-legal studies have long pointed to the distance between "the law on the books" and "the law in action." Power plays a significant role in shaping how rules are translated into practice, whether as a result of strategies of creative compliance (McBarnett and Whelan 1997) or through the strategic exploitation of gaps, indeterminacies, or bargaining entitlements (Galanter 1981; Moore 1978).

The duty to inform is offered as an important but partial solution to the problematic imbalance of power characteristic of FPIC processes. Indeed, significant aspects of this imbalance arise from limited local access to reliable, detailed, and accessible information on proposed extractive projects, their contexts and implications. Without accurate knowledge of such matters, local actors face considerable difficulties in protecting their own interests and are vulnerable to manipulation in negotiations. As Fiss (1984, 1076) points out, inequality of information creates structural advantages in negotiation: disputants with imperfect knowledge can be persuaded to settle for less than they are due. Furthermore, communities that lack reliable information will find it difficult to mobilize their resources in their own best interests. Without the capacity to identify or evaluate the risks or benefits posed by a project, communities (or constituencies within communities) are less likely to be able to engage productively in collective action. Thus, conversely, it is expected that fuller knowledge of relevant circumstances can facilitate real deliberation and the capacity to negotiate.

Information does not provide a full solution to the problem of power. As the alternative dispute resolution literature points out, the strength of a party's bargaining position is influenced by its alternatives to reaching agreement (Fisher and Ury 1981). A fully informed party with poor alternatives to settlement remains in a weak position, regardless of the extent of its knowledge, and can be bargained down significantly. Where the local climate is one of desperation and need, effective access to information

may help local actors only to make the best of a bad situation. It provides no greater substantive guarantee of a socially just outcome.

In addition, the presence of rules intended to promote the effective "informing" of local actors will not necessarily guard against the pernicious effects of power in its influence over rule implementation. Where power is used to distort the implementation of access to information rules, these rules may have little capacity to place checks on the exercise of power. Cariño reports that this has been the case in the Philippines, where, despite detailed legal rules mandating FPIC, non-compliance is common.

Fundamental to the exercise of prior informed consent is access to sufficient information to make a genuine assessment and sufficient time to consider and debate the issues internally. In the Philippines, *no case exists* where adequate information has been provided to the affected community. The consultation meetings called nominally by the [relevant governmental authorities] to "inform and consult" are too often platforms for the exclusive presentation of company information and propaganda. To date, no consultation has been invited or informed by any independent agency knowledgeable on the issues, let alone any groups critical of mining. This has only occurred where communities or local NGOs have made such efforts out of their own limited resources. (2005, 35; emphasis added)

Whether information can provide a meaningful response to the problem of power imbalances in corporate and community engagement in the extractive sector could be usefully explored through empirical research on existing consent and consultation regimes. To this end, it is helpful to identify several dimensions of the right to be informed contained within the principle of FPIC.

- *Scope*: How are the relevant topics and issues identified?¹⁵
- *Generation*: Through what processes is the information generated? How are concerns regarding independence and credibility addressed?
- *Cost*: How are informational activities paid for?

15. An international workshop on methodologies regarding FPIC and indigenous peoples held by the UN Permanent Forum on Indigenous Issues in 2005 concluded that the word *informed* should: – imply that information is provided that covers (at least) the following aspects:

- the nature, size, pace, reversibility, and scope of any proposed project or activity;
- the reason(s) for or purpose(s) of the project and/or activity;
- the duration of the above;
- the locality of areas that will be affected;
- a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks, and fair and equitable benefit-sharing in a context that respects the precautionary principle;
- personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees, and others);
- procedures that the project may entail.

United Nations Economic and Social Council 2005, 12.

- *Dissemination/exchange*: How, when, where, and through what activities or programs is information disseminated? How is information exchanged among corporate and community actors?
- *Barriers to assimilating knowledge*:¹⁶ How are barriers identified and addressed among corporate and community actors? What access to advice and expertise do community actors receive? How are cross-cultural issues dealt with? What forms of training do corporate staff receive?
- *Ownership*: Who has ownership or other rights to the information once it is generated?

Concluding Remarks: Toward a Critical Research Agenda on the Operationalization of FPIC

In this article I have sought to explore the principle of FPIC, its implications, and the challenges in translating or assessing the principle in practice. FPIC represents the desired regulatory model, promoted by the indigenous movement and its allies, for direct engagement regimes administered by developed and developing country states, by multilateral development banks, by extractive industry associations, by private lenders, and by NGOs and transnational advocates. It is not clear, however, that FPIC processes hold the emancipatory promise wished for. In global policy circles relating to extractives, it seems that FPIC is everywhere discussed, but it is not much of an exaggeration to say that it is practised virtually nowhere. Furthermore, while direct corporate and community engagement has become an established practice in the field of extractives, there is no consensus on the adoption of FPIC as the guiding standard for engagement. Instead, resistance to FPIC among states and extractive firms remains high. Nevertheless, FPIC remains influential, and the World Bank Group's adoption of an almost-FPIC standard has the potential in the coming years to institutionalize a series of interpretive and implementation practices at a global scale.

Here I have sought to identify and clarify several issues to contribute a critical research agenda on implementation of the regime. Critical implementation research that inquires into these kinds of processes and into the institutional structures used to realize them can serve two purposes. It can reveal and focus attention on the gaps in existing regimes. It can also help to build understanding of the challenges involved in implementation and insights into the underlying problems that implementation is intended to address.

16. A duty to inform requires ensuring that information provided can be taken in as *knowledge*, that is to say, information that increases an actor's capacity for action (see Alavi and Leidner 1999).

References

- Alavi, M., and D.E. Leidner. 1999. Knowledge management systems: Issues, challenges, and benefits. *Communications of the Association for Information Systems* 1 (2): 1–36.
- Albiston, C.R. 2005. Bargaining in the shadow of social institutions: Competing discourses and social change in workplace mobilization of civil rights. *Law & Society Review* 39 (1): 11–49.
- Bass, S., P.S. Parikh, R. Czebiniak, and M. Filbey. 2003. *Prior informed consent and mining*. Washington: Environmental Law Institute.
- Canada. Indian and Northern Affairs. 2005. Statement by the Observer Delegation of Canada. <http://www.ainc-inac.gc.ca/ap/ia/stmt/unp/05/fpi/mrf-eng.asp>.
- Cariño, J. 2005. Indigenous peoples' right to free, prior, informed consent: Reflections on concepts and practice. *Arizona Journal of International & Comparative Law* 22 (1): 19–39.
- Colchester, M., and M.F. Ferrari. 2007. *Making FPIC work: Challenges and prospects for Indigenous peoples*. Moreton-in-Marsh: Forest Peoples Programme.
- Colchester, M., and F. Mackay. 2004. *In search of middle ground: Indigenous peoples, collective representation and the right to free, prior and informed consent*. Forest Peoples Programme. Paper presented to the 10th Conference of the International Association for the Study of Common Property Oaxaca, August 2004.
- De Echave, J. 2005. *Report: Canadian mining companies investments in Peru: The Tambogrande case and the need to implement reforms*. Lima: CooperAcción.
- De Echave, J., K. Keenan, M.K. Romero, and A. Tapia. 2005. *Los Procesos de Dialogo y la Administración de Conflictos en Territorios de Comunidades: El Caso de la Mina de Tintaya en el Perú*. Lima: CooperAcción.
- Dezalay, Y. 1994. The forum should fit the fuss: The economics and politics of negotiated justice. In *Lawyers in a postmodern world*, ed. M. Cain and C.B. Harrington, 155–82. New York: New York University Press.
- Extractive Industries Review Secretariat (EIR). 2003. Striking a better balance: The extractive industries review. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/o,,contentMDK:20306686~menuPK:592071~pagePK:148956~piPK:216618~theSitePK:336930,00.html>.
- Fisher, R., and W.L. Ury. 1981. *Getting to yes: Negotiating agreement without giving in*. New York: Penguin.
- Fiss, O.M. 1984. Against settlement. *Yale Law Journal* 93:1073–90.
- Forest Stewardship Council. 2009a. About FSC. <http://www.fsc.org/about-fsc.html>.
- . 2009b. FSC facts & figures. <http://www.fsc.org/facts-figures.html?&L=crtvjrnboj>.
- Galanter M. 1981. Justice in many rooms: Courts, private ordering, and Indigenous law. *Journal of Legal Pluralism and Unofficial Law* 19:1–47.
- Garcia Perez, A. 2007. El síndrome del perro del hortelano. *El Comercio* 27 October 2007. http://www.elcomercio.com.pe/edicionimpresa/html/2007-10-28/el_sindrome_del_perro_del_hort.html.
- Goodland, R. 2004. Free, prior and informed consent and the World Bank Group. *Sustainable Development Law & Policy* 4:66–74.
- Hertz, S., A. La Vina, and J. Sohn. 2007. *Development without conflict: The business case for community consent*. Washington DC: World Resources Institute.
- Indian Law Resource Center. n.d. Position paper on indigenous peoples' right of free prior informed consent with respect to indigenous lands, territories and resources. <http://www.indianlaw.org/en/projects/ihr/mdb>.
- Imai, S., L. Mehranvar, and J. Sander. 2007. Breaching Indigenous law: Canadian mining in Guatemala. *Indigenous Law Journal* 6 (1): 101–39.
- Interamerican Development Bank (IADB). 2005. Strategy for indigenous development and operational policy on indigenous peoples: Report on the consultation process.
- IUCN/ICMM. 2008. *Mining and indigenous peoples issues roundtable: continuing a dialogue between indigenous peoples and mining companies*. Sydney, Australia, 30–31 January 2008. <http://www.icmm.com/document/237>.
- Keenan, K., J. De Echave, and K. Traynor. 2002. Mining and communities: Poverty amidst wealth. Paper presented at International Conference on Natural Assets, 8–11 January 2003, Tagaytay City, Philippines.

- Kingsbury, B. 1998. "Indigenous peoples" in international law: A constructivist approach to the Asian controversy. *American Journal of International Law* 92:414-57.
- Kirsch, S. 2006. *Reverse anthropology: Indigenous analysis of social and environmental relations in New Guinea*. Stanford: Stanford University Press.
- Lewis, J., L. Freeman, and S. Borreill. 2008. *Free, prior and informed consent and sustainable management in the Congo Basin*. Berne: Intercooperation, Swiss Foundation for Development and International Cooperation Berne and Society for Threatened Peoples Switzerland.
- Li, T.M. 2001. Boundary work: Community, market, and state reconsidered. In *Communities and the environment: Ethnicity, gender, and the state in community-based conservation*, ed. A. Agrawal & C.C. Gibson, 157-79. New Brunswick, NJ: Rutgers University Press.
- Lobel, O. 2004. The renew deal: The fall of regulation and the rise of governance in contemporary legal thought. *Minnesota Law Review* 89:262-389.
- MacKay, F. 2004. Indigenous peoples' right to free, prior and informed consent and the World Bank's extractive industries review. *Sustainable Development Law & Policy* 4: 43-65.
- Marschke, M., D. Szablowski, and P. Vandergeest. 2008. Engaging indigeneity in development policy. *Development Policy Review* 26 (4): 483-500.
- McBarnet, D., and C.J. Whelan. 1997. Creative compliance and the defeat of legal control: The magic of the orphan subsidiary. In *The human face of law*, ed. K. Hawkins, 177-98. Oxford: Clarendon.
- Mnookin, R.H., and L. Kornhauser. 1979. Bargaining in the shadow of the law: The case of divorce. *Yale Law Journal* 8 (5): 950-97.
- Moore, J. 2008. Peru: Piura votes, a dangerous precedent. *Upside Down World* 16 September 2008. <http://upside-downworld.org/main/content/view/1479/76/>.
- Moore, S.F. 1973. Law and social change: The semi-autonomous social field. *Law & Society Review* 7 (4): 719-46.
- Muehlebach, A. 2003. What self in self-determination? Notes from the frontiers of transnational indigenous activism. *Identities: Global Studies in Culture and Power* 10:214-68.
- O'Reilly, Kevin. 1998. The BHP Independent Environmental Monitoring Agency as a management tool. Prepared for the Laborador Inuit Association. Submitted to Voisey's Bay Environmental Assessment Panel. <http://www.carc.org/rndtable/vbpanels.html>.
- Reuters. 2009. Peru blames police in copper mine torture case. *Reuters* 19 March 2009. <http://uk.reuters.com/article/idUKN18351902>.
- Rousseau, S., and F. Meloche. 2002. *Gold and land: Democratic development at stake. Report of the observation mission of the Tambogrande municipal consultation process in Peru*. Montreal: International Centre for Human Rights and Democratic Development. <http://www.dd-rd.ca/site/publications/index.php?id=1345&subsection=catalogue>.
- Secretariat of the Convention on Biological Diversity. 2004. *Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by Indigenous and local communities*. Montreal: SCBD.
- Sinclair, J., and A. Diduck. 1995. Public education: An undervalued component of the environmental assessment public involvement process. *Environmental Impact Assessment Review* 15:219-40.
- Szablowski, D. 2007. *Transnational law and local struggles: Mining, communities and the World Bank*. Oxford: Hart.
- Trubek, D.M., and L.G. Trubek. 2006. New governance & legal regulation: Complementarity, rivalry, and transformation. *Columbia Journal of European Law* 13: 1-26.
- United Nations Economic and Social Council. 2005. *Report of the International Workshop on Methodologies regarding Free Prior and Informed Consent*, UN, New York, 17-19 January 2005, E/C.19/2005/3.
- United Nations General Assembly, 107th plenary meeting, 13 September 2007, A/61/PV.107.
- Vasquez, M. 2009. La Criminalización de la Protesta Social. Paper presented at Rethinking Extractive Industry: Regulation, Dispossession and Emerging Claims conference, 5-7 March 2009, York University, Toronto.
- Weitzner, V. 2006. *Dealing full force: Lutsel K'e Dene First Nation's experience negotiating with mining companies*. Ottawa: North-South Institute and Lutsel K'e Dene First Nation.

World Bank Group. 2004. WBG/Civil Society Meeting transcript. WB-IMF 2004 Spring Meetings , Civil Society Sessions, Meeting on the Extractive Industries Review, 22 April 2004. <http://www.ifc.org/ifcext/eir.nsf/Content/WBGCivilSocietyMeetingTranscript>.

World Commission on Dams (WCD). 2001. *Dams and development: A new framework for decision making*. London: Earthscan.



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Corporate Social Responsibility and the Rentier Nigerian State: Rethinking the Role of Government and the Possibility of Corporate Social Development in the Niger Delta*

Uwafiokun Idemudia

ABSTRACT This paper contributes to the emerging discussion on the role of government in corporate social responsibility (CSR) from a developing country perspective. Drawing on a preliminary conceptual framework, the paper critically examines the extent to which the Nigerian government has facilitated or inhibited CSR practices, and the ramifications for corporate social development. It demonstrates that the nature of the Nigerian state, the country's rentier economy, and the contested nature of CSR have prevented the Nigerian government from providing an enabling environment for CSR, which, together with oil companies' failures, undermine the possibility of corporate social development in the Niger Delta.

RÉSUMÉ Cet article contribue à la discussion émergente sur le rôle du gouvernement, du point de vue d'un pays en développement, en matière de responsabilité sociale d'entreprise (RSE). S'appuyant sur un cadre théorique préliminaire, l'article examine de façon critique dans quelle mesure le gouvernement nigérian a facilité ou inhibé les pratiques de RSE, ainsi que les conséquences sur le développement social des entreprises. Il y est démontré que la nature de l'État nigérian, son économie d'État rentier et la nature contestée de la RSE ont empêché le gouvernement nigérian de créer un environnement favorable à la RSE, ce qui, jumelé aux manquements des compagnies pétrolières, mine les possibilités de développement social des entreprises dans le delta du Niger.

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Introduction

Development theory and practice have historically placed different emphases on the roles the government and private sector play in growth and development (Chris, Philips, and Bhatia-Panthaki 2007). For example, while some scholars have contested the nature of the relationship between transnational corporations (TNCs) and development in developing countries, others have debated the strengths and limitations of the welfare and neo-liberal states.¹

However, since the late 1990s, there has been a gradual shift in the conceptualization of the business-society relationship from *business and society* (i.e., a collateral system) to *business in society* (i.e., an interpenetrating system). This conceptual shift has reinforced the idea that business is not just part of the problem of development, it is also part of the solution. For example, Visser, McIntosh, and Middleton (2006) noted that despite the polarizing nature of the TNC-development nexus debate, a general consensus now exists that business is well placed to make significant positive contributions toward improving social, economic, and environmental conditions in Africa. This expression of a new relationship between private capital and public interest, frequently conceptualized in terms of corporate social responsibility (CSR), represents a shift away from the confrontational politics of earlier decades toward a newer emphasis on collaboration and partnership (Hamann 2003).

Today, there appears to be a growing consensus that if sustainable development is to be achieved, then constructive inputs are needed from government, civil society, and business (see European Commission 2001; Warhurst 2001). Consequently, it is argued that today sustainable development is no longer a matter of choosing between the state and the market; instead it is a matter of creating the appropriate mix of government and private sector action to maximize welfare. In other words, it is about creating an enabling environment with a strong regulatory framework to mobilize resources for development (Chris, Philips, and Bhatia-Panthaki 2007). Underpinning this position is the proposition that CSR is not just about the business-society relationship; rather, it is a way of rethinking the roles of companies in society that takes governance and sustainability as core values and that favours social co-responsibility² among government, business, and civil society (Albareda, Lozano, and Ysa 2007) (see figure 1).

This new emphasis on a particular kind of enabling environment for development has arisen in response to the existence of governance deficits that arguably reflect state and market shortcomings, and in response to continuing and new societal demands that traditional institutions have been unable to meet (Ciulla 1991; Moon 2004). Midtun (2005) has suggested that we are witnessing the emergence of a new form of societal

1. This is illustrated in the different variants of the modernization versus dependency theory debates.

2. Co-responsibility implies the existence of common objectives, the assumption of specific responsibilities, and the articulation of the responsibilities taken on by each party. See Albareda et al. 2008.

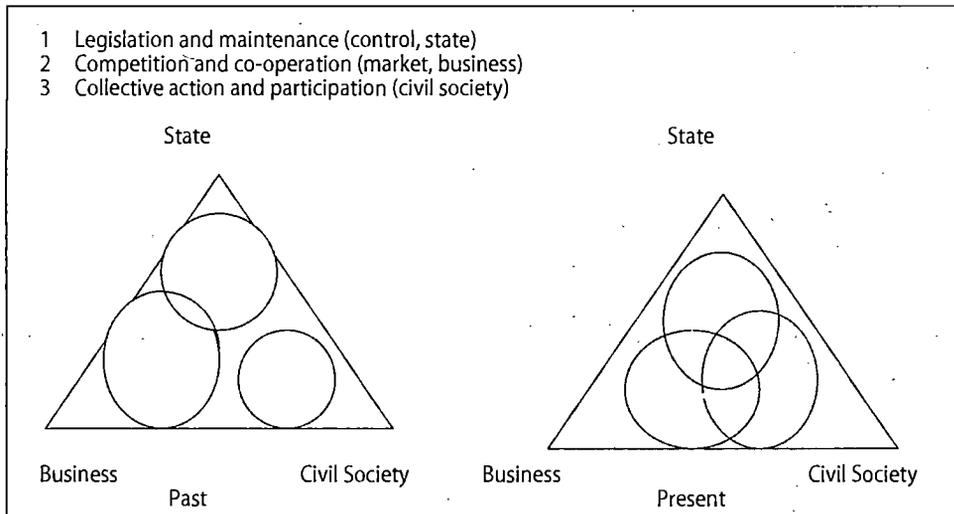


Figure 1. State, business, and civil society

Source: Van Marrewijk (2003).

governance, an embedded relational governance that shares the basic market orientation of the liberal model as well as many of the social and collective goals of the welfare state.³ A key driver of this embedded relational governance model is CSR,⁴ which is seen as a useful framework within which new ways of collaboration and partnerships among corporations, government, and civil society can be established, creating innovative mechanisms for addressing existing governance deficits (Albareda et al. 2008). It is therefore not surprising that the European Commission (2002) has described CSR as the business contribution to sustainable development, and that Albareda et al. (2008) have argued that attention must be paid to the development and application of CSR within the framework of other stakeholders, like government, from a relational perspective. Indeed, a decade ago, Bowie (1991, 63) argued that “if we are to develop a truly comprehensive theory of corporate social responsibility, we must develop a theory for determining the appropriate *reciprocal duties* that exist among corporate stakeholders.” Besides, the moral relations at the heart of CSR concerns are reciprocal.

Hence, while emphasis on CSR has often focused largely on the actions and inaction of corporations, the recent debate over whether CSR can best contribute to development as a voluntary business initiative or as mandated by law has brought to the forefront the key role of government in the discourse and practice of CSR. Indeed, Albareda et al. (2008) have noted that a critical literature review reveals two basic dimensions of the analysis of government and CSR. The first dimension of the literature generally em-

3. Midttun (2005) suggests that the emerging embedded relational form of governance is driven by both the institutional deficit mentioned above and advances in communication technologies that have facilitated new forms of collective action.

4. While CSR remains a contested concept, this paper adopts Van Marrewijk's (2003) definition of it as company activities, voluntary by definition, that demonstrate the inclusion of social and environmental concerns in business operations and in interactions with stakeholders.

phasizes the need for, and explores the motivation behind, governmental involvement in CSR. For example, Moon (2002, 2004) identifies three reasons for governmental support for CSR: CSR can substitute for governmental efforts, it can complement governmental efforts, and it can legitimize governmental policies. The second dimension of the literature focuses on either the different roles government can adopt in the promotion of CSR (see Fox, Ward, and Howard 2002) or how government has understood, designed, and implemented its public policy initiatives to promote CSR (see Albareda, Lozano, and Ysa 2007; Albareda et al. 2008). However, much of this literature focuses on developed countries or on comparative analyses of European and North American governments (see Aaronson 2003; Matten and Moon 2008). In contrast, limited explicit attention has been given to the role of developing country governments in corporate social development.⁵ This is unfortunate, since it is in developing countries that the governance deficit that CSR purports to provide an opportunity to address is more acute. In addition, while the CSR-development nexus debate continues to focus on whether or not CSR can advance sustainable development in developing countries, it is of little importance to study how companies organize and undertake CSR initiatives without looking at how they are socially enabled to do so (Sorsa 2008).

Against this background, the specific objectives of this paper are to (a) critically examine whether the Nigerian government has been able to foster an enabling environment for CSR in the Niger Delta⁶ (see Figure 2), and (b) consider the implications of the presence or absence of an enabling environment for the possibility of corporate social development in the Niger Delta.

Background Context: Oil in Nigeria and Community Development in the Niger Delta

The evolution of the oil industry in Nigeria and its social, political, and economic impacts on the state-society relationship have been well documented (see Frynas 2000; Omoweh 2005). However, two aspects of the literature are of particular relevance here. The first is the early 1970s debate over whether the Nigerian state is simply a tool of foreign capital or an autonomous actor. Omoweh (2005) suggested that the debate has been in a state of flux, and concluded that the state is not a mere tool of the capitalist in the metropole or of the local bourgeoisie; rather, the Nigerian state, like every capitalist state, acts to reproduce the aims of capital while ensuring its own means of accumulation. In addition, the Nigerian state is a product of colonialism and therefore a state-nation as opposed to a nation-state (Idemudia and Ite 2006b). Hence, not only does

5. Corporate social development refers to development brought about by CSR initiatives such as poverty reduction, social infrastructure provision, capacity building and community empowerment, and environmental conservation (Hopkins 2006).

6. Crude oil is mainly extracted in the Niger Delta (figure 2), where 70% of the population lacks access to basic amenities like good roads, tap water, electricity, and where the incidence of poverty is widespread.

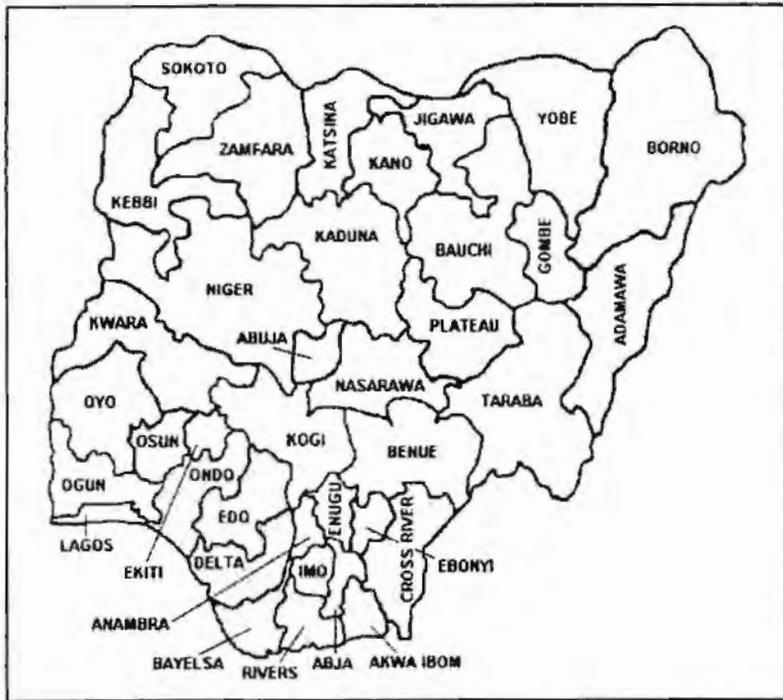


Figure 2. Constituent states of the Niger Delta, Nigeria

the state suffer from a legitimacy crisis, but also its ethnic heterogeneity and religious diversities, as well as differences in the colonial experiences of the different parts that now make up Nigeria, mean that a *politics of anxiety* predominates.⁷

The second relevant aspect of the broader literature is the understanding of the Nigerian state as a mono-commodity rentier state (see Yates 1996). The rentier nature of the Nigerian economy is manifested in the fact that not only does oil rent predominate, but it is also largely external in origin. For example, oil rents account for 40% of Nigeria's GDP, while oil export accounted for 95% of the country's total exports and 80% of governmental revenue between 1970 and 2006. In addition, the capital intensive nature of the oil industry means that only a few are involved in the process of rent generation, while a majority of Nigerians are involved in its distribution and consumption. No more than 2–3% of the population is involved in the generation of oil revenue.

Finally, by virtue of a number of decrees and laws (such as the *Land Use Act* of 1978 and the 1969 *Petroleum Act*), Nigeria's central government is the principal recipient of oil rent. Hence, the Nigerian state is invariably more of an allocative than a productive state (see Luciani 1987). This rentier economy fosters a rentier mentality that affects

7. Ake (1985) asserts that the politics of anxiety arises as different groups struggle on grimly, polarizing their differences, and convinced that the ability to protect their interests and obtain justice is dependent on their power. Under such circumstances development cannot occur.

both the nature of the state and its role in society. For instance, elaborating on this rentier context, the “resource curse” literature has demonstrated how oil has hindered democracy in Nigeria (Ross 2001), fostered a predatory state and poor governance (Moore 2004), generated social conflict (Idemudia and Ite 2006b), and furthered poor economic development (Karl 1997).

Similarly, the Federal Government of Nigeria’s (FGN) response to the demand for community development and compensation for the negative effects of oil extraction in the Niger Delta has generally involved the creation of new institutions and the occasional marginal increase in oil revenue allocated to the Niger Delta region, as with the 3% increase in the derivation fund⁸ in 1992 and the 13% increase in 2000. The different institutions created include the Niger Delta Development Board (NDDDB) in 1963, the Oil Producing Area Development Commission (OMPADEC) in 1993, the Niger Delta Development Commission (NDDC) in 2000, and the Ministry of the Niger Delta in 2008. However, the incidences of corruption, poor planning, limited capacity, poor governmental funding, bottleneck bureaucracies, and limited community involvement have led many commentators to describe these governmental agencies as total failures. For example, Frynas (2000) asserted that the NDDDB was merely an exercise in public relations, while Omotola (2007) has argued that OMPADEC was only used by the political elites to siphon money and that the NDDC has been unable to deliver on its developmental promise. However, Ibeanu (1997) has asserted that benefits from crude oil to the producing communities, however meagre, have come from these institutions and the oil companies.

Conceptual Framework: Enabling Environment and Stakeholder Responsibility

According to Fox, Ward, and Howard (2002), an enabling environment implies a policy environment that encourages and provides incentives for business activities that minimize environmental and social costs while maximizing economic gains. Consequently, it is argued that the presence or absence of an enabling environment significantly influences the chances that a CSR initiative will achieve its desired impact. For example, Sagebien et al. (2008) recently stated that given appropriate CSR practices and an enabling political economic context, CSR can contribute to sustainable development defined in terms of poverty reduction, equitable resource distribution, respect for ecosystem limits, and capacity building for the long-term social, environmental, and economic health of communities.

The emphasis on an enabling environment emerges from the idea that CSR practices do not take place in a vacuum (Idemudia 2008). Hence, while Idemudia (2008) points out that CSR does not conjure up infinite possibilities, Sagebien et al. (2008)

8. The derivation principle refers to the idea of returning a certain percentage of the proceeds of a produce derived from a region back to that region.

have argued that CSR critics and proponents need to be more realistic about what CSR can achieve. This is because taken alone, CSR efforts cannot transform political and economic structures that create conditions in which inequalities and injustices persist. Therefore, the enabling environment analytical framework pays attention to both corporate responsibility and stakeholder responsibility as a means to better understand the relationship between CSR and development. This is due to two closely related reasons. The first is that the developmental outcome of CSR initiatives (i.e., corporate social development) is not simply a function of business action or inaction. Rather, it is best understood as a function of stakeholder relationships because the action or inaction of other stakeholders directly or indirectly affects the impact of CSR on development (see figure 1). Second, CSR is at the heart of managing the socio-environmental costs and benefits of business activities; setting the boundaries on the way these costs and benefits are managed is partly a question of business policy and partly a question of public governance (Fox, Ward, and Howard 2002; Ward 2004). Hence, public governance affects not only the type and trajectory of CSR in different contexts but also the respective roles of different stakeholders (Ward 2004). Therefore, the implication is that the possibility of corporate social development in the Niger Delta significantly depends on both oil TNCs addressing their corporate responsibility and stakeholders like government addressing their social responsibilities (see figure 2). An important insight of this perspective is its acknowledgement that the different actors involved in CSR are often driven by different and sometimes conflicting interests. It therefore sees a need to identify and understand possible factors that can drive as well as constrain CSR's contribution to development (Fox 2004). However, Utting (2000) points out that a possible danger with this framework lies in the failure to address the structural determinants of mal-development and how these can undermine a government's ability to ensure an enabling environment. For example, it is common for governments in developing countries to lower environmental standards and taxes to attract foreign direct investment, which has ramifications for CSR practices. It has thus been suggested that proponents of this enabling environment perspective need to focus not only on the internal drivers and constraints of CSR but also on the external factors (Idemudia 2007a). Nonetheless, despite its limitations, the enabling environment perspective offers a more complete and balanced view of CSR's potential impact on development and an opportunity for theoretical advancement.⁹

A critical challenge for the CSR-development debate is to identify the appropriate balance between the roles of different actors and then to explore how they could best be combined to maximize the contribution of business to sustainable development at all levels of society (Ward 2004). Hence, the emphasis on stakeholder responsibility implicit in the enabling environment view offers the opportunity to explore the ramifications of stakeholder actions for corporate social development in the Niger Delta and how CSR practices might become more effective and relevant in the region.

9. This as opposed to an alternative analytical strategy that might focus mainly on the actions or inaction of the corporations in exploring their CSR contribution to development.

Goodstein and Wicks (2007) recently clarified the nature of stakeholder responsibility with regard to stakeholder-firm and stakeholder-stakeholder relationships by identifying three domains of responsibility.¹⁰ The first is stakeholder reciprocity responsibility (SR-R), which is based on the principle of reciprocity and fairness, and which emerges as a function of stakeholders reciprocating benefits received from the firms and other stakeholders. The second domain of responsibility is the stakeholder interdependence responsibility (SR-I). This emerges from the idea that people and organizations sharing a common fate choose to pledge things to each other so as to foster co-operation and enhance the welfare of society. Finally, stakeholder accountability responsibility (SR-A) suggests that stakeholders bear reciprocal responsibility for acting with integrity, and taking into account potential harms to firms and other stakeholders. Another useful framework from an enabling environment perspective is that proposed by Fox, Ward, and Howard (2002) (see table 1). According to them, there are four key roles the public sectors in developing countries play in support of CSR practices.¹¹ A synthesis of the foregoing models (see figure 3) provides the analytical framework underpinning the analysis here.

Table 1. Public sector roles

Public Sector Roles			
Mandating	"Command and control" legislation	Regulators and inspectorates	Legal and fiscal penalties and rewards
Facilitating	Enabling legislation	Creating incentives	Capacity building
	Funding support	Raising awareness	Stimulating markets
Partnering	Combining resources	Stakeholder engagement	Dialogue
Endorsing	Political support		Publicity and praise

Source: Fox, Ward, Howard (2002)

Figure 3 suggests that on the basis of the principles that underpin reciprocity, interdependence, and accountability, the Nigerian government can actively meet these stakeholder responsibilities by addressing its partnership obligations and by facilitating, mandating, and endorsing CSR practices. Figure 3 also suggests that these roles and responsibilities are mutually reinforcing, since adequate attention to each would ensure an enabling environment for corporate social responsibility. This framework has two main implications for the discussion in the next section. First, while oil companies and civil society are key stakeholders in CSR (figure 3), emphasis here is on the role of government. This is useful because, to date, literature on the CSR-development nexus

10. Stakeholder here refers to "any group or individual who can affect or who is affected by the achievement of the firm's objectives" (Freeman 1984) defined broadly as government, business, and civil society. Stakeholder responsibility here emphasizes the interaction of stakeholders with other stakeholders and the firm (Goodstein and Wicks 2007).

11. While not without weakness, this model has the strength of being relatively simple and holistic, of covering the complete CSR agenda, and of neutrality in that it does not reflect inherent bias toward any particular public sector actions (Fox, Ward, and Howard 2002).

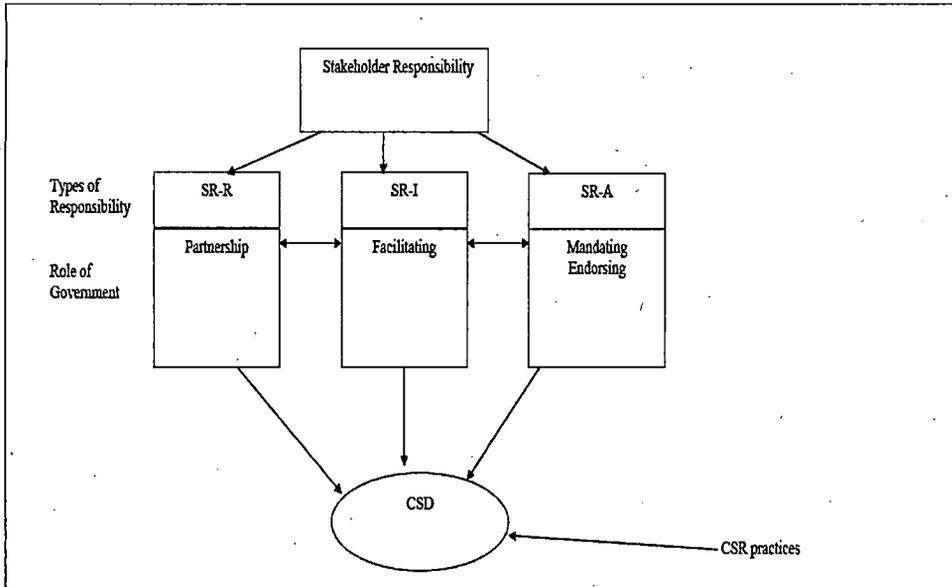


Figure 3. Conceptual framework: government stakeholder responsibility

in Nigeria has generally and for good reasons emphasized corporate responsibility (see Eweje 2006; Idemudia 2007b, 2009; Akpan 2009). Hence, the discussion here complements existing works by addressing an aspect of the CSR-development relationship that has received limited attention. Second, the Nigerian government is seen not just as a leading player but also as a site of political contestation, in Polanyi's sense, with regard to CSR practices (Wilts and Skippari 2007). Under these circumstances, CSR practices defined in terms of costs and opportunities are extensively politicized, and the political decisions of the state tend to support the interests that are best organized to influence it.

The conceptualization of the Nigerian government as a site of contestation not only offers us the opportunity to examine possible factors (external and internal) that can drive and constrain governmental efforts to support CSR but also allows us to question why certain social forces might be unable to effectively influence government.

The Nigerian Government and CSR in the Oil Industry: The Possibility of Corporate Social Development

Below, I examine how well the government has been able to address its different roles and responsibilities (see figure 3) as a means to ascertain if there is an enabling environment for CSR and therefore the possibility of corporate social development in the Niger Delta region.

The Nigerian Government and Its Mandating Role

Central to CSR is the need to address legal obligations (Christensen and Murphy 2004). Oil extraction by its nature tends to have a significant ecological footprint; therefore, if

development efforts are to be meaningful and sustainable, they must protect, preserve, and conserve the environments upon which the livelihood of rural inhabitants depend (Idemudia 2009). This is acutely so in the Niger Delta, where 70% of the population depends on fishing and farming. Hence, governmental efforts to address its mandating responsibility vis-à-vis the oil industry are critical to community development. Fortunately, environmental laws in Nigeria are said to be, in principle, comparable to those of Western Europe and North America (Hara 2001).

Indeed, a number of agencies, such as the state and federal ministries of environment and the Department of Petroleum Resources, have been established to enforce existing environmental laws. Similarly, the unanimous passage in 2004 of the oil and gas bill, which stipulates the social responsibility of oil TNCs that operate in the country, is another important standard-setting effort by the FGN. This trend appears to have been replicated in a number of different state Houses of Assembly. For example, in 2006, the Akwa Ibom State House of Assembly passed an oil bill that legislated similar provisions in the regulation of oil companies operating in the state. These bills are important because during the signing of oil prospecting agreements in the 1950s and 1980s, the guidelines to protect the environment and promote good community relations were either ignored or overlooked by government and oil TNC officials. Available anecdotal evidence thus seems to suggest that the Nigerian government might be taking its mandating responsibilities seriously.

However, the extent to which governmental attention to its mandating responsibility has reduced the costs of oil extraction for local communities and therefore supported corporate social development is at best marginal. For example, despite widespread adoption of CSR policies by oil companies since the late 1990s, there were about 5,400 oil spills officially recorded between 2000 and 2004 alone (Onwuchekwa 2004). Indeed, local communities continue to bear the full brunt of the negative externalities associated with oil extraction, with significant ramifications for their well-being and livelihood (see table 2). The FGN's inability to translate its mandating responsibility into effective support for corporate social development has numerous causes, only two of which are discussed here.

The first is the weak institutional and technical capacity of governmental regulatory agencies, such as the Department of Petroleum Resources and the federal and state ministries of environment. Due to their lack of technical and institutional capacities to effectively monitor and ensure oil industry compliance with regulatory statutes, these agencies more or less depend on oil TNCs to monitor themselves. For example, regulatory agency officials find it difficult to gain regular access to oil industry exploration facilities in the mangrove swamps to monitor and enforce compliance in the area. The Department of Petroleum Resources, and state and federal ministries of environment often lack properly equipped laboratories to undertake water and soil sample tests in the event of spills to establish the extent of environmental damage. Thus, regulatory agencies rely on oil TNCs to report on compliance and undertake sample tests. In an interview with sources in the Ministry of Natural Resources and Environment in Akwa Ibom State, an engineer noted, "We have no well-equipped laboratory to test and analyze samples in the event of oil spills. As a result, the entire figures we have are based

Table 2. Perceived impact of oil production in survey villages (ranked)¹²

Negative impact of oil production	Villages			Total N = 145
	Emereoke 1	Ikot Ebidang	Inua Eyet Ikot	
Damage to house roofs	41 (95%)	30 (94%)	66 (94%)	137 (94%)
Loss of fish	40 (93%)	27 (84%)	66 (94%)	133 (92%)
Health problems	37 (86%)	25 (78%)	53 (76%)	115 (79%)
High cost of living	19 (44%)	15 (47%)	62 (89%)	96 (66%)
Low crop yield	0 (0%)	26 (81%)	0 (0%)	26 (18%)
House vibration and cracks	0 (0%)	0 (0%)	15 (21%)	15 (10%)

Source: Questionnaire Survey

on what Exxon Mobil chooses to release to us. That is also why the ministry is unable to adequately arbitrate conflicting corporate-community claims in the event of oil spills or gas flaring effects." This situation invariably entails a conflict of interest, since the regulated are in effect the regulators. This has led some analysts to argue that official oil spill records are often suspect, since many spills go unrecorded, with devastating consequences for community development. The problem of weak institutional and technical capacity is rooted in the allocative nature of the Nigerian state, where emphasis is on accumulating, distributing, and consuming rents as opposed to building the technical and institutional capacity of governmental agencies, which is perceived as diminishing instead of increasing accumulated rent.

A second factor behind government's inability to effectively support CSR relates to the nature of governmental involvement in the oil industry. Oil exploration and marketing takes place in Nigeria through complex joint venture partnership agreements in which the government holds an average of 55% equity. The Nigerian government is in effect both a direct "stockholder" as well as a "stakeholder" in the oil industry. Under the joint venture partnership agreements, government and foreign oil companies share the operational cost of crude oil production in proportion to their equity share, but the operational cost is fully under the control of oil TNCs. This arrangement means that governmental attempts to regulate the oil industry amount to government regulating itself, since it would have to bear a majority share in any additional cost that arises from governmental mandating activities. As a result, laws are often so weak they are difficult to implement, and even when such laws are enforced, fines for violations are so minimal that it is cheaper to violate than to adhere to the law. For example, Chevron noted that while compliance with the Gas Re-injection Decree that prevents gas flaring would cost the company US\$56 million, it is cheaper to pay \$1 million yearly in fines (Frynas 2000). It is therefore not accidental that the date for ending gas flaring in Nigeria has

12. Empirical data presented here are part of a broader study undertaken by the author during 2006 and 2007 in which 160 households were surveyed and 130 semi-structured interviews were conducted in the Niger Delta.

been shifted over six times since 1978, to the benefit of oil TNCs and at great cost to rural dwellers in the Niger Delta. In essence, government and oil TNCs find it cheaper to externalize the costs of oil extraction to local communities.

Local community organizations like the Movement for the Survival of the Ogoni People and NGOs like Environmental Rights Action have made significant efforts to resist this habit of externalizing the cost of oil extraction to local communities. While some success has been achieved, due to governmental overdependence on oil revenue so far such efforts have been unable to bring about significant change in governmental attitude and policy. The rentier nature of the Nigerian state means that oil revenue is central to its existence. Consequently, the profit motive of oil TNCs is in symbiosis with governmental interest in rent accumulation. Hence, oil TNCs are often better placed to influence government and have their interests privileged over the interests of local communities. This partly explains the relative inability of Nigerian civil society to influence how the game is played. Hence, the possibility for corporate social development in the Niger Delta is at best marginal in a context in which CSR practices are voluntary and government lacks incentive and the institutional capacity to effectively regulate oil TNCs.

The Nigerian Government and its Facilitating Role

The finite nature of oil and the contradictions inherent in oil extraction are well illustrated by the experiences of the people of Oloibiri in Bayelsa State. Oil was first extracted in Nigeria in 1956 in the Oloibiri community. It was once a lively town, but it is now a ghost town. Since the oil wells dried up, the people have lived a solitary and depressed life, and have nothing to show for oil extraction. If experiences like that of Oloibiri are not to be repeated and corporate social development in the Niger Delta is to become a real possibility, government needs to fulfil its interdependence responsibility to promote corporate social development via the equitable redistribution of oil wealth, the effective and efficient use of oil rent, and the unbiased reconciliation of competing and conflicting stakeholder claims. Unfortunately, the FGN has so far been unable to deliver on this responsibility.

First, revenue allocation and sharing are politically sensitive issues in Nigeria due to the allocative nature of the Nigerian state, as all tiers of government essentially depend on the centre for oil revenue. The problem of overdependence on oil rent within a multi-ethnic fragile state-nation, where every group seeks to maximize its gains from the national cake, allows for a politics of anxiety and the transformation of oil revenue into "relatively assessed goods" (Idemudia and Ite 2006b). The amount of oil revenue that one state or local government gets is dependent on what other competing states and local governments receive. Hence, oil rent allocation is deeply politicized and associated with perceptions of regional and ethnic dominance that have made equitable redistribution of oil wealth difficult. For example, prior to 2001, while the five southern oil producing states that accounted for 90% of oil revenue received 19.3% of allocated oil revenue, five northern non-oil producing states received 26% of allocated federal revenue (Ikporukpo 1996). This revenue allocation pattern meant that for a long time

insufficient funds were allocated to the Niger Delta. As a consequence, even though the people of the Niger Delta bore the direct cost of oil extraction, limited investment in the socio-economic development of the region has been made since independence. Hence, despite recent efforts by oil TNCs to increase their community development spending, community needs remain largely unaddressed and CSR has had limited beneficial impact (Idemudia 2009).

Second, a core characteristic of a state-nation like Nigeria is the emergence of what Ekeh (1975) refers to as the two publics. Ekeh demonstrated that instead of the private and public realms that characterize Western societies, African societies have two public realms with different moral linkages to the private realm: the moral primordial public and the amoral civil public. The dialectical confrontation of these two publics underpinned the proliferation of competitive communalism immediately after independence, which over time has metamorphosed into a structured, neo-patrimonial relationship that both enables corruption and makes it effective. While in principle the effective use of oil rent is another means through which the Nigerian government might facilitate corporate social development in the Niger Delta, the predomination of neo-patrimonialism-induced corruption and rentier mentality myopia has prevented the pursuit of this option. Nigeria lost an estimated US\$380 billion to corruption and waste between 1960 and 1999 (Human Rights Watch 2007). The institutionalization of corruption at all levels of government and in most agencies in Nigeria effectively undermines the state's capacity to support corporate social development as revenue that could be directed toward poverty reduction is stolen. This partly explains why despite a significant increase in the allocation of oil revenue to the Niger Delta since 2000, there has been little to nothing to show for it in terms of community development (Human Rights Watch 2007).¹³ Similarly, rentier mentality myopia among governmental officials often means that core community development needs are neglected in favour of lofty white elephant projects. For example, instead of investing in health and education, in 2006 the River State government invested in a personal private jet for the then governor.

Third, although oil TNCs in the Niger Delta have identified conflict as a major problem confronting the implementation of CSR initiatives geared toward community development (see Idemudia 2007b), instead of promoting corporate social development by encouraging stakeholder engagement and seeking peaceful means for reconciling competing and conflicting stakeholder interests, the FGN has often been quick to resort to the use of force. Exemplary of this is the 1999 Odi Massacre in Bayelsa State, where the Odi village was razed and over 200 people were killed under the directive of the

13. It should be noted that in recent years the FGN has made significant effort to address the problem of corruption via the establishment of a number of anti-corruption agencies, such as the Nigerian Extractive Industry Transparency International, the Economic and Financial Crimes Commission, and the Independent Corrupt Practices and Other Related Offences Commission. However, these agencies not only lack strong legal support, they also tend to emphasize government income instead of governmental expenditure. Thus, while some progress has been made with regard to the direct theft of money from governmental coffers, problems associated with rentier mentality myopia remain prevalent and unaddressed.

democratic government of the time. In contrast, government provides no support to communities that decide to seek justice in the courts. This happens despite the fact that bottleneck bureaucracies, the high cost of litigation, and limited access to courts have been identified as problems confronting this peaceful means for local communities to express their grievances against oil companies. This tendency to use force to resolve competing stakeholder claims is partly rooted in the fact that Nigeria as a state-nation faces a legitimacy crisis and therefore community protest and agitation are instinctively interpreted as separatist tendencies that cannot be tolerated (Idemudia and Ite 2006b). Besides, for the rentier elites, community agitation is a threat to the process of primitive accumulation within an allocative state. In addition, the minority status of the Niger Delta people in Nigeria means that their elected officials have little political leverage to influence the central state. For example, in the face of the ongoing crisis, in July 2009 a House of Representatives member for the Niger Delta region moved a motion in the House of Assembly that the military assault then taking place in the region should be halted. The motion was not only defeated in the House of Assembly, but a northern honourable suggested that the military action should be extended to other areas of the region and that it would be better for the population of the region to be decimated in order that oil should flow and peace should reign.¹⁴

The Nigerian Government and Its Partnership Role

The Nigerian government has sought to address its stakeholder reciprocity responsibility via partnerships with oil TNCs facilitated by the enactment of the *Niger Delta Development Commission Act* (NDDC) of 2000. The NDDC is supposed to contribute to sustainable development of the region. The act that instituted the NDDC requires the federal government to contribute 15% of oil revenue to the Commission, while oil TNCs are expected to contribute 3% of their annual budget to the Commission. In addition, member states are expected to contribute to the NDDC 50% of the ecological fund allocated to them by the federal government. The activities of the NDDC include social infrastructure provision, health care delivery, support for agriculture, skill acquisition, and youth empowerment. The NDDC was able to implement about 814 projects in areas of health, agriculture, and social infrastructure in the region in 2007 (Idemudia 2007a).

Partnership seems to have taken a strong root in government circles for three reasons. First, there appears to be a consensus that more can be achieved by government through partnering than by working alone. A government official noted during an interview that “by partnering, the state government is able to maximize the impact of its investment in development as well as address a wide range of community needs.” Second, the pursuit of partnership appears to arise also from the dearth of resources, especially at the local government level. According to the secretary to council in Ibeno

14. A. Daniel, “Niger Delta, constitution review remain core issues at National Assembly,” *Guardian News*, 18 June 2009, http://www.guardiannewsngr.com/policy_politics/article01/indexn3. See author for copies of cited *Guardian News* articles.

Local Government Area, "the local governments do not have the financial resources to provide the needed social infrastructure in the host communities due to the nature of the terrain; as such, partnership with Exxon Mobil that has the resources is a necessity." Third, there is now widespread awareness that poor coordination of development projects among government, oil companies, and the NDDC is partly responsible for community under-development due to the duplication of development projects and the inefficient use of scarce resources. As a result, partnership among these actors is seen as an opportunity for information sharing, reduction of transaction costs, and ensuring coordination (Idemudia 2009). According to Dr. Emmanuel Uduaghan, the governor of Delta State, "evidence had shown that some projects which the state may have decided to undertake were sometimes on the list of NDDC and the oil companies, and this has created problems in the past; as such projects may end up being abandoned or the community will end up with just one project instead of three if the organisations involved coordinated their activities. To avoid this problem, the Delta State government has gone into partnership with the NDDC and oil companies so as to coordinate the development effort of each of them."¹⁵

Despite this increasing governmental support, partnership initiatives continue to face critical challenges. At least two main problems are at play. The first is the Nigerian government's failure to deliver within existing partnership arrangements, especially with regard to its financial commitments. A case in point is the funding of the NDDC. Despite the stipulation of the NDDC Act, the FGN contributes only 10–12% to the Commission, while state governments make no contribution at all. In response, the oil TNCs deduct their individual community development spending before making their 3% contribution to the Commission, and in some instances they have withheld part of their statutory contribution to the NDDC. Consequently, while by law the FGN was expected to make NGN318 billion in allocations to the NDDC between 2001 and 2006, it provided only NGN93 billion. Similarly, while by law the oil TNCs were expected to contribute NGN182 billion during the same period, they allocated only NGN142.¹⁶ A crucial dynamic here is that the key stakeholders (i.e., government and oil TNCs) are each attempting to pass the costs of CSR to the other. Rather than an ideationally neutral terrain, as expected by those who see CSR as good for development, CSR is in fact a domain of stakeholder contestation. Hence, the pertinent but frequently ignored question as to who should bear the cost of CSR and how this affects the possibility of corporate social development is of great importance. Government and oil TNCs are unwilling to bear the costs associated with their social responsibility, and as a consequence CSR contribution to community development in the Niger Delta is limited. Since, the NDDC is starved of funds and therefore unable to meet its developmental goals in the region.

15. S. James, "Delta team up with NDDC, oil firms for devt," *This Day News*, 21 August 2005, <http://allafrica.com/stories/printable/200508310102.html>.

16. "NDDC seeks National Assembly's intervention on N225b fund, *Guardian News*, 13 October 2007, <http://www.guardiannewsngr.com/business/article03>.

Political interference is a second problem confronting the promotion of partnerships through the NDDC. As a federal establishment, the NDDC is often at the centre of political wrangling as different interest groups seek to leverage the Commission, often to the detriment of its developmental goals. Nominations to the NDDC management board are often over-politicized, with significant ramifications for effective management. Similarly, mutual suspicion and acrimony among members of the Joint Committee of the National Assembly on the NDDC contribute to the unnecessarily long delay in the passing of NDDC annual budgets. Such interference tends to destabilize and complicate the developmental efforts of the NDDC and contributes to its inability to deliver on its partnership responsibility. Emmanuel Aguariavwodo, a former chief executive of the NDDC, noted that “the only way we [i.e., NDDC] can develop the region is to remove politics from developmental efforts. It is so important, because we face the same problems and challenges as the state governments.”¹⁷

The Nigerian Government and its Endorsement Role

In theory, the Nigerian government’s endorsement role provides it with an opportunity to fulfill its stakeholder accountability responsibility (see figure 3). This role should allow the government to name and shame bad companies and reward good companies for their CSR initiatives. Unfortunately, however, the FGN does not endorse the CSR practices of oil TNCs. There are two possible reasons for this failure.

The first arises from the fact that both government and oil TNCs are immersed in a legitimacy crisis in the Niger Delta region (see Idemudia 2007b). Each has traditionally used the failure of the other as a means of absolving itself of any wrongdoing. Over the years this blame game has become a cornerstone of Nigerian government policy in the Niger Delta. This culture of blame also extends to intergovernmental relations: While state governments accuse the federal government of failing to fulfil its responsibility to the people of the Niger Delta by increasing its developmental spending in the region, the federal government in turn blames state governments for not efficiently using the revenue they receive from the federal government. The former governor of Bayelsa State “blamed the federal government for the failure of the NDDC to meet the yearnings of the people of the region because of poor funding, and [argued] that the federal government should as a matter of urgency increase the funding of the NDDC and increase the derivation fund to 50%.”¹⁸ In response, the secretary to the federal government recently argued that in addition to the normal revenue allocation provided to all states under Section 162(2) of the constitution, the region gets an added 13% derivation fund for crude extraction and 15% funding via the NDDC, yet the state governments have nothing to show for it.¹⁹ This culture of blame invariably makes any attempt by

17. “Don’t Play Politics with N/Delta Devt,” *This Day News*, February 8 2006, <http://allafrica.com/stories/printable/200602080363.html>.

18. K. Ebiri, “Alamiyeseigha seeks abolition of Petroleum Land Use Acts,” *Guardian News*, 23 March 2004, <http://www.guardiannewsngr.com/news/article07>.

19. K. Ebiri, “States’ misuse of funds, bane of the Niger Delta, says Kingible,” *Guardian News*, 6 May 2008, <http://www.guardiannewsngr.com/news/article03>.

government to endorse oil TNCs' CSR efforts tilt the balance in favour of the oil TNCs and further complicate the legitimacy crisis of the Nigerian government. Governmental endorsement of CSR practices would amount to the government's conceding that it has failed, thereby opening itself to further attack. In contrast, not endorsing the CSR efforts of oil TNCs allows government to continue using the blame game to cover its own inadequacy. In essence, because governmental endorsements of oil TNCs would further damage the governments' already bad reputation, highlight governmental inadequacies, and make government directly responsible for the problems in the region, endorsement is often carefully avoided.

The second reason government fails to endorse the CSR efforts of oil TNCs stems from the widespread perception that oil TNCs are socially and environmentally underperforming. There appears to be a general consensus in Nigerian society (government and host communities) that oil companies can and should do more (Idemudia 2007b). Thus, in response to an attack on Shell's Benisede flow station facilities in the Niger Delta, Dr. Cairo Ojougboh, the former chairman of the Committee on Petroleum Resources in the House of Representatives, attributed the attack to Shell's irresponsibility. He argued that a careful analysis of those involved often reveals people retired or sacked by Shell, or those to whom Shell owes salaries, or the jobless in the areas where Shell operates. He concluded that "if Shell carried the people along, and gave them employment, the people would not think of involving themselves in such [attacks]."²⁰ Whatever the veracity of this perception, it reinforces a view that oil TNCs are underperforming and serves to legitimize government non-endorsement of their CSR efforts.

Emerging Issues and Conclusion

There are three main issues that arise from the analysis here. The first is that governmental support for CSR is still limited and fragmented. Hence, the enabling environment that would foment corporate social development in the Niger Delta is non-existent. Why is this so, and what does it mean for CSR theory and practice in developing countries? Unfortunately, previous studies have been relatively silent in the face of these questions. The foregoing discussion suggests that absence of an enabling environment in Nigeria stems from structural and systemic inadequacies of the Nigerian state that are manifested in state-society relationships. While the potential benefits to be derived from partnerships between government and oil TNCs serve as an important driver for governmental involvement in CSR, as highlighted in the literature, the analysis undertaken here identifies three main constraints to the effective implementation of CSR practices in Nigeria. The first is the nature of the Nigerian state (i.e., its state-nation status), which means the politics of anxiety often predominates so that the government is unable to either properly formulate or effectively implement a

20. A. Oota, "Ojougboh blames Shell for attack on flow station," *Vanguard News*, 17 January 2006, <http://allafrica.com/stories/printable/200601170259.html>.

coherent CSR policy framework to support corporate social development in the Niger Delta. The second is the rentier nature of the Nigerian economy, which consolidates the weak position of the Nigerian state in the global capitalist system (i.e., it is overly dependent on oil extraction and oil revenue, but lacks control over the process of oil extraction and marketing). This renders the state relatively susceptible to capture by foreign oil companies and the rentier elite, to the detriment of local communities in the Niger Delta. The third constraint is that CSR is a site of contestation informed by the logic of profitability and rent accumulation. Thus, government and oil TNCs are often willing to pass the cost of oil extraction on to local communities. This externalization of costs undermines community development via significant environmental degradation and associated health problems. These constraints to CSR practices in the Niger Delta implicitly inhibit the possibility of corporate social development in the Delta by creating an environment in which oil companies face a high temptation to break the law, at low cost to them and with little or no associated risk for doing so (Idemudia and Ite 2006a). The implication is that since oil companies are not socially enabled to address their CSR, oil TNCs' CSR initiatives are often fragmented, misdirected, driven by business as opposed to development logic, and based on the avoidance of core CSR issues regarded as costly to the companies, though central to community development (e.g., environmental protection).

The second emerging issue is that, in contrast to extant studies on CSR and government, which, perhaps due to their focus on developed countries, tend to suggest that government is a driver of CSR, it is shown here that government can also constrain CSR. Therefore, the issue of CSR and the possibility that it might contribute to community development is significantly different within a rentier context. The implication is that the nature of the state and the character of its economy matter for CSR and its contribution to community development. The rentier status of the Nigerian state means that government benefits more when oil companies are able to maximize profits than when they engage in costly CSR practices. Hence, support for CSR practices is both limited and contested.²¹ Unfortunately, the contested nature of CSR, demonstrated in the squabble over funding the NDDC and in the failure of government to effectively mandate or endorse CSR, undermines the potential contribution of CSR to community development in the Niger Delta. While oil TNCs argue that community development is principally the responsibility of government, government argues that oil TNCs should be involved in ensuring the development of their host communities. Meanwhile, oil extraction continues unabated and community lands and rivers are being polluted, and more people are being displaced from their traditional sources of livelihood with no alternative provided. Consequently, more households in the Niger Delta are pushed into poverty every day. Thus, in addition to its other negative social, political, and economic consequences, rentierism also inhibits the possibility of cor-

21. Because CSR expenditures are part of the operational cost of oil TNCs, and government is expected to be responsible for 55% of operational cost, limited governmental support is given to CSR initiatives, especially since oil TNCs are often able to pass on such cost to government because they control the operational cost.

porate social development by constraining the ability of government to adequately support CSR and regulate oil TNCs.

The third emerging issue is that CSR's potential contribution to development in a country like Nigeria depends on more than whether CSR is a voluntary initiative or a mandated obligation.²² While the call for legally binding international regulations is a necessity and a reflection of socio-political realities in developing countries, if CSR is to contribute to development, the call for global regulation of TNCs should be situated within the broader context of efforts that seek to constrain the negative effects of capital accumulation. This means efforts to ensure corporate accountability must be undertaken in tandem with efforts to ensure state-society accountability. Regardless of whether CSR is a voluntary or mandated initiative, without a state that is accountable to its society, as in Nigeria, CSR will at best contribute only marginally to community development. Therefore, in places like Nigeria, global regulation should be backed by social and technical capacity building of civil society (i.e., social forces) to enhance its relative ability to contest issues, seek accountability, and influence the state. At present, oil TNCs and rentier elites enjoy a disproportionate advantage vis-à-vis civil society in their capacity to influence and capture the state in Nigeria. In addition, civil society should broaden its strategy to engage the state by actually supporting its members in running for political office and by lobbying governmental officials. These suggestions are not without pitfalls and do not represent silver bullets, but they are among the steps that must be taken if corporate social development is to be realized in the Niger Delta.

References

- Aaronson, A.S. 2003. Corporate responsibility in the global village: The British role model and the American laggard. *Business and Society Review* 108 (3): 309–38.
- Ake, C. 1985. *A political economy of Africa*. Lagos: Longman.
- Akpan, W. 2009. When corporate citizens are “second-class” national citizens: The antinomies of corporate mediated social provisioning in Nigeria’s oil province. *Journal of Contemporary African Studies* 27 (1): 105–18.
- Albareda, L., J.M. Lozano, and T. Ysa. 2007. Public policies on corporate social responsibility: The role of governments in Europe. *Journal of Business Ethics* 74:391–407.
- Albareda, L., J.M. Lozano, A. Tencati, A. Midttun, and F. Perrini. 2008. The changing role of governments in corporate social responsibility: Drivers and responses. *Business Ethics: A European Review* 17 (4): 347–63.
- Bowie, N. 1991. New directions in corporate social responsibility. *Business Horizons* 34 (4): 56–65.
- Chris, G., C. Philips, and S. Bhatia-Panthaki. 2007. The private sector, poverty reduction and international development. *Journal of International Development* 19:723–34.
- Christensen, J., and R. Murphy. 2004. The social irresponsibility of corporate tax avoidance: Taking CSR to the bottom line. *Development* 47:37–44.
- Ciulla, B.J. 1991. Why is business talking about ethics? Reflection on foreign conversations. *California Management Review* 34 (1): 67–86.
- Ekeh, P. 1975. Colonialism and the two publics in Africa: A theoretical statement. *Comparative Studies in Society and History* 17 (1): 91–112.

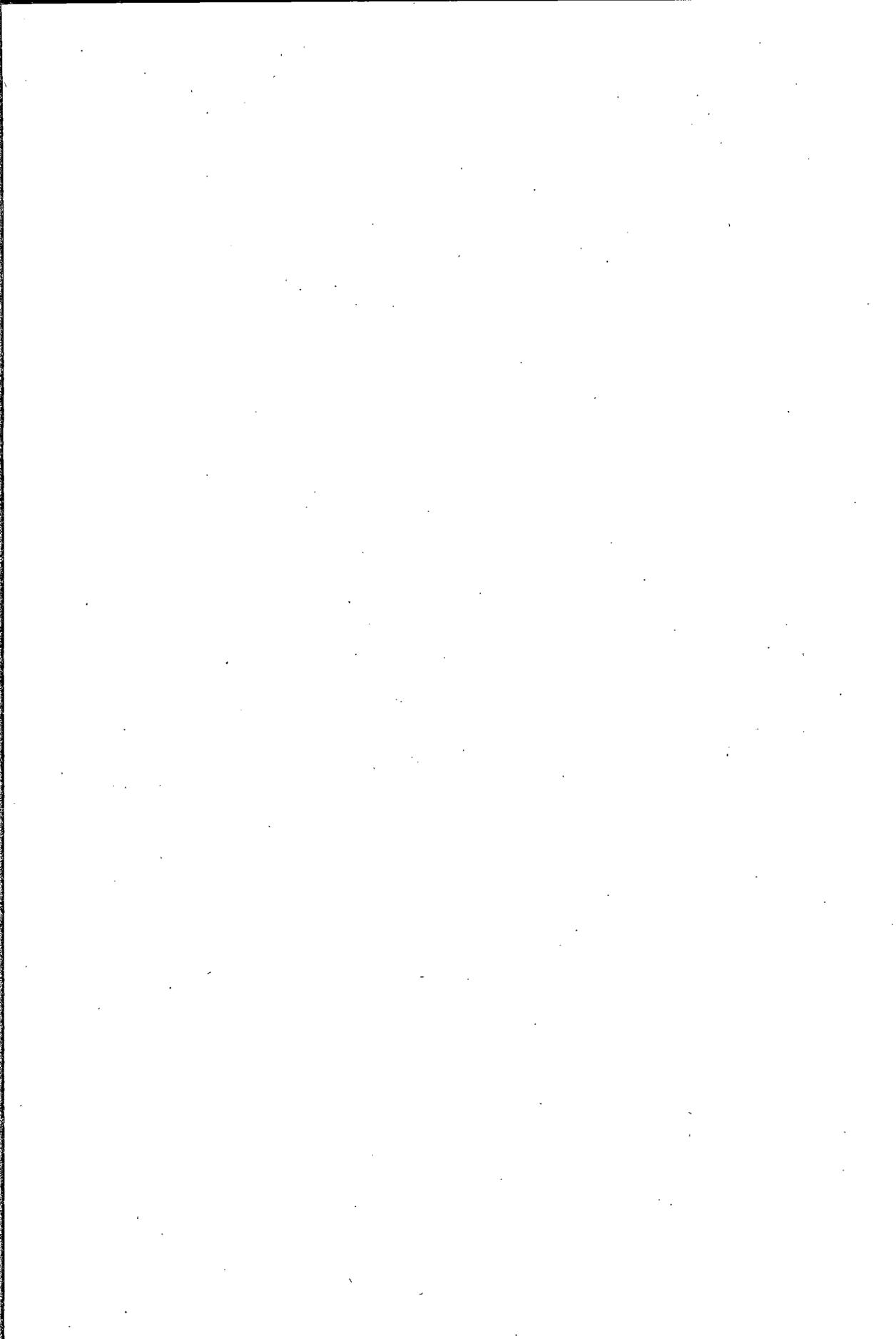
22. Indeed, while the CSR voluntary versus mandatory CSR initiative debate has been insightful, consensus has begun to emerge that CSR as a voluntary initiative or as a legally binding obligation are not necessarily mutually exclusive. In fact, both can be complementary (see Idemudia 2008).

- European Commission. 2001. Green paper: Promoting a European framework for corporate social responsibility. Com (2001) 366-final, Brussels.
- . 2002. Corporate social responsibility: A business contribution to sustainable development. Com (2002) 347-final, Brussels.
- Eweje, G. 2006. The role of MNEs in community development initiatives in developing countries: Corporate social responsibility at work in Nigeria and southern Africa. *Business and Society* 45 (2): 93–129.
- Fox, T. 2004. Corporate social responsibility and development: In quest of an agenda. *Development* 47 (3): 26–36.
- Fox, T., H. Ward, and B. Howard. 2002. *Public sector roles in strengthening corporate social responsibility: A baseline study*. Washington, DC: World Bank.
- Freeman, R.E. 1984. *Strategic management: A stakeholder approach*. Boston, MA: Pitman.
- Frynas, J.G. 2000. *Oil in Nigeria: Conflict and litigation between oil companies and village communities*. Hamburg and London: LIT Verlag Munster.
- Goodstein, D.J., and C.A. Wicks. 2007. Corporate and stakeholder responsibility: Making business ethics a two-way conversation. *Business Ethics Quarterly* 17 (3): 375–98.
- Hara, O.K. 2001. Niger Delta: Peace and co-operation through sustainable development. *Environmental Policy and Law* 36 (6): 302–308.
- Hamann, R. 2003. Mining companies' role in sustainable development: The "why" and "how" of corporate social responsibility from a business perspective. *Development Southern Africa* 20 (2): 237–54.
- Hopkins, M. 2006. *Corporate social responsibility and international development: Is business the solution?* London: Earthscan.
- Human Rights Watch. 2007. *Chop fine: The human rights impact of local government corruption and mismanagement in River State, Nigeria*. New York: Human Rights Watch.
- Ibeanu, O. 1997. *Oil, conflict and security in rural Nigeria: Issues in the Ogoni Crisis*. Occasional paper series 1 (2), African Association of Political Science (AAPS).
- Idemudia, U. 2007a. Corporate social responsibility and community development in the Niger Delta, Nigeria: A critical analysis. PhD thesis, Lancaster University, Lancaster, UK.
- . 2007b. Community perceptions and expectations: Reinventing the wheels of corporate social responsibility practices in the Nigerian oil industry. *Business and Society Review* 112 (3): 369–405.
- . 2008. Conceptualising the CSR and development debate: Bridging existing analytical gaps. *Journal of Corporate Citizenship* 29:91–110.
- . 2009. Oil extraction and poverty reduction in the Niger Delta: A critical examination of partnership initiatives. *Journal of Business Ethics* 90 (1): 91–116.
- Idemudia, U., and U.E. Ite. 2006a. Corporate-community relations in Nigeria's oil industry: Challenges and imperatives. *Corporate social responsibility and environmental management journal* 13 (4): 194–206.
- . 2006b. Demystifying the Niger Delta conflict: Towards an integrated explanation. *Review of African Political Economy* 33 (109): 391–406.
- Ikporukpo, C. 1996. Federalism, political power and the economic power game: Control over access to petroleum resources in Nigeria. *Environment and Planning C: Government and Policy* 14 (2): 159–77.
- Karl, T. 1997. *The paradox of plenty: Oil booms and petro-states*. Berkeley: California University Press.
- Luciani, G. 1987. Allocation versus production states: A theoretical framework. In *The Rentier State*, ed. H. Beblawi and G. Luciani, 63–82. London: Croom Helm.
- Matten, D., and J. Moon. 2008. "Implicit" and "explicit" CSR: A conceptual framework for comparative understanding of corporate social responsibility. *Academy of Management Review* 33 (2): 404–24.
- Middtun, A. 2005. Policy making and the role of government; Realigning business, government and civil society: Emerging embedded relational governance beyond the (neo) liberal and welfare state models. *Corporate Governance: International Journal of Business in Society* 5 (3): 159–74.
- Moon, J. 2002. The social responsibility of business and new governance. *Government and Opposition* 37 (2): 385–408.

- . 2004. Government as a driver of corporate social responsibility: The UK in comparative perspective. ICCSR Research Paper Series, No. 20-2004, University of Nottingham.
- Moore, M. 2004. Revenues, state formation and the quality of governance in developing countries. *International Political Science Review* 25 (3): 297–314.
- Omotola, J.S. 2007. From the OMPADEC to NDDC: An assessment of state responses to environmental insecurities in the Niger Delta, Nigeria. *Africa Today* 54: 573–89.
- Omoweh, D.A. 2005. *Shell petroleum development company, the state and underdevelopment of Nigeria's Niger Delta: A study in environmental degradation*. Trenton, NJ: Africa World Press, Inc.
- Onwuchekwa, O. 2004. 5,400 spills threaten Niger Delta—Ugochukwu. *Daily Champion*, 24 November. <http://allafrica.com/stories/printable/200411240494.html>.
- Ross, M. 2001. Does oil hinder democracy? *World Politics* 53:325–61.
- Sagebien, J., N. Lindsay, P. Campbell, R. Cameron, and N. Smith. 2008. The corporate social responsibility of Canadian mining companies in Latin America: A system perspective. *Canadian Foreign Policy* 14 (3): 103–28.
- Sorsa, V. 2008. How to explain socially responsible corporate actions institutionally: Theoretical and methodological critique. *Electronic Journal of Business Ethics and Organizational Studies* 13 (1): 32–41.
- Utting, P. 2000. Business responsibility for sustainable development. Occasional Paper No. 2, UNRISD, Geneva.
- . 2005. Corporate responsibility and the movement of business. *Development in Practice* 15 (3–4): 375–88.
- Van Marrewijk, M. 2003. Concepts and definitions of CSR and corporate sustainability: Between agency and communion. *Journal of Business Ethics* 44:95–105.
- Visser, W., M. McIntosh, and C. Middleton. 2006. Introduction and overview. In *Corporate citizenship in Africa: Lessons from the past; Paths to the future*, ed W. Visser, M. McIntosh, and C. Middleton, 1–17. Sheffield: Greenleaf Publishing.
- Ward, H. 2004. *Public sector roles in strengthening corporate social responsibility: Taking stock*. Washington, DC: World Bank.
- Warhurst, A. 2001. Corporate citizenship and corporate social investment: Drivers of tri-sector partnership. *Journal of Corporate Citizenship* 1 (Spring): 57–72.
- Wilts, A., and M. Skippari. 2007. Business-government interaction in a globalizing economy: Introduction to special issue. *Business and Society* 46 (2): 129–35.
- Yates, A.D. 1996. *The rentier state in Africa: Oil rent dependency and neo-colonialism in the Republic of Gabon*. Trenton, NJ: Africa World Press, Inc.



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Revisiting the Chad-Cameroon Pipeline Compensation Modality, Local Communities' Discontent, and Accountability Mechanisms*

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ABSTRACT This paper queries social regulation and social justice claims related to compensation agreements. It draws upon the Chad-Cameroon pipeline project and compensation settlements between the Exxon Oil Consortium and the Bakola Pygmies in Cameroon as an empirical case study. It interrogates accountability and equity concerns in settlements in light of the fact that such arrangements are value-laden and arise from political processes premised on a "social minimum," thus entrenching a political economy of resource allocation that potentially destabilizes local community entitlements and livelihood sustainability. A critical analysis of the Chad-Cameroon pipeline hinges on the validity of formal corporate-community agreements, the disjunction between the rhetoric of compensation and actual practices, and the contested scale and scope of accountability.

RÉSUMÉ Cet article examine les revendications de régulation et de justice sociales liées aux accords de compensation. Il utilise comme sujet d'étude empirique le projet de pipeline Chad-Cameroun et les règlements d'indemnisation entre le consortium Exxon et les Pygmées Bakola au Cameroun. Il s'interroge sur les préoccupations en matière de responsabilité et d'équité dans les règlements, à la lumière du fait que de tels arrangements sont chargés de valeurs et proviennent de processus politiques basés sur la prémisse du « minimum social », résultant ainsi en l'implantation d'une économie politique d'allocation des ressources qui déstabilise potentiellement les droits et privilèges de la collectivité locale et la durabilité de ses moyens de subsistance. Une analyse critique du pipeline Chad-Cameroun s'articule autour de la validité des ententes formelles entre les entreprises et la collectivité, de la séparation entre la rhétorique de compensation et les pratiques actuelles, ainsi que des désaccords au sujet du degré et de l'étendue des responsabilités.

Introduction

The Chad-Cameroon pipeline project continues to garner interest from human rights activists, scholars, policy-makers, stakeholders, and claimants. The critical incidents that have regularly marked its development, from contestation of its raison d'être to the

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ethos of compensation arrangements and, most recently, the withdrawal of World Bank support, raise fundamental ethical, political, and accountability issues. The pipeline project provides an instructive case study on the ambiguities of corporate-community relations, revealing the stakes involved in the micro-politics of agreement negotiation and implementation.

The Chad-Cameroon case sharply contrasts with other documented cases of corporate-community agreements involving indigenous communities, albeit in different geopolitical contexts and configurations, including Canada and Australia. One such case, discussed by O'Faircheallaigh in this issue, suggests positive outcomes for aboriginal communities and substantial compensation reinvestment in local development. Citing "Gagudju traditional owners of the Ranger uranium mine in Australia's Northern Territory" and "the Aboriginal signatories of a 2001 agreement in Cape York, in far north Queensland" as cases in point, O'Faircheallaigh offers a different narrative of corporate-community agreements. This narrative, compared to the experience of the Bakola indigenous communities in the Chad-Cameroon pipeline case, raises questions about the factors that enable or hinder the achievement of positive gains for disfranchised communities like the Bakola of Cameroon.

This paper grapples with three contentious issues associated with the pipeline project: (1) compensation negotiations between affected indigenous communities and the Exxon Oil Consortium, (2) the micro-politics and gendered impacts of settlement implementation, and (3) the role of contestation and advocacy to force corporate compliance with settlement agreements. The paper analyzes the negotiations between the Exxon Oil Consortium and the local communities, represented by the Bakola Pygmies of the Kribi-Lolodorf region in Cameroon, to make the case for an accounting of the social justice dimension of negotiation and the inherent value-laden political process it entails. Based on these considerations, it questions accountability and equity postulates of compensation settlements as they are entrenched within a political economy of oil exploitation and resource allocation and set in a "social minimum" framework that Fouinat (2004, 4) defines as "a substitute for social protection."

The paper is structured in three parts, starting with a contextual background that traces the evolution of the pipeline and its development. The second part analyzes the impasse in compensation agreements, micro-politics, and gendered impacts of compensation implementation along the pipeline route, as well as the paradoxical and contested meanings of compensation. It questions the fragility and validity of formal corporate-community agreements, and the disjunction between the rhetoric of compensation and actual practices. The last part examines the efficacy of accountability mechanisms and questions the minimalist approach to compensation arrangements, the scope and scale offered for contention about the project, and advocacy for compensation in the face of uncertainty and unanticipated risks associated with the project.

The analysis draws from contextual accounts derived from interviews with community members, including women and NGO representatives, as well as a textual analysis of settlement agreements that employs elements of discourse analysis, a technique described as situating texts as part of social events imbued with political meaning (Fair-

clough 2003). Additional insights derive from observations of the pipeline in situ¹ in Cameroon during 2002 and 2004, at the height of construction, when tension among displaced communities along the Kribi-Lolodorf region, and activist and community mobilization were on the rise. This mobilization was catalyzed by NGOs whose engagement engendered active local resistance to the pipeline project and inspired efforts to redress the power imbalances that subvert communities' rights, to ensure compliance with state regulations, and to demand corporate accountability.

The Chad-Cameroon Oil Pipeline Project: Context and History

The Chad-Cameroon oil pipeline project has significantly evolved since its inception. It emerged from a consortium partnership involving US-based ExxonMobil, Chevron, and Petronas of Malaysia to develop the Doba oil fields in southern Chad. It also encompassed the construction of a 1,050-km pipeline from Doba to Cameroon's Atlantic coast in Kribi to facilitate oil export to world markets. Access via land to transport oil through a 640-mile underground pipeline to an offshore export loading facility in Kribi, a pristine ecological site, was deemed essential for operational feasibility and project success. Analytically, it is illustrative of the overarching political economy of oil exploitation in Cameroon and the peculiarities of this pipeline project, since Cameroon (unlike Chad, which is a landlocked oil production and extraction site) serves as a conduit for oil transport to a marine terminal.

The pipeline crossed through 238 villages and passed within two kilometres of 794 additional villages in Cameroon. The government of Cameroon, represented by the Cameroon Oil Transportation Company S.A. (COTCO),² holds a 3% stake in the project (Guyer 2002; Jobin 2003; World Bank 2001). The state of Cameroon was bound by the State-Investor Agreements to the Exxon Consortium and was responsible for guaranteeing the security of the investments. Despite strident international opposition (Guyer 2002; Pegg 2005), transnational mobilization, and resistance from local communities and grassroots environmental organizations, motivated by the project's social and economic risks and its "rentier nature" (Keenan 2005, 398; Gary and Reisch 2005), the World Bank approved funding for the Chad-Cameroon oil pipeline in May 2000, allocating US\$3.5 billion to the project (World Bank 2001). Construction began

1. I locate myself in this project as a participant observer and expert on NGO advocacy capacity building. I have been available to provide technical expertise to civil society groups grappling with extractive industries in defense of local communities and indigenous communities' rights and entitlements.

2. COTCO is a special-purpose company incorporated in Cameroon as a joint venture between the private sponsors and the governments of Cameroon and Chad, which will own and operate the Cameroon portion of the pipeline export system (see project document: World Bank 2000. "Chad Cameroon Petroleum Development and Pipeline Project." <http://www.ifc.org/IFCExt/spiwebsite1.nsf/b7a881f3733a2d0785256a550073ff0f/8283e68c6d9ee28c85257635006f23b6?OpenDocument>).

in October 2000, and oil flow and export began in 2004. The project's expected life span is 25–30 years.

The pipeline project, the largest single private sector investment in sub-Saharan Africa at that time (Guyer 2002; Jobin 2003; Pegg 2005), fell under the World Bank 1991 operational directive³ that stipulates core principles and prerequisites for all World Bank project operations. Its rationale is to (a) ensure that indigenous people benefit from development projects, and (b) avoid or mitigate potentially adverse effects on indigenous people caused by Bank-assisted activities (World Bank 1991, para. 2, 1). In line with these goals, the directive mandated the creation of an Indigenous Peoples Plan, which sets out procedural guidelines and core principles, such as the “informed participation” of indigenous peoples themselves. In the case of the pipeline, implementation of the Indigenous Peoples Plan was entrusted to the Cameroon-based Foundation for Environment and Development in Cameroon (FEDEC), which was set up by the Exxon Consortium in 2000. The identification of local preferences through direct consultation, the incorporation of indigenous knowledge, and the appropriate early use of experienced specialists were stated to be three key elements required in any project that affects indigenous peoples and their right to both natural and economic resources (World Bank 1991, para. 8, 2). This project policy document was subsequently revised in 2005 to further emphasize the centrality of indigenous peoples' identities and cultures, their stewardship role, the provision of context and culturally relevant Indigenous Peoples Development Plans, and social and environmental assessments. The revisions were a response to critiques.

From the outset, the World Bank's role centred on providing loans and mobilizing additional funding from commercial banks, conditional to its oversight of the project (World Bank 2000; Guyer 2002). In return, the World Bank would provide “political risk mitigation; credit mobilization; and what might be termed ‘resource curse risk mitigation’” (Pegg 2005, 8). The project met substantial opposition from local communities along the pipeline corridor in the Kribi region (Guyer 2002). Local NGOs and international organizations, such as Friends of the Earth, Oilwatch, and Oxfam, acted as catalysts. Using divergent and complementary tactics, including media campaigns, these actors, in concert or separately, converged to demand that the World Bank refuse to fund the pipeline. Mobilization against the project was stimulated and bolstered by the immediacy of the pipeline construction, the perceived risks aggravated by the lack of state support, and a record of negative impacts from extractive industry activ-

3. The World Bank 1991 operational directive was revised in 2005 under the Operational Policy and Bank Procedure on Indigenous Peoples (OP/BP 4.10). The 2005 version shifts emphasis onto indigenous peoples' identities and cultures, stewardship, the provision of context and culturally relevant Indigenous Peoples Development Plans, as well as social and environmental assessment. It claims to streamline project processing requirements by establishing five clear steps: screening, social assessment, consultation with affected communities, preparation of plan or framework, and disclosure. See Indigenous Peoples (OP/BP 4.10), <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTINDPEOPLE/0,,menuPK:407808~pagePK:149018~piPK:149093~theSitePK:407802,00.html>.

ity. This scenario is not exceptional in the long history of conflict between extractive industries and local communities. The displacement and dispossession of local communities (Escobar, Rocheleau, and Kothari 2002), well documented in places like the Niger Delta (Watts 2004; Obi 2009), prove to be common to the *modus operandi* of extractive industries.

Hence, vocal resistance to the project mounted. When the appeals of the resistance movement were rejected, their advocacy strategies shifted to raising awareness among affected communities of the social and environmental risks posed by the project, including the potential for the destruction of local ecosystems, and the right to fair and just compensation for affected communities. The negative impacts of the pipeline on local livelihoods and the fragile ecology, the social dislocation of indigenous communities (Karl 2004), and human rights violations involving the Bakola⁴ (Keenan 2005) were fundamental issues in the concerted and sometimes ad hoc advocacy campaign, providing causal conduits and opportunities to translate structural strain into collective action (Klandermans 1997). However, such advocacy efforts have proven more effective in informing public opinion about the risks of the project than in influencing the content of the compensation agreement, or in forcing compliance.

Reasons for the limited efficacy of local movements include political apathy (Forje 2006), which reflects the lack of long-standing, local, civic engagement as well as the adversarial attitude of the authoritarian state toward civil society: the state views civic associations as enemies (Forje 2006) or incorporates them into the state apparatus (Takougang and Krieger 1998). Moreover, the state's weak position (Rosenblum 2005) vis-à-vis the Exxon Consortium and its expectation of oil rent, estimated at US\$65 million per annum (World Bank 2001; Jobin 2003), limit its willingness to force corporate compliance. In this context, local communities, aware of their weak position, were compelled to negotiate to gain as much as possible from the pipeline. Hopes for a profitable or at least fair compensation for communal land loss and displacement induced the communities to make concessions. Hence, they gave tacit acceptance to the pipeline's encroachment on fragile ecosystems and ancestral lands. The communities' tolerance of the pipeline project in return for achieving short-term material goals contrasted with the sustained efforts of NGOs⁵ on behalf of "voiceless communities"

4. The Bagyéli or Bakola Pygmies represent one of the three main groups of indigenous Baka Pygmies in the east and of the Bedjang tribes in the Nditam region of Cameroon. They are located within the confines of the Lolodorf, Bipindi, and Kribi zones. Their population was recently estimated at 5,000, according to the Courier ACP-EU January-February 2002 report "Dob'a-Kribi pipeline: How will the Pygmies fare?" http://ec.europa.eu/development/body/publications/courier/courier190/en/en_043.pdf.

For general information on the genealogy of the Chad-Cameroon Pipeline Project, consult the following web bank: <http://www.bicusa.org/en/Project.Resources.26.aspx>.

5. See examples of national, regional, and transnational advocacy initiatives: "Open Letter to Mr. James D. Wolfensohn, President of the World Bank," Korinna Horta, Environmental Defense (7/9/98) From 86 NGOs in 28 Countries Concerning the Chad/Cameroon Oil & Pipeline Project, http://www.edf.org/documents/465_Letter%20to%20World%20Bank,%20July%201998.htm; "The Chad-Cameroon Oil and Pipeline Project: Putting People and the Environment at Risk," Korinna Horta, Environmental Defense (9/1/99), http://www.edf.org/documents/728_ChadCameroon_

to secure long-term gains, including corporate accountability and compliance with the protection of indigenous rights. This difference of position and approach between communities and NGOs is indicative of the complexity of partnerships among “allies” who hold varying degrees of power and different locational positions. Asymmetrical power dynamics and often conflicting interests characterize such relations. These differences hold implications for mobilization efforts and compel local NGOs, such as the Center for Environment and Development (CED), to choose a multi-scalar scope of intervention. By focusing on issue-based advocacy pertinent to the specific and time-bound demands of local communities, local NGOs acquiesce to communities’ immediate needs and negotiate their priorities. At the same time, the NGOs may pursue a broader scope of mobilization linked to international and transnational NGOs in their continuous mobilization against transnational corporations. These compromises may not be based on mainly altruistic and intrinsic motives. The relevance of local NGOs to local constituencies is at stake, too. This is evident in the work of the CED and its linkages with regional networks like Oilwatch and with international and transnational NGO networks such as Third World Network, the Friends of the Earth, Environmental Defense Fund, and others. Such multi-scalar practices are illustrative of transnational diffusion and issue networks (Tarrow 1998) in trans-local mobilization. The challenge rests with how NGOs and communities reconcile and negotiate differences in such partnerships, which can be vertical or horizontal, prescriptive or empowering.

In 2001, in response to persistent protest regarding the project, the World Bank set up an external compliance monitoring group and a five-member independent supervisory panel—the International Advisory Group⁶ (IAG)—with a mandate to monitor the progress of the project in terms of accountability, transparency, and governance as well as overall environmental and social impact. The IAG’s mandate also required that it advise the Cameroonian government on the project’s risks and on mitigation strategies, in addition to providing a review of government oil revenue allocation to poverty alleviation programs (World Bank 2000). Civil society organizations such as the CED in Cameroon and the Washington-based Center for International Environmental Law questioned the effectiveness of a watchdog role for the IAG, emphasizing the fact that “IAG monitoring of human rights was not included in its terms of reference,” and that the IAG had “no permanent posting in the pipeline region ... and will be limited by monitoring from afar ... [through] on-site visits scheduled only twice per year.”⁷

pipeline.pdf; “Letter to Mr. James D. Wolfensohn, President of the World Bank,” Korinna Horta, Environmental Defense (7/10/00), http://www.edf.org/documents/459_Letter%20to%20Mr.%20James%20D.%20Wolfensohn,%20June%202001.htm; From 73 NGOs and NGO Umbrella Organizations in 23 Countries Regarding the Establishment of the International Advisory Group for the Chad-Cameroon Oil & Pipeline Export Project, http://www.edf.org/documents/1050_IAG_Jan2002.pdf.

6. See <http://www.gic-iaa.org/eback.htm>. The IAG has produced many reports on the pipeline project emphasizing its shortcomings. Appointed members of the IAG are Mamadou Lamine Loum (Chair), Jane I. Guyer, Abdou El Mazide Ndiaye, Jacques Gérin (executive secretary). The IAG mandate ended on 30 June 2009.

7. See CED, Cameroon and Washington Center for International Environmental Law (2001). CIEL. Immediate release, <http://www.ciel.org/Ifi/chadcamwatchdog.html>.

Within the scope of its responsibilities, the IAG consulted with the two parties—the communities and the Consortium—to plan appropriate compensation measures. Similarly, the Exxon Oil Consortium launched village-level “consultations” throughout the project area. The consultations served the instrumental purpose of public information campaigns, and they aimed to establish the groundwork for expropriation and compensation. The Consortium hired facilitators, rural animators, and civil servants from one of the main implementing agencies in Cameroon (COTCO) to conduct an information and sensitization campaign, assess the local communities’ needs and position, and set up the compensation and valuation plan to adhere to the guidelines of the World Bank.

While the Consortium claimed compliance with the spirit and prescription of the World Bank operational directive requiring communities’ “*informed participation*” and consultations—reporting that over 900 village-level public consultation meetings had been held by mid-1999 (Esso 1999; Moynihan et al. 2004)—such claims have been challenged. Counter-claims attest to not only a lack of participation by numerous communities but also an inadequate compensation modality, one that specified individual and community compensation for loss of crops, productive trees, land, and collective resources at statutory compensation rates (Guyer 2002) based on the perceived economic and market value of assets. The counter-claims also referred to the possible erosion of endogenous communities’ land rights, loss of biodiversity, and negative impacts on the environment (Nelson and Kenrick 2001; Nguiffo, pers. comm. 2002; Jobin 2003; Friends of the Earth International and Center for Environment and Development 2001; Horta, Nguiffo, and Djiraibe 2007). In fact, accounts by NGO leaders and field missions coincide with the findings of the IAG, specifically regarding the lack of effective communication between the Consortium and the communities, often involving an absence of culturally appropriate space for meaningful dialogue (Nelson and Kenrick 2001; IAG 2009a). Such concerns were echoed by community leaders who asserted that “the fear to be identified as an opponent to the project, in defiance to the government, forced many people to attend the meetings.” One woman interviewed along the pipeline corridor confided that “even though [she] wanted to attend the meetings and managed to attend one meeting in her community, she was advised not to say negative things about the project. Attacking the project meant attacking the government” (field notes, 2002).

Also noteworthy was the pseudo-militarization of these consultations, including the presence of armed guards, which often thwarted the open, safe, participatory process that a meaningful democratic public consultation process should embrace (Lo 2002). Observation of the site and the pipeline corridor revealed many tense encounters with armed guards and barricaded areas that were off-limits to the public. The spatial control of the pipeline sites suggests the adoption of practices that are systemic in the Niger Delta with regard to the privatization and corporatization of security (Omeje 2006). The circumstances surrounding the meetings further subverted any meaningful “‘citizen participation’, defined as deliberation on issues affecting their own life, a normative core of democracy” (Fisher 2000, 1). More important have been claims of the retention and manipulation of information and the instrumentalization of expertise reported by NGOs (Nelson, Kenrick, and Jackson 2001), challenging the notion of

informed participation. This is illustrative of the contested meaning of "consultation," in which citizen engagement may be instrumentalized as mantra while clearly lacking substantive content. Overall, the "stakeholder" consultations appear to be a farce, since dialogue with communities was predicated on the assumption that the project was bound to be implemented. Indeed, the recognition of a right to say no was in no way part of the negotiating process. The manipulation of the rhetoric of compensation is emblematic of the framing of consultations devoid of, and divorced from, substantive issues. The objective was not to determine "whether communities agreed to the pipeline construction," but rather "how to 'reasonably' and at the least cost possible, compensate affected communities for their loss" (field notes, 2002). The discourse of compensation and community dialogue, alongside coercive practices, constituted the range of tactics to exert power and social control over communities. The meta-narrative and discourses surrounding "negotiation" and "compensation" embody a discursive fallacy when they present "communities" and the ExxonMobil consortium as equal "parties." In fact, the "subaltern" position of communities is reinforced and entrenched.

An underlying question in negotiation theory and practice pertinent to the negotiation under analysis is: What was at stake for both parties? For the Exxon Oil Consortium, much rested on a timely implementation of the pipeline construction from Doba to the Cameroon Atlantic coast in Kribi. The Consortium's overriding concern was with the security of its personnel and the 1,050-km pipeline to export oil to world markets. Second, any delay in construction would have had negative impacts not only on the target date of 2004 but also on the returns and revenues on the investment. Third, the feasibility of the project was contingent on the collaboration of 1,032 villages along the pipeline. Fourth, since the Consortium was highly vulnerable to exposure regarding the violation of indigenous rights, it sought to maximize the financial returns of its investment and ensure a good rating in corporate social behaviour. This explains its proactive effort to mitigate vulnerability and avert social unrest along the pipeline corridor. Finally, the Consortium needed to obtain at least a satisfactory rating of corporate social responsibility and citizenship, and to demonstrate compliance with human rights and environmental norms (Lo 2002).

The local communities' primary concerns during the negotiations were stable livelihoods and access to the resources to sustain them: access to land, adequate financial resources to settle in new villages, and basic social services such as schools and health centres. Central to their concerns was the need to safeguard their own physical security, and freedom from military action. They also sought to prevent further encroachment onto their ancestral lands (Nelson and Kenrick 2001), which would irremediably compromise both their livelihoods as well as the preservation of cultural and ecological balance. Various accounts from NGOs underlined the local communities' vulnerability to food insecurity, displacement and its corollaries, and loss of livelihoods (Friends of the Earth International and CED 2001; Horta, Nguiffo, and Djiraibe 2007). Of particular interest were concerns about the risk of abuse from obtuse forms of power. These included the apparent manipulation of access to information concerning the project, including expert and technical knowledge required to understand much documentation — without which indigenous communities were seriously hampered in their nego-

tiations with the Consortium (see footnote 7; Amnesty International 2005; Rosenblum 2005). Violations of human rights had been documented, along with considerable social, economic, and environmental risks. The neutral stand adopted by the government of Cameroon only exacerbated community vulnerabilities. Further, the monopolistic form in which the state conducted its oil rent management was not conducive to redistributive justice, and state accountability to citizens was and remains compromised.

Local communities had much at stake in the outcome of negotiations while the Exxon Oil Consortium had only a nominal interest. Exxon had an alternative plan—a fallback position—that consisted of building the pipeline in the Central African Republic or the Congo. Thus, the Consortium was well positioned to satisfy its interests. The government, in turn, had a high stake in obtaining revenues from the pipeline, and in resolving the conflict under the guise of national security and unity. Inquiries into the impasse in the agreement negotiation suggest that parties' different positions shaped how they responded and acted. The Consortium was in a dominant bargaining position with strong backing from government, which was committed to honouring its pre-existing agreement with Exxon. This accounts for the series of "consultations" orchestrated by the corporation to reach a joint agreement. The lure of joint gains and potential "win-win solutions" appealed to local community leaders, despite reservations among environmental NGOs and human rights groups, which created an "expectancy gap" between NGOs and community representatives. This, in turn, raised questions about the internal dynamics of communities and their relationships with the NGOs that claimed to represent them. In the end, despite all the turbulence and protest, the local communities agreed to a compensation settlement plan in December 2000.

The following section critically contrasts the promises and terms⁸ of the agreement with its actual implementation. For instance, the compensation agreement called for job creation and the "the allocation of 80% of the jobs to local residents and the creation of 5,000 jobs" (Esso 1999). However, several reports and field missions challenge the adequacy of compliance with this requirement, and question whether Bakola communities have benefited. NGO reports suggest that "most work is given to expatriates, and locals end up with occasional short-term unqualified labour" (Friends of the Earth International and CED 2001). Further, "the influx of largely male job seekers into the project area has led to serious social disruption of the communities, with prostitution, alcohol abuse, HIV/AIDS, and other sexually transmitted diseases all on the rise" (Friends of the Earth International and CED 2001; Jobin 2003; Karl 2004). The risk of "increase in Sexually Transmitted Diseases/AIDS,⁹ mostly in the zones near project facilities," identified in external reviews, appears not to have been offset by adequate mitigation plans. This suggests a discounted risk. The compensation package also in-

8. See the following links: <http://www.ifc.org/IFCExt/spiwebsite1.nsf/b7a881f3733a2d0785256a550073ffof/8283e68c6d9ee28c85257635006f23b6?OpenDocument>; <http://www.esso.com/Chad-English/PA/Files/suppvol1ch1.pdf>; <http://www.worldbank.org/afr/ccproj/>.

9. Increased risk of malaria, diarrheal diseases, and respiratory diseases, along with the oil pipeline's eventual contribution of large amounts of greenhouse gases, were raised as issues, as was the lack of equity in sharing these risks. See Jobin (2003); Friends of the Earth International and CED (2001); and Utzinger et al. (2004).

sists on “the hiring of local suppliers in multiservice sectors” (Esso 1999), yet the meaning of “local” is problematic. NGO field reports (Horta, Nguiffo, and Djiraibe 1999, 2007) suggest that while the project may provide employment to some surrounding communities, the Bakola farming community’s interests will not be served since its members possess few skills suitable to the project. Further, the package stipulated “the minimization of the potential of the pipeline route to encroach on villages, houses, and other human settlements, creating a need for resettlement. No more than 150 households will be resettled as a result of the project” (Esso 1999). However, accounts from the monitoring body IAG, together with NGO reports, suggest deeper encroachment on Bakola traditional and sacred ritual sites (Nelson and Kenrick 2001). As well, compensation for sacred objects is reduced to covering “the traditional ritual cost of moving the object” (Esso 1999, 5–12). The intrinsic and symbolic value of such “objects” is lost in this valuation grid.

Similarly, the agreement referred to “regional in-kind compensation paid for temporary losses of community resources along the pipeline easement in Cameroon,” and stipulated that “in-kind community compensation will be paid to communities permanently losing communal lands at fixed facility sites” (Esso 1999, 5–6). However, “compensation will be paid to the individual, who holds primary rights to the resource” (*ibid.*, 5–9). This individuation of entitlement may conflict with collective land use and traditional land tenure systems specific to the local communities. While progress has been noted in the disbursement of compensation (IAG 2006), the meaning of “in-kind” is highly debated; in practice, it amounted to the provision of farming tools (Nelson and Kenrick 2001). Moreover, the compensation covered only the three-year construction period (Esso 1999), a time much too short for rebuilding livelihood systems.

An important clause of the Indigenous Peoples Plan stipulated that the Campo Ma’an National Park be set up (Esso 1999, 5–6). The IAG reports suggest delays in the implementation of this requirement and insufficient funding for the management of biodiversity in offset areas entrusted to FEDEC (IAG 2006, 2009a, 2009b; Horta, Nguiffo, and Djiraibe 2007, 17). Moreover, the IAG reports express fear for imminent bankruptcy for FEDEC, which would then be unable to fulfill its mandate to implement the indigenous plan and monitor project impacts on indigenous communities (IAG 2009a, 11). Similarly, “the Foundation estimates that its available capital will potentially allow it to continue its activities for three years, perhaps less” (IAG 2009b, v); hence the IAG’s urgent plea that “FEDEC’s founding fathers—the government, Consortium and WB—must still reach an agreement concerning their respective responsibility to ensure implementation of this component of the Environmental Management Plan over the next 22 years” (IAG 2009b, v).

Lastly, the agreement specified “adequate market rate compensation for the value of various crops, including fruit trees, coffee, cocoa, raffia palm, and manioc” (Esso 1999). The outcome of this clause is contested. Not only do compensation rates appear to be arbitrary and below market value, but claims and grievances the Bakola filed for adequate compensation or timely disbursement of funds have been left pending for years (IAG 2006, 2009a). This has left communities with no other recourse and no access to alternative mitigation options.

To its credit, the Exxon Oil Consortium manifested responsible corporate behaviour by readjusting the compensation value of a single mango tree from CFAF3,500 to CFAF550,000 (Horta, Nguiffo, and Djiraibe 1999). However, in the NGOs' and communities' views, it failed to "create new formulas for calculating the compensation for other essential trees but set the rates without consulting the local people and NGOs" (*Declaration of Bebedjia* 1999, quoted in Horta, Nguiffo, and Djiraibe 1999). Besides, the NGOs' 1999 "Critical Analysis of the Compensation Plan" documents low compensation rates and intimidation in local villages, and suggests that the compensation for raffia trees—for which the local people have more than 30—is 120 times below their market value (Groupe de Concertation 1999, quoted in Horta, Nguiffo, and Djiraibe 1999). According to NGO reports, the inherent weakness of the compensation plan rests in its failure to consider the market value of property lost by local communities (Horta, Nguiffo, and Djiraibe 1999, 2007). Hence the IAG's most recent recommendation to "establish mutually agreed-upon rules for fair compensation, which may mean compensation that exceeds outdated national standards" (IAG 2009a, 17).

Clearly, what may be appropriate compensation is interpreted differently, and claims of compliance are challenged by counter-claims of failure. As argued by Pegg (2005), the empirical realities of the Chad-Cameroon pipeline project have frequently failed to live up to promised goals of contributing to development and alleviating poverty. What has emerged is that the compensation arrangement—premised on market value assessment of tangible physical assets such as land, livestock, and forest resources—overlooked the short- and long-term loss of intangible assets. How have generational and long-term impacts been taken into account? Recognizing that community livelihoods, productive systems, and ecological balance require time, investment, and adequate resources to rebuild, how can they be measured and compensated? Furthermore, cultural assets and capital, defined in this context as assets of tangible and intangible cultural expressions (Throsby 1999, 2001), and traditional ecological knowledge specific to the Bakola (Johannes 1989) bear great significance in community sociocultural maintenance, cohesion, and psychosocial balance, as well as cultural and even physical survival (Dutfield 1997). The challenge lies in valuing and compensating for the loss of such assets, which could be undervalued within the predominant compensation framework. These absences call into question the very premise of the community compensation settlement, predicated on assumptions of accountability and joint gains, and yet interpreted differently, based on the location and interests of the different actors.

Micro-Politics and Analytics of Compensation Arrangements and Implementation

Preceding sections highlight that compensation negotiations are neither linear processes nor devoid of tension among the participants (affected communities, NGOs, and corporations). Lags in the implementation timetable (AIG 2009, Horta, Nguiffo, and Djiraibe 2007) and the failure to implement all aspects of the agreement (as noted

by the IAG 2002, 2005, 2009a, 2009b) render visible the complex power relations with which communities must contend. Such inequalities generate different discourses on compensation agreements, characterized by communities and NGO advocates as “deception” and “minimal compensations.” They also point to the obliteration of accountability, evidenced by the lack of a timely and full delivery of the compensation package, further compounded by the ambivalent role played by the state, represented by COTCO. The compensation arrangements, framed within a minimalist approach in their piecemeal implementation, raise contentious issues pertinent to the social minimum approach to compensation and legitimate social justice claims. At first glance, the social minimum approach appears to be an overriding principle of such negotiations. For instance, the compensation plan suggested “a one-time in-kind payment for villages permanently losing land for construction of fixed facility sites and/or inconvenience by temporary construction causing land loss of more than one growing season” (Esso 1999). This points to temporality of entitlement to benefits and minimal compensation for potential loss of livelihood and labour productivity, compensated at discounted rates and clearly entailing a discounting of risk.

A closer social analysis of the pipeline project, so far missing in the growing literature, also reveals gender blindness in compensation allocation and implementation. Accounts by women interviewed along the pipeline corridor suggest “their lack of involvement in negotiation,” “de facto representation by the head of household, or the chief of village,” or sometimes “random employees or messengers of the Pipeline project” (field notes, 2002). One informant related, “When the COTCO employees came into the village they asked for our husbands. And when they were not there, they told us that it was not necessary for us to attend the meetings. It was a man’s affair.” Women also noted the fact that “they were not invited to participate in the consultations” (A.N., pers. comm. 2002) that could have been appropriate decision-making forums in which to express their needs. At the same time, items in the compensation package, like tools—not adequately gendered and adapted to the local farming system—were instead traded for cash, not reallocated for household needs and maintenance. Taken together, all this is indicative of gender biases in representation, resulting in the silencing of women’s voices in the negotiation process and a lack of accounting for their gender needs and interests. Lack of gender responsive consultations or needs assessments induces a systematic erasure of women’s differentiated needs, interests, and active agency, resulting in male-biased compensations, empirically manifest in the choice of farming tools and agricultural inputs.

Furthermore, compensation modalities appear to ignore gender differences in vulnerabilities and entitlements specific to the social and cultural context of the Bakola. Once available, monetized compensations are of de facto benefit to “men, i.e., husbands and chiefs,” according to the women interviewed along the pipeline corridor (A.N., pers. comm. 2002). These practices manifest entrenched gender biases in compensation settlements and allocation, echoing similar accounts documented in the cases of anthropogenic and natural disasters (Seager 2006; Hudson 2005; Carpenter 2005; Earnson and Morrow 1998). They also echo Rocheleau’s (1995) assertion of entrenched

gender imbalance in resource management and allocation that derives from unequal power dynamics (Jackson 1993) and differential bargaining power (Agarwal 1997b).

In contrast to the active resistance of women in the Niger Delta, which is anchored on modern mobilization strategies, combined with traditional and culturally sanctioned forms of protest and resistance (Ikelegbe 2005; Turner and Brownhill 2004; Ukeje 2004), women's mobilization along the pipeline corridor in Cameroon against dispossession by the oil companies has been timid, circumscribed by gender restrictions, and mostly channelled through the NGO advocacy network. The invisibility of women in the pipeline protest contrasts markedly with the history of social movements in Cameroon. In fact, regional mobilizations by rural women have been ongoing in different chiefdoms (or fondoms) in the northwest province for at least 40 years (Diduk 2004). Clearly, women have historically opened, entered, and shaped popular dissent, and they have participated in overt activism at the national scale. What accounts for the differences are contextual specificities that impact the way in which gender relations and hierarchies are structured, accepted, contested, or transformed in specific social and cultural sites. In the case of the Bakola communities, their forest location has historically conferred upon them security, identity, and liberty (Turnbull 1961), yet reinforced their marginalization (Ngima 2001, 27).

Beyond gender ideologies, exclusion and discrimination appear at multiple physical and discursive sites. In Cameroon, the state's political discourse emphasizes ethnic particularities (Monga 2000). Its discourses on autochthony and citizenship (Pelican 2008) give rise to unequal and exclusionary practices in compensation allocation. Beyond gender variables, citizenship and location were defining characteristics influencing who would or would not receive compensation.

With reference to the Bakola Pygmies, the meaning of citizenship needs to be culturally interpreted beyond the state-issued national identity card, the required document for benefit registration and entitlement. Cameroon records a 58.1% rate of birth registration in rural areas (UNICEF 2009), in which the "People of the Forest" are marginally represented. The lack of proof of legal identity leaves them little recourse to claim their citizenship rights. The pernicious effects of benefit entitlement malleability become more evident when indigenous systems and records are discounted. The disenfranchised status of marginalized communities, labelled "Pygmy" for instance, permeated the negotiation processes and compensation implementation. This was further exacerbated in the state's failure to serve as guarantor of justice when the Exxon Oil Consortium failed to comply with the compensation agreement and timetable and to take into account the people's vulnerability. The settlement plan was supposed come into effect in December 2000, but according to community accounts and evaluation reports, as of autumn 2009 it was not yet fully in force (IAG 2009a).

Marginalization is not uniform across communities. For example, Bantu communities are more accustomed to the cash economy and compensation transactions; therefore, they draw most of the benefits from the pipeline, at the expense of the Bakola (Friends of the Earth International and CED 2001; Tachi 2001; Karl 2004). Hence, tension between the two communities is high.

Eager to write off serious environmental degradation and egregious human rights abuses, the Exxon Consortium may have committed itself formally to the mantra of corporate social responsibility but did so without embracing the substantive accompanying practices (Lo 2002). All of this calls into question the intrinsic value of negotiation agreements, which “depends on a sequence of reciprocal actions” (Susskind and Cruikshank 1987, 31). The gap between the agreement and actual implementation epitomizes the role of power in such transactions. It further entrenches the primacy and logic of business transactions (Leader 2006) that trump the social and human contingencies of their application. Related to the lack of compliance is the role of the state and its very nature in the context of the Chad-Cameroon pipeline. The state’s failure to regulate corporate behaviour vis-à-vis the citizenry evinces the existence of pathologies associated with rent-seeking states, the “resource curse,” and the myopia of policy-makers who undermine accountability to the citizenry (Weinstein 2005, 599; Ross 1999, 2001).

Furthermore, according to NGO and community member accounts, the Bakola Pygmies of the Kribi-Lolodorf area have been “labeled rebellious communities” by the pipeline project staff and COTCO’s representatives, and their members and supporters have been “threatened and pursued for civil disobedience.” According to an NGO leader, NGO representatives who were vocal and committed to serving the interests of local communities “were threatened and coerced to promote unconditional and immediate support for the project.”¹⁰

This state repression of protest has had far-reaching impacts on the communities’ self-awareness and their commitment to defending their interests and fighting for social justice. However, the tactics to suppress protest and vocality are not unique to the Cameroon case. They echo accounts from Chad that suggest systemic state brutality and repressive responses to protest along the pipeline (Gary and Reisch 2005). They also converge with similar patterns of denial and blame shifting noted by Garvin et al. (2008) in Ghana, and strategies of de-politicization of community activism stressed by Zalik (2004) in Nigeria.

Community discontent, stemming from the non-implementation of agreements, also reflects the power dynamics at play between the communities and various actors. Relevant to this case study are Chesler’s (1991) argument that power imbalance is the rule at the crucial and often unresolved implementation stages of an agreement, as well as his assertion that the participation of an overly weak “party” lacking self-empowerment strategies makes a mockery of negotiations and leads to superficial outcomes. This calls for a new interpretation of the conflict as more than a two-party disagreement, in order to adequately capture the underlying social conflicts and to ensure social justice. This resonates with Ospina Peralta, Santillana Ortiz, and Arboleda’s (2008, 2922) contention that “the bargaining between dominant and subordinate stakeholders in any given territory always takes place in a context of historic power relations and particular political traditions.”

10. See CED, Cameroon and Washington Center for International Environmental Law (2001). CIEL. Immediate release, <http://www.ciel.org/Ifi/chadcamwatchdog.html>.

Accountability Conundrum: Scale and Scope of Contention and Advocacy Efficacy

A critical analysis of the Chad-Cameroon pipeline compensation formula calls into question the validity of the formal corporate-community agreement of 1999. The disjuncture between the rhetoric of compensation and actual practices raises questions about the scale and scope of accountability, and the possibility of sanctions for non-compliance. While monitoring and oversight for the project have been placed in the hands of agencies such as the IAG and the Steering and Monitoring Committee, their ability to hold the Consortium and COTCO accountable, and to articulate more tangible recommendations has been limited, due in part to limited mandate. Their lower power position, vis-à-vis COTCO and the Consortium, relegate them to the limited role of observer rather than actor-with-agency.

Faced with continuing lack of compliance to the agreement—the key source of community discontent—communities, supported by NGOs, have launched an appeal to induce compliance and hold the Consortium accountable, and have constructed a protest space linking localized struggle and audiences with an international/transnational audience. Along with its network and coordinating organizations, Oilwatch Africa has given some support and impetus to communities organizing against individual oil companies and hydrocarbon projects in the region (see Osuoka and Zalik in this issue). Such advocacy efforts have increased public exposure and helped open political space for engagement, thus strengthening the communities' position.

This approach resonates well with Chesler's (1991) assertion that movements toward social justice stem from the energy and power of oppressed people and their interactions in struggle with allies. Self-advocacy, public scrutiny, and public exposure appear indispensable to guarantee minimum agreement compliance and to generate agency. NGOs displayed agency prior to the project's approval by the World Bank in June 2000, and by calling on the World Bank to issue a moratorium on funding to ensure that necessary conditions concerning legal frameworks be met (Horta, Nguiffo, and Djiraibe 2000). Thirteen NGOs reviewed the terms of reference and recommended that the IAG representatives visit the sites twice a year (Horta, Nguiffo, and Djiraibe 2000), a demand to which the World Bank acquiesced. However, they have not been successful in asking IAG members to visit affected communities on demand to document the impact of the project.

Since the project's approval, advocacy initiatives have focused on publicizing social and environmental risks, which resulted in the World Bank's establishment of the IAG and a revisiting of its Indigenous Peoples Plan, with more attention given to social impacts. NGO transnational advocacy campaigns encompassed a variety of strategies and tactics in their ongoing efforts to monitor compliance and negotiate just outcomes. An illustrative case is the 2002 claim filed by the CED with the World Bank in the name of Cameroonian peasants and workers victimized by the Chad-Cameroon

pipeline project." Such initiatives—mobilizing constituencies, employing the media, drawing a broad base of support, and inviting mediated dialogue with the Exxon Oil Consortium—have been used in attempts to force compliance (Lo 2002).

These advocacy efforts suggest the potential of joining political action and purposeful individual action (Cleaver 2007). Combined with moral arguments by community leaders, churches, and pressure from NGO allies with targeted messages that appeal to what is right—and in the local community's self-interest—a concerted, multi-pronged mobilization emerged and attempted to force the Exxon Oil Consortium to deliver on the agreements that had been negotiated. In the absence of recognized professional and willing mediators, the grassroots NGOs, committed to social justice, have been playing a much-needed power-balancing act. They have been key actors in enabling local communities to challenge acute power imbalances. The outcomes of these initiatives ranged from clinging to the status quo to changes of institutional practices and policies, as in the case of the World Bank, the operational directive, and Indigenous Peoples Plan. Yet, as argued by Osuoka and Zalik in this issue, "in striving both to achieve the broader promotion of 'self-determination' among affected communities and to resist socially destructive oil activity, they have to contend with an industry that is in alliance with—and a reflection of—the state in all its neo-liberal manifestations."

Unlike other sites embroiled in violence, like the Niger Delta (as described by Obi in this issue; Okonta and Douglas 2001; Watts 2004; Ukiwo 2007; Peterside and Zalik 2008), activist movements centred on local community rights and entitlements in Cameroon have been non-violent to date. Strategies have included mobilizing support from influential power brokers, traditional leaders, and well-established and prominent politicians as mediators. However, the efficacy and persuasive power of mediators remain questionable, since their interventions have resulted in vague or broken promises (Friends of the Earth International and CED 2001). Furthermore, while strategic, the integration of mediators committed to facilitating democratic negotiation processes with feasible, fair, and sustainable outcomes raises questions about potential conflicts of interest. Given the existing power differential between the Bakola and the Exxon Oil Consortium, the mediator's intervention would have to be committed to empowering, at the onset, the low-power party (Forester and Stitzel 1989; Forester 1994), allowing it to enhance its self-efficacy. In this case, it would mean forcing the Consortium to comply with its agreements to sustain a fair and just outcome. Susskind's and Cruikshank's ideal of the mediator activist (Susskind and Cruikshank 1987; Forester and Stitzel 1989) who not only embraces the implementation of an agreement and the guaranteeing of outcomes but also seeks to redress power imbalances that have subverted the process, resonates in this case.

Chesler (1991, 8) saliently posits, "The creation of social change, and the quest for social justice, requires the generation and utilization of power and associated resources to challenge the status quo of institutionalized authority and privilege." This captures the challenges of monitoring and implementing negotiated agreements and the de-

11. See CED (2002). <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/CameroonNOR1.pdf>; <http://www.foei.org/en/media/archive/2002/0925.html>.

livery of requisite benefits where the low-power group is disempowered and has no strong support network with adequate resources. It also reaffirms claims that “victim compensation is symbolic policy, nominal policy, [and that] substantive programs do not always actually follow political rhetoric” (Eliasm 1983). The argument advanced by Eliasm juxtaposes the discursive content of compensations as text, the political rhetoric they employ, and the social practices they enable (Fairclough 2003).

More neglectful is the communities’ unacknowledged entitlement to protection first, rather than compensation after the fact, in light of unanticipated risks and environmental hazards. The January 2007 Kribi oil spill at the marine terminal is illustrative of this and suggests the failure of the state to protect and guarantee fundamental rights in the absence of statutory and legally binding environmental management policies. In this case, the materiality of environmental risk and hazard, an issue raised by various NGO reports and activists but discarded by pipeline Consortium authorities, proved salient and illustrative of the social costs and negative externalities of the pipeline. Neither communities nor the government are entitled to compensation for this accidental oil spill, due to the lack of legal and regulatory frameworks or operational judicial and regulatory systems to oversee environmental management in the oil sector.

Lastly, the World Bank disengagement from the pipeline project in September 2008—subsequent to a noted lack of compliance by the Chad government on its contractual agreement regulating the export credit and resource allocations to the social sector (World Bank 2008)—reveals the malleability and volatility of corporate-community agreements. The withdrawal of the major regulatory and governance entity raises further questions regarding the accountability mechanism that would apply to future risks, and suggests a governance void and accountability vacuum that should inspire concerted and continued mobilization.

Conclusion

The paper has argued that communities like that of the Bakola Pygmies cannot secure decent agreements that address their long-term needs, given the significant power imbalances between them and corporate actors like the Exxon Oil Consortium, especially when strong state institutions are lacking. Instead, the logic of negotiations leads disenfranchised communities to focus on short-term gains without considering alternative development strategies to address their conditions, or the right to say no to that on which they disagree. This paper also contends that the Consortium in this case did not adequately implement even the minimal agreement that was signed. Thus, the problems rest in varying parts in the negotiation process, the agreement itself, and the lack of implementation, all due to power differentials and a dearth of accountability mechanisms.

Shortfalls in the implementation of the compensation agreement reflect an all-too-common pattern of abuse of the low-power group when negotiation processes are embedded in a context of inequality and there is no commitment to a fair and just outcome

(Lo 2002). Fundamentally, power differentials render more manifest the salience of the political economy of oil exploitation, and the overlapping patterns between oil producing and oil transporting countries. The overarching political economy context freezes asymmetric triadic relations among the state, communities, and the corporation, creating a geography for corporate-community agreements and their implementation that contrasts with the Australian and Canadian cases analyzed by O'Faircheallaigh in this issue. It further dramatizes the state's paradoxical position in its rent-seeking rationality when caught between the legitimate demands of citizens and marginalized communities and the power of transnational corporations. It is necessary to interrogate the position and power of the state embedded in specific political economies.

Also required is the contextualization of the social and political dynamics that shape the interactions among the state, civil society, corporations, and communities, bearing in mind that unequal power dynamics are the subtexts of such interactions. These factors converge to determine the contrasting geographies and genealogies of negotiation and localized corporate behaviour.

The World Bank's disengagement from the Chad-Cameroon pipeline in 2008 serves as a metaphor for failed accountability and compels further interrogation of the institutional oversight, accountability, and ethos underpinning corporate and community agreements. Does it also signal the failure of the normative or voluntary corporate social responsibility agenda and mantra? What opportunity structures emerge for enhanced accountability now that the World Bank has exited from the Chad-Cameroon pipeline project?

More importantly, should the need for revenue transparency be considered more important than systematic public accountability, the rule of law, or social protection and the safeguarding of communities' fundamental rights and entitlements? Further, recognizing community disempowerment as both a dominant victimization narrative and a mobilizing metaphor, what are the possibilities for a transformative dialectic? Moving beyond entrapment in victimization narratives, what new material and discursive sites of agency could emerge? How should social actors act on the impetus to inscribe agency and accountability into the lexis and practice of community-corporate agreement negotiation and implementation?

Clearly, the elusive nature of corporate-community agreement in the case of the Chad-Cameroon pipeline demands a rethinking of the substantive dimensions of agreement negotiation and implementation. More pernicious are the politics of "short-termism" underpinning the specific arrangement analyzed here, where compensation is premised on short-term vulnerability and risk while discounting long-term human security threats or generational impacts. Furthermore, the propensity to subsume risks and costs in monetized terms leads to a potential normalization of the monetization of compensation, leaving discrete, intangible yet fundamental rights and entitlements unaddressed. The disjuncture calls for a paradigm shift and a rethinking of the approach to corporate-community negotiations, orthodoxies, and substantive content of agreements. It starts with an accounting of contingency, potential volatility, and negative externalities of such agreements in light of entrenched power imbalances, and unaccounted ecological and social risks compounded by weak accountability systems.

References

- Agarwal, B. 1997b. "Bargaining" and gender relations: Within and beyond the household. *Feminist Economics* 3 (1): 1-51.
- Amnesty International. 2005. *Contracting out of human rights: The Chad-Cameroon Pipeline Project*. London: Amnesty International UK.
- Barbier, J.-C., ed. 1985. *Femmes du Cameroun : Mères du Cameroun, femmes rebelles*. Paris: Karthala.
- Carpenter, R.C. 2005. Women, children and other vulnerable groups: Gender, strategic frames and the protection of civilians as a transnational issue. *International Studies Quarterly* 49 (2): 295-334.
- Chesler, M. 1991. Racial/ethnic/cultural issues in dispute resolution. Working Paper No. 28, Program on conflict management alternative. Anne Harbor: University of Michigan.
- Cleaver, F. 2007. Understanding agency in collective action. *Journal of Human Development* 8 (2): 223-44.
- Diduk, S. 2004. The civility of incivility: Grassroots political activism, female farmers, and the Cameroon State. *African Studies Review* 47 (2): 27-54.
- Dutfield, G. 1997. Between a rock and a hard place: Indigenous peoples, nation states and multinationals. In *Medicinal Plants for Forest Conservation and Health Care*, 34-44. Rome: Food and Agriculture Organization of the United Nations (FAO).
- Earnson, E., and B.H. Morrow, eds. 1998. *The gendered terrain of disaster: Through women's eyes*. Westport, CT: Praeger.
- Eliasm, R. 1983. Symbolic politics of victim compensation. *Victimology* 8 (1-2): 213-24.
- Escobar, A., D. Rocheleau, and S. Kothari. 2002. Environmental social movements and the politics of place. *Development* 45 (1): 28-53.
- Esso. 1999. *Chad export project: Compensation plan: Environmental management plan, Cameroon portion*. Volume 3. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/10/22/000094946_00102212454961/Rendered/PDF/multi_page.pdf.
- Fairclough, N. 2003. *Analysing discourse: Textual analysis for social research*. London: Routledge.
- Fisher, F. 2000. *Citizens, experts, and environment*. Durham: Duke University Press.
- Forje, J.W. 2006. Building a vibrant state-civil society in Cameroon facing the changes of the new millenium. *Le bulletin de l'APAD* 18, *Itinéraires de "deflates" au Cameroun*. <http://apad.revues.org/document461.html>.
- Fouinat, F. 2004. A comprehensive framework for human security. *Conflict, Security & Development* 4 (3): 289-97.
- Forester, J. 1994. Lawrence Susskind: Activist mediation and public disputes. In *When talk works: Profiles of mediators*, ed. K. Deborah M. and Associates, 309-54. San Francisco: Jossey Bass.
- Forester, J., and D. Stitzel. 1989. Beyond neutrality: The possibilities of activist mediation in public sector conflicts. *Negotiation Journal* 5 (3): 251-64.
- Friends of the Earth International and Center for Environment and Development (CED). 2001. *Broken promises. The Chad-Cameroon pipeline project; Profit at any cost*. June. CIEL. http://www.ciel.org/Publications/chadcam_broken_promises.PDF.
- Garvin, T., T.K. McGee, K.E. Smoyer-Tomic, and E.A. Aubynn. 2008. Community company relations in gold mining in Ghana. *Journal of Environmental Management* 90 (1): 571-86.
- Gary, I., and N. Reisch. 2005. *Chad's oil: Miracle or mirage? Following the money in Africa's newest petro-state*. Washington, DC and Baltimore, MD: Bank Information Center and Catholic Relief Services. http://crs.org/publications/showpdf.cfm?pdf_id=187.
- Guyer, J.I. 2002. Briefing: The Chad-Cameroon petroleum and pipeline development project. *African Affairs* 101 (402): 109-15.
- Horta, K., S. Nguiffo, and D. Djiraibe. 1999. *The Chad-Cameroon oil and pipeline project: Putting people and the environment at risk*. Environmental Defence Fund. http://www.edf.org/documents/728_ChadCameroon_pipeline.pdf.
- . 2000: Letter to the IAG. http://www.edf.org/documents/1050_IAG_Jan2002.pdf.

- . 2007. *The Chad-Cameroon oil and pipeline project: A project non-completion report*. Environmental Defence Fund. http://m.edf.org/documents/6282_ChadCameroon-Non-Completion.pdf.
- Hudson, H. 2005. Doing security as though humans matter: A feminist perspective on gender and the politics of human security. *Security Dialogue* 36 (2): 155–74.
- Ikelegbe, A. 2005. Engendering civil society: Oil, women groups and resource conflicts in the Niger Delta region of Nigeria. *Journal of Modern African Studies* 43 (2): 241–70.
- International Advisory Group (IAG). 2002. *Chad-Cameroon petroleum development and pipeline project*. Report of visit to Cameroon, 7–8 April. <http://www.gic-ia.org/doc/Pr93125-eng.004.pdf>.
- . 2005. *Chad-Cameroon petroleum development and pipeline project*. Report of mission 8 to Cameroon, 3–12 January. http://www.gic-ia.org/doc/IAG_Report_Mission_8_Cameroon.pdf.
- . 2006. *Chad-Cameroon petroleum development and pipeline project*. Report of mission 11 to Cameroon, 15–23 March. http://www.gic-ia.org/doc/IAG-Report_Mission_11_to_Cameroon.pdf.
- . 2009a. *Chad-Cameroon petroleum development and pipeline project*. Assessment Report, 25 June. http://www.gic-ia.org/doc/IAG_Assessment_Report_June2009.pdf.
- . 2009b. *Chad-Cameroon petroleum development and pipeline project*. Report of mission to Chad and Cameroon, 11–31 January. http://www.gic-ia.org/doc/IAG_Mission_Chad-Cameroon_Jan11-31_2009.pdf.
- Jackson, C. 1993. Environmentalisms and gender interests in the third world. *Development and Change* 24: 649–77.
- Joab-Peterside, S., and A. Zalik. 2008. The commodification of violence in the Niger Delta. In *Violence today: Actually existing barbarism*, ed. L. Panitch and C. Leys, 199–219. New York: Monthly Review Press.
- Jobin, W. 2003. Health and equity impacts of a large oil project in Africa. *Bulletin of the World Health Organization* 81 (6): 420–26. http://www.scielo.org/scielo.php?script=sci_arttext&pid=S0042-96862003000600011&lng=en. doi: 10.1590/S0042-96862003000600011.
- Johannes, R.E., ed. 1989. *Traditional ecological knowledge: A collection of essays*. Gland, Switzerland, and Cambridge: International Union for the Conservation of Nature.
- Karl, L. 2004. Oil-led development: Social, political, and economic consequences. In *Encyclopedia of Energy*, 661–72. New York: Elsevier.
- Keenan, J.H. 2005. Chad-Cameroon oil pipeline: World Bank and ExxonMobil in “Last chance saloon.” *Review of African Political Economy* 32 (104–105): 395–405.
- Klandermans, Bert. 1997. *The social psychology of protest*. Oxford/Cambridge, MA: Blackwell.
- Leader, S. 2006. Human rights, risks, and new strategies for global investment. *Journal of International Economic Law* 9 (3): 657–705.
- Lo, M. 2002. Is advocacy an effective strategy to induce compliance to negotiation outcomes? The case of the Exxon Oil Consortium, the Bakola Pygmies and Bantus of the Kribi/Lolodorf Region of Cameroon. *Community and Environment Conflict Seminar*, May 2002. Ithaca, Cornell University.
- Monga, Y.D. 2000. “Au village!” Space, culture, and politics in Cameroon. *Cahiers d'études africaines* 160 (4): 723–49.
- Moynihan, K.J., Clayton F. Kaul, Ed R. Caldwell, Ulrich L. Sellier, Neil A. Daetwyler, Gary L. Hayward, and Joey V. Tucker. 2004. Chad Export Project: Environmental Management and Monitoring Process and Systems. http://www.esso.com/Chad-English/PA/Files/SPE_Paper_86721_EnvMgmtMonitoring.pdf.
- Nelson, J., and J.D. Kenrick. 2001. Report on a consultation with Bagyéli Pygmy communities impacted by the Chad-Cameroon oil pipeline project. Forest Peoples Programme. http://www.forestpeoples.org/documents/ifi_igo/ccp_bagyeli_consult_may01_eng.shtml.
- Ngima, G.M. 2001. The relationship between the Bakola and the Bantu peoples of the coastal regions of Cameroon and their perception of commercial forest exploitation. *African Study Monographs Suppl.* 26: 209–35.
- Obi, C. 2009. Oil extraction, dispossession, resistance and conflict in Nigeria’s oil-rich Niger Delta. Paper presented at *Rethinking Extractive Industry* conference. Toronto, York University, 7–9 March.
- Okonta, I., and O. Douglas. 2001. *Where vultures feast: Shell, human rights and oil in the Niger Delta*. San Francisco, CA: Sierra Club Books.

- Omeje, K. 2006. Petrobusiness and security threats in the Niger Delta, Nigeria. *Current Sociology* 54 (3): 477-99.
- Ospina Peralta, P., A. Santillana Ortiz, and M. Arboleda. 2008. Neo-corporatism and territorial economic development: The Ecuadorian indigenous movement in local government. *World Development* 36 (12): 2921-36.
- Pegg, S. 2005. Can policy intervention beat the resource curse? Evidence from the Chad-Cameroon pipeline project. *African Affairs* 105 (418): 1-25.
- Pelican, M. 2008. Mbororo claims to regional citizenship and minority status in north-west Cameroon. *Journal of the International African Institute* 78 (4): 540-60.
- Rocheleau, D., B. Thomas-Slyter, and T. Edmunds. 1995. Gendered resource mapping. Focusing on women's spaces in the landscape. *Cultural Survival Quarterly* 18 (4): 62-68.
- Rosenblum, P. 2005. Statement of Peter Rosenblum, Professor, Columbia University Law School. Release of contracting out of human rights: The Chad-Cameroon Pipeline Project, Amnesty International. <http://www.amnestyusa.org/document.php?lang=e&id=ENGUSA20050907004>.
- Ross, M.L. 1999. The political economy of the resource curse. *World Politics* 51 (2): 297-322.
- . 2001. Does oil hinder democracy? *World Politics* 53 (3): 325-361.
- Seager, J. 2006. Noticing gender (or not) in disasters. *Geoforum* 37 (1): 2-3.
- Susskind, L., and J. Cruikshank. 1987. *Breaking the impasse*. New York: Basic Books.
- Takougang, J., and M. Krieger. 1998. *African state and society in the 1990s: Cameroon's political crossroads*. Boulder: Westview Press.
- Tarrow, S. 1998. *Power in movement: Social movements and contentious politics*. 2nd ed. Cambridge: Cambridge University Press.
- Tatchi, R. 2001. Compensations: Les exclus du Plan de la COTCO. *Bubinga* 41:13.
- Throsby, D. 1999. Cultural capital. *Journal of Cultural Economics* 23:3-12.
- Turnbull, C.M. 1961. *The forest people*. London: Jonathan Cape.
- Turner, T.E., and L.S. Brownhill. 2004. Why women are at war with Chevron: Nigerian subsistence struggles against the international oil industry. *Journal of Asian and African Studies* 39 (1-2): 63-93.
- Ukeje, C. 2004. From 'Aba to Ugborodo: Gender identity and alternative discourse of social protest among women in the oil Delta of Nigeria. *Oxford Development Studies* 32 (4): 605-17.
- Ukiwo, U. 2007. From "pirates" to "militants": A historical perspective on anti-state and anti-oil company mobilization among the Ijaw of Warri, Western Niger Delta. *African Affairs* 106 (425): 587-610.
- UNICEF. 2009. State of world's children report 2009. <http://www.unicef.org/sowco9/report/report.php>.
- Utzinger, J., K. Wyss, D.D. Moto, N. Yémadji, M. Tanner, and B.H. Singer. 2004. Assessing health impacts of the Chad-Cameroon petroleum development and pipeline project: Challenges and a way forward. *Environmental Impact Assessment Review* 25 (1): 63-93.
- Watts, M. 2004. Resource curse? Governmentality, oil and power in the Niger Delta, Nigeria. *Geopolitics* 9 (1): 50-80.
- Weinstein, J.M. 2005. Resources and the information problem in rebel recruitment. *Journal of Conflict Resolution* 49 (4): 595-624.
- World Bank. 1991. *Operational Directive, OD 4.20, Indigenous Peoples*. World Bank Operational Manual, Article 2 and Article 8. Washington, DC: World Bank. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_IndigPeoples/\\$FILE/OD420_IndigenousPeoples.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_IndigPeoples/$FILE/OD420_IndigenousPeoples.pdf).
- . 2000. Chad-Cameroon Petroleum Development and Pipeline Project. Summary of Project Information. IFC World Bank Group. <http://www.ifc.org/IFCExt/spiwebsite1.nsf/b7a881f3733a2d0785256a550073ff0f/8283e68c6d9ee28c85257635006f23b6?OpenDocument>.
- . 2008. World Bank statement on Chad-Cameroon pipeline. 9 September. <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CHADEXTN/0,,contentMDK:21894530~menuPK:349894~pagePK:2865066~piPK:2865079~theSitePK:349862,00.html>.
- Zalik, A. 2004. The Niger Delta: From "Petro violence" to "partnership development." *Review of African Political Economy* 31 (101): 401-24.

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Corporate Social Responsibility and Canadian Mining Companies in the Developing World: The Role of Organizational Leadership and Learning*

Hevina S. Dashwood and Bill Buenar Puplampu

ABSTRACT This paper explores the role of firm-level dynamics in order to explain the extent to which mining companies show a commitment in policy and practice to the principle of corporate social responsibility (CSR). The authors argue that attention must be given to organizational variables, including the role of leadership and learning. As theorizing on CSR in the developing country context remains underdeveloped, this paper tests the applicability of existing organizational behaviour concepts to a case study of a Canadian, mid-tier mining company operating in Ghana by exploring the mechanisms by which mining companies come to recognize and act on their CSR obligations.

RÉSUMÉ Cet article explore le rôle des dynamiques d'entreprise afin d'expliquer le degré d'engagement des compagnies minières, à travers leurs politiques et leurs pratiques, au principe de la responsabilité sociale d'entreprise (RSE). Les auteurs allèguent que l'attention doit porter sur les variables organisationnelles, dont le rôle de la direction et de l'apprentissage. Comme les analyses théoriques sur la RSE demeurent lacunaires dans le contexte des pays en développement, cet article examine l'applicabilité des concepts existants relatifs aux comportements organisationnels à l'étude de cas d'une entreprise minière intermédiaire en exploitation au Ghana, en explorant les mécanismes par lesquels les compagnies minières parviennent à reconnaître leurs obligations en matière de RSE et à s'y conformer.

* This paper is part of a larger collaborative research project that employs a multi-perspective approach to case studies of Canadian mining companies in developing countries. The authors are co-investigators in this larger project, and Dr. Kernaghan Webb, Ryerson University, is the principal investigator. This research was supported by a grant from the Social Sciences and Humanities Research Council Canada under its International Opportunities Fund. The authors are grateful for the research assistance of Isaac Odoom, Nathan Andrews, and Davida Borquay.

Introduction

Over the past two decades, considerable attention has been devoted to the activities of Canadian mining companies, and their operations in Canada and around the world. Much of the academic attention has focused on major multinational mining companies, understood as companies with operations in two or more countries. Although NGOs and other civil society actors have focused on “junior” mining companies as well, little effort is made to differentiate them from the “big” players. This paper seeks to address this gap by analyzing the influences and processes by which junior Canadian mining companies respond and adapt to pressures to improve their social and environmental performance. Specifically, this paper analyzes the internal organizational attributes likely to make a junior mining company committed to corporate social responsibility (CSR).

The term “junior” mining company has tended to be used rather loosely, often lumping what are actually mid-tier companies into the category of “junior.” The term “junior” generally refers to mining companies that are primarily involved in exploration, and this study henceforth uses the term “mid-tier” to denote companies engaged in mining.¹ There are about half a dozen mid-tier, Canadian mining companies engaged in gold mining in Ghana. While they tend to be the subject of NGO activism, there has been little academic attention paid to them in a way that differentiates them from the major mining companies. To explore the internal attributes that explain a company’s commitment to CSR, the authors have conducted a case study of a mid-tier, Canadian mining company operating in Ghana. A single case study approach allows the authors to examine in detail the company’s policies and practices vis-à-vis CSR, in order to better understand how and why the company has sought to improve them.

The research findings strongly point to the critical importance of organizational leadership and learning as attributes necessary for sustainable CSR practices. These findings are consistent with other research that identifies internal corporate attributes as essential to understanding a firm’s commitment to CSR (Howard-Grenville 2006). Although it is often assumed that mid-tier companies lack the incentives, resources, and capacity to effectively implement policies to meet their social responsibilities, the research findings suggest otherwise. As is the case with mining multinationals, junior and mid-tier companies are faced with similar constraints and incentives, and it is necessary to look at the specific conditions in which they operate, and internal organizational variables, in order to explain why companies are more or less committed to

1. This study follows the Metals Economics Group’s classification of junior, mid-tier, and major mining companies. A junior company is one engaged primarily in exploration, a mid-tier company is one with annual revenues of at least US\$50 million, and a major company is one with annual revenues of more than US\$500 million. (See Metals Economics Group, *Special Report on World Exploration Trends*, <http://www.metalseconomics.com/pdf/PDAC%202009%20World%20Exploration%20Trends.pdf>, p. 2.) Any company, regardless of size, that operates in two or more countries can be understood as a multinational company, although the term has generally been reserved for major companies. See Hill (1998).

CSR. In so doing, the analysis moves away from a blanket assumption that CSR is a mere public relations exercise by identifying the internal mechanisms by which mining companies come to recognize and act on their CSR obligations.²

In order to understand the larger external environment in which the company under study operates, the first section of this article identifies the global, Canadian, and Ghanaian contexts in which the CSR policies of the company have evolved. Research findings suggest that this mining company has been influenced by developments at the global level (such as initiatives to promote global standards applicable to mining, for example), as well as developments in Canada and Ghana. The second and third sections will outline the theoretical literature and methodological approach that inform this analysis, and will explicate the research questions. The fourth section will outline the case study findings, identifying the key organizational attributes under analysis and relating them to the empirical observations. The final section will assess the theoretical implications of the research and identify questions for future research.

For the purposes of this paper, CSR is defined as going beyond the legal-regulatory obligations companies have toward those parties affected by their operations with respect to human rights, labour standards, and the environment. CSR expects that organizations engage in a combination of self-regulation, active promotion of the public interest, and an awareness of their fiduciary responsibility to stockholders, as well as to society and the natural environment (Carroll and Buchholtz 2006). The authors recognize that there is considerable debate as to what constitutes CSR in the developing country context, and address this debate in the theoretical literature section.

Global, Canadian, and Ghanaian Contexts

In the past 10 to 15 years, large mining companies with global operations have begun to demonstrate a greater awareness of, and commitment to, their social and environmental responsibilities. Efforts to improve the industry's bad reputation stemmed from the tightening of environmental regulation and NGO pressure in the advanced industrialized democracies, and from the global push to promote better practices. Global initiatives that have directly or indirectly affected mining companies include the ILO labour standards, the OECD guidelines for multinational enterprises (revised 2000), the International Finance Corporation's (IFC) Policy and Performance Standards on Social and Environmental Sustainability (IFC 2005), and the ISO 14,001 environmental management standards.

2. The focus of this paper is on a company's perceptions of its CSR obligations and what it has done internally to meet them. The paper does not seek to make claims about community perceptions of the company's efforts. Doing so would raise difficult conceptual and methodological issues that are beyond the scope of this paper, though they are a central concern of the larger research project of which this paper is a part.

Due to the fact that they must operate where the ore is, and because of the huge up-front capital costs associated with opening a new mine, mining companies are vulnerable to community opposition to their operations. Mining companies must seek a "social license" to operate, and they cannot simply pick up and leave in the event of community opposition (Gunningham, Kagan, and Thornton 2003). In response to these external pressures, in the late 1990s the major mining companies took steps at the global level to improve the mining industry's reputation. A key outcome of these efforts was the creation in 2001 of the International Council on Mining and Metals (ICMM), which superseded the International Council on Mining and the Environment (Dashwood 2005). The ICMM seeks to promote best practices in the mining sector through a variety of endeavours, with a view to improving the industry's reputation (for details, see McPhail 2008).

More recent global developments continue to attempt to influence the policies and practices of mining companies such as the Extractive Industry Transparency Initiative (in which Ghana participates), the UN Global Compact, and the initiatives of the UN Special Representative of the Secretary-General for Business and Human Rights (UN Human Rights Council 2008). These various global developments have had an impact on the mining company under study.

Canada is a major player in the global mining industry. Hard-rock mining remains an important source of GDP, accounting for about 3.7%, and minerals and mineral products exports account for approximately 17.5% of domestic exports (Natural Resources Canada 2007). Canada is a repository of significant legal, technical, and financial expertise for the global mining industry. It is home to a large number of junior to low-mid-tier mining companies, many of which have operations around the world. In 2006, more than 800 Canadian companies were involved in international exploration projects, and 62% of all mining companies involved in exploration projects are Canadian (*ibid.*; Lemieux 2005). Not surprisingly, Canada has a major mining presence in Africa.

In the face of growing public pressure to respond to concerns about the activities of Canadian mining companies abroad, the Canadian government has preferred to facilitate voluntary initiatives to promote CSR. As reports surfaced about the bad practices of Canadian mining companies abroad, the voluntary initiatives favoured by the Canadian government became the subject of much criticism (Mining Watch Canada, Halifax Initiative; see Coumans, this issue). A particularly significant development was the tabling in June 2005 by the Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT) of a report on mining in developing countries and CSR (SCFAIT 2005). The report argued that junior companies often lack the resources, knowledge, or incentives to adequately address issues arising from the social, cultural, political, or environmental context in developing countries. The report expressed concern about the lack of Canadian laws to regulate the activities of Canadian mining companies in developing countries, and called for legislation to hold companies accountable for their activities overseas (SCFAIT 2005).

In its response to the SCFAIT report, the government agreed to a number of the recommendations but shied away from enacting legislation that would entail the extrater-

ritorial application of Canadian law in foreign jurisdictions.³ The government prefers to lend its support to voluntary initiatives like the Mining Association of Canada's Towards Sustainable Mining initiative, which was launched in 2004. The National Round Tables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries launched in 2006, resulted in the government's announcement in February 2007 of its support of the Extractive Industries Transparency Initiative. Two years later, in March 2009, the government announced its strategy for promoting CSR in the Canadian extractive sector. In the strategy paper "Building the Canadian Advantage," the government sets out initiatives it proposes to take to promote CSR in the extractive sector and commits resources to that end (Government of Canada 2009). Acknowledging the special constraints encountered by junior mining companies, the government announced initiatives to help strengthen the capacity of junior mining companies to meet their environmental and social obligations.

The description above of developments at the Canadian and global levels provides a snapshot of the broader context in which Canadian mining companies operate. We now turn to the specific institutional context in Ghana, in which the company under study is operating.

Ghana is a West African country that boasts one of the most successful transitions to multi-party democracy on the continent (readers interested in more detail on Ghana's political and economic history may consult Amenumey 2008; Aryeetey and Kanbur 2008; Pupilampu 2004a, b). However, Ghana's socio-economic development does not yet match its political growth. Although recent GDP growth has averaged 6% over the past four to seven years, per capita income is about US\$500 and poverty remains pronounced in rural areas. Structurally, the economy is still heavily reliant on cocoa, timber, and raw mineral (mainly gold) exports. Annual budgetary shortfalls average around US\$1 billion, leaving Ghana reliant on foreign bilateral and multilateral donors, and the remittances of the Ghanaian diaspora. Foreign direct investment (FDI) still features by 2006–07 estimates at a low 1.15% of GDP,⁴ although the country is experiencing a rising trend in FDI. (See map on p. 193.)

The mineral resources of the country (gold, industrial diamonds, timber, and bauxite) are concentrated in the rich forest areas of the west, central, Ashanti, Brong Ahafo, and eastern regions of the country. The actively mined minerals include bauxite, gold, diamonds, and manganese. There are over 20 active mining firms in Ghana. The 2007 Annual Report of the Ghana Chamber of Mines lists the following mining firms as active: **Gold:** Abooso Goldfields Ltd; AngloGold Ashanti Ltd; Chirano Gold Mines; Goldfields [Ghana] Ltd; Golden Star Resources; Newmont Ghana Ltd; **Bauxite:** Ghana Bauxite Company Ltd; and **Manganese:** Ghana Manganese Company Ltd. The sector contributes 5% of GDP with annual revenues in excess of US\$1 billion. On average,

3. Government of Canada, *Government Response to the SCFAIT 14th report on "Mining in Developing Countries and Corporate Social Responsibility,"* 2005. <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2030362&Language=E&Mode=1&Parl=38&Ses=1>.

4. World Bank, MIGA (Multilateral Investment Guarantee Agency), 2007, http://www.miga.org/quickref/index_sv.cfm?stid=1586.

it contributes 10% to government revenue each year. In 2006, total government IRS receipts were about US\$523 million. The mining sector contributed about US\$53.5 million from income tax as well as royalties⁵ (CHRAJ 2008; Aryeetey and Kanbur 2008).

A range of junior, mid-tier, and major mining companies are operating in Ghana. The large-scale global multinationals have a significant mining footprint on more than one continent, and command considerable resource and market clout. The Ghanaian mining industry also has small-scale artisanal miners. Mining is regulated by the Minerals Commission. Those who have purchased licenses from the Minerals Commission and the Precious Metals Marketing Corporation (PMMC) are considered legal. The PMMC also licenses buyers of artisanal outputs. Those without licenses are illegal and referred to as “galamsey.” Figure 1 below details the governance, administrative structures, and stakeholder interlinkages of mining in Ghana.

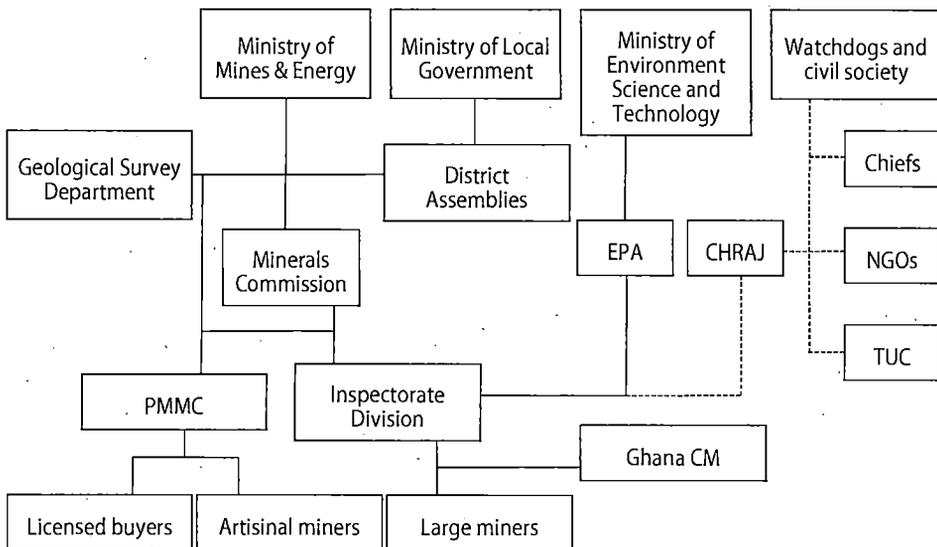


Figure 1. Institutions in the structure of mining in Ghana

Source: Authors' compilation of variety of sources

Background Literature: CSR and Developing Countries

Despite the obvious impacts that major firms and their activities have on developing countries, Ofori (2007a) notes that the CSR literature in relation to developing economies like those in West Africa remains underdeveloped. One reason for this situation is that the application of CSR practices in developing countries is a relatively new phe-

5. Ghana Chamber of Mines, Annual Report and Financial Highlights. “Life without Mining is Impossible,” Accra, 2007, <http://www.ghanachamberofmines.org>.

nomenon (Idemudia 2007). Indeed, the latest wave of interest in CSR in the “West” can in part be attributed to the now discredited neo-liberal agenda that sought to minimize the role of the state in the economy through deregulation and privatization.

Idemudia (2007, 369) argues that there is a disjuncture between local priorities in the South and the delivery of CSR because the CSR agenda has largely been driven by northern actors whose priorities are more attuned to the concerns of Western societies. This situation has led Ofori (2007a) to conclude that there is a gap in our understanding of the “nature, content and intent” of CSR interventions in Ghana, a country with a long history of CSR activity by both large and small companies, which until recently consisted of companies engaging in what Ofori (2007a, 67) describes as a “haphazard indulgence in corporate good works”. Such strictly philanthropic activities often tend to address the symptoms rather than the causes of abiding institutional, systemic, and national limitations and weaknesses.

The notion that CSR activities can be reduced to philanthropic initiatives that firms choose to undertake in a discretionary manner has been discredited in the mainstream CSR literature (Ofori 2007a, 2007b). Stakeholder theory, for example, acknowledges that firms have obligations toward a range of stakeholders—including employees, the environment, local communities, suppliers, and governments—that, while not always legally mandated, move beyond the realm of discretionary voluntarism (Donaldson and Preston 1995). Recognition of a firm’s obligations to society constitutes a measure of mutual responsibility that is neither gift based or voluntary (one chooses to) nor optional (by not engaging in said responsibility, nothing much is “lost”). Rather, it represents a statement of human responsibility toward humankind in the bid for sustainable mutual co-existence, captured by the Akan-twi motto *asetena pa*, which means “proper/acceptable co-existence.”⁶ Idemudia (2007, 2009) picks up on this theme in his analysis of ongoing community dissatisfaction in the Niger Delta, noting that communities expect “good neighbourliness” on the part of oil and gas multinationals. We situate the CSR challenge in Ghana’s mining sector within this context.

Lately, the debate on CSR in the context of the developing world has turned to the question of whether CSR can contribute to economic development and/or sustainable development. Conventional arguments that foreign mineral and oil and gas investments enhance social and economic development are countered by others who argue that extractive activities exacerbate poverty and conflict (the “resource curse”) (Sagebien et al. 2008). There are also different expectations or understandings of what CSR can accomplish. The growing literature on CSR in Africa is largely critical, and this can be explained in part by differences in perspectives on the role and purpose of CSR. For example, Hilson (2007, 43), in his critique of mining companies in Ghana, argues that “companies are generally implementing ... programmes that are incapable of alleviating rural hardship.” Such an argument seems to assume that mining companies alone are responsible for rural development.

This study takes as a starting point the understanding that while firms can and should be expected to contribute more effectively to socio-economic development

6. See WACAM Ghana website, <http://www.wacamghana.com/index.php/>.

(Blowfield 2005, 2007; Jenkins 2005), there are limits as to what CSR can accomplish. Mining companies alone cannot guarantee sustainable development; they cannot, nor should they, take on the role of government. The extent to which firms can enhance social and economic value in the countries in which they operate depends on the enabling or disabling dynamics resulting from a range of interactions with actors outside the boundaries of the firm (Sagebien et al. 2008; see also Idemudia, this issue). While firms cannot be expected alone to foment sustainable development, they can be expected to add economic, social, and ecological value to the communities in which they operate (Bird and Herman 2004). Bird and Herman argue that in their dealings with developing areas, international business actors must address three fundamental questions: economic development of the nation gauged by growth in local commerce, institutional growth, and capacity development; value addition and asset development; and attention to just exchanges. Although firms may be engaged in actions that could be described as socially responsible (e.g., building schools and giving grants), if they fall short in other areas like protecting the environment, then their responsibility as a company in using, maximizing, and enhancing the endowed natural capital is not being realized. This is the core of the CSR challenge in the developing world.

The questions that energize this research can be summarized as follows: What drives local and/or international firms' CSR practices in developing countries? What are firms' understandings of CSR in the developing country context, and to what extent are CSR efforts a reflection of attempts to respond to the needs of local communities in poor countries? To answer these questions, we explore internal, firm-level dynamics that point to a commitment to CSR. In this way, the paper contributes to the larger literature on CSR in the developing country context by taking a multidisciplinary approach that brings organizational factors into the analysis.

Internal Organizational Attributes of Companies

When organizations go through numerous transitions and when they operate in environments where their actions and inaction have significant consequences for the communities and peoples among whom they operate, it is important to understand the internal factors that enable them to navigate both the transitions as well as the dynamics of community concerns and nuances. The organization that is the subject of this case study has been through many transitions and is operating in a sensitive community area: a developing country. Some scholarly writings suggest that there is still debate about the role of leadership in organizational performance (Svensson and Wood 2007). However, other researchers have noted its critical place in managing transitions, determining the emotive tone and value framework of the organization, and ensuring that the organization actually achieves its goals (Cooksey 2003; Lakomski 2001).

Variation in managerial perceptions and interpretations (Hoffman and Ventresca 2002; Sharma 2000) and different mindsets about a company's obligations toward society (Howard-Grenville 2006; Welford 1997) produce differing responses to external pressures to improve environmental and social performance. This study concurs with findings that point to the critical role of managerial leadership in promoting CSR

within the firm, (Dashwood 2007; McGuire and Hutchings 2006). Furthermore, it acknowledges the research that shows that leadership and organizational learning are intimately linked and interdependent processes (Cooksey 2003).

Organizational learning processes are important in explaining how mining companies respond and adapt to societal pressures to become more environmentally and socially responsible. A learning organization has been defined as an organization skilled at creating, acquiring and transferring knowledge, and at modifying its behaviour to reflect new knowledge and insights (Garvin 1993). Grappling with CSR entails responding to shifting societal expectations, to the emergence of new issues, and to shifting constellations of stakeholders. Learning is an ongoing, dynamic process that requires the ability to adapt to evolving societal norms.

In an important and enlightening article, Antal and Sobczak (2004, 81) identify the multiple types of learning processes that are most relevant to CSR. Part of the learning process around CSR involves improving on current ways of doing things ("single loop learning"). Given that as recently as the mid-1990s many mining executives remained skeptical about the merits of CSR, some "unlearning" has been necessary in order to change old mindsets and meet society's shifting expectations (ibid, 82). Among some companies there has been a substantial change in thinking about CSR, whether for strategic or normative reasons. Such companies have had to rethink their internal procedures and introduce new measurement techniques to reflect environmental and social obligations ("double loop learning"). We argue that the company under study has attempted to undergo all three of these learning processes.

Analytical Framework

This study draws on insights from rational choice institutionalism, the "new" institutionalism in organization theory, and historical institutionalism to explain why the firm under study adopted CSR policies, and the extent and nature of its commitment to them (Campbell 2006). Rational choice institutionalism assumes that firms are instrumental actors motivated by the self-interested desire to maximize profits and shareholder value. Since rationalist approaches take interests as given, analysis focuses on the external constraints that firms are encountering to explain their CSR policies. Rationalist approaches provide an important part of the explanation as to why firms would adopt CSR policies, but are silent on how institutional context can mediate the instrumental, agent-driven choices of individual firms. Historical institutionalism provides a useful corrective to this problem because it questions how institutional structure conditions responses to external constraints. The institutional context in a developing country like Ghana influences the CSR policies of firms based on local conditions.

The "new" institutionalism in organization theory, which emphasizes cognitive processes and the normative environment, enhances our understanding of how managers interpret their external environment, identify problems, and address challenges. The approach allows considerable room for agency by recognizing as critical the support of

senior management for internal CSR initiatives. Drawing on March and Olsen (1999, 306), an "institution" is defined here as a "relatively stable collection of practices and rules defining appropriate behaviour for specific groups of actors in specific situations." This definition permits us to consider how norms (standards of appropriate behaviour) might influence firm behaviour around CSR. While the behavioural logic behind firms' adaptation to CSR is material/instrumental, it is also driven by considerations of what is the appropriate or right thing to do. Given the dynamic and shifting nature of societal norms, firms must ask not only how they will benefit from adopting CSR policies, but also what is the appropriate response given conflicting rules and norms.

Methodological Approach and Case Study

To tease out the internal leadership and intra-organizational variables central to understanding the extent and nature of a firm's commitment to CSR, a single case study was conducted of Golden Star Resources (GSR), a mid-tier, Canadian mining company with extensive operations in Western Ghana. Consistent with the approach taken in the larger research project of which this investigation is a part (see footnote 1), GSR agreed to participate in this study.⁷ Although a single case study limits the extent to which research findings can be generalized, detailed analysis of a single case enabled the researchers to observe the internal organizational changes and policy initiatives undertaken to improve CSR performance, thereby addressing the gap noted earlier in relating organizational attributes to CSR. The study relied on secondary sources as well as company documents to gain insights into GSR. To get a sense of the role of leadership and learning processes around CSR, in-depth, open-ended yet structured interviews were conducted with senior management and managers responsible for various aspects of CSR delivery in the firm. The identities of interviewed officials are kept confidential, in keeping with standard ethical conventions governing research in the social sciences. These were carried out in Ghana in March and April 2009 at the mine sites of Bogoso and Wassa as well as through telephone interviews carried out from Canada.

Overview of Mining Legacy

To begin with the mine sites, the Bogoso/Prestea area has been affected by mining (as well as forestry and agricultural) activities for over 120 years, and the local environment has therefore been subject to varying degrees of degradation. The latest wave of mining investment that began in the late 1980s after the *Mining Act* was liberalized has brought with it a tsunami of difficult issues. The switch from deep shaft to the more profitable surface mining generated social conflict: because fewer people are employed in surface mining, there were substantial lay-offs, and many laid-off people resorted to galam-

7. Mining companies are often reluctant to participate in such projects, and it could be inferred that GSR was prepared to participate because it wished to showcase its CSR initiatives. The authors are aware of this limitation, but felt the opportunity to conduct an in-depth study of the company's organizational attributes with respect to CSR outweighed the limitations.

sey work. Furthermore, the switch to surface mining resulted in the displacement of farmers from their land, since mining increasingly came into conflict with agricultural activities. By the late 1990s, more than 70% of the land surface in the Tarkwa-Prestea-Bogoso-Abosso-Nsuta axis was under concessional licenses to mining companies operating in the area (Akabzaa 2000, 75). Six new surface gold mines came on stream in the mid- to late 1990s in the area, creating the largest concentration of mines in the African continent (Akabzaa 2001, 147).

The sharp rise in the number of foreign mining companies operating in Ghana led to a spate of human rights abuses in the 1990s. As local communities reacted to environmental degradation, deteriorating health, and allegedly forced displacements and loss of livelihood, state security personnel were employed to harass and forcibly move local communities opposed to new mines.⁸ According to Ayine (2001, 96–99), central and local government authorities were complicit in failing to respect the rights of local communities because they saw local communities as obstacles to mining operations rather than as rights-bearers.

While pockets of communities negatively affected by mining sought to resist the wave of new mines in the 1990s, there was at the same time extreme concern over the loss of jobs in the mining sector. The sale of inefficient and poorly managed, state-owned mining companies to private companies resulted in the retrenchment of many workers as part of cost-cutting measures (Akabzaa 2001, 76). In the absence of programs to assist retrenched workers (such as were implemented in South Africa), having lost their livelihoods, many of them resorted to galamsey activities. This has produced conflict with mining companies as galamsey operators encroach on company concessions.

Local NGOs, such as the Third World Network and the Wassa Association of Communities Affected by Mining (WACAM), have documented the abuses and advocated on behalf of local communities. Reporting on research conducted in 2006, the Commission on Human Rights and Administrative Justice (CHRAJ), documents the significant negative social, environmental, and economic problems associated with surface mining. Their efforts to document alleged abuses have provided a baseline against which to measure the efforts of mining companies to improve their practices. The economic, social, environmental, health, and spatial (migration) impacts of mining have been documented elsewhere and need not be repeated here (see, for example, Akabzaa and Darimani 2001; Akabzaa 2000, 2001; Akpalu and Parks 2007; Ayine 2001; CHRAJ 2008; Garvin et al. 2009; Hilson 2002; Nyame, Grant, and Yakovleva 2009).

Case Study

We now turn to the case study in order to address the questions and propositions raised above. Golden Star Resources is an international gold mining and exploration company focused on mining, mine development, and exploration along the Ashanti Gold Trend in the western region of Ghana. The company is registered in Canada and, although technically a Canadian company, its headquarters are in the United States and its min-

8. "Fear, panic grip Tarkwa and environs," *Ghanaian Chronicle*, 28 May 1998.

ing activities are concentrated in Ghana. Until 1999, the company focused on exploration in West Africa and the Guiana Shield of South America. In 1999, a major strategic decision was made to transform the company into a gold producer. It then purchased the Bogoso Gold Mine, and in 2001 it acquired the Prestea underground mine and Prestea surface rights. These properties now form Golden Star (Bogoso/Prestea) Ltd. In 2002, GSR further acquired the Wassa mine, incorporated as Golden Star (Wassa) Ltd., and is currently developing the Hwini-Butre and Benso (HBB) properties, which were purchased in 2005. (See map on p. 193.) The company owns a 90% interest in Bogoso/Prestea and Wassa while the government owns a 10% carried interest; GSR also owns 80% of Prestea Underground, and the Ghanaian government owns a 20% interest. The company's revenues from gold in 2008 were US\$257.4 million (GSR 2009a). Thus, GSR has a sizeable presence in Ghana, and although it works alongside major mining multinationals along the Ashanti Trend, including Newmont Mining Company, AngloGold Ashanti Ltd., and Gold Fields Ltd., it has become the largest holder of mining properties in the area. The Bogoso lease is 95 km² and the Prestea lease is 129 km², and they are close to the towns of Bogoso and Prestea. There are about a dozen communities in the Bogoso/Prestea concession, and half a dozen in the Wassa/HBB concession.

As the above brief account attests, the mining legacy that GSR inherited was marred by a history of mistrust between communities and mining companies (Garvin et al. 2009), as well as between communities and local and central authorities. The Prestea underground mine that GSR purchased in 2001, for example, was the subject of much discontent because the previous owner, Barnex, laid off 1,400 of its 1,800 workers in the face of major losses due to declining gold prices in 1998 (Public Agenda 1998, quoted in Akabzaa 2001, 120, Appendix B). Lack of sensitivity to community concerns regarding human rights and the environment earned GSR a bad reputation by the mid-2000s, a fact acknowledged by company officials (Executive 1, Executive 2, Manager 1, Manager 4, Manager 5, Manager 6, Manager 9).

Allegations made against GSR include human rights abuses stemming from the resort to state security personnel and damage to the environment. Media reports from the mid-2000s cited complaints about the "violations of community rights" at Bogoso, and criticized GSR for being "irresponsible and arrogant."⁹ As described by WACAM, "the human rights violations and environmental problems of Bogoso Gold Ltd. have been a source of conflict between the communities and the company for a long time."¹⁰ A major tailings spillage in 2004 caused particular discontent as the community remembered an earlier cyanide spillage in 1991 when the Bogoso mine was managed by Billiton Bogoso Gold.

In 2005, senior management of GSR began to make a concerted effort to improve the company's policies and practices. One key driver of this process was the pressure exerted by the advanced, industrialized democracies on mining companies to pursue such improvements. In the Canadian context, this pressure can be understood in light

9. "Mining communities decry destruction of their livelihood," *Ghana News Agency*, 13 August 2005; and "Stop BGL's irresponsible and arrogant mining," *Ghana News Agency*, 24 August 2005.

10. "EPA Investigates Cyanide Spillage at Bogoso," *Ghana News Agency*, 25 October 2004.

of the SCFAIT report and ongoing efforts on the part of NGOs to hold Canadian mining companies to account. The second key driver was the recognition on the part of senior management that GSR needed to improve relations with the local communities affected by company operations (Executive 3, Manager 4, Manager 6, Manager 9). In response to these pressures, GSR has sought to improve its relations with the local community, to acquire a "social license to operate," and to adopt best practices pertaining to environmental and social issues. Part of this process involved major organizational changes which were initiated in 2005–06.

By 2005, GSR had experienced considerable expansion, having added Wassa and HBB to its original acquisition of Bogoso in 1999 and Prestea in 2001. Senior management decided it was necessary to increase GSR's competency across the board, in finance, project development, and technical services. The decision was also made to create the position of VP, Sustainability, which was filled in 2006. There are five people in senior management, including the CEO.

Bogoso and Wassa each have a general manager, plus five or six sectional managers. Each mine has a community affairs/sustainability department and an environmental affairs department. The community affairs department at Bogoso was established in 2005 and is led by a community affairs manager. The environmental department at Bogoso was created in 1999, the year GSR acquired the mine, and has an environmental manager (Executive 1). At Wassa, the community affairs functions were tacked onto the Human Resources Department in 2003, so there is a manager of human resources and Community Relations. Wassa did not have a separate environment department until 2009, when the environment function was split off from a department that was responsible for environment, health, and safety. The position of environmental superintendent was created in February 2009, at the time of the split (Manager 8, Manager 9). In 2009, GSR created a Group Safety Manager position, with responsibility for safety at all its mining operations

GSR's Response to Environmental and Social Challenges

In a significant step, GSR first began releasing annual sustainability reports in 2007 (for the 2006 reporting year). These reports do not provide a definition of sustainability, but mining is understood as an essentially unsustainable activity, and the company is of the view that the community understands this (Executive 1). Sustainability is understood as the contribution GSR makes to a sustainable economy. Golden Star Resources adds economic and social value through the provision of training, jobs, career opportunities, income tax, and the payment of royalties. The company provides extensive training to both its own employees and inhabitants of the larger catchment area. It considers this training to constitute a lasting contribution to the local and national economy (Executive 3).

A lack of jobs was identified by company officials as a (if not the) major concern of the communities (corroborated by meetings with community opinion leaders). As of 31 December 2008, GSR had approximately 2,400 full-time employees and 400 contract

employees, a 30% increase over the previous year. Although most of the executive-level positions are held by expatriates, the VP, Operations is Ghanaian, as is most of the in-country management. The difficult reality is that less than 10% of jobs in large-scale mining are unskilled, which has implications for companies' ability to hire people from local communities. Characteristic of rural areas, these communities suffer from low education levels, and the lack of senior schools means that many never make it past the primary level. Still, the fact that over 50% of site managers are Ghanaian should not be discounted, since the need for skilled labour means the aspirations of well-educated Ghanaians can be met.

The following is a selective discussion of key CSR initiatives that demonstrate the important role of organizational leadership and learning (see GSR 2008b and GSR 2009c, the reports for 2007 and 2008, for more detailed information).

Earlier it was noted that GSR underwent major institutional change in order to foster a greater commitment to CSR. Senior management was clearly critical in driving the process forward. The former CEO's decision to improve the company's capacity in the area of CSR by establishing the position of VP, Sustainability created the competence at senior management level to move forward with CSR initiatives. Since the establishment of that position, senior management has continued to drive the company's efforts to improve upon its performance and address the CSR challenges it faces. Organizational changes continue to be made to ensure that the company has the capacity to meet its CSR commitments.

In the early 2000s, a Sustainability Committee of the Board was created that has helped ensure that the decision-making process on CSR is integrated into everyday business. As one executive noted, the relatively small size of the company means that there are no silos ("everybody does everything"), so executive and senior management see CSR as part of standard operating procedure (Executive 1). The absence of boundaries is reinforced by internal reporting procedures, where the VP, Sustainability includes a sustainability component in his monthly reports to the board. Quarterly reviews on sustainability issues are prepared by the VP, Sustainability as a means for tracking whether internal targets are being met and for ensuring continual improvement (Executive 1). Monthly reports from the mine managers form the basis of the annual sustainability reports.

Although GSR publishes sustainability reports and has a Sustainability Committee of the Board, by all appearances the leadership uses the terms "sustainability" and "CSR" interchangeably. Interviews with senior management reveal that GSR understands that its CSR practices are obligatory and not discretionary. Despite the company's mid-tier status, CSR is seen as a "long-term commitment that is driven independently of a company's financial situation" (Executive 1). It is understood as the "right way to manage a business," reflecting a "social conscience" where compliance with the law "constitutes the minimum of what CSR entails" (Executive 1). It was further noted that GSR's commitment to CSR entails ensuring that its business benefits all stakeholders by "not degrading the environment, working with people in the community, maintaining a good image, and treating employees well" (Executive 2). Finally, CSR is understood

as “where you place your value; value should be placed on people ... CSR is about how to treat people ... about having an interest in the communities” (Executive 4).

GSR has been on a very steep learning curve since it began its efforts in 2006 to improve its reputation and relations with the local communities. For GSR, its efforts to bring about change entailed not merely improving on extant ways of doing things (single loop learning) but also rethinking its internal procedures and introducing new practices and management systems (double loop learning). These learning processes had to come from the top and, as argued above, the role of senior management has been critical in promoting CSR within the company.

GSR has demonstrated its willingness to engage with local communities and track the concerns of NGOs in order to adapt to shifting constellations of stakeholders and new issues as they emerge. Evidence suggests that GSR’s CSR initiatives are now more community relevant and community led, compared to the situation prior to 2005–06. Evidence that GSR has introduced mechanisms to promote greater responsiveness to community needs is reflected in the creation of community mine consultative committees (CMCC). The CMCCs serve as the “eyes and ears” of the company, and when attending various meetings the authors of this article observed no hesitation on the part of community leaders to criticize the company (suggesting that these forums are genuinely for voicing concerns and grievances over such issues as resettlement and compensation). GSR attempts to respond to the specific needs of poor communities in a developing country context. Through the CMCCs, people are invited to make requests for development funding, which are locally driven according to community priorities. GSR invests US\$1 per ounce of gold produced, and in 2008, US\$295,900 was invested in building and repairing schools, building decent housing to attract teachers, providing vocational training, and providing up to 20 scholarships a year to allow children from the communities to advance their education beyond the primary level.

Perhaps most importantly, GSR has sought to address the pressing need for employment in the area of its operations by providing sustainable livelihood options for local people. The Golden Star Oil Palm Plantation (GSOPP) is a major alternative livelihoods project launched in 2006. It is a subsidiary of GSR, but its mandate is social, not economic. The fact that GSOPP runs according to a viable business model does not detract from its social objective. It is likely to ensure the long-term viability of the project, because it will ensure sustainability even as mines close. The mandate of GSOPP is to provide alternative livelihoods to people needing to be resettled as a result of GSR’s operations, and to provide employment to youth and people who might otherwise be engaged in galamsey mining. As of February 2009, US\$1.65 million had been invested in the project, and 692 hectares had been planted (GSR 2009b). Beneficiaries include those who have been resettled, farmers in nearby communities, women who can grow produce between the plants, and casual labour that is hired to maintain the plantations, all helping ease the chronic unemployment in the area.

The Golden Star Oil Palm Plantation represents an important positive step that reflects the priorities of the local communities: “GSR had a problem before ... It was not socially responsive ... choosing instead to suggest initiatives to the local community people rather than listen to them” (Executive 2). “We tried with tie-and-die as well as

snail farming (I think) and silk worm breeding ... but the people did not patronize these efforts ... We had offered these to them" (Manager 1). The palm oil project, on the other hand, is appropriate to the region, since many farmers already grow oil palms and there is an internal market for processing oil palm fruits (Manager 5).

Senior management has played a key role in promoting learning within the organization, and they show greater sensitivity to both environmental and social issues. As one executive noted, "The previous regime created the impression in the minds of the people that the company could exist without the people," but that has changed (Executive 2). Another manager noted that "the leadership did not use to pay much attention to environmental issues ... even if staff wanted to raise these matters, they had no avenue or voice for that ... the situation has changed now" (Manager 1).

Training is a key means of sustaining CSR within an organization, and GSR has ongoing and extensive training programs in place to ensure that its environmental and social policies are actually implemented. Management noted that although commitment to CSR is strong at the managerial level, it is weaker further down the line. One manifestation of this problem is that safety is considered something "white guys do" (Executive 3). Another manifestation of the problem is that of interdepartmental collaboration, where some departments (especially mining and metallurgy) not directly responsible for the environment and the communities still require ongoing sensitization to the issues (Manager 1). In short, it "takes time to bring about change" (Executive 4), and although GSR is moving in the right direction, transformative change of this kind takes years to implement.

There are many national and international standard-setting initiatives from which GSR has learned. Although the company may be a junior-mid-tier enterprise with limited resources, it has nevertheless been able to participate in and/or apply these standards. For example, on the initiative of the former CEO, in 2006 GSR began to provide annual reports under the United Nations Global Compact. Participation in the UN Global Compact has helped foster learning about such issues as child labour (the need to ensure that it is not used in the company's supply chain). In 2007, GSR updated its environment, health, and safety and community relations, and human rights policies so as to reflect the Global Compact Principles. In 2008, training was provided to ensure that the updated policies are implemented.

In another example, GSR adheres to the International Cyanide Management Code (ICMC) and was seeking certification in 2008 (as of March 2009, Wassa had not yet received certification). Cyanide is flown to Tarkwa and trucked in pellet form from Tarkwa to the processing plants. In accordance with the ICMC, stakeholder communities along the transport route are provided with training in emergency response to any potential cyanide transportation incidents (86 trained in 2007). Internally, 165 employees and third-party contractors were trained on emergency response to cyanide incidents, including the symptoms of cyanide exposure, health effects of cyanide, and first aid procedures associated with cyanide poisoning. Golden Star Resources considers the IFC's Performance Standard 5 an example of the best practice for community resettlement, and it has provided training to the community affairs departments to ensure that resettlement projects are completed in accordance with that standard. At

the national level, GSR applies the Mining Association of Canada's Sustainability Performance Levels in evaluating its performance in such areas as community consultations, the environment, and safety (GSR 2008a). The mining company also reports its annual royalty payments under the Extractive Industries Transparency Initiative in which Ghana participates. From January 2005 until the end of March 2009, a total of US\$11.8 million was paid in royalties from the Bogoso/Prestea mine and a total of US\$10.2 million from the Wassa mine.¹¹

These are examples of the learning potential of global and national-level voluntary CSR initiatives.

Conclusion

The above reveals that the mid-tier, Canadian mining company Golden Star Resources has the incentive, capacity, and resources to meet its CSR obligations. The incentive comes largely from the direct correlation between the need for a social license from the local communities and the company's ability to operate its mines. The capacity has come from the major organizational innovations that provided the leadership needed at the senior managerial level to move the company's CSR agenda forward.

The evidence suggests that the leadership of GSR is open and committed to learning about best practices and engaging with the local communities to learn what their concerns and priorities are. The creation of the Community Mine Consultative Committees and the process in which requests for development projects are made by the community to GSR's Development Foundation demonstrates that GSR is not merely dictating initiatives to the community. In this respect, the company's vision of its responsibilities is in line with the consensus in the broader theoretical literature on CSR in the developing country context, which argues that CSR must contribute to the socio-economic development of the countries in which company operations take place.

The assumption that financial constraints prevent junior and mid-tier mining companies from meeting their CSR obligations is not borne out by the evidence from this case study. Admittedly, junior and mid-tier mining companies are disadvantaged in that they lack the resources to pay the membership fees to organizations such as the ICMM and the Mining Association of Canada. For example, GSR is developing an environmental management system that will conform to the ISO 14,001 standard, but it is not seeking certification because of the considerable expense involved. This is a disadvantage because GSR cannot benefit from the credibility afforded by an external certification program. On the other hand, GSR has benefited from the availability of the ISO 14,001 standard, and is seeking to improve its environmental management system by conforming to an internationally recognized best practice. In addition, although GSR cannot afford to join the ICMM, senior management has acknowledged that it fol-

11. "Golden Star Resources pays \$22 million in royalties," *Daily Graphic*, 18 May 2009.

lows what the "big boys" are doing, and applies best practices where they are applicable to GSR's operations (Executive 1).

Given the Ghanaian institutional context in which GSR is operating, the need to undertake CSR initiatives that are appropriate to the needs of the local community is a major challenge GSR has sought to address. In providing sustainable livelihood projects for the benefit of people displaced by mining, existing research and the experiences of other mining companies have helped GSR learn what works and what does not (Hilson and Banchirigah 2009). After some trial and error experiences, the company arrived at the oil palms project as one appropriate to the needs of local communities. It seems to have been well received.

Since GSR launched its CSR policies and organizational changes only three years prior to this study, it is arguably too soon to assess the extent to which these initiatives have resulted in improved outcomes for the community, but further research can explore this question.

Again, the ability of GSR to take advantage of national and international standard-setting initiatives contradicts the proposition that junior and mid-tier companies are severely constrained. As one official noted, "One doesn't need a lot of money to promote CSR; what is needed is time and initiative" (Executive 4). What appears to be far more critical than resources is the commitment of senior management. Learning plays an important role in this process. This points to another aspect of learning: the ability to cast off old mindsets and bring about a change in attitude necessary for a company to commit to CSR ("unlearning"). As the discussion on leadership and learning above attests, creating a culture of commitment to CSR is a difficult process that cannot be accomplished in a few years. As senior management in GSR confirmed, creating that culture is a work in progress (Executive 3, Executive 4). There are still areas where improvement is needed, including aspects such as safety, community health, and addressing the problem of galamsey. The fact that senior management is prepared to acknowledge that more needs to be done suggests that GSR has shed the "arrogant" attitude it was alleged to have held five years ago. The role of senior management in bringing about change in this case confirms arguments in the larger theoretical literature that leadership plays a critical role in bringing about transformation in any organization (for example, Cooksey 2003; McGuire and Hutchings 2006).

This research demonstrates that when assessing a company's commitment to CSR principles, it is important to "unpack" the firm and analyze its internal dynamics. The findings suggest that smaller firm size is not necessarily a major detriment to developing capacity around CSR, and further research focusing on the organizational attributes of mid-tier as well as major mining companies would shed more light on this question. Greater understanding of these internal dynamics could potentially inform policy relevant initiatives that tap into the internal leadership and learning potentials of firms to improve their CSR performance. Further research on firm-level processes in other companies that are both leaders and laggards would make it possible to identify gaps in leadership and learning mechanisms where improvements could be made. More research is also called for on the sorts of global and national CSR voluntary initiatives that promote leadership and learning around CSR.

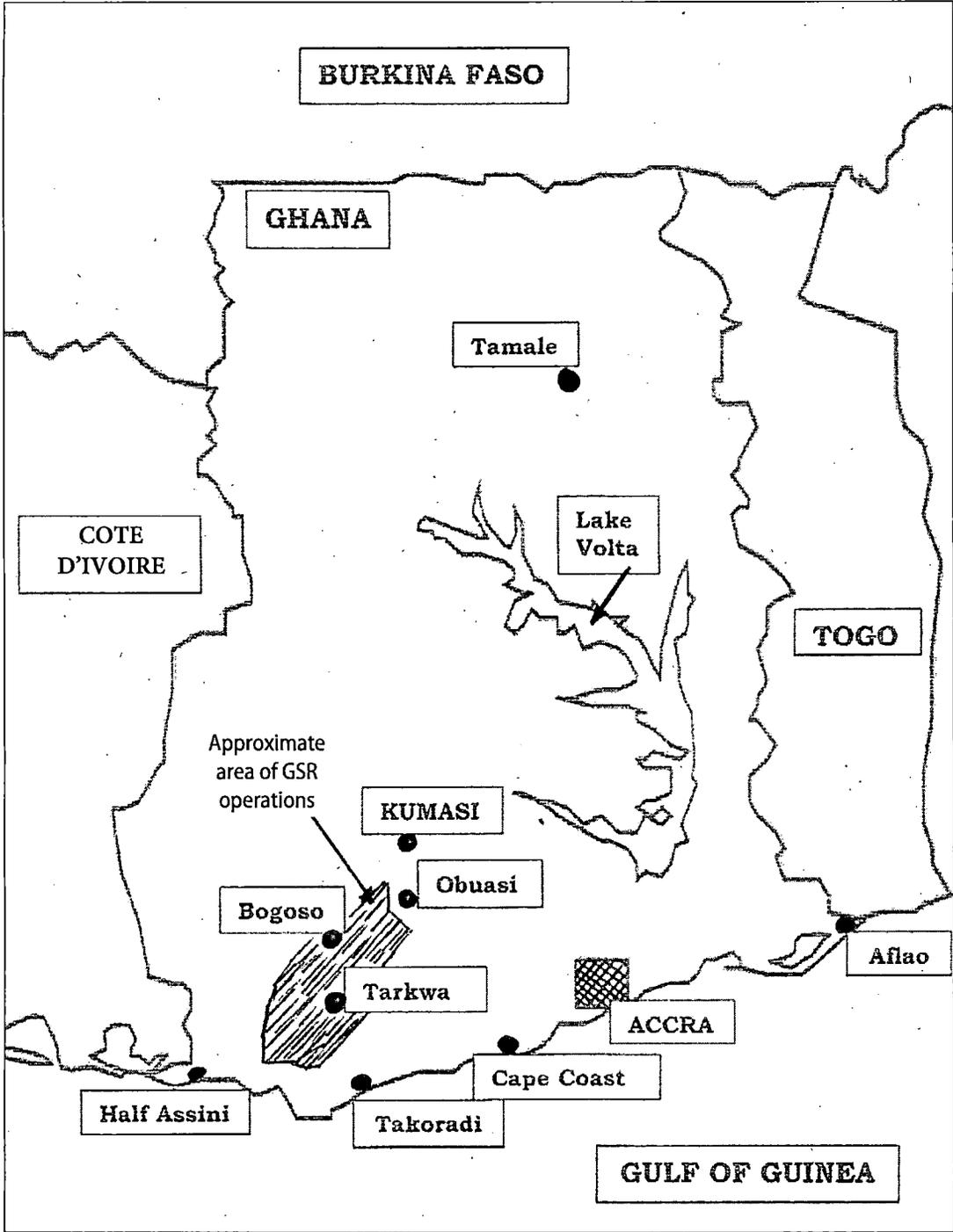


Figure 2. Map of Ghana showing approximate area within which GSR operates mines.

References

- Akabzaa, T. 2000. *Boom and dislocation: The environmental and social impacts of mining in the Wassa West District of Ghana*. Accra, Ghana: Third World Network.
- . 2001. Research for advocacy on issues on mining and the environment in Africa: A case study of the Tarkwa mining district, Ghana. In *Mining, development and social conflicts in Africa*, ed. Third World Network, 143–53. Accra, Ghana: Third World Network.
- Akabzaa, T., and A. Darimani. 2001. The impact of mining sector investment: A study of the Tarkwa mining region. Draft report. Structural Adjustment Participatory Review Initiative (SAPRI), Accra, Ghana.
- Akpalu, W., and P. Parks. 2007. Natural resource use conflicts: Gold mining in tropical rainforest in Ghana. *Environment and Development Economics* 12 (1): 55–72.
- Amenumey, D.E.K. 2008. *Ghana: A concise history from pre-colonial times to the 20th century*. Accra, Ghana: Woeli Publishing Services.
- Antal, A.B., and A. Sobczak. 2004. Beyond CSR: Organizational learning for global responsibility. *Journal of General Management* 30 (2): 77–98.
- Aryeetey, E., and R. Kanbur. 2008. *The economy of Ghana: Analytical perspectives on stability, growth and poverty*. New York: James Currey/Accra, Ghana: Woeli Publishing Services.
- Ayine, D. 2001. The human rights dimension to corporate mining in Ghana: The case of Tarkwa District. In *Mining, development and social conflicts in Africa*, ed. Third World Network, 85–101. Accra, Ghana: Third World Network.
- Bird, F., and S.W. Herman. 2004. *International businesses and challenges of poverty in the developing world: Case studies on global responsibilities and practices*. New York: Palgrave Macmillan.
- Blowfield, M. 2005. Corporate social responsibility: Reinventing the meaning of development. *International Affairs* 81 (3): 515–24.
- . 2007. Reasons to be Cheerful? What we know about CSR's impact. *Third World Quarterly* 28 (4): 683–95.
- Campbell, J. 2006. Institutional analysis and the paradox of corporate social responsibility. *American Behavioral Scientist* 49 (7): 925–38.
- Carroll, A., and A. Buchholtz. 2006. *Business and society: Ethics and stakeholder management*. Mason, OH: Thomson South-Western.
- Commission on Human Rights and Administrative Justice (CHRAJ). 2008. *The state of human rights in mining communities in Ghana*. Accra, Ghana: CHRAJ.
- Cooksey, W.R. 2003. "Learnership" in complex organisational textures. *Leadership and Organizational Development Journal* 24 (4): 204–14.
- Dashwood, H. 2005. Canadian mining companies and the shaping of global norms of corporate social responsibility. *International Journal* (Autumn): 977–98.
- Donaldson T., and L.E. Preston. 1995. The stakeholder theory of corporations: Concepts, evidence and implications. *Academy of Management Review* 20 (1): 65–91.
- Garvin, D.A. 1993. Building a learning organization. *Harvard Business Review* (July–August): 79–91.
- Garvin, T., T.K. McGee, K.E. Smoyer-Tomic, and E.A. Aubynn. 2009. Community-company relations in gold mining in Ghana. *Journal of Environmental Management* 90 (1): 571–86.
- Golden Star Resources (GSR). 2008a. *Policy Updates*. Golden Star Resources. Environment, health and safety. www.gsr.com/Social_Responsibility.
- . 2008b. *Sustainability report 2007*. Golden Star Resources. http://216.139.227.101/interactive/gss2007sustain/gss2007sustain.pdf?print_pages=true.
- . 2009a. *Annual report 2008*. Golden Star Resources. <http://216.139.227.101/interactive/gss2008/>.
- . 2009b. *Golden Star oil palm plantations: An innovative approach to community sustainable development*. Unpublished PowerPoint Presentation, given during personal interview, 30 March.
- . 2009c. *Sustainability Report 2008*. Golden Star Resources. <http://www.gsr.com/PDFs/GSRAnnualSustainabilityReport2008.pdf>.
- Government of Canada. 2009. *Building the Canadian advantage: A corporate social responsibility (CSR) strategy for the Canadian international extractive sector*. Foreign Affairs and International Trade Canada. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx>.

- Gunningham, N., R.A. Kagan, and D. Thornton. 2003. *Shades of green: Business, regulation, and environment*. Stanford, CA: Stanford University Press.
- Hill, C. 1998. *International business: Competing in the global market place*. Boston: Irwin/McGraw-Hill.
- Hilson, G. 2002. Harvesting mineral riches: 1000 years on gold mining in Ghana. *Resources Policy* 28 (1-2): 13-26.
- Hilson, G., and S.M. Banchirigah. 2009. Are alternative livelihood projects alleviating poverty in mining communities? Experience from Ghana. *Journal of Development Studies* 45 (2): 172-96.
- Hoffman, A.J., and M.J. Ventresca, eds. 2002. *Organizations, policy and the natural environment*. Stanford, CA: Stanford University Press.
- Howard-Grenville, J.A. 2006. Inside the "Black Box": How organizational culture and subcultures inform interpretations and actions on environmental issues. *Organization and Environment* 19 (1): 46-73.
- Idemudia, U. 2009. Oil extraction and poverty reduction in the Niger Delta: A critical examination of partnership initiatives. *Journal of Business Ethics* 90 (1): 91-116.
- . 2007. Community perceptions and expectations: Reinventing the wheels of corporate social responsibility practices in the Nigerian oil industry. *Business and Society Review* 112 (3): 369-405.
- International Finance Corporation (IFC). 2006. *Performance standards on social and environmental sustainability*. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf).
- Jenkins, R. 2005. Globalization, corporate social responsibility and poverty. *International Affairs* 81 (3): 525-40.
- Lakowski, G. 2001. Organizational change, leadership and learning: Culture as cognitive process. *International Journal of Educational Management* 15 (2): 68-77.
- Lemieux, A. 2005. Canada's global mining presence. Natural Resources Canada. <http://www.nrcan.gc.ca/mms-smm/busi-indu/cmy-amc/content/2005/08.pdf>.
- March, J., and J. Olsen. 1999. The institutional dynamics of international political orders. In *Exploration and contestation in the study of world politics*, ed. P. Katzenstein, R. Keohane, and S. Krasner, 303-29. Cambridge, MA: MIT Press.
- McGuire, D., and K. Hutchings. 2006. A Machiavellian analysis of organizational change. *Journal of Organizational Change Management* 19 (2): 192-209.
- McPhail, K. 2008. Global governance challenges in industry sectors and supply chains. *Corporate Governance* 8 (4): 471-81.
- Nyame, F., J.A. Grant, and N. Yakovleva. 2009. Perspectives on migration patterns in Ghana's mining industry. *Resource Policy* 34 (1-2): 6-11.
- Natural Resources Canada. 2007. *Overview of trends in canadian mineral exploration*. <http://www.nrcan-rncan.gc.ca/mms-smm/busi-indu/pdf/explor/2007/exploration07-e.pdf>.
- Ofori, D. 2007a. Social responsibility and ethics in Ghana: Stakeholders' expectations and challenges. In *Management and economic development in sub-saharan africa: theoretical and applied perspectives*, ed. J. Okpara, 63-97. London: Adonis and Abbey.
- . 2007b. Corporate social responsibility: Perspectives of leading firms in Ghana. *Corporate Governance* 7 (2): 178-93.
- Puplampu, B. 2004a. A political and economic history of Ghana, 1957-2003. In Bird and Herman, 64-74.
- . 2004b. Capacity building, asset development and corporate values: A study of three international firms in Ghana. In Bird and Herman, 75-97.
- Sagebien, J., N. Lindsay, P. Campbell, R. Cameron, and N. Smith. 2008. The corporate social responsibility of Canadian mining companies in Latin America: A systems perspective. *Canadian Foreign Policy* 14 (3): 103-28.
- Sharma, S. 2000. Managerial interpretations and organizational context as predictors of corporate choice of environmental strategy. *Academy of Management Journal* 43:681-97.
- Standing Committee on Foreign Affairs and International Trade. (SCFAIT). 2005. *Mining in developing countries and corporate social responsibility*. Government of Canada, House of Commons.

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1961949&Language=E&Mode=1&Parl=38&Ses=1>.

Svensson, G., and G. Wood. 2007. Sustainable leadership ethics: A continuous and iterative process. *Leadership and Organization Development Journal* 28 (3): 251–68.

UN Human Rights Council. 2008. *Protect, respect and remedy; A framework for business and human rights: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*. 7 April 2008, A/HRC/8/5. UNHRC, Refworld. <http://www.unhcr.org/refworld/docid/484d2d5f2.html>.

Welford, R., ed. 1997. *Corporate environmental management: Culture and organizations*. London: Earthscan.



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Revisiting the Reform Process of African Mining Regimes

Bonnie Campbell

ABSTRACT This article examines the reform of regulatory frameworks that has taken place in Africa over the last twenty years in light of the findings of a research project on the negotiation of mining regimes in Canada. The argument is that certain elements of the free mining doctrine that animated the nineteenth-century formulation of mining regimes in North America can be seen as having guided the liberalization process of African mining regimes during the 1980s and 1990s. One of the ways this came about was through the strong retrenchment of state authority. In turn, this contributed to the institutionalization of asymmetrical relations of power and influence with important consequences for local political processes, local participation, and community welfare.

RÉSUMÉ Cet article examine la réforme des cadres réglementaires qui est survenue en Afrique au cours des vingt dernières années, et ce, à la lumière des résultats d'un projet de recherche sur la négociation des régimes miniers au Canada. Les conclusions de cette recherche suggèrent certains éléments du principe de *free mining*, qui déterminaient la formulation des régimes miniers du dix-neuvième siècle en Amérique du Nord, peuvent avoir influencé le processus de libéralisation des régimes miniers africains dans les années 1980 et 1990. L'une des causes réside dans l'important retrait des autorités gouvernementales. Ceci a contribué à l'institutionnalisation de relations de pouvoir et d'influence asymétriques, avec d'importantes conséquences sur les processus politiques locaux, la participation locale et le bien-être des communautés.

Introduction

This article examines the reform of regulatory frameworks that has taken place in Africa over the last twenty years in light of the findings of a research project on the negotiation of mining regimes in Canada and Quebec.¹ It will show that revisiting the

1. The project, "Modes de gouvernance, institutions politiques et contribution du secteur minier au développement : leçons à partir de l'expérience canadienne," was funded by SSHRC 2006–2009. The introduction of this article refers to the contribution to the journal by Myriam Laforce: "L'évolution des régimes miniers au Canada et les conditions d'émergence de nouvelles formes de régulation" (The evolution of mining regimes in Canada and the conditions for the emergence of new forms of regulation), which summarizes the theoretical framework adopted in the research project. Her contribution draws from the joint article by Myriam Laforce, Ugo Lapointe, and Véronique

reform process of African mining regimes through Canadian lenses can offer important insights with regard to better understanding the structural relations that help condition outcomes. The Canadian research project aimed to understand the extent to which negotiation processes took into account the concerns of affected communities, and allowed community members to contribute to decisions about the development of their regions (see the article by Myriam Laforce in this issue for a full description of the project). As the contribution by Laforce reveals, revisiting the Canadian experience helped identify some of the principles that condition and perpetuate the structural and power relations associated with mining operations in our own country. Research findings suggest that mining regimes are a key component of the structures of power that condition relations among the actors involved—influencing the nature of the negotiating space created, the outcomes of negotiation processes, and participants' capacity to put forward alternative policies—and that they contribute to perpetuate asymmetrical relations of power and influence.

Although the notion of regimes is itself the object of debate, to analyze a particular set of legal instruments the research project adopted the following definition of the concept: "sets of governing arrangements [that include] networks of rules, norms, and procedures that regularize behaviour and control its effects" (Keohane and Nye 1997). From the perspective of what is referred to as "heterodox political economy" and legal pluralism (Szablowski 2007), the approach borrowed from Chavagneux (1998) the view that the capacity to shape structures depends in large part on the capacity to advance "priority values" within the structures concerned. The values privileged by actors who hold power contribute *de facto* to favour certain positions and interests. Structures and actors are the vehicles for values, and the hierarchy these values assume plays a central role in influencing the possibilities for, and outcomes of, political action.

The values and principles that have informed the development of mining activities in North America, specifically in Canada, are of particular interest for this article. Central among these is the principle of *free mining*, or "free entry," as it is also called. Free mining has been defined as encompassing "(i) a right of free access to lands in which the minerals are in public ownership, (ii) a right to take possession of them and acquire title by one's own act of staking a claim, and (iii) a right to proceed to develop and mine the minerals discovered."²

Four implications of free mining are of special importance to the subject treated here: First, the principles inherent in free mining suggest that the development of the mining sector is not only desirable but to be prioritized over alternative uses of a particular territory. Second, the freedom of action permitted mining entrepreneurs has conditioned the manner in which most Canadian jurisdictions foresee or take into

Lebuis, "Mining sector regulation in Quebec and Canada: Is a redefinition of asymmetrical relations possible?" *Studies in Political Economy* 84 (Fall 2009): 47–78. References to the values and principles involved draw more specifically on the contribution of Ugo Lapointe to this article and his presentation to the 2009 CERLAC conference: "Les origines des régimes miniers au Canada: l'héritage du système du *free mining*" (The origins of mining regimes in Canada: The legacy of the "free mining" system). See Lapointe (2009).

2. See Barton (1993, 115). The notion is treated more fully in Laforce, Lapointe, and Lebuis (2009).

account participation by, or consultation with, affected communities, notably First Nation communities, when mining rights are granted. The formal process of consultation and participation by affected communities — often aboriginal — is generally deferred to a relatively more advanced stage of mining projects. Third, the delegation of authority to mining companies through the principle of free mining also often undermines the authority of public institutions. Fourth, free access to a resource and the guaranteed right to exploit it constitute, according to Karen Campbell (2004, 1) “a key structural issue that contributes to the preferential treatment enjoyed by the mining industry.” This explains why regimes based on free mining appear characterized by an asymmetrical power structure that constrains the negotiating space of local actors, limiting their opportunity to choose a development strategy for their territory.

Drawing on the analytical perspective adopted to study Canadian mining regimes, this article suggests that a focus on the principles and objectives that inform the reform process offers a means of analyzing the relations of influence that characterized mining regime reform in many mineral-rich African countries over the last two decades, and which are often perpetuated by these regimes. The argument presented here is that certain elements of the free mining doctrine that animated the nineteenth-century formulation of mining regimes in the American and British spheres have also guided the liberalization process of African mining regimes over the 1980s and 1990s. One of the ways this came about was through the retrenchment of state authority, which in turn contributed to the institutionalization of asymmetrical relations of power and influence that had important consequences for local political processes, local participation, and community welfare. The approach consequently helps explain some of the social, economic, environmental, or human rights impacts of these regimes, and prompts one to question the extent to which current mining regime reform processes in Africa can transform the asymmetrical power relations that have typified mining activities on the continent in the past.³

This article is divided into two sections. The first examines the process of reform of mining regimes in Africa in order to illustrate the principles and overall orientation of the measures that led to the strong retrenchment of state institutions.⁴ It will be argued that the nature of the reforms strongly conditioned the choice of development strategies, the forms of participation in that process, and the resulting distribution of responsibilities and power, particularly between public and private actors. The second section looks more closely at recent implications of these trends, notably with regard

3. While not the focus of this article, the connection between the conceptualization of Canada's mining regimes and the reform of those regimes in other regions of the world has been both indirect (through the role that Canada plays in multilateral financial institutions responsible for the reforms), and direct (as Canada provides expertise and finances for such reforms in particular countries); see B. Campbell (1999). This connection may become increasingly direct as CIDA contemplates moving into this area.

4. Although the article draws on the rich African debates over the social and political consequences of structural adjustment for the state and the productive sector that have informed previous work by the author (Biersteker, 1990; B. Campbell 1989, 2004), this topic is not its primary focus. The concern of this article is rather with the political implications of the reform process of regulatory frameworks itself.

to the degree of legitimacy conferred to mining activities by the new regulatory frameworks, and identifies three types of responses to these issues. It also briefly examines the resulting shaping of policy space and policy options for the states and communities concerned.

The Reform of Regulatory Frameworks for Mining in Africa: Certain Political and Developmental Implications

Mining regimes have been reformed on a very wide scale in Africa over the past two decades.⁵ The process of reform has been ongoing and extensive: 35 African mining codes had been revised by 1995 and many of these have been revised again since then, often several times. During the 1980s, perhaps the central aspect of regulatory framework reform for mining in Africa was the very conscious attempt to redefine the role of the state in order to ensure its withdrawal from productive activities. According to the United Nations Conference on Trade and Development (UNCTAD 1995, 4): "During this period, a deteriorating financial situation has forced many countries to reconsider the role of the State. State-owned enterprises, including in the mineral sector, have been privatized, inter alia to reduce fiscal deficit."

While numerous actors have obviously been involved in the reform process, in the context of the severe indebtedness of many mineral-rich countries in the early 1980s and the policies of structural adjustment at that time, the Bretton Woods institutions took the lead in determining the orientation of the measures that were to be introduced. In view of the far-reaching implications of these reform measures, notably with regard to the social and economic development of the countries concerned, it is of interest to examine certain principles and assumptions that informed the thrust of the measures introduced.

The approach to mining regime reform in Africa adopted by the multilateral financial institutions was systematized in the 1992 World Bank document *Strategy for Mining in Africa* (World Bank 1992). Most African national states had assumed a central development role after independence but, according to the World Bank document, they lacked management and technical capabilities, and the necessary risk capital to invest. According to the report, as states were drawn into the cycle of indebtedness, they were no longer able to sustain the development of Africa's potential. The future development of the mining industry would therefore "largely depend on attracting new high risk capital from foreign mining companies" (World Bank 1992, 10), for in the past it has been mainly "international mining companies which provided the management and technical capabilities and mobilized the necessary financing for projects to be identified and implemented" (ibid., xi). This strategy was defined as the best way to ensure the development of African potential and to improve the economic situation by provid-

5. The analysis presented below draws on ten years of research on the implications of mining code reform in Africa. See Campbell (2009, 2006a, 2006b, 2004), Belem (2008), Akabzaa (2000), UNCTAD (2005).

ing tax revenues in the longer term. From this perspective, the "main objective of donor intervention in African mining—whether through technical assistance or investment financing—should be to facilitate private investment and help reduce the country and project-related risks for the private investor" (*ibid.*, xii). In short, the report argued that to adapt to modern conditions of mining, the primary objective of African countries should be to avoid state ownership and attract private investors.

To gain a better understanding of the concerns of international companies that invest in developing countries, the World Bank commissioned a survey that was sent to 80 mining companies, both juniors and majors. In view of the central role attributed to the mining sector in stimulating local growth strategies, it is significant to note that the World Bank did not conduct similar consultations with local actors, whether decision makers or community representatives, at this stage of the reform process. The nature of the process of consultation recalls, in this respect, the privileged place attributed mining interests in North America under the principle of free mining. The results from the survey revealed that after mineral potential and existing infrastructure, which are their main decision criteria, potential investors look for a stable legal and fiscal framework, including a mining code, contractual stability, a guaranteed fiscal regime, profit repatriation, and access to foreign exchange. Significantly, the Bank study noted that macroeconomic data were less important because the mining sector is more isolated from other sectors of the national economy, except for some features concerning earnings and exportation, like exchange rates. Investors also look for a larger and faster return on equity in Africa than in developed countries because higher risk premiums are required for projects in developing countries. In addition, investors prefer to keep majority ownership. Finally, noted the document, investors are concerned about corruption and political risks, and suffer from the lack of geological information in Africa. In short, "[p]erceived mineral endowment, infrastructure, political stability, investment policies, and institutional framework, are all key determinants of exploration and investment decisions" (World Bank 1992, 18). Because the mineral potential of Africa was unquestionably appealing, the main decision factor determining an investment was the perceived risk, especially political risk.

The above reveals first that consideration of what was needed to attract foreign investment was very much premised on a sectoral approach that privileged the perspectives of potential investors rather than an approach that might have sought to articulate these views with broader concerns regarding the contribution of the mining sector to national or regional macroeconomic strategies. The latter perspective would have implied a concern for building intersectoral linkages and encouraging local transformation of the resource in order to see to what extent the sector could contribute to broader development objectives. Second, after the period of stringent state withdrawal in the 1980s, what was clearly central to the World Bank strategy of the 1990s was the emerging new role assigned to the governments of mineral-rich countries, a point to which we shall return. Third, the adopted approach sought to provide a general template for mining codes, disregarding to a large extent the diverse specificities of different countries, characterized by distinct policy traditions, trends, and objectives.

With regard to the recommendations that followed, the governments of African countries were expected to take actions aimed to attract investment and reduce investment risk for private mining companies. The World Bank recommendations pertained to four main areas: a) appropriate regulatory frameworks, b) economic and fiscal policy, c) institutional reforms and infrastructure, and d) environmental effects.

Appropriate Regulatory Frameworks

In the Bank study, the notion of a regulatory framework encompasses both the mining code and the issue of mineral rights and licenses. A mining code "is the combination of statute law, regulations and agreements which governs the allocation, tenure and operation of mining rights" (World Bank 1992, 21). The main qualities of an appropriate regulatory framework include its clarity and stability, with minimal ministerial discretion, and coordination with other legislation. The same legislation has to be equally applied to all investors, without distinction between private or public investors, or their origin. Those rights also need to be transferable. Moreover, such a framework should ideally provide long-term security of tenure (20 or 30 years for exploitation, with renewal), with a clear definition of termination provisions, and an easy conversion between exploration and exploitation licenses. These rights are granted in exchange for certain conditions, notably minimum work commitments, which are considered preferable to large license fees. The Bank study is very specific concerning land surface relinquishment requirements in addition to work commitments or surface rentals. The study recommended that after an initial phase of exploration (perhaps three or four years), 50% of the initial license area be surrendered and effort on the remainder increased. Such regulatory frameworks were seen as a means to reduce investment risks in two ways: first, by permitting stable policies and reducing the uncertainty factor, and second, by providing protection against foregoing mining rights.

Economic and Fiscal Policy

Economic and fiscal policy is presented as having as its objective the creation of a certain balance between the risk a company takes when investing in a particular country in the context of international competition, and the returns a state receives from this investment through the exploitation of its resources. Tax revenues and foreign exchange receipts are "the major benefits to be derived from mineral development" (World Bank 1992, 27), but because African countries are perceived to be high-, or medium-risk, investment locations, they have to be competitive in their taxes and incentives, according to the Bank, in order to attract investors, improve their revenue and realize social objectives in the long term. Policy has to first be promoted within a sound economical environment, which includes good macroeconomic policy and good governance. Of particular concern are exchange rates, because inflation could reduce profits, and free foreign trade, including the right to import goods and services, and the "unrestricted" right to export their products. Companies also need to have access to foreign exchange

funds "to pay for imports, service debts and, in the case of foreign investors, repatriate capital and dividends" (World Bank 1992, 27).

Moreover, the report continues, an attractive tax policy should privilege earning-based taxes over royalties (that should not exceed 1-2%) (World Bank 1992, 32), export taxes, or import duties, in order to not increase operating losses because of the cyclical nature of the mining business. In a long-term perspective, this approach presumes convergence between the interests of companies and governments, and consequently proposes that it would be in the interest of governments to set up policy conditions for low-cost production by permitting companies to have access to least-cost supplies (local or foreign) and also reduce employment by introducing new technology. Finally, with regard to government-company relations, the Bank report suggests that it is preferable for the government to use those revenues to provide social services rather than to oblige the company to do so, and it does not encourage state participation in mining projects.

Institutional Reforms and Infrastructure

To implement this new legislation, the World Bank recommended institutional reforms that include the reform of state-controlled enterprises, the setting up of new and adapted institutions, and the regulation of artisanal mining. The government has the responsibility to organize and supervise the privatization of state-controlled mining companies because "private investors are needed as majority partners in existing state-controlled mining companies if these are to reach their potential" (World Bank 1992, 39). The absence of political pressure on organization and management, the freedom to hire and fire, and the capacity to maintain contacts with the outside world are factors presented by the report to explain the superiority of privately owned enterprises (*ibid.*, 40).

These objectives can be reached through the sale of state-owned enterprises or by privatization, a more complex process that "may require the involvement of external specialists" (World Bank 1992, 41). As a result, the changing role of government, from owner to regulator, depends on the reconstruction of institutional mining frameworks, which have to perform effectively. The World Bank recommended the creation of five institutions, each with a specific and well-defined role: a Ministry of Mines, a Department of Mines (a sub-unit of the Ministry of Mines), a Geological Survey, a Mineral Promotion Agency, and an Environmental Office. The Department of Mines would also regulate artisanal mining, limiting associated problems such as poor working conditions, health and environmental impacts, and lost government revenues by recognizing and formalizing the reality of small-scale mining, and establishing and enforcing realistic regulations concerning the environment, health, and safety (*ibid.*, 42-45).

Sound policies are also required to ensure good infrastructure and to deal with environmental issues. The study suggests that the lack of infrastructure is often a deterrent to investment, especially at the exploration stage; consequently it is to the advantage of governments to contribute the necessary infrastructure.

Environmental Effects

In view of the fact that, according to the report, the environmental effects of mining activity are generally geographically localized, identifiable and specific, and because adequate technology is available to deal with them, the study concludes: "The necessary measures to safeguard the environment and the health and safety of the population and the workforce can be incorporated into legislation" (World Bank 1992, 47). Most state-run operations lack the funds to replace old technology, and in such operations and in many artisanal mining activities, environmental conditions consequently lag behind those of industrialized countries. The study notes that by contrast, privately owned industrial mines usually offer better environmental conditions. Moreover, "[m]ajor international mining companies have adopted their own environmental protection standards which equal, and sometimes exceed, internationally recognized standards such as those of the U.S. Environmental Protection Agency" (*ibid.*, 48).

This last point is illustrative of the more general premise underpinning the 1992 study: that the role of government is to create a suitable environment for the private sector. This requires "[a] clearly articulated mining sector policy that emphasizes the role of the private sector as *owner* and *operator* and of government as *regulator* and *promoter*" (World Bank 1992, 53; emphasis added). The stringent retrenchment of the state from productive activities in the sector and its confinement to the role of facilitator of private investment, the requirement of minimal ministerial discretion, the provision of long-term security of tenure, and land surface relinquishment requirements all make the World Bank approach to the opening up of the mining sector strongly analogous to former approaches founded upon the principle of free mining.

The World Bank's 1998 publication *Assistance for Minerals Sector Development and Reform in Member Countries* (Onorato, Fox, and Strongman 1998), and notably its Appendix 2, "Summary of the Essential Elements of a Modern Mining Code," illustrate how uniformly sectoral reforms were introduced in very different countries during the 1990s. Moreover, the document reads as an implementation program for the recommendations proposed in the *Strategy for African Mining* report (World Bank 1992). The importance and overall approach of the World Bank's involvement to which the more precise 1998 directives would apply had been set out in 1992: "There are more than twenty projects where the World Bank has been involved in the 1990s in the process of reviewing and revising the laws which affect minerals development in developing countries and countries in transition to market economies" (*ibid.*, 14). While these countries of Africa, Asia, Eastern and Central Europe, and Latin America are recognized to vary greatly, "they nevertheless share the common objective of reviving and expanding development of their minerals sectors by stimulating greater private sector participation ... Although the policy, legislative and regulatory solutions adopted by these countries may have different features, some common themes are apparent. 'Successful' countries have well articulated policies and legal and institutional frameworks which support small and large scale mining without imposing uneconomic fiscal burdens" (*ibid.*, 14-15).

Chile, Indonesia, Papua New Guinea, and Ghana are cited as examples of successful countries. Regarding the latter country, the study underlined the resurgence of the gold mining industry, and among the reasons given for its flourishing were the government's commitment to its private sector minerals development policy, the adoption of new mining laws in 1986, and the privatization of the state Gold Mining Company assets in the 1990s. As well, the publication noted, "taxes are not burdensome, and substantial foreign exchange sales revenues can be held offshore" (World Bank 1992, 15). The study identified the essential elements of a modern mining code: the scope of the law, institutional framework, participation of affected people, access to mining activities, security of tenure, regulatory aspects, private land owners, ancillary licenses and permits, other project activities, investment contracts, fiscal issues, and, finally, environmental and social matters.

Before looking at the implications of the reforms in the second section of the article, a brief empirical presentation will be provided to illustrate how the principles set out above translated in concrete reforms. A historical analysis illustrates a dynamic and open-ended process of reform, which translates into what has been described as three different generations of African mining codes (B. Campbell 2004). The first generation, of the 1980s, illustrated by the Ghanaian experience that will be detailed below, entailed the initial, very stringent forms of state withdrawal then suggested as necessary to attract foreign investment. The second generation, of the early to mid-1990s, with Guinea the example here, reflected an increasing recognition of the need for certain forms of regulation, notably with regard to the protection of the environment. However, the attempted solution at that time was to delegate oversight to private (non-state) actors. The third generation, of the late 1990s, which concerned countries such as Mali, Madagascar, and Tanzania, reflected an increasing recognition that states do in fact have a role to play in facilitation and regulation, though subordinate to the "owner and operator" role assigned to private actors. Since then, reforms have maintained this general orientation up to the current process of widespread revision, during which the merits of past frameworks have come under scrutiny and are the object of intense debate.

A useful illustration of policy reforms proposed for the African mining sector and state retrenchment is provided by Ghana, at the time (mid-1980s) the continent's second most important producer of gold and bauxite. This example is particularly useful because the new Ghanaian regulatory framework was to serve as a model for other countries, notably Mali. The mining sector received priority attention under the country's Economic Recovery Program, initiated in 1983, since this sector was considered key to the country's economic recovery. Alongside the general, macroeconomic policy reforms, specific sectoral reforms that sought to encourage investor interest in mining were introduced. A new *Minerals and Mining Law* (PNDCL 153) was put in place in 1986. There were two addenda: *Additional Profile Tax Law* (PNDCL 122) and *Minerals (Royalties) Regulations* (LI 1349), in 1985 and 1987, respectively. Another law, the *Small Scale Mining Law* (PNDCL 218), was enacted in 1989 in a bid to give legal credence to small-scale artisanal mining in the country.

Opportunities for investment were opened up as a result of an important series of privatizations, particularly that of the former state-controlled Ashanti Goldfields Cor-

poration. An additional law established the Minerals Commission as a key institution to ensure a one-stop investment centre for mining (Akabzaa 2004). These laws, with their generous provision of tax incentives to foreign investors, constituted the main legislation that wielded jurisdiction over fiscal issues of the mining sector. For example, corporate income tax, which stood at 50–55% in 1975, was first reduced to 45% in 1986 and then to 35% in 1994. Initial capital allowance to enable investors to recoup their capital expenditure was increased from 20% in the first year of production and 15% for subsequent annual allowances in 1975, to 75% and 50%, respectively, in 1986. The royalty rate, which stood at 6% of total value of mineral won in 1975, was reduced to 3% in 1987. Other duties were abolished, such as the Mineral duty (5%), import duty (5–35%), and Foreign Exchange Tax (33–75%) that had prevailed and significantly contributed to government revenue from the sector until the reforms (Akabzaa 2004). In addition, according to the same source, the following incentives were introduced:

- Exemption from the payment of customs import duties with regard to plant equipment and accessories imported for use in mining.
- Personal remittance quota for expatriate personnel was freed from any tax imposed for the transfer of external currency out of the country.

Apart from these concessions, the holder of a mining lease may be permitted by the Bank of Ghana to retain a minimum of 25% of the operator's foreign exchange earnings in an external account for the purpose of acquiring equipment, spare parts, and raw materials, and for dividend payment and remittance with regard to goods for expatriate personnel, among others. Akabzaa's (2004) study documents that companies have in fact negotiated individual retention levels far above the minimum requirement. Thus, although minerals are a significant part of the country's exports, the contribution of this sector to GDP has, at certain periods, been as low as 2%.

The assumptions and principles that informed the reform process and called for such extreme forms of state retrenchment, as well as the nature of the relations that explain why these principles dominated, are important contributing factors to explain the disappointing results regarding the contribution of mining to public revenues, in generating local employment, and to the lack of emphasis placed on local transformation and/or the potential diversification of minerals produced. The implications of these far-reaching reforms have been the object of many studies. In the context of the arguments presented here, four trends merit special attention.

First, the strong retrenchment of the state from the mining sector has been accompanied by parallel processes: the redefinition of its role and a reduction of state sovereignty. In this regard, the study commissioned by the World Bank entitled *Review of Legal and Fiscal Frameworks for Exploration and Mining* proposes a "shift in the policy orientation of developing countries in favour of enabling and facilitating private investment in mineral resource development" (Naito, Remy, Williams 2001, 6). Four of the seven components of the proposed policy shift that aims to create a favourable investment climate concern the regulatory function of the state. The capacity of the state to implement developmental goals is seriously compromised by the proposal that it should withdraw even further from the regulation of key macroeconomic instruments. Moreover, its capacity to ensure a sustainable flow of net returns from mining activities

and to maintain political sovereignty are, in fact, challenged in a very direct manner, as the following recommendations illustrate:

- (i) Economic reform that liberalised the general investment regime (in the areas of taxation, currency exchange, banking, trade and labour) and opened all sectors to foreign investors.
- (ii) *Allowing or expanding private access to resources previously reserved to the state, which involves a major change in the concept of sovereignty for many developing countries.*
- (iii) A reduction in the levels of *ad valorem* royalties required by the state.
- (iv) A reduction in corporate income tax rates, as well as customs duties on imported capital goods, so that they fall within a generally accepted range. (Naito, Remy, and Williams 2001, 6; emphasis added)

Second, the process of redefining the role of the state in the mining sector and of reconceptualizing its sovereignty more generally in many ways echoes the observations of Susan Strange with regard to the reduced autonomy and authority of states, as well as their reduced capacity to influence the evolution of their own structures. As a counterpart, the distribution of structural power has clearly been shifted to the advantage of private actors and, notably, transnational mining companies. In *Rival States, Rival Firms* by John M. Stopford, Susan Strange, and John S. Henley (2001, 14), the consequences of the growth of foreign direct investment on the structural power of states is described as follows: “[...] states’ positive power to harness internal resources is decidedly constrained when they try to influence where and how international production takes place. They find they cannot direct; they can only bargain.”

Third, the narrowing of the margin of manoeuvre of mineral-rich states and of their policy space as a result of having to respond to an externally-driven reform process has, in certain circumstances, been accompanied by the institutionalization of a particular mode of reproducing power relations. This has especially been the case in countries where mineral resources are plentiful. In a manner similar to the experience of petroleum-rich countries, notably Nigeria where authors such as Cyril Obi (2001, 2004) have identified and analyzed a “politics of oil,” the particular “politics of mining” that has emerged in certain mineral-rich states and been perpetuated in countries such as Guinea is often severely lacking in transparency and accountability in spite of the fact that the Bretton Woods Institutions have been overseeing the reform process for many years. As a result, the case of Guinea, where the mining code was revised under the auspices of the World Bank in 1995, illustrates how much the mining sector has been favoured over other sectors to the detriment of the country as a whole and in a manner congruous with the principle of free mining. As a World Trade Organization (2005, 54) study noted; “The incentives given to approved mining enterprises are still much more attractive than those for non-mining enterprises under the Investment Code.”

Almost a decade after the introduction of the Guinean code, the World Bank (2004, 10) recognized, with regard to the impact of exemptions on the government’s fiscal revenue, that “[t]ax exemptions severely limit Guinea’s revenue collection performance.”

Furthermore, the institution identified “[t]he large number of import duty exemptions, often unjustified, which particularly favour the mining sector” (ibid., xi) as one of the three main factors constraining revenue mobilization in the country. Indeed, in 2001, exemptions on import duties alone exceeded the duties collected. And the World Bank report, which estimated the real current cost of fiscal exemptions that favour the mining sector in terms of lost revenue at 20% of total revenue (or approximately 3% of GDP), adds in this regard that “the real value of exemptions may be higher than actually recorded since many of them have been granted informally over the years to individual traders, either as a favour or on a rent-seeking basis” (ibid., 11–12).

The fourth implication of the far-reaching reforms of the 1990s concerns the emergence of contradictions that have accompanied the liberalization process, and the emergence and prolongation of particular domestic structural power relations linking African decision makers to powerful foreign actors, whether corporate, financial, or diplomatic. Significantly, the Bretton Woods Institutions have become involved in attempting to address the consequences of certain practices, particularly those lacking in transparency. However, these practices must be resituated in the context of the liberalizing reforms of the mining sector that African governments were summoned to introduce, and which involved measures to ensure the strong retrenchment of the state in situations where political institutions had already been severely weakened by years of structural adjustment. The difficulties of coming to terms with these practices and, more fundamentally, with the contradictions and tensions inherent in their own policies are well illustrated by the way in which the World Bank Group distanced itself from the most important recommendations of the 2003 Extractive Industries Review it had commissioned—for example, refraining from promoting mining activities in areas characterized by weak governance and a lack of transparency. However, the possibility of moving beyond the current situation to one ensuring the introduction of regulatory frameworks likely to promote developmental and environmental objectives as well as the protection of human rights, appears constrained in many situations by the structural relations of power inherited from the past, and by the hierarchy of values these relations perpetuate.

Current Issues: Regulatory Frameworks, Legitimacy, and Policy Space

The social, economic, and environmental consequences of the particular development model that has informed the regulatory frameworks introduced in African countries have been the object of considerable research and are increasingly well documented. Less attention has been given to the political implications of these reforms, especially the accompanying processes that have been identified as the “modes of governance”⁶

6. The notion of “mode of governance” has been defined in many ways. Applied to mining, Belem (2008) defines it as the sum of the forms of regulation that determine the conditions of exploi-

and the particular "politics of mining" that have emerged. These issues are the focus of this section.

The Issue of Regulation and Legitimacy

One consequence of the ongoing liberalization of the African mining sector is the way that past functions of the state, already institutionally weakened through structural adjustment measures, have increasingly been delegated to private operators. These include service delivery, and also rule-setting and implementation. The tendency has been toward "an increased (and often reluctant) assumption of state-like responsibilities by transnational mining enterprises at the discreet behest of weak governments" (Szablowski 2007, 59).

Another coping strategy adopted by states to deal with new mining regimes was, as Strange suggested, the "retreat of the State" or, as stated by Szablowski, one of "selective absence." As a result, "the retreat of the state from the mediation of socio-economic relations has left private enterprise increasingly subject to social claims" (Szablowski 2007, 60). The resulting ambiguities and blurring of responsibilities have led to companies finding themselves having to deal with the demands and expectations of communities. They also have to increasingly face the risk of potential conflict and, consequently, the need to ensure the security of their own activities. As Szablowski has noted, the issue of weakened institutional and political capacity and, consequently, of the regulatory capacity of host governments, is particularly salient. Moreover, because legitimacy and regulation are interdependent products of legal processes, lack of attention to such issues can only obstruct the establishment of regulatory terms deemed legitimate.

There have been three types of responses to such situations. In the first two, at issue and being debated, concerning the rights and obligations of enterprises, are "the regulatory terms on which different audiences are willing to find that the entitlements of transnational enterprises will be deemed legitimate" (Szablowski 2007, 65). In the third response, which will not be discussed in this article (see Campbell, 1999, 2006b for a full discussion of this response), companies have turned to direct forms of ensuring the security of their operations through the employment of private security forces.

A first response to the question of legitimacy has been the creation of a complex body of norms and standards that, in large measure, have their origin in the multilateral arena. This elaborate set of continually evolving standards concerns a wide variety of areas including, for example, environmental impact assessments, and can be seen collectively as the World Bank Group safeguard policy regime. Szablowski (2007) has

tation of mineral resources for any particular project. This definition puts emphasis on the actors responsible for the forms of regulation, as well as the evolution of these forms resulting from the evolving positioning of these actors. "The notion of modes of governance permits identifying the implications for social relations of emerging institutional arrangements, as well as the role of actors who represent alternative values" (x; my translation). Hence, the mode of governance in the mining sector "represents the sum of the forms of regulation for each of the related dimensions (economic, social and environmental), which determines, in any given period, the conditions of exploitation of mining resources" (232; my translation).

referred to these norms and the practices that accompany them as constituting a new "transnational legal system." However, this system is hampered by several difficulties, including the questions of how the new body of norms is to be locally appropriated and how these norms cohere with national policy objectives. Another challenge is the segmented nature of these norms, which deal with specific areas, or, again, the often unresolved question of the capacity of states to monitor, enforce, and, if necessary, implement remedial solutions. Paradoxically, the very issues that the new regulatory frameworks were intended to resolve are likely to pose problems of legitimacy for mining operations in the future.

In addition, there are several other drawbacks concerning the manner in which these new norms have emerged and the practices that accompany them, such as the preference for technocratic over political legitimization processes among project sponsors, and corporate-oriented transnational lawmakers, such as the Multilateral Investment Guarantee Agency and the International Finance Corporation (Szablowski 2007, 300). Finally, and most importantly, the emergence of a body of norms and standards that have their origin in the multilateral arena, as is the case of environmental impact assessments, legitimizes the operation of private operators while failing to clarify the regulatory responsibilities of governments. They may allow governments to shift the locus of responsibility for what were previously considered state functions (clinics, roads, infrastructure, etc.) to the private operators of large-scale mining projects. As Szablowski has argued, such a transfer not only silences the legitimate and indeed necessary right of governments to offer services to their populations, a precondition to their being held publicly accountable, but also contributes to obscuring the issue of government responsibility itself.

A second response, parallel to the introduction of norms and standards to ensure the legitimacy of the activities of private operators in answer to the weakened institutional and political capacities of states in many mineral-rich countries of Africa, has been the tendency on the part of multilateral financial institutions and certain Western governments to suggest that such issues can be treated as symptoms of "*weak governance*." According to this approach, these problems can be resolved by the introduction of the right set of administrative practices and procedural measures, and can be monitored by using "governance indicators." This is problematic for several reasons. Such an approach introduces parameters that seek to quantify the performance of historically constructed, country-specific, highly complex institutional relations using notions that are variously defined and the object of debate, and that are often highly subjective, such as "government effectiveness," "regulatory quality," and "voice and accountability."

The increasing technicization of decision-making processes runs the risk of sidelining important substantive debates and depoliticizing issues like resource distribution, which may be treated as technical questions even though they are clearly political. Consequently, these issues are difficult to track, monitor, and measure with indicators because they often involve political choices and not only technical decisions. Moreover, with technical and administrative aspects of "governance" given overriding emphasis, current proposals to contribute to "capacity building for resource governance" in developing countries unfortunately miss the key point that past reform measures that

have sought to open the extractive sector for investment have done so in a manner that severely weakened the political and institutional capacity of local governments. As a result, it becomes a circular argument to call for the reinforcing of local capacity if the nature of past and ongoing reforms, which weaken local capacity, is not questioned.

Guinea provides a particularly interesting example of these issues and, more specifically, of the role of the multilateral financial institutions in the area of "improving governance." While the more recent recommendations proposed by the World Bank Group point to the need for greater transparency and accountability, in practice, the policies proposed remain essentially procedural rather than substantive in nature. They have been directed at improving administrative and management issues, and not the relations of which such procedural issues are the reflection. Consequently, taken alone they treat the symptoms of a particular "politics of mining" and not the structural relations of influence and power that make such dysfunctional processes possible.

Similarly, with regard to the negotiation of particular mining contracts, the distribution of mining revenues has most frequently been stipulated in particular agreements negotiated between state representatives and specific companies. The largesse of the concessions granted in certain of these contracts reflects not only the often weakened technical negotiating capabilities of the government representatives concerned, but also the nature of the political processes, and modes of political and social regulation that have been perpetuated over the last several decades. In the case of Guinea, policy reforms framed in terms of improving the "management of resources in the extractive sector" appear to legitimize a certain "politics of mining" that could hardly be seen to be compatible with promoting sustainable development, and ushering in a transparent and accountable political process. In fact, as the present situation in Guinea clearly illustrates, the past patterns of regulatory regime reform initiated by the multilateral financial institutions have at times proven surprisingly compatible with the prolongation rather than the redefinition of the relations that engender corruption.⁷

The Revision of Regulatory Frameworks, Institutional Arrangements, and Policy Space

As local benefits resulting from mining activities have proven disappointing, there have been numerous calls for the revision of fiscal, legal, and environmental frameworks and mining contracts regimes in countries as different as Liberia, Zambia, Tanzania,

7. To take this example one step further, in spite of the recommendations in 2003 of the Extractive Industries Review to the effect that the World Bank Group should "develop explicit governance criteria, transparently and in a participatory manner, which should be met before investments for the extractives industry take place" (EIR 2003, 2-3), these conditions do not seem to always be heeded in the case of policies pursued in mineral-rich countries such as Guinea or the Democratic Republic of the Congo. By way of illustration, in 2008 the IFC was considering a large loan to a combined mining-power-transport project to export aluminum from Guinea. The US\$5.2 billion Guinea Alumina Project was at the time proposed by the world's largest mining company, BHP Billiton, which aimed to secure \$500 million in loans from the IFC. The IFC Board was initially set to decide on the investment in late January 2009, but all Guinean projects were put on hold after the death of the former president and a military takeover of the government in late December 2008.

Guinea, and the Democratic Republic of the Congo (Maury 2008). Moreover, at least 11 countries have decided to review their mining contracts to better respond to the new demands for the social regulation of private sector development that have accompanied the rapid process of liberalization and the opening up of mineral-rich African economies to investment.⁸ Among the issues behind the call to revise African mining regimes is that of the mining sector's role within broader development strategies.⁹ Two dimensions of this vast subject are of particular importance here: the role attributed to public policies and the institutional arrangements that allow these policies to be realized, and the issue of policy space.

Paradoxically, conclusions reached by the World Bank for other world regions, including their implications for policy reforms, have not informed the assumptions and development model underpinning mining sector reforms in Africa over the last decade. For example, a 1996 World Bank study focusing on Latin America and the Caribbean clearly recognized the need for supportive public policies, the very policies that have been largely absent because of the way the state's role in mining in Africa has been redefined. The World Bank also acknowledged that a mining boom would not lead to economic diversification capable of generating long-term sustainable development without effective public policies to encourage such a process. The World Bank (1996, 3, quoted in NSI 1998, 78) stated that "exploration successes will not necessarily translate into mines, related industries, employment, and the increase in national wealth if the requisite conditions are not in place."

In the context of discussions spawned in large part by the Extractive Industry Review recommendations of 2003, reforms have been proposed by the multilateral financial organizations to improve the administrative capacity of states in the mining sector. An example of such reforms are the World Bank's recommendations with regard to reinforcing institutional capacity, adopting strategic plans to improve governance, transparency, infrastructure, telecommunications, energy, and roads, all of which are critically important. What is of note is the apparent lack of recognition of the need to reinforce the "developmental capacities" of states. In this regard, there appears to be little attempt to respond to the observations made, for example, by the Commission for Africa (2005, 128), which recognized not only the legitimacy of state intervention but also the need to reinforce the capacity of states in Africa so they might assume a larger developmental role: "Weak institutional capacity prevents the state from undertaking

8. These are: South Africa, Ghana, Guinea, Liberia, Madagascar, Niger, Nigeria, the Democratic Republic of the Congo, Sierra Leone, Tanzania, and Zambia.

9. Here one could mention the experience of countries like Liberia, which is attempting to ensure such a role for its sector. At a regional level, one could mention the work of the International Study Group (ISG) of the United Nations Economic Commission for Africa on the revision of mining regimes in Africa; an ISG report is expected in 2010. It should be emphasized that the Group has worked under very tight constraints, both financial and political. At the centre of the ISG work has been the analysis of the potential transformative and developmental role of the sector, implying a central role for public policies and intersectoral and regional approaches like "industrializing corridors." These issues highlight the need for certain preconditions, notably those concerning policy space and policy process.

its responsibilities effectively, whether planning and budgeting, managing development assistance, providing services or monitoring and evaluating progress.”

While there is discussion as to how development can be achieved by promoting activities at the community level, which is without doubt important, much less emphasis, if any, appears to be given to the role that states need to assume in ensuring positive outcomes for social and economic development at the national level. The necessary broadening of policy space to ensure a developmental role for mining implies abandoning the sectoral approach of the past and considering a wider integrated perspective that focuses on the transformative potential of mining. This implies moving beyond the perception of mining as essentially a source of revenue toward seeing it as a catalyst for building intersectoral linkages, notably by integrating mining activities into other areas, like industrial policies.

For this to happen, it is vital that countries not be obliged to abdicate policy space. With a view to providing additional certainty to investors, many developing countries have locked policy changes into fiscal stability clauses and signed various international investment agreements (IIAs). The most important agreements have been bilateral investment treaties on the promotion and protection of foreign investment. In many mineral-rich countries, the number of bilateral investment treaties has increased rapidly during the past decade (UNCTAD 2007, 161).

Discussions concerning the developmental role of mining need to be recast in a broader context, taking into account trade negotiations and other areas of decision that may condition or limit policy space. Several areas of policy choice illustrate what can be described as the narrowing of policy space for mineral-rich countries of Africa, highlighting the need for a broader approach.¹⁰ Three such areas are choice and balance between growth sectors, promoting intersectoral linkages, and industrial diversification and infrastructure development.

As previous studies have documented, alternative policies exist with regard to these areas, and through the pursuit of these alternative policies, mining could potentially be integrated into intersectoral, transformative development strategies. The questions that emerge, then, are: Why has this not happened in the past, and under what conditions might this now occur? And how might countries avoid abdicating policy space during the current process of mining regime revision in Africa?

Conclusion: Certain Conditions for the Emergence of Future Options

As illustrated by the Canadian experience, modification of the rules and procedures of mining regimes can take place *without* transforming the principles and norms on which the regime rests (see Laforce, this issue). The past experience of the reform of regulatory frameworks in Africa also eloquently illustrates this point. For example, in spite of the introduction of new principles concerning the protection of the environ-

10. This point is developed by Campbell (2006a).

ment in the 1990s, the hierarchy of values that has characterized most mining regimes in Africa to date clearly continues to condition the negotiation of future contracts and regimes. Notwithstanding the widespread recognition of the importance of environmental protection, mining projects continue to be approved, and take place in protected forests and conservation areas, as is happening at present in the Mont Nimba region of Guinea, a UNESCO World Heritage Site. While regulations often exist to address these concerns, the capacity to enforce regulations is often severely lacking, as has been documented over the last ten years by the World Bank itself, notably with regard to Madagascar (World Bank 1998, 6, quoted in Sarrasin 2004, 66). Consequently, as suggested in the approach we have adopted drawn from authors such as Strange, companies inherit important structural power, while regulatory functions are transferred either to the transnational arena (as with voluntary codes of conduct or with the performance standards of the World Bank Group), or to new local and informal arenas of regulation (as, for example, in the case of specific agreements between mining companies and affected communities). These trends explain the emergence of new legal regimes that are either local or transnational, formal or informal. As a result, the content of these regimes is defined at a level and in arenas that bypass national space and that, in turn, influence the power relations at work within the structure of the mining industry.

The approach proposed here seeks to draw attention to the conditions that help perpetuate particular structural power relations, and to the risks these trends involve in the current African context. Given the heritage of the reforms of the last two decades and the hierarchy of values present in most mining regimes in Africa, the transformation of the principles and norms on which these regimes rest depends on the creation of new institutional arrangements and political space that reflect structural relations quite different from those that have characterized the sector in the past. To date, the role played by powerful foreign actors has clearly placed severe constraints on the negotiation of future contracts and regimes. Moreover, the current reform process is characterized by the technification of issues and the danger of the decreasing accountability of the actors concerned. Consequently, the problem of the lack of capacity to enforce existing regulations is not merely a technical challenge of building "governance resource capacity" but also very much a political issue about building political and institutional capacity. If the externally driven nature of the reform process has potentially negative implications for democratic processes and state legitimacy, it also raises the question of state accountability, which is particularly critical if conflicts are to be avoided.

These trends clearly present problems of legitimacy for the activities of foreign investors themselves. Moreover, there is every reason to suggest that when tensions arise mining companies will attempt to resolve them by hiring private security forces. However, such trends are clearly not in the interests of the countries and communities concerned, nor of the companies involved. As the 2007 recommendations of the Canadian Round Tables on Corporate Social Responsibility in the Extractive Sector made clear (see article by Coumans in this issue for a detailed analysis of this process), these issues obviously involve mining companies but are of a broader scope. They also involve in a very direct manner the role that multilateral and bilateral actors, as well as interna-

tional NGOs, play in shaping the principles and practices surrounding mining regimes in Africa. The role that such actors assume in conditioning the structural relations of power that, in turn, help determine the values, norms, and practices that inform the revision of mining regimes has been largely overlooked. This significant oversight can perhaps be explained at least in part by the apparent concordance between the values and principles that have shaped mining regimes in North America, notably in Canada, and those introduced into African regulatory frameworks.

Attempts to confront historically determined social, political, and economic challenges with management solutions considered universally valid have generated contradictions that raise two fundamental issues: first, the impossibility of managing from the exterior issues as complex as those concerning institutional and economic reform, and second, the total lack of political responsibility among multilateral and bilateral actors, and international NGOs with regard to the reforms and policies they propose and at times impose. In terms of the thrust of the current reform process itself, to the extent that it remains externally driven, it continues to erode rather than reinforce state legitimacy, and to deny the involved countries the ability to determine the conditions under which mining activities take place within their territories. In turn, these problematic outcomes contribute to explaining the mounting problems of legitimacy that mining operations face on the continent. The increasing and alarming drift toward hiring private forces to secure mining operations in Africa signals how urgent it is to revisit the role external actors continue to play at this particularly critical turning point in the reform process. The current situation also points to the urgent need for the countries of origin of mining companies to assume responsibility for ensuring that mining companies respect international standards, that essential monitoring and reporting procedures are in place, and that measures of redress are taken when necessary, particularly in the context of weakened institutional and political capacity inherited from past reforms.

References

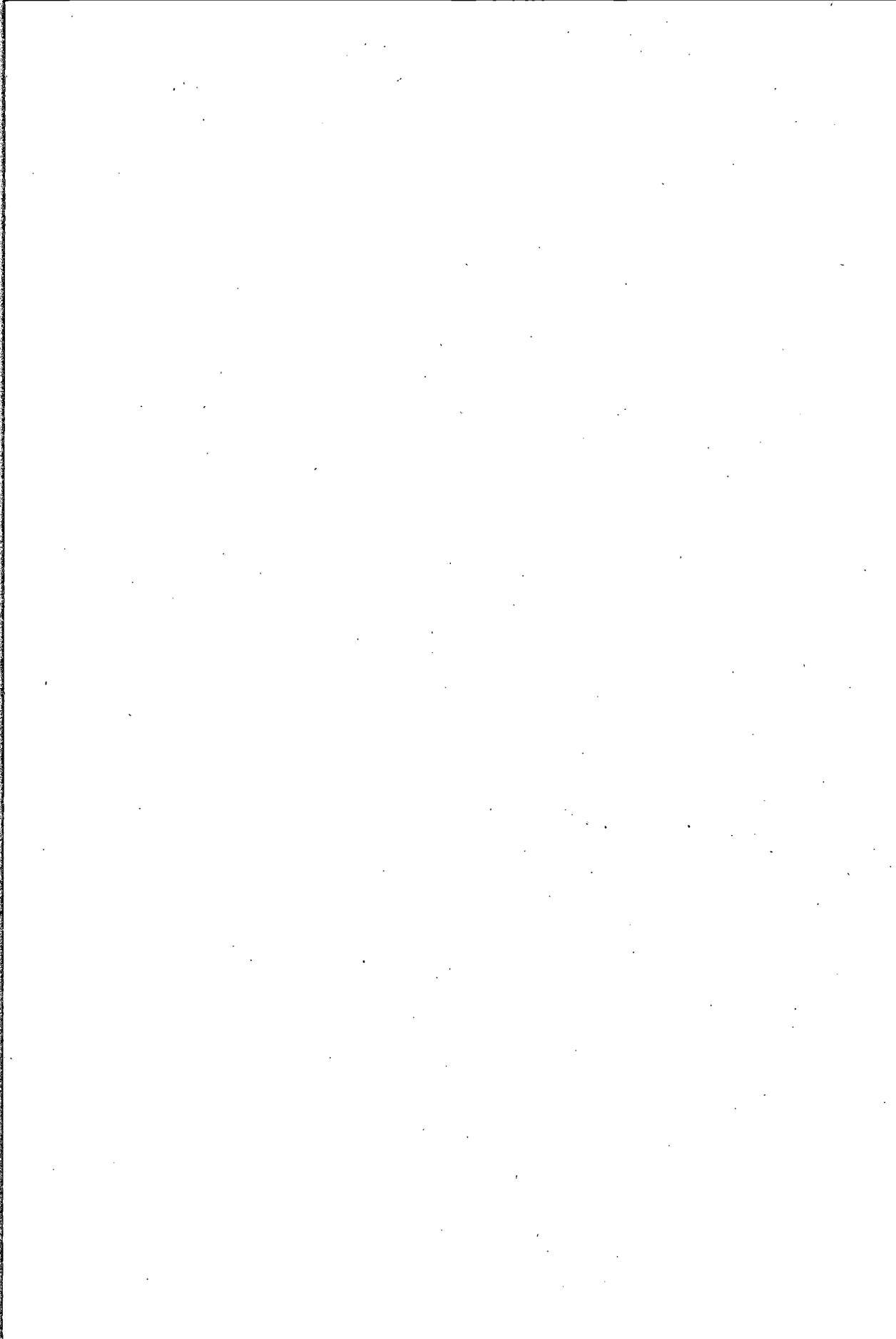
- Akabzaa, Thomas M. 2000. *Boom and dislocation: The environmental and social impacts of mining in the Wassa West District of Ghana*. Accra: Third World Network Africa.
- . 2004. Mining legislation and net returns from mining in Ghana. In *Regulating mining in Africa: For whose benefit?* ed. Bonnie Campbell, 25–29. Coll. Discussion Paper 26. Uppsala: Nordic Africa Institute.
- Barton, Barry J. 1993. *Canadian law of mining*. Calgary: Canadian Institute of Resources Law.
- Belem, Gisèle. 2008. *Quelle gouvernance pour la mise en œuvre du développement durable? L'expérience de l'industrie minière du Mali*. PhD thesis, Institut des Sciences de l'environnement. Montreal: Université du Québec à Montréal.
- Biersteker, Thomas J. 1990. Reducing the role of the state in the economy: A conceptual exploration of IMF and World Bank prescriptions. *International Studies Quarterly* 34 (4): 477–92.
- Campbell, Bonnie. ed. 1989. *Political dimensions of the international debt crisis*. London: Macmillan Press.
- . 1999. Les intérêts miniers canadiens et les droits de la personne en Afrique dans le cadre de la mondialisation. *Droits et Démocratie*, Centre international des droits de la personne et du développement démocratique. <http://www.dd-rd.ca/site/>.

- , ed. 2004. *Regulating mining in Africa: For whose benefit?* Discussion Paper 26. Uppsala: Nordic Africa Institute.
- . 2006a. Better resource governance in Africa: On what development agenda? *Minerals and Energy: Raw Materials Report* 21 (3-4): 3-18.
- . 2006b. Good governance, security and mining in Africa. *Minerals and Energy: Raw Materials Report* 21 (1): 31-44.
- , ed. 2009. *Mining in Africa: regulation and development*. London: Pluto Press, Ottawa: IDRC, and Uppsala: Nordic Africa Institute.
- Campbell, Karen. 2004. *Undermining our future: How mining's privileged access to land harms people and the environment*. Discussion Paper on the Need to Reform Mineral Tenure Law in Canada, West Coast Environmental Law Staff Counsel, January.
- Chavagneux, Christian. 1998. Peut-on maîtriser la mondialisation? Une introduction aux approches d'économie politique internationale. *Économies et sociétés: Relations économiques internationales* 34: 25-68.
- Commission for Africa. 2005. *Our common interest: Report of the Commission for Africa*. London, March 11. http://www.commissionforafrica.org/english/report/thereport/english/11-03-05_cr_report.pdf.
- Extractive Industries Review (EIR). 2003. *The World Bank Group and extractive industries. Volume I: Striking a better balance*. Final Report of the Extractive Industries Review. Jakarta and Washington, DC: The World Bank Group and Extractive Industries. December. <http://go.worldbank.org/T1VB5JCV61>.
- Keohane, Robert O., and Joseph S. Nye. 1997. *Power and interdependence*. Toronto: Little, Brown and Co.
- Laforce, Myriam. 2010. L'évolution des régimes miniers au Canada et les conditions d'émergence de nouvelles formes de régulation (The Evolution of Mining Regimes in Canada & the Conditions for the Emergence of New Forms of Regulation), *Canadian Journal of Development Studies* 30, 1-2: 49-67.
- Laforce, Myriam, Ugo Lapointe, and Véronique Lebus. 2009. Minings sector regulation in Quebec and Canada: Is a redefinition of asymmetrical relations possible? *Studies in Political economy* (Fall 2009): 47-48.
- Lapointe, Ugo. 2009. The origins of mining regimes in Canada: The legacy of the "free mining" system. Presentation at the conference *Rethinking extractive industry: Regulation, dispossession, and emerging claims*. Centre for Research on Latin America and the Caribbean and Extractive Industries Research Group, York University, Toronto, 5-7 March. <http://www.yorku.ca/cerlac/EL/papers/Lapointe.pdf>.
- Maury, Frédéric. 2008. Quand les États renégocient. *Jeune Afrique* Hors série. *L'État en Afrique* (Special Issue): 84-86.
- Naito, Koh, Felix Remy, and John P. Williams. 2001. *Review of legal and fiscal frameworks for exploration and mining*. London: Mining Journal Books.
- North-South Institute (NSI). 1998. Beyond Best Practice: The Mining Sector. In *Canadian Development Report 1998: Canadian corporate and social responsibility*, 79-99. Ottawa: The North-South Institute.
- Obi, Cyril. 2001. Global, state and local intersections: Power, authority and conflict in the Niger Delta oil communities. In *Intervention and Transnationalism in Africa: Global-Local Networks*, ed. T. Callaghy, R. Kassimir, and R. Latham, 173-93. Cambridge: Cambridge University Press.
- . 2004. The oil paradox: Reflections on the violent dynamics of petro-politics and (mis)governance in Nigeria's Niger Delta. *Africa Institute Occasional Paper*, No. 73. Pretoria: Africa Institute of South Africa.
- Onorato, William T., Peter Fox, and John E. Strongman. 1998. *World Bank Group: Assistance for minerals sector development and reform in member countries*. World Bank Technical Paper, No. 405. Washington, DC: World Bank.
- Sarrasin, Bruno. 2004. Madagascar: A mining industry caught between environment and development. In *Regulating mining in Africa: For whose benefit?* ed. Bonnie Campbell, 53-66. Coll. Discussion Paper 26. Uppsala: Nordic Africa Institute.

- Stopford John M., Susan Strange, and John S. Henley. 2001. *Rival states, rival firms: Competition for world market shares*. Cambridge: Cambridge University Press.
- Strange, Susan. 1989. Toward a theory of transnational empire. In *Global changes and theoretical challenges: Approaches to world politics for the 1990s*, ed. Ernst-Otto Czempiel and James N. Rosenau, 161–76. Lanham, MD: Lexington Books.
- . 1994. *States and markets*. 2nd ed. London and New York: Continuum.
- Szablowski, David. 2007. *Transnational law and local struggles: Mining, communities and the World Bank*. Oxford and Portland, OR: Hart Publishing.
- United Nations Conference on Trade and Development. (UNCTAD). 1995. State participation and privatization in the minerals sector. Report by UNCTAD Secretariat. *Minerals and Energy: Raw Materials Report* 11 (3): 2–3.
- . 2005. *Economic development in Africa: Rethinking the role of foreign direct investment*. New York and Geneva: United Nations.
- . 2007. *World investment report*. Geneva: UNCTAD.
- World Bank. 1992. *Strategy for African mining*. World Bank Technical Paper, No. 181, Africa Technical Department Series, Mining Unit, Industry and Energy Division. Washington, DC: World Bank.
- . 1996. *A Mining strategy for Latin America and the Caribbean: Executive summary*. Mining Unit, Industry and Energy Division. Technical Paper No. 345, Washington, DC: World Bank. December. <http://www-wds.worldbank.org/>.
- . 1998. *Project appraisal document for a mining sector reform project*. Report no. 17788-MAG, 2 June. Washington, DC: World Bank.
- . 2004. *Guinea; Strengthening public expenditure management for poverty reduction and growth: Public expenditure review*. Report no. 27347-GUI, 10 June. Washington, DC: World Bank.
- World Trade Organization (WTO). 2005. *Trade policy review; Republic of Guinea: Report by the Secretariat (Revision)*. Report no. WT/TPR/S/153/Rev.1. Geneva: Trade Policy Review Body, 14 December.



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Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil-Rich Niger Delta

Cyril I. Obi

ABSTRACT The article analyzes the ways in which globalized oil extraction results in the dispossession of local people and fuels violent resistance in Nigeria's oil-rich, but impoverished Niger Delta. This follows from the transformation of resistance from non-violent to violent forms, involving well-publicized attacks by Niger Delta, ethnic-minority militias against the Nigerian state-oil multinationals partnership. The main argument is that oil extraction and the inequitable distribution of its benefits fuel disenchantment and conflict between the Niger Delta people, and those regarded as the exploiters and beneficiaries of the oil resources in the region. It also examines the local and transnational dynamics and ambiguities underpinning resistance politics and the prospects for resolving the contradictions spawned by "fossil fuel capital" in the Niger Delta.

RÉSUMÉ Cet article analyse comment l'extraction du pétrole à l'échelle mondiale mène à l'expropriation des populations locales et alimente la vive résistance dans le delta du Niger, une zone appauvrie du Nigeria pourtant riche en pétrole. Cette situation résulte de la mutation des formes de résistance non violentes en des manifestations violentes, qui ont conduit aux attaques largement publicisées des milices des minorités ethniques du delta du Niger contre le partenariat État nigérian-multinationales pétrolières. L'argument principal est que l'extraction du pétrole et la distribution inéquitable des bénéfices qui en découlent alimentent la désillusion et les conflits entre la population du delta du Niger et ceux qui sont perçus comme les exploitants et les bénéficiaires des ressources pétrolières de la région. Les dynamiques et les ambiguïtés locales et transnationales à la base des politiques de résistance sont également examinées, de même que des pistes de solutions aux contradictions engendrées par le « capital de combustible fossile » du delta du Niger.

Introduction

This article examines the linkages between oil extraction, dispossession, and the escalating violence in Nigeria's Niger Delta involving local ethnic-minority militias protesting against the Nigerian state-oil multinationals alliance that has extracted oil from the region for five decades, with little or no benefit accruing to the inhabitants of the region. Media reports vividly document acts of violence: sabotage of oil pipelines and installations, clashes between militias and government troops, killings, and a thriving trans-

national trade in stolen oil (or illegal oil bunkering) that reportedly accounts for the estimated loss of one-tenth of Nigeria's annual oil production (UNODC 2009, 25–26).

The insurgency rides on the groundswell of popular anger linked to the alienation, dispossession, and neglect of the ethnic-minority people of the Niger Delta region of Nigeria, by the transnational forces of “fossil fuel” capitalism. Central to this struggle is the quest of the local forces of resistance to contest, repossess, and control their natural resources, particularly oil and gas. Resistance in this context refers to “a collective action directed at blocking further alienation, expropriation, and environmental degradation. It represents a mass project of restitution and self-determination” arising from the exploitation of the region's oil by multinational oil corporations (MNOCs) backed by the Nigerian state (Obi 2005, 318).

Between late 2005 and mid-2009, attacks against oil installations forced the shut-down of between 25% and 40% of Nigerian's oil production and exports, leading to substantial loss of revenues and profits by the state-oil multinationals alliance. These militia attacks (in addition to oil theft) have largely accounted for a drop in daily oil production from about 2.6 million barrels in 2005 to 1.3 million barrels in June 2009 (Sanusi Barkindo, Group Managing Director of Nigerian National Petroleum Corporation, quoted in Nyam 2009). The resultant loss of revenue is estimated in billions of dollars (Idemudia 2009, 92).

The transformation of initially uncoordinated, non-violent protests into a full-blown pan-Delta insurgency and the attendant insecurity in the region has continued to occupy the attention of strategic and policy analysts and oil multinationals, whose multi-billion dollar investments are at grave risk. Also at stake are the energy security and strategic interests of oil-dependent Western powers, which back the oil multinationals and rely on oil imports from the Niger Delta.

The article analyzes the dynamics of local resistance against a transnational oil alliance comprising the oil multinationals, their home governments, the Nigerian state, and ruling elite coalitions built within its structure of power, of which a small but significant faction is of Niger Delta origin. Resistance groups tap into ethnic minority grievances to mobilize local support. They also connect to, and network with, global activist groups and organizations to “transnationalize” their resistance against a globalized oil production that robs them of their rights and resources, and pollutes and impoverishes the region and its people (Watts 2006; Amnesty International 2009, 14–20).

This article is organized into four sections. The introduction is followed by a conceptual section that examines the concepts of extraction, dispossession, and resistance in relation to the logic of globalization and its “discontents” in the Niger Delta. The paper then proceeds to examine the local, ethnic, and transnational ramifications of the politics of local resistance. The concluding section sums up the arguments and the prospects for the future.

Extraction and Dispossession: Conceptual Issues

Oil, extracted from the earth's bowels, is commoditized through market relations into a fuel for profit. Given its nature as the most commercially viable form of energy, oil is considered a linchpin of capitalism on a global scale. It is also the fuel of strategic and military power, involving high stakes in guaranteeing uninterrupted supplies to established and emerging (oil-dependent) powers across the world.

The strategic location of oil in global capitalism is a key point, particularly the social relations of power that are spawned around oil extraction and commoditization. Oil-based extraction and accumulation involve a combustible mix of exploitation, violence, and the large-scale removal and transfer of energy resources and wealth from the sites of production to those of consumption, accumulation, and distribution. Violent conflict is often the outcome of struggles over oil. Of note in this context is the quest to redress perceived injustices embedded in the separation of those that profit from, and enjoy the benefits of, oil production and commoditization (the transnational alliance of petro-state, oil multinationals, and ruling elites), from the others (the dispossessed in local communities from under whose lands and waters the oil is extracted).

Dispossession results from the ways in which "capitalism" takes "away the rights people have over their natural resources" (Logos 2006). Harvey's (2007, 34) depiction of accumulation by dispossession "as the ways assets, wealth and income are transferred from the mass of the population toward the upper classes or from vulnerable to richer countries" aptly captures the situation in the Niger Delta. Since 1970, oil revenues from Delta production had contributed \$350 billion to Nigeria while the region remained one of the most impoverished parts of the country (UNDP 2006; ANEEJ 2004).

The Niger Delta has been described as "one of the world's most severely petroleum-impacted ecosystems and one of the 5 most petroleum-polluted environments in the world" (Niger Delta Natural Resource Damage Assessment and Restoration Project 2006). Harvey's (2003, 162) position that "accumulation by dispossession in our times has provoked political and social struggles and vast swaths of resistance" is exemplified by the resistance in the Niger Delta. Accumulation by dispossession operates in complex ways. Though transnational, it involves various layers and meshes, which bring together various forces and actors at different scales and levels. The structure of extraction and dispossession in the Niger Delta reflects such complex layering.

According to Watts (2004, 60), accumulation operates through an "oil complex" comprising "a statutory monopoly over mineral exploitation, a nationalized oil company (NNPC) that operates through joint ventures with oil majors who are granted territorial concessions, the security apparatuses of the state protecting costly investments and ensuring the continual flow of oil, and an institutional mechanism 'derivation principle' by which federal oil revenues are distributed to the states and producing communities, and not least the oil producing communities themselves." This principle has been a source of contestation between Nigeria's three major ethnic groups—Hausa-Fulani, Yoruba, and Igbo, who dominate the federal government—and the ethnic minorities of the oil-producing Niger Delta states.

Watts goes on to note that “central to the oil complex is its enclave character, the extent to which it is militarized as a national security sector, and a dominant fiscal sociology, namely the massive centralizing consequences of vast unearned income, flowing to the federal exchequer, derivative of the alliance of state and capital.” The result is that the Nigerian state acts transnationally to facilitate oil extraction, with the ruling elite coalition using state power to accumulate oil wealth. It also uses the “privatized” state and its coercive force—the Joint Military Task Force (JTF) established in 2003—to protect oil installations and facilitate extraction by crushing protest and resistance to oil industry operations. The Nigerian state, the ruling elite, and its transnational partners use oil wealth to reinforce control over power and continue reproducing oil-based, transnational accumulation in the Niger Delta.

The Niger Delta

The Niger Delta is a vast coastal plain at the southernmost part of Nigeria where the river Niger drains into the Atlantic Ocean in the Gulf of Guinea. Considered the largest wetland in Africa and also among the largest in the world, it covers 70,000 square kilometers. Between 7,000 and 25,000 square kilometers of the Delta are covered by mangrove forests, swamps, coastal ridges, and forests. As such, the region is very fertile, providing a habitat for a vast biodiversity and supporting a high population density of people who derive their livelihoods from its rich resource base. Its inhabitants are mainly ethnic minorities with a long history of agitation for self-determination. The discovery of oil in the region in 1956, which today accounts for most of Nigeria’s oil and gas production and most of its national revenue, has affected the region’s significance in economic, strategic, and political terms.

In spite of the immense wealth generated by oil production in the Niger Delta, it has remained one of the most impoverished parts of Nigeria. The Niger Delta Human Development Report’s (2006, 15, 18, 44) findings indicate “inadequate, unavailable and poor quality infrastructure” and high unemployment rates. The “unstable social, economic and political situation ‘has helped open the door to HIV&AIDS’, and high levels of poverty, estimated at an average of 69 per cent” (17, 57–58). This poverty in the midst of wealth is a contributory factor to the violence that has engulfed the region as people seek to win back resources for their survival and development.¹

The Nigerian State and Oil

The history of the oil industry is embedded in the colonial oil and mineral laws of 1887, 1907, and 1914 (amended in 1925, 1950, and 1958 respectively), which vested the ownership of oil in the colonial state and gave an oil exploration monopoly in Nigeria to British or British-allied firms (Omeje 2006, 35–36). However, by 1959, the oil exploration monopoly held by Shell-BP over the country was broken and other Western oil companies were granted oil concessions. In the period immediately after independence

1. See Idemudia in this issue for the map of the Niger Delta.

in 1960, the Nigerian state exercised little or no oversight over the activities of the oil multinationals and their domination of the oil industry. However, during the civil war (1967–1970) Nigeria's military rulers enacted decrees that vested the ownership of oil and gas in the Nigerian state. Of note in this regard are four pieces of legislation: *Oil in Navigable Waters Act* of 1968, the *Petroleum Act/Decree* of 1969, *Exclusive Economic Zone (EEZ) Decree* of 1978, and the *Land Use Act* of 1978.

The *Petroleum Act/Decree No. 51* of 1969 updated earlier mineral and oil acts. Section 1 of the decree provided that "the entire ownership and control of all petroleum in, under or upon any lands to which this section shall be vested in the state." Section 2 also granted the oil minister "the sole right to grant oil mining leases to oil companies" (Obi 2001, 26). This decree, which expropriated all the oil in the Niger Delta in the name of the Nigerian federal military government, was made by the ruling military council and did not involve the people of the Niger Delta.

The *Land Use Act* of 1978 (derived from the 1977 *Land Use Decree*) attempted to unify the various land tenure systems in Nigeria and place all land in the federation in the trust of the state governments (Obi 2001, 26; Omeje 2006, 37). The impact of this law on the Niger Delta was serious, as the people viewed it as an act of injustice. As I have noted elsewhere (Obi 2001, 27), "having lost the ownership of their land to the government, the most the oil communities could claim from oil multinationals was compensation or "surface rents."²

Since the oil-producing communities had no legal claim to the "ownership" of oil produced from under their lands and waters, they had little or no leverage in making successful compensatory claims as a result of land expropriation or pollution by the oil industry. The situation remained unchanged even after Nigeria made the transition from military to democratic governance. In the same regard, the *Exclusive Export Zone Decree* and the 1999 *Nigerian Constitution*, section 44 (3), further alienated the people from the oil wealth by vesting the control of oil in the government of the federation "as may be prescribed by the National Assembly" (Ebeku 2001).

Oil is the fiscal basis of the Nigerian state, accounting for over 90% of export earnings and 80% of federal revenues. Perhaps the most contentious role of the Nigerian state relates to the distribution of oil revenues in a multi-ethnic, but highly centralized federation. At its heart is the feeling that oil wealth from the Niger Delta is controlled by ethnic-majority ruling elites from other, non-oil producing parts of the country, which dominate the federal government, while the ethnic minorities in the region that produces the oil—the "goose that lays the golden eggs"—suffer from neglect, pollution, and underdevelopment. This is partly the result of policy shifts in the revenue allocation principle of derivation, which implied that national revenues should be distributed on the basis of returning a proportional ratio of revenue contributed to the centre to the contributing unit (region/state).

This principle favoured the ethnic majorities whose regions between 1953 and 1960 had retained 100% of revenues. That figure was reduced by 50% between 1960 and 1970.

2. Above the surface of the ground; for example, crops or trees of economic value, buildings, shrines, burial places, etc.

That proportion applied until 1970 when new principles of minimum responsibility of government (40%), population size (40%), social development factor (15%), and internal revenue effort led to the progressive reduction of the derivation principle from 45, to 3, and then to 1.5%, before it was increased to 13% in 2000.

The timing of the abandonment of the derivation principle coincided with the period oil became the main source of revenues, and the regions/units that coincided with ethnic majority groups no longer produced most of national revenues. The shift away from the derivation principle fuelled resentment and anger among ethnic/oil minorities of the Niger Delta amid claims that the oil of the region was being “colonized” by the majority ethnic groups (Ebeku 2008, 400–403; Ukiwo 2009, 2), notwithstanding the fact that a faction of the Niger Delta’s ruling elite is aligned to the hegemonic, national, ruling elite.

The argument that the federal government has used the oil proceeds largely for corrupt enrichment, primitive accumulation, or development of other parts of Nigeria often glosses over the involvement of the Niger Delta’s ruling elite in corruption and primitive accumulation of the region’s resources. This elite faction has adopted the rhetoric of self-determination to argue for the transfer of more oil revenues, based on a return to the 50% oil derivation principle of revenue allocation to the region.

Its ambivalence can be gleaned from its covert ties to militias in the region, while at the same time it benefits as a local faction of the national ruling elite by riding on local grievances. In this regard, two former Niger Delta state governors, Lucky Igbinedion and Diepriye Alameseigha, have been successfully prosecuted for corruption in Nigeria, while a third, James Ibori, is wanted abroad to answer to charges related to fraud and money laundering, with his associates standing trial in Britain on corruption-related charges. This partly explains why, despite increases in oil derivation from 1.5% in the early 1990s to 13% in 2000, there has not been a corresponding impact on the low quality of life among the majority of the region’s inhabitants (Human Rights Watch 2007, 20; ANEEJ 2004, 17–20).

The Transnational Connection

According to the Nigerian Oil and Gas Sector Reform Implementation Committee (OGIC), five multinational oil corporations (Shell, Chevron Texaco, Exxon Mobil, Total, and Agip [Eni])—account for over 95% of Nigeria’s oil and gas production (Awhotu 2008). Oil multinationals are bound to the Nigerian state through contracts that underpin the transnational nature of oil extraction/dispossession and the sharing of the profits.

The point of “unity” is the common interest in extraction and profit. Thus cuts to oil production and financial losses as a result of militia attacks hurt the state and oil companies, prompting the Nigerian state to seek to act more decisively in enforcing the conditions for uninterrupted oil supplies from the Niger Delta. It has largely resorted to the militarization of the region to end the resistance from armed groups.

It is not difficult to fathom the contribution of oil from the Niger Delta to the record profits being announced by oil multinationals. Exxon Mobil, the world’s largest oil

company, announced record profits for 2007 approximating \$40.6 billion, with total company sales of more than \$404 billion, exceeding “the gross domestic product of 120 countries” (Mouawad 2008). The same scenario holds true for Royal Dutch Shell, which operates in over 110 countries and made \$27.56 billion in profits in 2007, and for Chevron Texaco, which announced record profits of \$18.7 billion in 2007 (BBC 2008a; Porretto 2008; Macalister 2008). While it has been difficult to come by the exact figures of the “contribution” of Nigeria to these record profits (Nwachukwu and Bala-Gbogbo 2009), it cannot be denied that its oil contributed to megaprofits.

Five decades of oil extraction have yielded a lot for oil multinationals and the state. In the first phase of the Nigerian oil industry, MNOCs held sway over the industry. In the second phase of “indigenization” in the 1970s, government in principle assumed ownership of the industry but institutionalized its partnership with global oil capital through joint oil venture agreements, and production and risk-sharing contracts. Although government officially controls access, and gets a larger share of oil profits, MNOCs control production and have considerable leverage over costs, which government has little or no capacity to monitor. It is even reported that the Nigerian government “cannot say exactly how much oil is lifted from the country” and “relies almost entirely on whatever the oil companies tell them” (Nwachukwu and Bala-Gbogbo 2009), suggesting also that the government could be shortchanged by its partners. Thus, the transnational oil partnership is reinforced by state dependence on oil multinationals in order to participate effectively in accumulation and realize its own share of oil revenues and profits.

Resistance Politics in the Niger Delta

The Niger Delta has a long history of resistance politics, dating back to the eighteenth and nineteenth centuries, when the region opposed the early attempts of European traders to gain access to the interior where the goods traded on the Atlantic coast were sourced. By the late nineteenth century resistance by some local potentates was finally overcome by the British, setting the stage for the colonization of Nigeria. The British divided Nigeria into three regions corresponding with the major ethnic groups (Hausa-Fulani in the North, Yoruba in the West, and Igbo in the East), thus setting the stage for ethnic cleavages and politics, including the agitation of ethnic minorities against perceived ethnic majority domination. Nigeria’s independence in 1960 only changed the character of the struggle for self-determination. This time the ethnic groups of the Niger Delta region, who were minorities in two of the three regions of a federation dominated by three numerically larger ethnic groups, sought to have autonomous regions of their own to prevent their continued marginalization and neglect by the larger groups.

The earliest violent attempt after independence to forcibly assert regional autonomy over the Niger Delta took place in February 1966, when an ethnic minority Ijaw militant, Isaac Adaka Boro, led the Niger Delta Volunteer Force (NDVF) in an abortive attempt to secede from Nigeria and establish a Niger Delta republic. At stake then, as now, was self-determination and the ownership and control of the oil in the region (Boro 1982, 119–120), which Boro and his supporters feared would be seized by

the Eastern region government, dominated by the Igbo ethnic majority, and the new "unitarist" Nigerian military government, led by General J.T.U. Aguiyi-Ironsi, an Igbo officer (Obi 2001, 21).

Initially sentenced to death after being found guilty of treason by a court, Boro and his followers were freed, after another military coup led by military officers of Northern origin resulted in Ironsi's overthrow and death, and his replacement with Colonel Yakubu Gowon as the new head of state. Within a year, the federal military government under General Gowon created 12 states in 1967, of which three—Rivers, Mid-West, and South-East—were in the Niger Delta. By this time, oil, largely found in, and produced from, the Niger Delta, had become a significant factor in Nigerian politics.

Upon his release, Boro joined the Nigerian army and fought in the civil war on the federal side to defend the interests of the ethnic minorities of the Niger Delta from perceived Igbo domination and to prevent the oil fields of the region from falling into the hands of the rebel Biafran (Igbo) forces (Boro 1982). Boro died at the war front shortly before the Nigerian civil war ended in 1970. His bravery and exploits in furthering the cause of Ijaw freedom made him a hero in the eyes of the people, and his legacy was to be revived in the 1990s by Niger Delta militants struggling for local autonomy and resource control.

Several developments after the civil war ended in 1970 had implications for the struggle of the Niger Delta ethnic minorities. These included the increased transfer and centralization of the control of oil revenues from the regions to the federal military government, and the vast expansion in local oil production and its impact on the fragile Niger Delta environment. This provided some justification for renewed agitation by the ethnic minorities that felt that the federal military government had shortchanged them: they supported it during the civil war, only to lose access to a considerable proportion of the oil produced from their region. Rather than having a right to 50% of oil revenues on the basis of the derivation principle of revenue allocation, their share was progressively reduced until it dropped to a mere 3% in the early 1980s. Various ethnic minority groups such as the Ijaw, Ogoni, Urhobo, Isoko, Ilaje, Egi, Ikwerre, and Itsekiri had begun to remobilize using peaceful methods to protest against the activities of oil companies and neglect by the government. These took the form of petitions, reports, and articles in local newspapers.

Pressure groups also emerged to demand the creation of new states in the region and greater representation in federal institutions. The expansion of the oil industry, the economic crisis following the fall in world oil prices in the early 1980s, and the adverse socio-economic effects of economic reform policies contributed to worsening conditions in the Niger Delta. These in turn contributed to the intensification of the struggles in the Delta.

Current Dynamics of Resistance Politics and Conflict

The militarization of oil extraction has percolated throughout Niger Delta society, contributing to the shift from non-violent to violent resistance. Resistance has been largely framed in the rhetoric of "resource control." This includes the demand for local autonomy (within a restructured and decentralized Nigerian federal state) and for control of the natural resources of the Niger Delta by the ethnic minorities of the region. But the campaign is not entirely free of certain ambiguities and contradictions. It is important to note Gramsci's argument on the "ambiguity of resistance" (Mittleman and Chin 2005, 17–27) in seeking to fully understand the calculations of expediency and fluid dynamics that underpin the formation, divisions, and shifting positions of the various actors: ethnic minority organizations, militias, and elite factions within the Niger Delta resistance coalition.

Although rooted in the oil-rich Niger Delta, resistance is by no means limited to the region. It spans other levels, national and global, in what can be termed a "geographical rescaling," with various actors and flows interacting in a complex tangle. Depending on the specificities of each moment, or calculations of expediency, they seek to block the process of oil-based accumulation. The strategies deployed also include mobilizing ethnic minority/communal organizations or militias outside of mainstream political parties and pressure groups, using local traditions/histories and global media to popularize local causes, which are often hinged on repossessing the control of oil.

It is important to note that the composition of the resistance "coalition" is neither homogenous nor fixed. It is constantly evolving, with ethnic minority militia opposed to the state-oil alliance entering into expedient partnerships with Niger Delta ruling elite factions and state officials, some of which are allied to the same national ruling elite that is perceived to be the main beneficiary of the wanton exploitation of the region.

The basic assumption that flows through the resistance discourse is that oil extraction is synonymous with dispossession, marginalization, and injustice. This can be gleaned from the *Ogoni Bill of Rights*, from the Movement for the Survival of Ogoni People (MOSOP), and the *Kaiama Declaration* of the Ijaw Youth Council (IYC). These are charters of demands by the Ogoni and Ijaw ethnic minority groups of the Niger Delta who seek to reclaim control and ownership of their natural resources for their own development. It is also writ large in the current campaign and demands of the Movement for the Emancipation of the Niger Delta (MEND)—the most recent and insurgent face of Ijaw pan-Delta resistance (Obi 2008, 423–428; Ukiwo 2007), to be discussed in the following section.

MOSOP moved its struggle to the next phase in the 1990s after its demands for "political autonomy," including "the right to the control and use of a fair proportion of Ogoni economic resources for Ogoni development" as articulated in the *Ogoni Bill of Rights*, was ignored by the federal government. MOSOP linked up with transnational rights advocacy networks such as Amnesty International, Human Rights Watch, Rainforest Action Group, Sierra Club, and Friends of the Earth to globalize its local resistance and increase its pressure on the government and on Shell, the largest onshore

multinational oil operator in the Niger Delta. It demanded a stop to the environmental degradation of Ogoniland, then payment of oil royalties, compensation for damage already done, and respect for the rights of the Ogoni people. MOSOP's spokespersons showed how Ogoni's resources were being tapped by the state-oil alliance, pointing also to the pollution and degradation of the environment as threatening the existence of the Ogoni.

The MOSOP campaign against Shell became well-known and effective locally and internationally before its "revolution" was literally beheaded in November 1995 by the federal military government. Although the fate that befell MOSOP's leaders, nine of whom were hanged, was to send a signal to other ethnic minority groups that the government would not brook any challenge to its control of oil, Ijaw youth took up the struggle from 1997 onwards. In December 1998, the Ijaw Youth Council was formed at a meeting of Ijaw activists and representatives from 40 Ijaw clans from across the coastal states of southern Nigeria. It issued the *Kaiama Declaration* (KD), which insisted that "we cease to recognize all undemocratic decrees that rob our peoples/communities of the right to ownership and control of our lives and resources, which were enacted without our participation and consent" and demanded the "Ijaw control of Ijaw oil."

Like MOSOP, the IYC appealed to the youth and ordinary people by drawing upon Ijaw traditional beliefs about justice and resistance. This included the use of *Egbesu*, an Ijaw god or deity of war, whose real significance lay deep in Ijaw cosmology as a symbol of spiritual protection, conferring invincibility from bullets or other forms of harm, for the Ijaw when they were fighting a "just war" for liberation. *Egbesu* initiation rites by Ijaw traditional priests were believed to embolden Ijaw youth intent on joining the resistance militia.

In late December 1998, the IYC mobilized the Ijaw through Operation Climate Change, a program of non-violent protest demanding that all oil companies leave the Niger Delta before the end of the year. Rather than negotiate with IYC or respond to the demands made in the KD, the military government sent in troops backed by warships that forcefully put down the protests in January 1999.

When Nigeria returned to democratic rule in May 1999, expectations were initially high in the Niger Delta that this would lead to the demilitarization of the region, reduce tensions, and bring "democracy dividends" to the people. At the same time, the Niger Delta faction of the ruling elite had made the rounds in an attempt to co-opt the leadership of the various social movements and the ethnic and communal organizations, with a view to deradicalizing and demobilizing them or using them for narrow or personal political purposes.

After the 1999 elections, government security forces remained in the Niger Delta. When a criminal gang operating from Odi, an oil-producing community in Bayelsa state, killed some police officers, the town was invaded by the Nigerian army, ostensibly to apprehend the criminals. This punitive expedition resulted in the razing of the entire community and left thousands injured, homeless, or dead. Although the abduction of police officers in Odi was an isolated event, it did not stop military forces from raiding other communities in the Niger Delta such as Olugbobiri, Liama, and Gbarantoru (Human Rights Watch 2002).

The militarization of the region dialectically fed into violent resistance by reinforcing the view that the oppressors would neither listen to the people's demands nor respect their rights. Apart from the perceived "failure" of peaceful protest to effect a change in the attitude of the state-oil alliance toward the Niger Delta, violent mobilization within and between local communities, alongside elite factionalization, became a source of empowerment for many youth. They adopted violence in navigating the complex terrain of survival in the region, pressuring the local elite and resisting the predatory instincts of the state-oil alliance and its local allies. This fed into a proliferation of militias and criminal gangs in the region (Coventry Cathedral 2009, 109–131), a development that partly led to the blurring of the boundaries between violent criminality and resistance.

The current dynamics suggest a considerable difficulty in differentiating the upsurge in criminality from that in violent resistance. Ikelegbe (2008) identifies three types of militias in the Niger Delta: insurgent, deviant insurgent, and criminal armed groups. The insurgents are described as the fighting arms of ethnic minority mobilization against the state-oil alliance. Examples include the Federated Niger Delta Ijaw Communities (FNDIC), the Movement for the Survival of Ijaw Ethnic Minorities in the Niger Delta (MOSIEND), the Niger Delta Peoples Volunteer Force (NDPVF), and MEND, all affiliated to the Ijaw/Niger Delta resource control project. Insurgent deviant groups either evolve into insurgent militia or break away from them. In some cases they evolve from campus fraternities. They are led by local "warlords," operating at the street, community, or ethnic level, with ties to members of the ruling elite, who deploy them for a mix of political and quasi-criminal activities, including oil theft. Examples include Dee Gbam, De Well, Bush Boys, Icelanders, and the Niger Delta Vigilantes (NDV). Criminal armed groups exist basically for self-enrichment and engage in violent crimes. It should still be noted that Ikelegbe's categories, though useful, are not exhaustive, as individuals and groups flow across the boundaries between one category and the other, based on exigent calculations and complex in-group dynamics that are difficult to capture.

To illustrate this point, in 1999, three Niger Delta state governors were able to penetrate and sponsor some of these armed groups in the region to unleash violence upon, and intimidate, their political opponents and voters. Of note was the governor of Rivers state, who got two of the leaders of such groups—Mujaheed Asari Dokubo (later, with the governor's support, president of the IYC) and Ateke Tom (then leader of the Okrika Vigilante, later Niger Delta Vigilantes)—to "help" him during the 1999 and 2003 elections (Best and Kemedi 2005; Manby 2004). However, after winning power, the politicians abandoned these armed groups. Asari and Ateke were believed to have turned their attention to the transnational illegal oil bunkering networks, collecting tolls on the trade, providing security to oil bunkering crews, selling stolen oil, or operating illegal oil refineries whose products were sold below market prices.

By involving themselves in illegal oil bunkering and getting payoffs from local political patrons or oil companies, militia leaders gained access to funds with which they stockpiled sophisticated weapons, built camps, and recruited and trained fighters. They also gained autonomy from their erstwhile political patrons, giving them space to pur-

sue alternative agendas. Of note in this regard was Asari Dokubo, who in 2003 broke off his association with Governor Odili, whom he accused of "rigging the 2003 elections in Rivers state," and formed the Niger Delta Peoples Volunteer Force (NDPVF), ostensibly to fight for Ijaw rights (Manby 2004). A year later bloody conflict ensued between NDPVF and NDV, with the latter believed to be backed by the state government seeking to destroy Asari's influence, particularly after he adopted populist rhetoric in promoting his credentials as a defender of Ijaw ethnic minority rights. Shortly after, he and Ateke signed a peace agreement facilitated by mediators in Abuja in October 2004.

It is also believed that some prominent politicians and governors of two other Niger Delta states, Bayelsa and Delta, had links with some of the militias in their domains and used them in rigging elections, among other things. In some parts of the Delta, militia and gang leaders were indirectly paid by oil companies and installations to protect oil installations, and fight against community associations or individuals who were disturbing oil operations.

MEND: The Militarization of Resistance?

The most potent militant group engaging in local resistance, but targeting a global audience, is the Movement for the Emancipation of the Niger Delta (MEND). As a coalition of Ijaw armed groups across the region, MEND itself has not been free of factionalization (Obi 2008, 425), even if a core group has remained fairly consistent in its methods and principles. MEND is believed to have been formed between December 2005 and January 2006. On January 11, 2006, it attacked the East Area (EA) oil field off the Niger Delta coast, abducting four oil workers who were held for 19 days (Obi 2008, 60). It had its roots in a loose, pan-Delta coalition, including the Federated Niger Delta Ijaw Communities (FNDIC), the Niger Delta Peoples Volunteer Force (NDPVF), and other armed groups from Delta, Bayelsa, and Rivers states (Ukiwo 2007; Okonta 2007; Coventry Cathedral 2009, 123–124). MEND decided to strike again in February 2006, after an attack by the JTF on Okerenkoko in the Ijaw clan of the Western Delta ostensibly to put an end to the activities of illegal oil bunkerers. This time, MEND fighters attacked "Shell's flow stations, pipelines, and the Forcados oil tanker platform, leading to a significant reduction in Nigeria's oil production" (Obi 2008, 61).

Since then, the group has attracted international attention to the plight of the Ijaw and its resistance campaign by taking foreign oil workers hostage, demonstrating the inability of Nigerian security forces to stop its attacks and sabotage of oil installations through the effective use of the global news media. By sending emails and pictures to the world's leading news agencies and local newspapers, and by taking journalists to its camps in the swamps of the Niger Delta (Junger 2007), MEND has tried to distance itself from, and has criticized, the Niger Delta faction of the ruling elite as well as opportunistic criminal gangs posing as militants. The Movement has also tapped into Ijaw traditional beliefs and sense of collective grievance to gain legitimacy and give voice to its demand for resource control and social justice. It has however gained most attention by its threats to "cripple Nigerian oil exports" (IRIN 2006).

MEND has been profiled by the Memorial Institute for the Prevention of Terrorism (MIPT 2007) as “an active terrorist group that uses violent means to support the rights of the ethnic Ijaw people in the Niger Delta.” This profile dwells more on labelling than analyzing the circumstances within which MEND emerged and the content of its messages. It aims at constructing the appearance of an imminent “terrorist threat” to Western energy interests that may appeal to some corporate/state actors, when what is called for is a more nuanced and informed view of MEND. Such a reading will locate MEND’s emergence in “the lethal cocktail of economic deprivation, military dictatorship and worsening environmental crisis” in the Niger Delta, and its tapping into “the fifty year Ijaw quest for social and environmental justice in the Niger Delta” (Okonta 2007, 7–11).

While MEND has abducted foreign oil workers, it has released all such hostages after a period, all unharmed. This lends some credence to the view that foreign hostages are used to draw international attention to its cause and to put pressure on the state-oil multinationals alliance. In an interview with Brian Ross, Jomo Gbomo, the spokesperson of MEND, elucidated the objectives of the group:

The Movement for the Emancipation of the Niger Delta (MEND) is an amalgam of all arm bearing groups in the Niger Delta fighting for the control of oil revenue by indigenes of the Niger Delta who have had relatively no benefits from the exploitation of our mineral resources by the Nigerian government and oil companies over the last fifty years. (Ross 2007)

MEND’s violent campaign against the government and the oil multinationals has been based on the tactical use of surprise attacks on strategic oil installations linked to production and exports, secrecy surrounding the identity of its core operators, and a sophisticated media campaign. Although the militant group has been affected by factionalism, its public face, represented by emails to the media by Jomo Gbomo, has remained consistent in articulating the tenets of its campaign. It has also co-operated with pan-Delta groups such as the Martyrs Brigade, Coalition for Militant Action in the Niger Delta (COMA), and the Joint Revolutionary Council (JRC).

The recent confrontation between MEND and the military occurred against the background of a JTF attack on the communities of Oporoza and Okerenkoko in Gbaramantu kingdom in the Western Delta on May 13, 2009, followed by the destruction of militia camps, including the strategic Camp 5 belonging to militia leader Government Ekpemupolo, alias Tompolo, once associated with MEND.

MEND responded through increased rhetoric against the state-oil alliance in the media and retaliatory attacks on strategic oil pipelines in the Niger Delta that largely crippled the operations of oil multinationals Shell, Chevron Texaco, and Agip in the Niger Delta (Nwachukwu and Ekott 2009; Ebiri and Etim 2009; Ume and Uwugiaren 2009; Onuorah et al. 2009). In addition, MEND made the release of one of its detained leaders, Henry Okah, a condition for a ceasefire.

Under pressure domestically and internationally, the Nigerian government announced an amnesty to fighters willing to lay down their arms and freed Okah. This

fulfilled one of the conditions for dialogue with the government. In spite of this, MEND carried out its first attack outside the Niger Delta, blowing up the Atlas Cove oil jetty in Lagos, the main distribution source for refined petroleum products to southwest Nigeria, on the eve before Okah's release on July 13, after which its ceasefire held.

Several developments have been key to the current (mid-2009) situation in the region: the submission of the Report of the Technical Committee on the Niger Delta to the federal government, the establishment of the federal ministry of the Niger Delta, and the announcement by the federal government on June 25, 2009, of an amnesty for all militants who renounce armed struggle and lay down their arms. Also of note is the release of the MEND leader, Henry Okah, leading to the declaration of a 60-day ceasefire by MEND effective from July 15, 2009.

The reality that MEND reflects a mix of several tendencies, ranging from radical resistance to its ambivalence toward the Niger Delta ruling elite, makes it rather difficult to predict the prospects for the struggle in the Niger Delta after Okah's release. Indications suggest that the extent to which his release will influence developments on the ground will depend on the balance of power between the various factions—ideologues, political activists, and fighting units within MEND—and the attitude and policies of the federal government, the Niger Delta state governors, and the ruling elite.

While some MEND "ex-commanders," such as Ebikabowei Victor Ben ("General" Boyloaf) and Kile Selky Torughedi ("Young Shall Grow"), or factions may be co-opted by government or ruling elites, the core group is likely to continue to mobilize violence to continue its campaign for resource control and "true fiscal federalism" (Reuters 2009). Having been mobilized into violent resistance and in the face of such very high stakes, MEND is unlikely to retreat without wresting major concessions that would require the state-transnational oil alliance to address the roots of the Niger Delta conflict.

The Global Securitization of Resistance in the Niger Delta

Three major considerations underpin the growing perception that the uninterrupted supply of oil from the Niger Delta is critical to Nigeria's security as well as the security of the world's (oil-dependent) powers, and that security should be guaranteed by military means. Resistance is then framed as a security threat capable of interrupting the flow of oil from a strategic source of global oil supplies and profit. This position informs the penchant of the federal government and the JTF to dismiss MEND as a bunch of "criminals" or "terrorists." The post-9/11 global war on terror has also provided the context for labelling MEND a terrorist organization with possible links to other international terrorist organizations targeting Western oil interests (Pham 2007). The third point relates to the risks posed by violent resistance to US and other Western interests against the background of the increased strategic profile of West Africa in global energy security calculations as an "alternative" to the volatile Arabian and Persian Gulf (Ianaccone 2007; Marquardt 2006; Ploch 2009). Also relevant is the perceived threat (often exaggerated) posed to Western oil interests and influence by the entry of Chinese and Indian state oil capital into the oil fields in the Gulf of Guinea, in the face of surging demand and limited supplies (Obi 2008; Lubeck, Watts, and Lipschutz 2007).

The foregoing provides an international context that is largely supportive of a "military solution" to the festering conflict in the Niger Delta. Apart from the offer of military assistance to the Nigerian government to "restore law and order" in the Niger Delta by the British prime minister (BBC 2008b), the newly formed US Africa Command has as part of its mandate the curtailment of threats to US interests on the continent, as well as building the capacity of African governments (and militaries) to ensure security and order in their territories. In this regard, the stakes in the continued extraction of oil from the Niger Delta will continue to climb, while the forces of violent resistance are likely to continue their attacks if their demands for resource control, restitution, and justice remain unmet.

Conclusion

Transnational, oil-based accumulation of capital, which translates into the dispossession of the people of the Niger Delta, dialectically feeds into resistance and conflict in the oil-rich region (Obi 2007, 104). Just as the global demand for oil continues to rise, and global access to oil has become of foremost strategic interest in a post-9/11 world, the stakes in ensuring uninterrupted supply of oil from the restive region will continue to rise. This will likely reinforce the local drive to resist tighter control of oil by the state oil-multinationals to the exclusion of the inhabitants of the region. It will also intensify the struggle of the ethnic minorities of the Niger Delta for a derivation-based redress in Nigeria's fiscal federalism.

Yet, government has remained intent on preserving the dominant relations of power over oil-based accumulation, backed by global oil and hegemonic powers that seek to justify and legitimize a transnationally backed military solution wrapped by the gloved fist of the Nigerian state. Some skeptics are concerned that the "failing" Nigerian state, held captive by corrupt ruling elites, cannot deliver on forcibly mediating the crisis or reining in the militants through the offer of "carrots." They remain suspicious that the ethnic-majority-dominated federal government, including its foreign partners (and its Niger Delta, ethnic-minority allies with links to the same militias that are fighting the government), will not change from its old ways of holding the oil wealth of the region hostage to its exploitative designs.

Some hardliners within the military top brass and the ruling elite continue to see the militants in the Niger Delta as criminals or terrorists who should be crushed or bought off rather than genuinely addressing the roots of local grievances. Their concern is for the preservation of the balance of power in favour of the state-transnational alliance, to guarantee the conditions for optimal oil exploitation and accumulation. This runs counter to the logic behind the demands of the people in the Niger Delta who are agitating for resource control and self-determination as a step toward repossessing the control of oil.

At stake are both the quest of the Niger Delta people for social justice, redress, and a redistribution of oil revenues in ways that guarantee "resource control" to them, and the resistance to transnational power relations hinged on oil extraction, which alienates

and impoverishes the people. The prospects for change depend on the transformation of the mode of oil production in ways that are beneficial to the majority of the people of the Niger Delta. They will also rest upon the foundation of a democratic multi-ethnic society that can guarantee resource control by the ethnic minorities, under a visionary and committed leadership backed by progressive social movements, to face the challenges of the equitable restructuring of the Nigerian federal state and reversing the asymmetries and injustices embedded in "fossil fuel capitalism."

References

- African Network for Environment and Economic Justice (ANEJ). 2004. *Oil of poverty in the Niger Delta*. Benin City: ANEJ.
- Amnesty International. 2009. *Petroleum, pollution and poverty in the Niger Delta*. London: Amnesty International Publications.
- Awhotu, Ese. 2008. NNPC produces below 100,000 barrels of oil daily—OGIC. *Leadership Nigeria*, November 20. <http://www.leadershipnigeria.com/news/119/ARTICLE/2567/2008-11-20.html> (accessed February 16, 2008).
- BBC. 2008a. Shell sets new UK profits record. January 31. <http://news.bbc.co.uk/2/hi/business> (accessed February 20, 2009).
- . 2008b. Brown outlines Niger Delta help. July 16. http://news.bbc.co.uk/2/hi/uk_news/7510645.stm (accessed February 20, 2009).
- Best, Shadrack, and Dimieari von Kemedi. 2005. Armed groups and conflict in Rivers and Plateau states, Nigeria. In *Armed and aimless: Armed groups, guns and human security in the ECOWAS region*, ed. Nicholas Florquin and Eric Berman. Geneva: Small Arms Survey.
- Boro, Isaac Jasper Adaka. 1982. *The Twelve Day Revolution*. Ed. Tony Tebekaemi. Benin City: Idodo Umeh Publishers.
- Coventry Cathedral. 2009. *The potential for peace and reconciliation in the Niger Delta*. <http://www.coventrycathedral.org.uk/downloads/publications/35.pdf> (accessed July 10, 2009).
- Ebeku, Kaniye. 2001. Oil and the Niger Delta people: The injustice of the Land Use Act. *CEPMLP Internet Journal* 9, Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee. <http://www.dundee.ac.uk/cepmlp/journal/html/vol9/vol9-14.html> (accessed February 16, 2009).
- . 2008. Niger Delta Oil, development and the New Development Initiative: Some reflections from a socio-legal perspective. *Journal of Asian and African Studies* 42 (399): 399–425.
- Ebiri, Kevin, and Willie Etim. 2009. Militants hit oil facility, abduct six foreigners. *Guardian newspapers*, July 7, 2009. <http://www.nguardiannews.com/> (accessed July 7, 2009).
- Harvey, David. 2003. *The New Imperialism*. Oxford and New York: Oxford University Press.
- . 2006. A conversation with David Harvey (interview). *Logos: A Journal of Modern Society and Culture* 5, no. 1. http://www.logosjournal.com/issue_5.1/harvey.htm.
- . 2007. Neoliberalism as creative destruction. *Annals of the American Academy of Political and Social Science* 610 (21): 22–44.
- Human Rights Watch (HRW). 2002. *The Niger Delta: No democracy dividend*. New York: Human Rights Watch.
- . 2007. *Chop fine: The human rights impact of local government corruption and mismanagement in Rivers state, Nigeria*. New York: Human Rights Watch.
- Iannaccone, A. 2007. *Toward a reform agenda for the Niger Delta: A report of the Africa Program Center for Strategic and International Studies (CSIS)*. Washington, DC: CSIS.
- Idemudia, Uwafiokun. 2009. Oil extraction and poverty reduction in the Niger Delta: A critical examination of partnership initiatives. *Journal of Business Ethics* 90: 91–116.
- Ikelegbe, Augustine. 2008. Popular and criminal violence as instruments of struggle: The case of youth militia in the Niger Delta region. Paper presented at NAI/PRIO Workshop on Violent Conflict in the Niger Delta, Oslo, August 18–19.

- IRIN. 2006. Nigeria: Militants threaten to cripple oil exports if demands not met. *IRIN Humanitarian News and Analysis*, January 17. <http://www.irinnews.org> (accessed February 20, 2009).
- Junger, Sebastian. 2007. Crude awakening. *Observer Magazine*, April 15.
- Legal Oil. 2007. Shifting trends in oil theft in the Niger Delta. Information Paper No. 3, January. <http://www.legaloil.com/Documents/Library/Legal%20Oil%20Information%20Paper%20No%203%20270207.pdf> (accessed February 16, 2009).
- Lubeck, P., M. Watts, and R. Lipschutz. 2007. Convergent interests: US energy security and the "securing" of Nigeria's democracy. International Policy Report. Washington, DC: Center for International Policy.
- Macalister, T. 2008. Exxon and Shell see profits rocket. *Guardian*, February 1. <http://www.guardian.co.uk>.
- Manby, Bronwen. 2004. Oil jihad in the Niger Delta? *OpenDemocracy*, October 27. <http://www.opendemocracy.net/content/articles/PDF/2139.pdf> (accessed February 13, 2009).
- Marquardt, E. 2006. The Niger Delta insurgency and its threat to energy security. *Terrorism Monitor* 4 (no. 16). Washington, DC, Jamestown Foundation. http://www.jamestown.org/programs/gta/single/?tx_ttnews%5Btt_news%5D=870&tx_ttnews%5BbackPid%5D=181&no_cache=1 (accessed February 20, 2009).
- Memorial Institute for the Prevention of Terrorism (MIPT). 2006. Group profile: Movement for the Emancipation of the Niger Delta (MEND). <http://www.mipt.org/> (accessed February 20, 2009).
- Mittleman, Jim, and Christine Chin. 2005. Conceptualizing resistance to globalization. In *The Global Resistance Reader*, ed. Louise Amoore, 17-27. London and New York: Routledge.
- Mouawad, J. 2008. Exxon Mobil profit sets record again. *New York Times*, February 1. http://www.nytimes.com/2008/02/01/business/01cnd-exxon.html?_r=1&hp&oref=slogin (accessed February 1, 2009).
- Niger Delta Natural Resource Damage Assessment and Restoration Project. 2006. Report. Federal Ministry of Environment Abuja, Nigerian Conservation Foundation, WWF UK, CEESP-IUCN Commission on Environmental, Economic and Social Policy. http://cmsdata.iucn.org/downloads/niger_delta_natural_resource_damage_assessment_and_restoration_project_recommendation.doc (accessed July 17, 2009).
- Nwachukwu, Clara, and Elisha Bala-Gbogbo. 2009. Black hole: Nobody knows how much oil Nigeria sells. *Next newspaper*, April 29. http://www.234next.com/csp/cms/sites/Next/News/5408495-147/Black_Hole:_Nobody_knows_how_much.csp (accessed July 10, 2009).
- Nwachukwu, Clara, and Ini Ekott. 2009. Militarism and oil production. *Next*, June 27. <http://www.234next.com/csp/cms/sites/Next/Money/Business/5430972-147/story.csp> (accessed June 28, 2009).
- Nyam, Phillip. 2009. Niger Delta: FG loses \$9.7m daily. *Leadership Nigeria*, June 24. http://leadershipnigeria.com/index.php?option=com_content&view=article&id=2928:niger-delta-fg-loses-897m-daily&catid=51:cover-stories&Itemid=74 (accessed July 10, 2009).
- Obi, Cyril. 2001. The changing forms of identity politics in Nigeria under economic adjustment: The case of the oil minorities movement of the Niger Delta. Research Report No. 119. Uppsala: Nordiska Afrikainstitutet, Uppsala.
- . 2005. Globalization and local resistance: The case of Shell and the Ogoni. In *The Global Resistance Reader*, ed. Louise Amoore, 318-327. London and New York: Routledge.
- . 2007. The struggle for resource control in a petro-state: A perspective from Nigeria. In *National Perspectives on Globalization*, ed. Paul Bowles, Henry Veltmeyer, Scarlett Cornelissen, Noela Invernizzi, and Kwong-leung Tang, 93-106. Hampshire and New York: Palgrave Macmillan.
- . 2008. Enter the dragon? Chinese oil companies and resistance in the Niger Delta. *Review of African Political Economy* 35 (117): 417-434.
- Okonta, Ike. 2007. Niger Delta: Behind the mask, Ijaw militia fight the oil Cartel. *World War 4 Report*. <http://ww4report.com> (accessed February 20, 2009).
- Omeje, Kenneth. 2006. *High stakes and stakeholders: Oil conflict and security in Nigeria*. Hampshire and Burlington: Ashgate.
- Onuorah, Madu, et al. 2009. Nigeria runs out of crude, refineries shut. *Guardian newspapers*. <http://www.ngrguardiannews.com/> (accessed June 25, 2009).

- Pham, Peter. 2007. Next front? Evolving United States–African relations in the “War of Terror” and beyond. *Comparative Strategy* 26 (1): 39–54.
- Ploch, Lauren. 2009. Africa command: US strategic interests and the role of the US military in Africa, October 2, Congressional Research Service. <http://www.fas.org/sgp/crs/natsec/RL34003.pdf>.
- Porretto, J. 2008. Exxon, Chevron post record profits. *Washington Post*, February 2. <http://www.washingtonpost.com> (accessed February 20, 2009).
- Reuters. 2009. Exclusive: Top Nigerian rebel sees more attacks in Niger Delta. July 14. <http://www.reuters.com/article/africaCrisis/idUSLE690768> (accessed July 20, 2009).
- Ross, Brian. 2007. News exclusive: Online interview with a terrorist. *ABC News*, January 3. <http://abcnews.go.com/Blotter/BrianRoss/story?id=2778701&page=1>.
- Ukiwo, Ukoha. 2009. Causes and cures of oil-related Niger Delta conflicts. *Policy Notes* No. 1: 1–4, Nordic Africa Institute.
- . 2007. From “pirates” to “militants”: A historical perspective on anti-oil company mobilization among the Ijaw of Warri, Western Niger Delta. *African Affairs* 106 (425): 587–610.
- Ume, James, and Iyobosa Uwugiaren. 2009. Militants cripple Shell production. *Leadership Nigeria*, June 20. http://www.leadershipnigeria.com/index.php?option=com_content&view=article&id=2785:militants-cripple-shells-production&catid=51:cover-stories&Itemid=74 (accessed July 10, 2009).
- United Nations Development Programme Nigeria (UNDP). 2006. *Niger Delta human development report*. Abuja: UNDP.
- United Nations Office on Drugs and Crime (UNODC). 2009. *Transnational trafficking and the rule of law in West Africa: A threat assessment*. Vienna: UNODC.
- Watts, Michael. 2006. Empire of oil: Capitalist dispossession and the scramble for Africa. *Monthly Review* 58 (4). <http://monthlyreview.org/0906watts.htm> (accessed February 20, 2009).
- . 2004. Resource curse? Governmentality, oil and power in the Niger Delta, Nigeria. *Geopolitics* 9 (1): 50–80.



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The Dilemmas of Global Resistance against Extractive Capital: The Oilwatch Network in Africa*

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ABSTRACT This article examines the emergence and campaigns of Oilwatch Africa and their implications for North-South tensions among global advocacy networks. The paper explores how the actions of civil society networks in the global South also express internal tensions shaped by local and national power relations. These relations are affected by political, economic, and cultural variations in the social conditions of the communities that these networks seek to support, as well as diverse political interests among their member organizations, some of whose activities may facilitate rather than resist transnational exploitation.

RÉSUMÉ Cet article examine l'émergence et les campagnes de Oilwatch Africa ainsi que leurs répercussions sur les tensions Nord-Sud entre les réseaux mondiaux de défense d'intérêts. L'article explore comment les actions des réseaux de la société civile des pays du Sud sont aussi une expression des tensions intérieures façonnées par les relations de pouvoir locales et nationales. Ces relations sont affectées par les différences politiques, économiques et culturelles que présentent les conditions sociales des communautés que ces réseaux tentent de soutenir, aussi bien que par la diversité des intérêts politiques des organisations membres, dont certaines activités facilitent l'exploitation transnationale au lieu de s'y opposer.

Introduction

Under a global system characterized by North-South power differentials, the emergence over the past two decades of South-South, "civil society" networks serves as a reaction to a shared coloniality. With the rise of contemporary environmentalism,

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transnational organizing became institutionalized with the emergence of groups like Greenpeace International and Friends of the Earth International (FOEI) in the early 1970s. Initially created by citizens of Northern countries, these were internationalized through branches in a half dozen countries in North America and Europe. As transnational activity spread to other parts of the world, the positions and strategies adopted by these networks have been crucial to global organizing. Yet at times they have occluded the perspectives of peoples and organizations from countries categorized as the Global South/Third World. The perception that Southern perspectives have been marginalized is not limited to environmentalism but occurs in a range of subsectors in "global civil society" (Taylor 2006; Bracking 2003; Doherty 2006; Bond 2006).

While non-governmental organization (NGO) and social movement groupings have existed in Western countries, the organizations that have achieved the most penetration in the South, particularly sub-Saharan Africa, have been the larger and professionalized NGOs such as Oxfam, Bread for the World, Catholic Relief Services, and Christian Aid. These Northern NGOs often hold the financial cards, and at times promote lobbying and advocacy strategies that legitimate formal institutional/governmental power structures. In the case of struggles against extractive industries, such strategies have been adopted by the professional NGOs created in Southern countries, including some of the members of the Southern networks we study. Exemplary are those NGOs in sub-Saharan Africa seeking different levels of accommodation with transnational corporations and the World Bank Group. However, some organizations from the South have been keen to organize "resistance" to entrenched structures of power, creating supplemental South-South networks for exchanges and self-articulation. Their collective analysis is based on a perception of shared coloniality.

In this article, we examine tensions in North-South mobilizing on extractive industries. Through the case of Oilwatch and its member organizations in Africa, and reflecting upon Friends of the Earth International with which key Oilwatch members have been associated, we show that Southern networks and civil society manifest internal tensions over strategy. Oilwatch was established in 1996 by representatives of organizations from 10 countries of Latin America, sub-Saharan Africa, Asia, and their supporters from North America and Western Europe as a decentralized network of resistance to petroleum exploitation. It aims to "halt the expansion of socially destructive and environmentally damaging oil activity in the tropics and other parts of the global South" (<http://www.oilwatch.org>). Founders of the network sought to "support all initiatives of local peoples to resist fossil fuels activities" (Oilwatch 2006). In contrast to certain large environmental NGOs that have sought to improve the technology and social policies of extraction to minimize environmental and social impacts, the founding documents of Oilwatch point to the "abandonment of the civilization based on the fossil fuels model" (<http://www.oilwatch.org>). It is this clearly petro-skeptic position that we see as the departure point and, perhaps, the defining characteristic of Oilwatch.

Since the network emerged to confront ecological injustice arising from petroleum extraction in the tropics, it has facilitated the interaction of members in addressing policy issues and defending the rights of communities that host extractive activities. Members include NGOs and CBOs (Community-Based Organizations) from South-

ern countries who work together to enable more stringent national and multilateral regulation. An exploration of the network offers insight into how global civil society is an historically and territorially embedded category, whose role in resistance to, or as monitor of, extractive industries is profoundly shaped by the relationship between state and capital—a relationship that has varied in certain key respects between global North and global South. Data derived for this paper emerges in particular from the participation of one of the authors in the work of the networks studied, and exchanges with network members and leaders during previous field work in Africa and Latin America. In our “absorption in the society we study” we try to maintain a focus by “rooting ourselves in theory,” in this case Gramscian thoughts on civil society and hegemony, while enabling our observations to contribute to “expanding dialogue of theory with itself” (Burawoy 1998).

As explained below, the importance of South-South organizing is crucial at the global scale; however, attention to regional/local conditions reveals tensions affecting the strategic position of the Southern networks themselves. Indeed, the experience of Oilwatch Africa suggests both the potential and contradictions that face emergent, Southern, “globalized” civil society. Like their Northern counterparts, Southern organizations at times select, advertently or inadvertently, to work in ways that collaborate with the interests of power holders. That is, while Southern advocacy networks may hold emancipatory potential, limitations arising from Oilwatch’s flexible understanding of “resistance” also facilitate interventions that further the interests of capital: reconciling token conflicts between oil companies and communities in production sites, while leaving broader conditions of extraction and mechanisms of industrial power intact. With our examples, we show that NGO-driven networks give support and impetus to community organizing against individual oil companies and hydrocarbon projects in the region. Yet in striving to promote “self-determination” among affected communities while resisting socially destructive oil activity, network members contend with an industry that is in alliance with—and that is a reflection of—the state in all its neo-liberal manifestations. Given this condition, any meaningful strategy of redress requires linking self-organized, grassroots formations to movements for broader social transformation. If not, resistance networks operating regionally or globally may well influence transnational policy debates, but their actions may have little resonance with front-line communities.

To proceed, we first outline the implications of some literature on global civil society for the emergence of these North-South networks, considering Gramscian critiques of the relationship between civil society and the state. This is followed by a discussion of Southern civil society, focusing on groups that emerged in resistance to pacts between the oil industry and the state in Nigeria, and the residue of colonial relations of rule that shaped them. These histories help elucidate the local dilemmas that face civil society network organizations seeking to represent affected communities. In practice, contradictions are sometimes manifest in the work of Oilwatch as negotiator of community concerns, a role through which the organization has been drawn into informal regulatory processes guiding transboundary oil and gas projects—for instance, the Chad-Cameroon Oil Pipeline and the West African Gas Pipeline (WAGP). These ex-

tractive projects demonstrate the coalescing of global capital's interests, as represented by corporations, the World Bank, and the sub-Saharan African elite. The responses of communities affected by these projects, and the NGO networks that support them, also show how civil society has fared when it has challenged the hegemony of global capital, given a context of community resistance and demands for local or regional "resource control." The contradictions involved in at once resisting and being partially integrated into such neo-liberal processes of institutional reform are similarly discernible in Oilwatch Africa's work to include community concerns in World Bank Group policy debates, such as the Extractive Industries Review (EIR) (see Lo in this issue).

In examining the historical events and political conjunctures with which the Oilwatch Africa network and its membership have been constituted, we come to understand their collective and individual interventions. We also consider their implications for tensions between North-South advocacy groups, and within regions in the global South, as related to governance in the post-colonial states in which network members operate. As such the multi-scalar tensions shaping advocacy networks' interventions against extractive capitalism are revealed. Globally, the work of South-South networks such as Oilwatch serves as a counter or check on the liberal, democratic/reformist approaches, and the neo-colonial relations that shape Northern/Western NGO "partnership" with community-based and Southern NGOs (Hart 2001; Escobar 1996). Nevertheless, regionally and domestically, Southern networks grapple with post-colonial/developmental states whose power is as much dependent on transnational capital as on domestic legitimacy, while as urban cosmopolitans these networks can become conduits of indirect rule (Mamdani 1996); that is, they could be seen as seeking to "represent" industrially affected (often rural) communities that may not directly or immediately experience substantive change in their livelihood via these global advocacy efforts.

Theorizing Global Civil Society and North-South Relations

"Civil society" has long been a contested concept: after an early association with the modern state, it was later modified to describe institutions beyond the state (Kaldor 2003). In contemporary development discourse it has been deployed with reference to NGOs and allies in more or less institutionalized social movements. We understand "social movement" as an analytical construct that can be used to understand episodic configurations of groupings whose expressions tend to be "radical and self-consciously ideological" (Doherty and Doyle 2006). With respect to addressing environmental problems, social movements' analyses aim not only to address the social externalities arising from industrial pollution but also to mobilize mass action to challenge and seek the replacement of existing power structures. Social movements, à la Gramsci, would tend to desire the promotion of a counter-hegemony, in our case, to that fashioned by the forces behind neo-liberal globalization. While social movements could include NGOs, as well as popular and mass organizations, their *modus operandi* sometimes

differs dramatically from the conventional and professionalized NGO, which tends to seek accommodation with governments and corporations (Tilly and Tarrow 2006). The different characteristics of groups and groupings that are supposed to constitute civil society within different settings is a factor in the recurring difficulty in the deployment of the concept. It has been observed that when used as a universal category, as in "global civil society," the danger arises of imposing an essentially Western analytical and practical concept on a range of non-Western societies and social realities (McIlwaine 1998). Moreover, the extent to which international civil society pressures can influence internal state dynamics (Keck and Sikkink 1998) and global governance institutions (Fox and Brown 1998), varies in relation to domestic economic conditions and the global political economy in which they are embedded.

Gramsci's work highlights how private associations within civil society are an expression of hegemonic forces within the state.¹ While diverse organizations exist within every political complex a few become dominant, thereby "constituting the hegemony of one social group over the rest of the population (civil society)" (Gramsci 2007, 107). Gramsci (1971, 258) emphasized how "so-called private initiatives" are part of a "complex of practical and theoretical activities with which the ruling class not only justifies and maintains its dominance, but manages to win the active consent of those over whom it rules" (ibid., 244). Civil society becomes the "agency for stabilising the social and political status quo" (Cox 1999).

However, civil society is also a contested terrain where marginalized social groups may mobilize for a counter-hegemony. For this to happen the "organic intellectuals" representing the marginalized groups have to develop an alternative analysis which, combined with vigorous mass mobilization and resistance, aims at enforcing a new hegemony within civil society. But where "civil society and the state are one and the same" (Gramsci 1971, 160), the process of creating a new hegemony entails social movements confronting not just the ethical, intellectual, and (sometimes viciously) coercive apparatus of the existing regime, but also those little conditionalities and idiosyncrasies of the funder that urge conformity with the powers that be (Incite: Women of Color Against Violence 2007).

In this context, major Northern-based NGOs could be said to represent the structures of power in their home states and perform road-clearing functions for capital when they operate in countries of the South. But their activities and approaches would both condition and be conditioned by local realities, as local groups and NGOs may often subscribe to, or adopt, counterpoising strategies. In post-colonial Africa, civil society is hardly a product of the last 20 years. Indeed, in the late colonial period civil associations were often associated with the cultural-territorial interests that indirect rule fostered (Idahosa and Shenton 2003, 2004). Thus social mobilization was organized around ethnic rather than class politics, as a reflection of the ethnic categories over which warrant chiefs presided.

1. Communiqué issued at the first All Ijaw Youths Conference, Kaiama, Bayelsa State, Nigeria, on December 11, 1998 (popularly referred to as the *Kaiama Declaration*).

In the 1990s when neo-liberal economics was in a triumphalist march (Amin 1990; Harvey 2003; Bello 2006), accelerated globalization meant a deeper incursion into parts of the South via foreign direct investment in mineral extraction. This had devastating repercussions for the environment and communities that concurrently experienced the withdrawal of the state from its role as guarantor of social services. With the ensuing "globalization of poverty," associated with Thatcher and Reagan era roll-backs, NGOs served to fill gaps in the provision of social welfare left by the retreating developmental/welfare state. As such they served as palliatives to marginalized and discontented groups (Malhotra 2000).

Neo-missionary NGOs of the development genre that provide water boreholes and sundry services in countries in Africa may be more easily identified with the role of amelioration. But environmental and human rights organizations that campaign for improvements in industrial practice may also be seen as assuaging communities, defusing heightened social tension in a context of political-economic contradiction. Not that the NGOs and other players within civil society perform such a role consciously. Rather, the regime of neo-liberal globalization may have "bamboozled" these groups "into a controlled environment where even critical voices serve the overall purpose of stabilizing the existing order" (Munck 2006). This compromise with neo-liberal globalization (Kapoor 2008) indeed reproduces colonial power dynamics (Petras 1997).

While the mineral resources and the proceeds of exploitation are consumed in the North, from colonial times Africa has been presented as the recipient of aid (Bayart 2000; Idahosa and Shenton 2003). In the last three decades NGOs have emerged in the region as the driving force of a new civil society essentially dependent on grants from Northern governments and foundations (sustained by governments and profits from transnational capitalist enterprises). The funds come with clear or tacit conditionalities from friendly Northern donors that prioritize certain themes and provide money to NGOs that demonstrate ability to deliver as prescribed by the "grant economy" (Albo 2009; Doherty and Doyle 2006). The result is that campaign priorities may reflect foreign rather than local expectations.

Brand also describes how professional NGOs and multilateral institutions promoting "development" and "sustainability," and other ideals of "environmental politics" may be pawns in a neo-liberal game tailored to achieve the strengthening of the global capitalist regime. Since the 1992 Rio de Janeiro "Earth Summit," which addressed issues of "sustainable development," government and business have been creating "strong institutional selectivity towards market-based instruments" in environmental policy and "respective flanking mechanisms in civil society."² With neo-liberalism in crisis, "business-as-usual" approaches to environmental problems ensure a "neo-liberalising of nature" accompanied by privatization, marketization, and deregulation (Brand 2009, 106). Accordingly, the prevailing position of mainstream Northern environmental NGOs is conciliatory as the hegemony of liberal democratic rule is very secure. Here, periodic elections have become normalized as means of bringing about peaceful political change. However, replacing elected political office-holders does not necessarily

2. Charles Abugre in an evaluation of Oilwatch Africa, 2004.

imply an alteration of an entrenched system of production and reproduction. Even where electoral democracy brings about incremental improvement in socio-industrial regulation and labour or ecological protections in the North, a broad range of literature indicates how the activities of Northern capital outside the territorial container of their “home” state serve as a kind of “spatial fix” for extractive capital (Harvey 2007).

Thus liberal democracy as a mode of regulation has been institutionalized in the North. Though threatened by neo-liberalism, domestically the welfare state apparatus had legitimated it. Resulting from a historical process of global capital expansion, dirty jobs in the primary stages of production—extracting natural resources—take place or have been transferred to the countries of the South or territories inhabited by marginalized groups in the global North and South, while the interests of Northern capital are increasingly mediated by discursive tools of self-regulation, such as corporate social responsibility. In regions like sub-Saharan Africa where domestic capitalism might be described as existing in an essentially rudimentary state, agents of imperial accumulation adopt dictatorial methods to secure the state for global capital in alliance with local elites (Bracking 2003). In part as a result of what Idahosa and Shenton (2003) describe as the “compromised modernity of late colonial rule,” a localized, ethnicized, and rural governance was incorporated into the NGO practices of sub-Saharan Africa in the late twentieth century.³ Conversely, in those regions where state legitimacy is more openly questioned, the gulf between state and subjects is more pronounced: groups have been more open to the idea of challenging rather than lobbying the state and its allies among international capital. This is exemplified in the responses of groups representing ethnic minorities during military and civilian dictatorships in countries like Nigeria, and among indigenous communities in various parts of Latin America.

The different social conditions confronting organizations in the North and South tend to hamper international-development-oriented “global civil society” networks since North-South tensions over ideological perspectives and organizational identity often exist (Doherty and Doyle 2006). The challenge arises: how might groups from “diverse geographical scales” work collaboratively “without attempting to develop universalistic and centralising solutions that deny the diversity of interests and identities that are confronted with neo-liberal globalisation processes” (Routledge, Nativel, and Cumbers 2006)? Seemingly minor disagreements between Northern groups that privilege lobbying and Southern groups that support resistance to industrial extraction may reflect either (1) hegemonic goals of Northern lobbying groups over Southern partners or, more generously, (2) a lack of appreciation of realities in the countries of the South by Northern groups. That said, and as discussed further below, in both North and South tensions exist *between* the advocacy organizations and affected residents — whose immediate objectives may also differ.

3. Communiqué of the Oilwatch Africa General Assembly, Port Harcourt, Nigeria, 1999.

Legacy of Colonialism

North-South tensions in the environmental movement have occurred in Friends of the Earth International, a number of whose Southern members were or are central actors in the Oilwatch network. FOEI operates as a federation of over 70 national organizations from the North and South, with each organization exercising the same decision-making power. But the ideal of diversity and internal democracy that the FOEI network seeks has not ensured immunity from the power imbalances in the global environmental movement.⁴ In many ways, its recent history has been a continuous attempt to manage tensions over strategy and identity. Disagreements between some Northern and Southern members culminated during the World Summit on Sustainable Development (WSSD) in South Africa in 2002. Southern members were dissatisfied with campaign dominance by more financially resourced Northern organizations. Groups like *Acción Ecológica* (then Friends of the Earth Ecuador and a member of FOEI) felt that the network's campaigns reflected a Northern predilection toward reformism, whereas they felt that the global economic system demanded a strategy of resistance. Following the WSSD, *Acción Ecológica* withdrew from FOEI. With similar threats from other members, FOEI undertook a soul-searching that resulted in it "accommodating the differences in strategy that followed from different national histories" (Doherty 2006).

This crisis expressed strain that had been mounting in global civil society during the preceding decade, which motivated Southern groups to establish South-South networks of their own, as Oilwatch exemplifies. In the half decade preceding *Acción Ecológica*'s withdrawal from FOEI, the organization had been a central force in mobilizing groups concerned with the negative impacts of petroleum, which had led to the emergence of Oilwatch.

Within the global South, hydrocarbon exploitation has frequently been associated with the entrenchment of communal conflict, massive corruption, disruption of local industries, distortion of national economies, social inequality, and state repression. The so-called "Resource Curse," presumed to result from over-dependence on a particular primary commodity (Auty 1993; Karl 1997), is at times held responsible for the economic "underdevelopment" of productive sectors, as well as civil conflict. Critics of the Resource Curse thesis point out that associating these outcomes with the presence of huge natural resource rents offers a rather ahistorical account of contemporary global power relations, a kind of natural resource determinism. Analyses informed by political ecology and world systems sociology, in contrast, argue that the contemporary concentration of this curse in Southern post-colonies reflects the legacy of historical relations of rule, which make these sites attractive for resource extraction in the first place (cf. Watts 2004; Bunker and Ciccantell 2005; Zalik 2009). Likewise, the rentier politics historically shaped by the oil industry are as important as the resource per se:

4. African civil society position on World Bank Group investments in mining, oil, and gas at the Africa consultation of the Extractives Industries Review (EIR) in Maputo, Mozambique, January 13–17, 2003.

in certain situations the presence of the oil corporation fosters particular techniques and spectres of violence, where armed security forces operating with the sponsorship of companies exacerbate the conditions for civil conflict over territory (Turner and Norre 1980; Omeje 2008). This is especially evident in the countries of the Gulf of Guinea, where competition for control of oil revenues has provoked violence. The oil and gas industry also exerts a corrupting and dislocating influence on states and communities—even those far away from extractive activities—where local elites compete to protect their territorial interests in oil enclaves.

As corporations adopt crude methods to extract petroleum in these areas, post-independence governments tend to turn a blind eye to abuses. In Brazzaville, Congo, corporations have participated in coups and mercenary insurgency to install puppet regimes, and competing French and US oil corporations paid for the private militias of the political elite during wars for state power. Denis Sassou-Nguesso defeated opposition with the help of the French oil company Elf Aquitaine (Basedau and Mehler 2003). In Nigeria, where no direct links could be made between military coup plotters and oil corporations, the partnership between these interests was nevertheless responsible for massacres of members of Etche, Ogoni, and Ijaw communities protesting despoliation of their land. Shell sold fuel to both sides during the Nigerian civil war, as revealed in archived correspondence (Zalik 2004).

An examination of the social realities in the global South thus validates an understanding of the state as an institution required by global capitalism to secure private property and social control (Ceceña 2009). In some instances, states have been created directly by transnational corporations with interests in natural resource extraction, with the military and political support of their governments. For example, what is now called Nigeria was created essentially by the British Royal Niger Company, which enforced the early structures of the state and encouraged the British crown to make a stake for the territory during the Africa-partitioning bonanza (Dike 1956; Alagoa 1964, 1971; Okonta and Douglas 2002). Today, “natives” may rule Africa but the character of the state remains that which facilitates exploitation.

In Nigeria the dynamics that led to protest against the state and hydrocarbon extraction were met with harsh repression under military dictatorships and recent civil regimes, now documented extensively (see Obi in this issue). The Ogoni movement was central to spurring global attention to the Deltan minorities. Following the Ogoni struggles, the All Ijaw Youth Conference at Kaiama on December 11, 1998, proclaimed the *Kaiama Declaration* and established the Ijaw Youth Council (IYC) as a representative organ to work toward actualizing “resource control,” or local access to extractive revenues. Following the Declaration, Ijaw youths took steps to implement the resolu-

tions, including a series of peaceful *Ogele*⁵ processions to mobilize local residents in solidarity with the call for “all oil companies to stop all exploration and exploitation ... pending the resolution of the issue of resource ownership and control in the Ijaw area of the Niger Delta.”⁶ In the last decade conditions have worsened. Since 2006 particularly, armed groups calling for resource control have emerged as a corollary to a pre-existing, security-protection racket in the region. Here, youth of the riverine area in particular, structurally marginalized through extraction, come to participate in an insurgency partly fuelled by participation in a contraband oil trade (Obi this issue; Peterside and Zalik 2008). Thus, a decade after the establishment of the IYC, environmental conditions and military crackdowns worsened. In the Gulf of Guinea, repression has similarly deepened as petroleum exploitation by transnationals intensifies.⁷

In Nigeria, the neo-liberal onslaught that accompanied the transition from military to civilian rule from 1999 onward further subordinated weak environmental regulation to the market. For example, although the Federal High Court of Nigeria declared the dangerous practice of gas flaring by oil companies a gross violation of human rights, the government, companies, and institutions like the World Bank support market mechanisms that protect or increase corporate profits via carbon offsets and carbon trading. Oil projects claiming to reduce flaring are marketed by companies seeking financial reward within the Clean Development Mechanism (CDM) of the United Framework Convention on Climate Change (Lohmann 2006). However, these mechanisms ignore the plight of communities that have suffered 50 years of contaminated air and farmlands from flaring and other industrial pollution.

Thus in sub-Saharan Africa neo-liberalism has reinforced histories of underdevelopment and dependence. In turn, Northern-funded NGOism may have weakened alternative social mobilization. In Nigeria groups that emerged during the pro-democracy struggles of the 1990s began, in the post-military transition era, to talk of “sustainable development,” “empowerment,” “capacity building,” and “stakeholding.” As Cox (1999) has pointed out, for some NGO professionals “clientelism may seem preferable to revolutionary commitment, especially when backed by the force of state and economic power.” Interventions seeking to achieve “incremental amelioration” around single issues diverted groups from the central issues of power and subordination. Indeed, supposedly “specialized” programs around “gender,” HIV/AIDS, forest conservation, oil and mineral extraction, and so forth present a blurred view of the underlying social factors that exacerbate and interconnect these problems.

5. *Ogele* in most Ijaw languages means a procession involving drumming and singing; it may also be translated as “a movement of the people.” In late December 1998, thousands of Ijaw embarked on *Ogele* in support of the *Kaiama Declaration*. The state sent troops, resulting in the shooting of many participants in peaceful processions. Such repression undergirded the emergence of armed resistance among communities.

6. Communiqué issued at the first All Ijaw Youths Conference, Kaiama, Bayelsa State, Nigeria, on December 11, 1998 (popularly referred to as the *Kaiama Declaration*).

7. In Brazzaville, Congo, abuses of citizens’ rights have continued since the emergence of a regime backed by oil corporations. In January 2007 the Sassou-Nguesso regime arbitrarily arrested two prominent campaigners against official corruption, confiscated their travel documents, and prevented them from travelling to Nairobi to address the seventh World Social Forum (WSF).

Oilwatch: A South-South Resistance Network

The Oilwatch network was established in 1996 to support global solidarity among communities involved in struggles against oil and gas companies, prompted by similarities in the experiences of communities affected by the oil industry, and the transnational history and organization of extractive industry (particularly oil and gas). Oilwatch aims to provide a platform for organizations of the South to look at crises from a people's perspective and develop a common analysis on the need to resist the expansion of the petroleum frontiers, promote energy sovereignty, and seek self-determination for communities. Although Oilwatch's major focus has been on the forms and effects of hydrocarbon exploitation, the network promotes an analysis that goes beyond issue-specific advocacy, associates the expansion of the oil industry with economic neo-liberalism, and encourages relations with emerging social movements.

Groups that participated in the meeting that created Oilwatch in Quito, Ecuador, in 1996 were drawn from Latin America (Ecuador, Colombia, Guatemala, Mexico, Peru), Africa (Nigeria, Cameroon, Gabon, South Africa), Asia (Thailand), North America, and Europe. This meeting was initiated by the Ecuadorian environmental organization *Acción Ecológica* with funding from development organizations from western Europe. At the time, the environmental and "resource-control" struggles of Ogoni and Amazonian indigenous groups against oil and gas companies raised awareness of the common threats facing tropical and southern peoples. Outrage over the execution of Ogoni leaders spurred the Shell boycott campaign in countries of the North (Watts 1994; Osaghae 1998; Frynas, Beck, and Mellahi 2000; Sawyer 2004; Bob 2005). These events impelled *Acción Ecológica* to action, and rallied support to the Oilwatch initiative from organizations in both South and North. Initially, a key struggle for Oilwatch was that of the indigenous U'wa of the Colombian Amazon who have a long history of resistance to oil exploitation. The U'wa consider extraction a violation of their sacred land (Saavedra 2001). By different actions, including a threat of mass suicide, the U'wa halted plans for oil exploitation by companies like US-owned Occidental Petroleum and Shell. Their possible mass suicide was taken seriously given that the U'wa's oral historians provided an account of hundreds of U'wa throwing themselves off a cliff rather than submitting to Spanish conquistadors (Beeson 2008).

From Nigeria, in attendance were Environmental Rights Action (ERA, later associated with Friends of the Earth) and the Movement for the Survival of Ogoni People (MOSOP). Other participants represented organizations from communities engaged in direct resistance to oil companies and faith-based groups, as well as local, national, and transnational NGOs such as Greenpeace. In the years that followed, tension over

strategy and identity resulted in Oilwatch revoking the full membership of Northern NGOs and converting their participation to a support status, in a quest to retain the integrity of a Southern viewpoint. As supporters, Northern organizations were no longer participants in agenda setting. Their role was now limited to supporting (via funding and information dissemination) the programs and campaigns initiated by Southern members.

The distinctive characteristic of Oilwatch is that it is a South-South network, defending the legitimacy of community-initiated resistance. It seeks to bring the abuses of the oil industry to the fore and to ensure that local and global discussion of oil and gas regulation are grounded in recognition of impacts on the victims of exploitation.⁸ That said, in all regions, advocacy tactics are influenced by the type and geographical location of hydrocarbon exploitation, so that protest remains reactive to capital's proposals. For instance, hydrocarbon exploitation affects communities divergently, leading to varied impacts, and thus strategies, in onshore versus coastal sites. In 2001, fishing communities from the coastal Chana district of Thailand commenced protests against the Thai-Malaysia Joint Development Area pipeline, a project planned to bring gas ashore in southern Thailand. Livelihood displacement affects fisher communities wherever offshore extraction occurs. Internationally on land, affected communities face direct loss of territorial rights through industrial leases or other forms of exclusion and pollution; additionally, they face discrimination in allocation of profits and revenues from extracted resources—a form of “accumulation by dispossession” (Harvey 2003). Residents are subjected to unfair compensation and suffer violence when they protest. Hydrocarbon extraction in the tropics often has long-term environmental and, therefore, social impacts (Oilwatch 2005, 2006).

From its inception, then, Oilwatch has contributed to global debates on fossil fuel development. The network was in the forefront of efforts to legitimize the issue of “ecological debt” in the agenda of global civil society. It raised the issue of the disequilibria in the allocation of profits and costs from oil and gas resources between Northern countries and companies and Southern countries and peoples. The Oilwatch Secretariat has issued position papers to redirect the focus of debates at different global fora. Examples are the rejection of market schemes to address climate change (emission trading), the critique of a civilization based on fossil fuels, calls for moratoria on further hydrocarbon exploration, and opposition to self-regulation by corporations; that is, against voluntary mechanisms for corporate social responsibility. Recently the Yasuni proposal in Ecuador, which seeks to prevent the development of a new oil field and thus “keep the oil in the soil,” serves as a practical example linking climate change activism with the Oilwatch “no to oil” position (Larrea 2009). In the Yasuni initiative, Acción Ecológica's active pursuit of global, Northern solidarity with a no-to-oil

8. Oilwatch “proposes that the communities that resist the hydrocarbon operations should be recognized, respected and supported rather than suppressed” via a “common identity among peoples of the South” and “recognition of the right of peoples to self-determination as primary in the resolution of environmental problems.” Politically Oilwatch aims to “stop the expansion of socially destructive and environmentally damaging oil activity in the tropics and other parts of the global South” (Oilwatch 2006, 173).

position reflects how, despite the criticisms we pose, transnational advocacy remains a crucial strategy for resisting the extension of the hydrocarbon frontier.

Organizationally, Oilwatch is a decentralized network with an international secretariat that coordinates the activities of members — initially in Ecuador and currently in Port Harcourt, Nigeria. Regional Oilwatch networks have been formed with the responsibility of coordination and communication within the region. Following the formation of Oilwatch Africa, concerns among some new members about the radical posture in its formative documents led to internal debates on the meaning of “resistance.” While the resistance strategy of Oilwatch may seem militant, one African civil society activist describes such militancy as “an approach which is rooted in a structuralist/political analysis of development problems which sees the ultimate solution as addressing power imbalances and bringing about true democratisation.” It thus seeks “organised interventions, the mobilisation of public opinion and confrontation (not necessarily violently) with institutions of power.”⁹

Regional Variations in Oilwatch Network Organizations

Such debates among African Oilwatch members led to a flexible definition of resistance, allowing a range of tactics. These sought to encompass varied political realities. At the first regional conference in 1999, members considered resistance to be “the right of a people to say NO and mean it, in defence of our collective environmental and human rights in order to achieve positive change.”¹⁰ Resistance strategies and measures to support communities adopted there included calls for moratoria on new oil and gas exploration and exploitation, community exchange of experiences, community education, research and publications, and monitoring and protests as means of active lobbying. In 2002, an Oilwatch Africa members’ meeting in Kribi, Cameroon, endorsed the earlier strategies and added more at multiple levels—local, national, and international. Key examples included a moratorium on hydrocarbon projects in war and conflict areas; suspension of financing for further oil/gas projects on the continent; boycott of campaigns; litigation defending community rights; promotion of corporate accountability through legally binding and enforceable laws; opposition to voluntary agreements and self-regulatory mechanisms; organization of peaceful protests and direct actions using songs, drama, dance; blockage and closure of oil facilities. An ongoing effort to clarify the content of “resistance” reflects internal tensions, similar to North-South tensions discussed earlier. Here, emerging social movements pursue a common analysis, while avoiding promotion of simplistic slogans or solutions unable to reflect a diversity of interests (Routledge, Nativel, and Cumbers 2006).

Despite similarities in transnational extraction methods in the South, members of Oilwatch Africa have tended to adopt varying approaches depending on the member

9. Charles Abugre in an evaluation of Oilwatch Africa, 2004.

10. Communiqué of the Oilwatch Africa General Assembly, Port Harcourt, Nigeria, 1999.

organization's degree of "rootedness" in community or national political struggles. Locally connected organizations have, at least initially, tended to be more radicalized and to express clarity in their political messaging. An example is Environmental Rights Action (ERA) in Nigeria, whose members were directly involved in the national organizations against military dictatorship and the Niger Delta self-determination movements. On the other hand, NGO members of Oilwatch who are committed to narrower biodiversity conservation objectives adopt a less political posture when responding to issues of hydrocarbon exploitation. In countries like Chad, where northern development organizations have had a more visible local presence (versus a country like Nigeria where locally established NGOs have dominated the civil society landscape around oil), struggles around oil and gas development display less political intensity, as domestic branches of large foreign NGOs may be less likely to challenge the socio-economic foundations of petroleum exploitation. Thus key NGOs in Chad and Cameroon (a country where NGOs working on forest conservation have been central to environmental advocacy) petitioned the World Bank Group to improve the implementation of the Chad-Cameroon Oil Development and Pipeline Project, of which the World Bank is a key financier (to be discussed further below).

Despite such varied approaches, central to the network's understanding of resistance is the proposition that the *initiative* of the people most affected by industry should determine the form and character of actions. Oilwatch Africa members, for instance, support territorially-based, ethnic nationality communities like the Ogoni and Ijaw of the Niger Delta in their resistance to state/corporate extraction, and seek to defend their claims on national/federal and global terrain. Similarly, while the global Oilwatch Secretariat does not initiate struggles, it supports and seeks to connect communities engaged in local struggles. This it did, for instance, with the U'wa in Colombia and Niger Delta organizations between 1998 and 2002, in part by fostering solidarity between Nigerian and Amazonian community leaders.

Accommodation versus "No" to Oil: The World Bank Extractive Industry Review and West African Energy Projects

Oilwatch Africa has been involved in facilitating civil society and community mobilization on specific oil developments such as the Chad-Cameroon Oil Development and Pipeline Project and West African Gas Pipeline (WAGP).¹¹ Both are commercial projects that the World Bank Group financed as a way to provide "political risk mitigation" for oil corporations. Very often the Bank has used its leverage over heavily indebted states in Africa to push for neo-liberal reforms in the extractive sectors. Bank critics argue that its role has benefited transnational corporations while worsening environmental and human rights conditions in the region. In the case of the Chad-Cameroon

11. For important additional contextualization, see Lo in this issue.

pipeline (see Lo in this issue), Exxon and other corporate initiators asked the World Bank to provide 3% financing for the project, to enable Chad's equity participation in two crude oil transportation companies (Horta, Nguiffo, and Djiraibe 2007; Gary and Reisch 2005). The Bank also extended credit to Ghana to enable the country's participation in the WAGP, a 681-kilometre onshore and offshore pipeline transporting natural gas from fields in the western Niger Delta of Nigeria to selected consumers in Benin Republic, Togo, and Ghana. The project has been critiqued for failing to contribute to reduction in gas flaring while exacerbating conflicts in the western Niger Delta (Osuoka 2009).

From 1999 onward, Oilwatch Africa, in collaboration with member organizations in Chad and Cameroon, organized community exchanges and advocacy to support residents' claims against both transboundary pipelines, which contributed to increased community organizing and representation. In the case of the WAGP, a consortium of host communities was established, and it made representations to the West African Gas Pipeline Company (WAGPco) and the World Bank, using platforms provided by Oilwatch Africa members.

Contradictions arise in such work quite consonant with a Gramscian analysis. In the campaigns on both the Chad-Cameroon and West Africa pipelines, attention focused upon the World Bank due to its perceived leverage over participating governments and companies. The Bank's request that the WAGP consortium improve its Environmental Impact Assessment (EIA) was made in direct response to the representations of Oilwatch Africa members. As a consequence of Oilwatch interventions, the World Bank and the WAGP sponsors appeared more informed of community and civil society concerns.¹² The WAGPco increased contact with, and patronizing of, community members in Nigeria and Ghana. In Nigeria, consultations resulted in the development of a Memorandum of Understanding (MOU) between the WAGPco and the communities, including the promise of social amenities. This has helped to reduce tension in the affected areas and led to the withdrawal by community members of a suit at the Federal High Court of Nigeria challenging the legality of the WAGP. We see here the effect of the flexible approach to resistance taken by Oilwatch members. Rather than outright resistance to further hydrocarbon development, Oilwatch Africa members here pursued accommodation of community claims by oil corporations and their backers. By reconciling minimal conflicts between communities and companies, the central questions of power, control, and "self-determination" may have been abandoned. That said, Oilwatch Africa leaders argue that their flexible approach to resistance is informed by the understanding that varied actions by communities could serve to expand the resistance frontier.¹³ Hence, within the framework of contemporary, global capitalism, diverse tactics are required to counter extraction expansion. While the above examples illustrate the World Bank's minimal response to critique, through a show of dialogue and reform, the state has not responded similarly. At the national level in Nigeria and

12. This was manifest, for instance, in a memo from the World Bank to WAGPco demanding a review of the WAGP EIA to address civil society concerns on the process and on gas flaring.

13. Discussion between the authors and a leader of Oilwatch in Nigeria, September 2009.

regionally in Africa, government agencies have been largely unwilling to engage with communities and Oilwatch members. Requests by ERA for information from, and meetings with, the Department of Petroleum Resources, Ministry of Petroleum, and Ministry of Environment were rebuffed between 2000 and 2006. During this period, the Committees on Gas in the Nigerian House of Representatives and Senate were unwilling to receive delegations from communities and civil society. Even requests to legislators to participate in capacity-building workshops were rejected. The result was that the WAGP enabling legislation, which holds major implications for national sovereignty and citizens' rights, was thus passed by the Nigerian National Assembly in a process shrouded in secrecy. Similarly in Ghana, the entire process of enacting the enabling legislation on the WAGP was concluded "in a few hours" before civil society organizations knew of it; they were consequently unable to influence the parliamentary outcome.¹⁴

We see, then, that the World Bank responded to Oilwatch members' and communities' requests. Yet these responses did not result in any fundamental alteration of the extractive business, including the issues of ownership and control, as these "half-hearted forms of consultation arranged by the multilateral institutions serve to keep larger questions ... of social policy out of bounds" (Bond 2006). When the World Bank could have significantly shifted its posture on financing extractive ventures within the context of its Extractive Industries Review (EIR), it balked, as explained below. Accordingly, although Oilwatch participated in these consultation processes, it has joined the call for the World Bank to stop financing extractive projects in the South.

Among the World Bank's key responses to massive global condemnation of its destructive impact was establishment of the Extractive Industries Review (EIR) in the late 1990s. Originally announced in 2000, the EIR was launched in 2001 by then-president of the World Bank Group, James Wolfenson, under the chairmanship of Dr. Emil Salim, former environment minister of Indonesia. The EIR was to serve as a platform to assess the Bank's lending and institutional support for the extractives business and recommend its future role in the sector. At the core of the EIR consultation process were four regional workshops—Asia and Pacific, Africa, Latin America and the Caribbean, and Eastern Europe and Central Asia—with representations from governments, business, and NGOs.

While some members of Oilwatch in Latin America and Africa opposed the process on grounds of total opposition to any World Bank role in financing mining projects, others sought to participate. Once again, this demonstrates contradictions inherent in civil society organizing in the South, as in the North. Indeed, some Oilwatch Africa members were involved in leading the mobilization of African civil society to make a strong input into the EIR, and were instrumental in drafting a statement calling on the World Bank Group to "stop financing and support for mining, oil and gas in Africa until adequate and transparent mechanisms are established for lending as well as dam-

14. From the account of an Oilwatch Africa member. See Mike Karikpo, Resource sovereignty, fueling conflicts: The case of West African gas pipeline project, Environmental Rights Action. http://www.eraction.org/publications/presentations/negotiating_resource_sovereignty.pdf.

ages to national economies, local communities and environment by current World Bank Group financing are addressed.”¹⁵ Strong civil society positions influenced the EIR’s final report in 2004, which recommended that the Bank adopt significant reforms: greater action to reduce poverty, immediate cessation of financing to coal projects worldwide; a phase-out of support for oil production by 2008; enhanced human rights protection; prior, informed consent for indigenous peoples and communities affected by extraction; and an end to support for destructive mining technologies (Darimani 2004).

Various African governments and mining companies opposed the EIR recommendations as capable of undermining “poverty alleviation and sustainable development” in the mineral producing countries (Darimani 2004).¹⁶ Unsurprisingly, but in the face of a favourable world reception to the EIR’s recommendations, the Bank’s board decided on their very selective and limited implementation. Practically, this amounted to a reversion to the World Bank’s status quo approach to extraction, failing to substantively alter the way the Bank, and the corporations and states they support, conduct business in Africa. As Bond (2006) points out, “multilateral agencies might take a few steps forward, but then several sideways and even backwards, leaving power relations and neo-liberal development strategies largely intact.”

Given these conditions, how does Oilwatch reconcile its no-to-oil position with demands for benefits from communities? There are two clear positions here: either Oilwatch is imposing its ideology on communities; or alternatively Oilwatch may also perform the role of “organic intellectual” by helping “clarify the political thinking of social groups, leading members of these groups to understand their existing situation in society and how in combination with other social groups they can struggle towards a higher form of society” (Cox 1999). Following Routledge, Nativel, and Cumbers (2006), Oilwatch agents might be referred to as network “imagineers” who as “grassrooting vectors” could develop alternative visions (“imaginaries”) to neo-liberalism. Yet it would seem that there is at times a disconnect between the messaging of Oilwatch members and local communities that seek immediate benefit from oil production revenues to address a lack of basic amenities. These material demands, in contrast to the advocacy positions in Oilwatch’s founding documents, partly explain the varying levels of resonance of Oilwatch messaging in affected oil communities, differentiating groups with a livelihood focus from, for instance, those like the U’wa of Colombia who sought a ban on extraction.

15. African civil society position on World Bank group investments in mining, oil, and gas at the Africa consultation of the Extractives Industries Review (EIR) in Maputo, Mozambique, January 13–17, 2003.

16. One might draw parallels here to the official response to recommendations of the Canadian Round Table on Extractive Industry.

Conclusion

This article, using a multi-scalar approach, examined some tensions facing South-South networks critiquing oil extraction. The approach reflects the global and local-level contradictions facing civil society networks seeking to represent affected communities. Despite similarities in the histories of the countries of sub-Saharan Africa (and the global South), and experiences of communities as victims of colonially mediated transnational extraction, tensions in Oilwatch's resistance posture and (op)position to hydrocarbon exploitation may be under-discussed. While the founding and working literature of the global Oilwatch network suggests a tendency to resist all fossil fuel activities, members in Chad, Cameroon, and Nigeria have conducted individual campaigns in response to community demands for benefits and infrastructure from petroleum ventures. Perhaps this reflects acceptance of the potential of oil and gas revenues to improve material conditions within affected communities. It may indicate that varied strategies adopted by communities and Oilwatch members not only promote resistance to the expansion of the extractive frontier, but also that certain actions positively contribute to environmental protection through directly or indirectly causing improvement in the material conditions of the people.

Oilwatch Africa and its coordinating organizations have given some support and impetus to community organizing against individual oil companies and hydrocarbon projects in the region. However, Oilwatch has recorded less success in addressing broader political goals of resistance: promoting "self-determination" and stopping socially destructive oil activity. The role of the network as "organic intellectual" is limited by the tendency of donor dependent NGOs to seek accommodation with institutions of power. The disparity between the ideological positions of Southern networks like Oilwatch and the advocacy direction of some of its members indicates that civil society in the global South may be far more politically diverse than their shared coloniality would suggest (Doherty and Doyle 2006). As neo-liberal policy changes have resulted in a widening gap between states and communities, social movements addressing environmental injustice in Africa have been challenged to devise emancipatory messaging and mobilization to fill the gaps the state has created, and to address the material needs of the social groups targeted.

Careful attention to regional and local tensions reveals that spaces for meaningful grassroots organizing must be preserved and fostered so as to secure "resource control" and restore a degree of territorial sovereignty to those communities most affected by extraction. Such spaces would offer opportunities to unify marginalized communities into movements that not only challenge the state and extractive capitalism, but also transform them.

References

- Alagoa, E.J. 1964. *The small brave city-state: A history of the Nembe-Brass in the Niger Delta*. Madison: University of Wisconsin Press.
- . 1971. The development of institutions in the states of the Eastern Niger Delta. *Journal of African History* 12 (2): 269–78.
- Albo, G. 2009. The crisis of neo-liberalism and the impasse of the union movement. *Development Dialogue* 51: 119–32.
- Amin, S. 1990. *Maldevelopment: Anatomy of a global failure*. London: Zed Books.
- Auty, Richard. 1993. *Sustaining development in mineral economies: The resource curse thesis*. NY: Routledge.
- Basedau, M., and A. Mehler. 2003. African resources and war. *Internationale Politik*, transatlantic ed. http://www.ip-global.org/archiv/2003/fall2003/download/4d61c5924e6411dbabf6732542681ea1e1eae/original_Basedau+03_03+q.pdf.
- Bayart, J.F. 2000. Africa in the world: A history of extraversion. *African Affairs* 99: 217–67.
- Beeson, B. 2008. U'wa fight new oil exploration. North American Congress on Latin America (NACLA). <https://nacla.org/node/5151>.
- Bello, W. 2006. The capitalist conjuncture: Over-accumulation, financial crises, and the retreat from globalisation. *Third World Quarterly* 27 (8): 1345–67.
- Bob, C. 2005. *The marketing of rebellion: Insurgents, media and international activism*. NY: Cambridge University Press.
- Bond, P. 2006. Civil society and global governance: Facing up to divergent analysis, strategy, and tactics. In *Theorizing global civil society*, ed. Rupert Taylor. Special issue. *Voluntas* 17 (4): 359–71.
- Bracking, S. 2003. Regulating capital in accumulation: Negotiating the imperial “frontier.” *Review of African Political Economy* 30 (95): 11–32.
- Brand, U. 2009. Environmental crises and the ambiguous postneo-liberalising of nature. *Development Dialogue* no. 51: 103–17.
- Bunker, S., and P. Ciccantell. 2005. *Globalization and the race for resources*. Baltimore: Johns Hopkins University Press.
- Burawoy, M. 1998. The extended case method. *Sociological Theory* 16 (1): 4–33.
- Ceceña, A.E. 2009. Postneo-liberalism and its bifurcations. *Development Dialogue* 51: 33–44.
- Cox, R.W. 1999. Civil society at the turn of the millenium: Prospects for an alternative world order. *Review of International Studies* 25 (1): 3–28.
- Darimani, A. 2004. Ignoring the EIR: How industry, government and the bank chose profits over people. <http://www.pambazuka.org/en/category/comment/24683>.
- Dike, K.O. 1956. *Trade and politics in the Niger Delta, 1830–1885: An introduction to the economic and political history of Nigeria*. London: Oxford University Press.
- Doherty, B. 2006. Friends of the Earth International: Negotiating a transnational identity. *Environmental Politics* 15 (5): 860–80.
- Doherty, B., and T. Doyle. 2006. Beyond borders: Transnational politics, social movements and modern environmentalisms. *Environmental Politics* 15 (5): 697–712.
- Escobar, A. 1996. *Encountering development: The making and unmaking of the Third World*. Princeton: Princeton University Press.
- Fox, J., and N. Brown. 1998. *The struggle for accountability: The World Bank, NGOs and grassroots movements*. Boston: MIT Press.
- Frynas, G., Matthias P. Beck, and Kamel Mellahi. 2000. Maintaining corporate dominance after decolonization: The “first mover” advantage of Shell in Nigeria. *Review of African Political Economy* 27 (85): 407–425.
- Gary, I., and N. Reisch. 2005. Chad’s oil: Miracle or mirage? Following the money in Africa’s newest petro-state, Washington, DC, and Baltimore: Bank Information Center and Catholic Relief Services. http://crs.org/publications/showpdf.cfm?pdf_id=187.
- Gramsci, A. 2007. *Prison notebooks*. Vol. 3. NY: Columbia University Press.
- . 1971. *Selections from the Prison notebooks*. Ed. Quintine Hoare and Geoffrey Nowell Smith. NY: International Publishers.

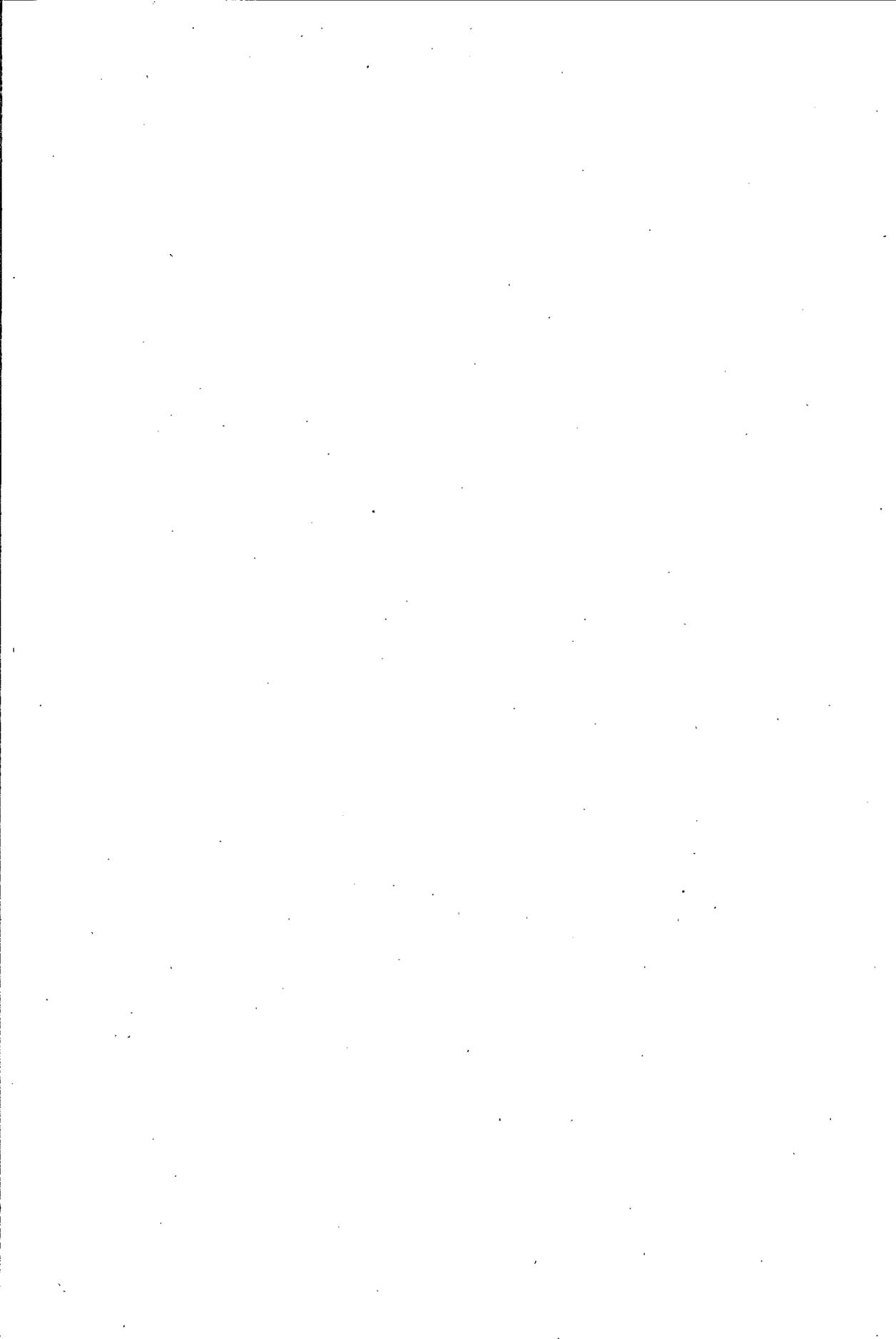
- Grovogui, S. 1996. *Sovereigns, quasi-sovereigns and Africans: Race and self-determination in African law*. Minneapolis: University of Minnesota Press.
- Hall, S. 1986. Gramsci's relevance for the study of race and ethnicity. *Journal of Communication Inquiry* 10 (2): 5-27.
- Hart, G. 2001. Development critiques in the 1990s: Cul-de-sacs and promising paths. *Progress in Human Geography* 25 (4): 649-658.
- Harvey, D. 2007. *The Limits to Capital*. Updated ed. NY and London: Verso.
- . 2003. *The New Imperialism*. NY: Oxford University Press.
- Horta, C., S. Nguiffo, and D. Djiraibe. 2007. *The Chad-Cameroon oil and pipeline project: A project non-completion report*. Environmental Defence Fund. http://m.edf.org/documents/6282_Chad-Cameroon-Non-Completion.pdf.
- Idahosa, P., and B. Shenton. 2004. The Africanist's "New" Clothes. *Historical Materialism* 12 (4): 67-113.
- . 2003. "The turn toward the local: Present and past development policy in Africa." <http://www.valt.helsinki.fi/kmi/Tutkimus/Sal/Idahosa%20&%20Shenton.htm>.
- Incite! Women of Color Against Violence. 2007. *The revolution will not be funded: Beyond the non-profit industrial complex*. Cambridge, MA: South End Press.
- Kaldor, M. 2003. The idea of global civil society. *International Affairs* 79 (3): 583-593.
- Kapoor, I. 2008. *The postcolonial politics of development*. NY: Routledge.
- Karl, Terry Lynn. 1997. *The paradox of plenty*. Berkeley: University of California Press.
- Keck, M., and K. Sikkink. 1998. *Activists beyond borders: Advocacy networks in international politics*. Ithaca: Cornell University Press.
- Larrea, C. 2009. Yasuni: Keeping the oil in the soil in the Ecuadorian Amazon. Paper presented at the conference Rethinking Extractive Industry, York University, Toronto.
- Lohmann, L., ed. 2006. Carbon trading: A critical conversation on climate change, privatisation and power. *Development Dialogue* no. 48.
- Malhotra, K. 2000. NGOs without aid: Beyond the global soup kitchen. In *NGO futures: Beyond aid*, ed. A. Fowler. Special issue. *Third World Quarterly* 21 (4): 655-68.
- Mamdani, M. 1996. *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press.
- McIlwaine, C. 1998. Contesting civil society: Reflections from El Salvador. In *Rethinking geographies: North: South Development*, ed. D. Simon and K. Dodds. Special Issue. *Third World Quarterly* 19 (4): 651-672.
- Munck, R. 2006. Global civil society: Royal road or slippery path? In *Theorizing global civil society*, ed. Rupert Taylor. Special issue. *Voluntas* 17 (4): 324-31.
- Oilwatch. 2006. *Between dream and memory: 10 years of struggle. 10 years of resistance*. Quito: Oilwatch. <http://www.oilwatch.org/doc/libros/ow10ingles.pdf>.
- . 2005. *Assaulting the paradise: Petroleum companies in protected areas*. Quito: Oilwatch. http://www.oilwatch.org/doc/libros/Assaulting_the_paradise.pdf.
- Okonta, I., and O. Douglas. 2002. *Where vultures feast: Shell human rights and oil in the Niger Delta*. San Francisco: Sierra Club Books.
- Omeje, K., ed. 2008. *Extractive economies and conflict in the global South*. Aldershot: Ashgate.
- Osaghae, E. 1998. Managing multiple minority problems in a divided society: The Nigerian experience. *Journal of Modern African Studies* 36 (1): 1-24.
- Osuoka, I. 2009. Paying the polluter? The relegation of local community concerns in "Carbon Credit" proposals of oil corporations in Nigeria. In *Upsetting the offset: The political economy of carbon markets*, ed. S. Böhm and S. Dabhi. London: MayFly Books.
- Peterside, S., and A. Zalik. 2008. The commodification of violence in the Niger Delta. In *Violence today: actual existing barbarism*, ed. L. Panitch and C. Leys. NY: Monthly Review Press.
- Petrás, J. 1997. Imperialism and NGOs in Latin America. *Monthly Review* 49 (7). <http://www.monthlyreview.org/1297petr.htm>.
- Routledge, P., P. Nativel, and A. Cumbers. 2006. Entangled logics and grassroots imaginaries of Global Justice Networks. *Environmental Politics* 15 (5): 839-859.
- Saavedra, L.A. 2001. Oilwatch! *New Internationalist* 27.

- Sawyer, S. 2004. *Crude chronicles: Indigenous politics, multinational oil and neo-liberalism in Ecuador*. Duke University Press.
- Taylor, Rupert, ed. 2006. Theorizing global civil society. Special issue. *Voluntas* 17(4).
- Tilly, Charles, and Sidney Tarrow. 2006. *Contentious politics*. Boulder: Paradigm Publishers.
- Turner, T. and P. Norre. 1980. *Oil and class struggle*. London: Zed Books.
- Vitalis, R. 2002. Black gold, white crude: An essay in American exceptionalism, hierarchy and hegemony in the Gulf. *Diplomatic History* 26 (2): 185–213.
- Watts, M. 2004. Resource curse? Governmentality, oil and power in the Niger Delta, Nigeria. *Geopolitics* 9 (1): 50–80.
- . 1994. Oil as money: The devil's excrement and the spectacle of black gold. In *Money, power, and space*, ed. S. Corbridge, N. Thrift, and R. Martin. Oxford: Blackwell.
- Wheeler, D., H. Fabig, and R. Boele. 2002. Paradoxes and dilemmas for stakeholder responsive firms in the extractive sector: Lessons from the case of Shell and the Ogoni. *Journal of Business Ethics* 39:297–318.
- Zalik, A. 2009. Zones of exclusion: Offshore extraction, the contestation of space and physical displacement in the Nigerian Delta and the Mexican Gulf. *Antipode* 41 (3): 557–82.
- . 2008. Labeling oil, reconstituting governance: The global memorandum of understanding, LegalOil.Com and the contested representation of profiteering in the "Global Niger Delta." Presentation at the International Workshop on Violent Conflict in the Niger Delta, PRIO-OSLO, Nordic Africa Institute, Oslo.
- . 2004. The Niger Delta: Petro-violence and partnership development. *Review of African Political Economy* 101: 401–424.



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Extraction, Territory, and Inequalities: Gas in the Bolivian Chaco*

Denise Humphreys Bebbington and Anthony J. Bebbington

ABSTRACT Conflicts over extractive industry have emerged as one of the most visible and potentially explosive terrains for struggles over distribution, territory, and inequality in the Andes. We explore these relationships in Bolivia, focusing on gas extraction in the Chaco region of the southeastern department of Tarija. We consider how the expansion of extractive industry intersects with territorializing projects of state, sub-national elites, and indigenous actors as well as with questions of inequality and inequity. We conclude that arguments over the territorial constitution of Bolivia are inevitably also arguments over gas and the contested concepts of equity underlying its governance.

RÉSUMÉ Les conflits liés aux activités de l'industrie extractive sont apparus comme l'un des terrains de lutte les plus visibles et les plus potentiellement explosifs sur des questions de distribution, de territoire et d'inégalité dans les Andes. Dans ce texte, nous traitons de ces relations en Bolivie, en nous concentrant sur l'extraction de gaz dans la région du Chaco relevant du département de Tarija dans le sud-est du pays. Nous examinons les interactions entre l'expansion de l'industrie extractive, les projets de territorialisation des élites infranationales et étatiques, et les acteurs indigènes, de même que les questions d'inégalité et d'iniquité. Nous concluons que tous les conflits entourant la constitution territoriale de la Bolivie sont aussi inévitablement des conflits sur la question du gaz et des concepts contestés d'équité qui sous-tendent sa gouvernance.

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Extractive Industries, Bolivian Territories

The social-state need[s] to generate economic surpluses that are the state's responsibility ... Is it mandatory to get gas and oil from the Amazon north of La Paz? Yes. Why? Because we have to balance the economic structures of Bolivian society, because the rapid development of Tarija with 90 percent of the gas is going to generate imbalances in the long run. It is necessary, accordingly, to balance in the long term the territorialities of the state ... combined with the right of a people to the land is the right of the state, of the state led by the indigenous-popular and campesino movement, to superimpose the greater collective interest of all the peoples. And that is how we are going to go forward. (Álvaro García Linera 2009)

With arresting directness this quotation from Bolivia's vice-president Álvaro García Linera reveals at least four tensions that underlie hydrocarbon policy and politics in contemporary Bolivia. These are tensions between local rights and the rights of the central state, between the territorial logics of sub-national indigenous projects and the territorial logic of Bolivia's new nation state, between the localization of costs and the nationalization of gains from extraction, and between the political logic of a state grounded in "the indigenous-popular and campesino movement" and that of a state ready to "superimpose the greater collective interest" on areas occupied by indigenous and campesino communities. These tensions, the ways in which they are contested, and how they are governed constitute our primary interest in this paper.

Over the last decade in Bolivia, hydrocarbons, natural gas in particular, have become the backbone of the macroeconomy as well as a primary source of social conflict (Kaup 2008). While the "gas war" of 2003 demonstrated the explosiveness of hydrocarbons governance on a national scale (Perreault 2006), voting patterns in the 2008 referenda on departmental autonomies and the revocation of elected authorities revealed the conflicting ways in which gas and the revenues it generates enter into sub-national political behaviour (Humphreys Bebbington and Bebbington, forthcoming). It is the contention of this paper that central to these conflicts are two related themes: perceptions of, and responses to, inequality and inequity, and struggles among conflicting territorializing projects, each linked to a particular view of gas and its governance (Wilson 2004; Perreault, forthcoming).

The distinction between inequality and inequity is important to these claims. We take inequality to refer to patterns in the distribution of outcomes (income, consumption, etc.), while the idea of inequity refers to the distribution of opportunities and of abilities to influence socio-economic and political processes (World Bank 2006; Bebbington, Dani et al. 2008a). In this sense, the term "equity" elicits notions of fairness and justice, and therefore might be closer to capturing factors that trigger socio-political activity in the presence of inequality.

This distinction between inequality and equity also sheds lights on the different territorializing projects associated with gas in Bolivia. This is so in two senses. First, in

order to finance new social programs aimed at reducing inequality in the distribution of public spending and in interpersonal income distribution, the current administration of President Evo Morales and his Movement Towards Socialism (MAS) is committed to the expansion of extractive industries in areas such as Tarija, where the bulk of Bolivia's proven gas deposits are located (Bebbington 2009). However, solving the function {(increased extraction) \rightarrow (reduced inequality)} also demands that the government redistribute part of the income generated by this gas extraction away from Tarija and toward other regions with fewer financial resources as well as into central government programs. Second, as the quotation from García Linera suggests, the Bolivian government is seeking to offset the geographical "imbalances" produced by the concentration of gas operations in Tarija. In addition to the political motivations that underlie these efforts,¹ a concern to reduce geographical inequality informs these calculations and has led the government to open hydrocarbon frontiers in departments² with no history of oil and gas on the grounds that "[i]t is necessary, accordingly, to balance in the long term the territorialities of the state" (see figure 1).

Politically, these processes confront the government with three challenges, each of which derives from the relationships between extraction, territory, and inequality/equity.

1. While the simultaneous promotion of extraction in Tarija and elsewhere reflects policy commitments to reduce interpersonal and territorial inequalities, it has also led the government to reproduce more traditional forms of inequity through political decision-making processes in which central authorities decide, more or less unilaterally, to "superimpose" their vision of how resources should be governed.
2. While these processes are components of a particular territorializing project in which the central state seeks to impose its view of national space and how it should be governed (cf. Wilson 2004; Wainwright and Bryan 2008; Wainwright and Robertson 2003), this central government strategy runs up against the more localized territorializing projects of indigenous peoples and sub-national elites. These sub-national projects involve rather different notions of how space should be governed and used.
3. There are good *a priori*, empirical, and conceptual reasons to expect that the expansion of extractive industry will itself aggravate inequalities and inequities within the regions in which it occurs (even as it is a strategy oriented toward reducing inequalities at a national scale). An instrument used to try and offset certain forms of inequality thus becomes a source of new inequalities.

Through the example of the extraction of natural gas in Bolivia, and specifically in the Chaco of Tarija, this paper explores the relationships among extraction, territory, and inequality, the conditions under which these relationships have given rise to social

1. These calculations involve efforts to reduce the political power of the so-called "Media Luna," the lowland departments of Bolivia in which both hydrocarbons and commercial agriculture are concentrated and which have historically had antagonistic relationships with the highlands (an antagonism that has intensified since the election of Evo Morales and his Movement Towards Socialism (MAS)).

2. This includes departments such as Oruro, Potosí, Beni, and the north of La Paz.

mobilization, and the extent to which this social mobilization has reworked these relationships. The paper is divided into three sections. The first section discusses (1) the ways in which the expansion of the extractive economy is likely to deepen and produce new inequalities within and between territories, and (2) the ways in which these inequalities and the inequities that underlie them are contested. In the light of these ideas, the second section discusses the effects that natural gas extraction has had on territory and distribution in the department of Tarija and how this has interacted with different territorializing projects in the region. We pay particular attention to the implications that this has had for the Weenhayek indigenous people who live in the Chaco of Tarija. The final section draws conclusions.

The empirical material underlying our arguments draws on field research conducted at different moments between 2007 and 2009. The most significant period of research involved nine months of fieldwork in Tarija conducted by the first author during 2008–2009. This fieldwork was complemented with four other shorter field visits involving one or other of the authors. A second source of data has been the authors' continuing engagement with regional and national actors involved in conflicts over gas and territory in Tarija, and particularly the first author's close collaborative relationships with two organizations in Tarija—the Consejo de Capitanes Guaraníes de Tarija (CCGT) and the Regional Studies Centre for the Development of Tarija and the People of El Chaco (CERDET). In addition to key informant interviews conducted with government, companies, activists, indigenous leaders, families, and researchers in Tarija, Santa Cruz, and La Paz, the first author's research involved participant observation of the work of CERDET (where she is also a Research Associate), of community consultations on gas development in Weenhayek territory, and of technical conferences on gas development. Finally, collaborative research activities with the technical team of CCGT have also been an extremely important source of information and insight into the relationships between the expansion of the gas economy and the territorial projects of indigenous organizations in the Chaco of Tarija.³

Extraction, Inequality, and Territorial Dynamics

Extraction, Inequalities, and Inequities

The literature on the so-called "resource curse" has demonstrated the economic and political distortions that frequently characterize mineral-dependent economies and which inhibit growth, frustrate economic diversification, and lead to forms of capitalist development that exhibit continuing poverty and inequality (Auty 1993, 2001;

3. The Bolivian Chaco is part of the eastern and southern lowlands, an ecoregion that is characterized by drier forest transitioning into scrub forest. Temperatures are extreme and water scarce. Population densities are low. Indigenous Guaraní, Weenhayek, and Tapiete occupy parts of the Chaco, though there has been significant colonization by other ethnic and cultural groups, and ranching dominates. The Chaco as an ecological region extends into Paraguay and Argentina. The Chaco forest is the second largest and most important in South America after the Amazon.

Weber-Fahr 2002; Sachs and Warner 1995; Humphreys, Sachs, and Stiglitz 2007; Karl 1997). While much of this literature focuses on the market volatility and exchange-rate effects of mineral dependence (often referred to as the Dutch Disease), there is also a substantial body of work exploring the distributional consequences of the extractive economy (Ross 2008; Kirsch 2006; CIDSE 2009; Aspinall 2007; Isham et al. 2005). This latter body of work explores how mineral-dependent economies both create new forms of inequality and interact with existing forms of inequality in ways that reduce transparency in economic management and increase levels of social conflict and rent-seeking behaviour (Ross 2008). These arguments have been explored both at national and sub-national scales (Arellano-Yanguas 2008).

There are several ways in which the arrival of extractive industry can aggravate inequality. Most significantly it creates asymmetrical power relations on an unprecedented scale (Stiglitz 2007). The size of the extractive enterprise, the resources at its disposal, its direct contacts with national and regional political authorities, and its privileged access to, and control of, information place it in a position of power in relation to other actors. This power gives the enterprise the capacity to favour candidates in local and regional elections, to sponsor social organizations with gifts and programs of various types, to assume a dominant presence in the local media, and to become, in Jeff Bury's (2004) terms, a "puppeteer" in the regional political economy, manipulating the actions of a range of the other actors.

The asymmetries of power that accompany the arrival of extractive enterprise in a new territory can themselves drive further inequality. First, through the control that the enterprise exercises over the natural resources it requires in order to operate, mostly land and water, the industry reduces other actors' access to, and control over, these resources (Bury 2004). Second, through its effects in the labour market, extractive industry creates new employment inequalities. Only part of the local population is able to access the jobs provided by the industry. Skilled jobs typically go to trained people who migrate in from other regions or countries. Even when the enterprise makes a deliberate attempt to create unskilled jobs for local populations, access to these only reaches out a certain distance from the mine or the well, and only lasts a limited time as such positions tend to be concentrated in the construction phase of a project. Furthermore, when extractive enterprises do hire unskilled labour, they frequently do so via local labour recruitment companies. In many cases these companies are created by pre-existing local and community elites, the effect being to further accentuate local inequalities of wealth and to induce the emergence of new local authorities (the labour gang organizers) who compete for power with existing community authorities.⁴

Third, to the extent that the enterprise acquires services and supplies from local companies,⁵ this also creates new inequalities. Whether it be for reasons of compe-

4. Here we draw on our research across different parts of the Andean region, as well as on the insights of other researchers who have encountered similar phenomena.

5. This is not to criticize such practices; indeed, they help localize some of the multiplier effects of extractive industry. We merely want to note that one effect is often to accentuate inequalities between the owners of these enterprises and others.

tence, scale, or proximity, only certain enterprises are able to participate in these new markets, and hence their owners emerge as new sources of local economic and political power. Fourth, extractive industries often initiate social and community development programs with a view to enhancing community relations and company reputation, and securing social licence to operate.⁶ The distribution of these programs—both between and within communities—is also unequal. This inequality may be deliberate, particularly when such programs are intended to compensate those people who are most negatively affected by extraction. Nonetheless, for those who do not benefit, these programs constitute a new form of inequality of opportunity as well as potential for exclusion. Moreover, such programs are often undertaken without regard to traditional forms of organization and decision making which, among lowland groups in the Bolivian Amazon and Chaco, often include mechanisms to maintain a degree of distributional equity.

Finally, extractive industry is by definition a geographically focused activity that generates significant environmental externalities. These externalities are both real (landscape modification, water contamination, water consumption, noise, traffic, night-time illumination) and perceived (the perception of environmental risk even when the company insists that it has been able to control for, and prevent, actual contamination). Reflecting the uneven geography of extraction, these externalities are also distributed unequally among communities.

The growth of extractive industry can introduce new inequalities among territories as well as within them. As the opening quotation from Bolivia's vice-president notes, the distribution of royalties from extraction, and the degree to which this distribution should match that of actual extractive activities, constitute one of the most serious terrains of conflict in Bolivia and have been so severe as to have called into question the integrity of the country (García Linera 2009; Humphreys Bebbington and Bebbington, forthcoming). Hydrocarbon-producing regions such as Tarija and Santa Cruz have believed passionately that they should hold onto the taxes and royalties that are due to them by law and generated by extraction. Conversely the western highlands (La Paz, Oruro, Potosí) have felt just as strongly that they have not received their "fair" share of the income streams that flow from hydrocarbon extraction. Finally, inequalities (and tensions) also emerge between the territories at the point of extraction and those distant territories in which the accumulation based on that extraction actually occurs. These distant territories may be within, or even beyond, Bolivia.

Contesting Inequality

There has been much interest in the types of institutional arrangement that might counteract these different sources of inequality. This interest is apparent in the literature on the resource curse (Humphreys, Sachs, and Stiglitz 2007; Weber-Fahr 2002) as well as in the literature which argues that subsoil, natural resources should be seen as an "endowment" (and not a "curse") that countries can transform into human development and economic growth (ICMM 2006; Davis 1995; Davis and Tilton 2002). A

6. "Social licence" refers to the notion that in order to operate smoothly, companies need good relationships with, and the approval of, local populations.

concern for alternative institutions is also visible in the Extractive Industries Review (EIR), conducted in response to the criticisms made of the World Bank Group's support to mining and hydrocarbon investments (World Bank 2004, 2005). Across these literatures one finds a wealth of recommendations regarding the sorts of institutional arrangement that might mitigate the adverse political, economic, and environmental effects of extractive industry. These include transparent fiscal contracts, civil society vigilance of the extractive sector, strengthened environmental and tax codes, independent monitoring of the local impacts of mining and hydrocarbons operations, fine tuning of consultation mechanisms, and many other recommendations (Weber-Fahr 2002; Stiglitz 2007; Karl 2007; Ross 2008; World Bank 2005). These are all, in effect, institutions for coping with, and offsetting, the inequities and inequalities that occur as a result of extraction. However, such recommendations for institutional design are less frequently accompanied by analyses of how new arrangements might emerge. Here other literatures are more helpful, in particular those on contentious politics (Tilly 2004), policy networks (Haas 1992), and the political economy of institutional change (Boix 2008). Bringing these literatures together with case studies of "institutional transitions to equity," Bebbington, Dani et al. (2008b) have identified several pathways through which equity-enhancing institutions might emerge. The most relevant for the discussion here are those pathways that derive from social mobilization, policy networks, and the formation of broader class alliances.

Social mobilization does not always induce equity-enhancing institutional change; indeed it can induce authoritarian and repressive responses. However, both the historical record (Tilly 2004) and more recent experience in the Andes (de Echave et al. 2009; Bebbington and Burneo 2008) suggest that institutional changes that reduce inequities can occur as responses to organized social protest. Policy networks and policy reformers can also play critical roles in the emergence and design of new institutions that reduce inequity (cf. Hochstetler and Keck 2007; Fox and Brown 1998). They help build technical and analytical arguments to justify the case for institutional change, and they craft the actual design of new institutions that have the chance of being viable in the context of existing administrative and political arrangements. Their ability to play these roles, however, can often depend on the political space that opens up as a result of organized social protest. Finally, the sustaining of institutional changes is that much more likely when new class alliances emerge (particularly of middle classes) that are committed to increased equity (Boix 2008; Lehmann 1978). By the same token, when these alliances unravel institutional changes can be reversed.

Institutional change is unlikely to be induced by just one of these pathways. Institutional changes that signal innovation in mining-sector governance in Peru, for instance, can only be understood as the combined effect of mobilization *and* policy networks (Bebbington and Bury 2009). By the same token, such pathways operate in the context of, and will be influenced by, other political projects.

Territory and Inequity in a Gas-Fuelled Economy: Bolivia and Tarija

In this section we discuss the forms of inequality that have been associated with the gas economy in Bolivia and the extent to which they have been reworked as a result of social mobilization. Following a discussion of these relationships at a national level, we focus our discussion on Tarija and particularly those parts of the Chaco occupied by indigenous peoples. As will be clear, the nature and effects of such mobilization have to be understood in the context of the different territorializing projects to which it is linked. In the case of Tarija, such territorializing projects include those of

1. the national government, which has a project aiming to reinforce the territorial integrity of Bolivia and to govern national space in a way that allows increased resource transfers away from gas-producing departments and toward highland departments and national social programs,
2. regional elites who are concerned to ensure that resources from hydrocarbon extraction remain in Tarija and who seek to use these resources in order to produce a particular vision of the department as a territory governed from the city of Tarija and integrated to Bolivia and South America by large-scale infrastructure,
3. sub-regional elites, such as those of the Gran Chaco, whose territorializing project hinges around increased autonomy for the province of Gran Chaco within the department of Tarija, and
4. indigenous peoples whose projects hinge around the consolidation and governing (and in several cases expansion) of their legally recognized collectively owned lands (so-called *Tierras Comunitarios de Origen*).

Each of these projects draws on a sense of grievance with the current order of things and the current distribution of the costs and benefits of gas extraction; and at the same time the viability of each project depends on changes in the management and governance of gas.

Extraction, Inequities, and National Mobilizations around Gas

Though natural gas is considered a new commodity in Bolivia, the hydrocarbons industry dates back to the 1920s when Standard Oil of New Jersey began drilling for oil in Bermejo, along the border with Argentina. In the years following the Chaco War (1932–1935), after allegations that Standard Oil was sending oil to Argentina via a secret pipeline, the government moved to take control of the oil fields and passed the operations onto the newly created national hydrocarbons company, *Yacimientos Petroleros Fiscales de Bolivia* (YPFB). In the 70 years since the creation of YPFB, real or perceived inequities linked to the hydrocarbons sector have driven several rounds of social protest, and the government has nationalized and then reprivatized the sector on five occasions. Each nationalization has invoked the same rationale: that the country

was not receiving a fair share of the profits deriving from the extraction of the nation's natural resources.

As its title, "Héroes del Chaco," makes clear, the Supreme Decree 29701 ushering in the most recent such nationalization in 2006 invoked this same history. As in earlier periods, the decree grew out of different senses of inequity surrounding the benefits from hydrocarbon extraction and out of a period of expansion in international investment in the sector. Since the mid-1990s, Bolivia has steadily shifted toward an economy powered by, and increasingly dependent upon, receipts from the extraction and export of its natural gas reserves. The interest in discovering and exploiting these reserves is linked to larger trends in the Andes and in South America that include among other things the extraction and export of primary materials, especially minerals, oil and natural gas, and the development of a network of regional infrastructure works that can facilitate the flow of these commodities to markets located both within the region as well as overseas (Bebbington 2009). Bolivia was encouraged and advised by multilateral funding agencies to open up the sector to private investment in order to better exploit and profit from its natural gas reserves. In this way, it was argued, the country would be able to take advantage of high prices and strong demand, in addition to its advantageous geographical location, to provide gas to urban centres (São Paulo, Buenos Aires) hungry for clean fuels.

The combination of technological advances and the new wave of investment catalyzed by reforms since the mid-1990s certainly drove important new discoveries and renewed enthusiasm for the possibility of extraction-led development. By the early 2000s production levels of gas and condensates were rising dramatically. However, increased social discontent accompanied this gas bonanza, particularly over the dominant role of transnational firms in the production chain and the paltry sums that Bolivia received for its gas. Government found itself hard pressed to deliver the benefits that could satisfy the rising expectations generated by the industry around the production and export of gas. Meanwhile, anti-globalization sentiments within social movements in Bolivia (as well as within certain transnational networks) inspired criticism of transnational energy firm ownership and control of Bolivia's resources, and pushed for an agenda to assert sovereignty over natural resources and to return the sector to state control (Perreault, 2006). These movements drew upon the contentious proposal to export gas from the Margarita field in Tarija through Chile to markets in Mexico and the United States, and cultivated the image of Bolivians having died in the Chaco War (1932–35) to defend hydrocarbon resources, only to have this wealth fall into foreign hands. At the same time, disagreement grew between Bolivian officials and transnational energy firms engaged in negotiations over the distribution of profits related to new contracts and the classification of new and old gas fields. Indeed, according to one former government official, rather than the pressure of social protest, it was the greed of some transnational firms that ultimately derailed the plans for gas exports. Whatever the case, the tensions surrounding inequities in benefit distribution and social control of the industry were part cause, and part product, of a broad social movement that coalesced around the struggle to reclaim sovereignty over the nation's national resources, especially hydrocarbon resources, from transnational firms. After a period of violent

confrontation, leading to the resignation of two presidents and contributing to the election of MAS, Evo Morales's government retook control of the direction of the sector and began to reconfigure the distribution of profits.⁷

Gas and Protest in Tarija and Its Chaco

Located in the far southern and southeastern reaches of the country, Tarija is the smallest of Bolivia's nine departments, with a total population of approximately 391,000 (less than 5% of the country's total population) and a total land area of 37,623 square kilometres (less than 4% of total national territory) (INE 2009). In colonial times, apart from the fertile valleys of Tarija, there was little in the department that interested the central state. This was particularly the case for the Chaco, where lands were considered unused, uninhabited, and free. Indeed, following the war of independence, veterans were awarded property in the Chaco in recognition of their service — at the expense of indigenous groups already living in the region (Saignes 1990). These veterans became the first official occupants of the region and the beginnings of a self-identified *chaqueño* culture.

Since the colonial period, agriculture and livestock-raising have been important productive activities in the department, with the sector being dominated by small-scale producers and a limited range of products (Preston 1998). Around the mid-twentieth century, however, the regional economy began to shift to hydrocarbon production after important oil reserves were found in Bermejo and the Chaco. This sector quickly became an important source of financial resources for the region when in 1941 Tarija began to receive the 11% royalty paid to those departments producing hydrocarbons (Lema 2008).⁸ During the 1940s, regional leaders created the Comité Pro Intereses de Tarija (the Committee for the Interests of Tarija, now known as the Comité Cívico or Civic Committee), which served as a mechanism around which the interests and projects of regional elites could coalesce, and as an instrument to demand the implementation of projects and investments using these royalties. Just as Tarija tussled with the national government over spending royalty monies, within the department there were equally acrimonious struggles over access to royalties between Tarija's provinces (above all those of the Gran Chaco)⁹ and the capital. In 1979, the Board of Tarija's Regional Development Authority (CODETAR) moved to recognize the demands of leaders from the Gran Chaco by assigning the province almost half (45%) of the 11%

7. The new hydrocarbons law 3058 was negotiated and signed by the Senate during the Veltze (2005–06) administration, though MAS were an important part of the legislative drafting process.

8. Royalties are payments made for the resource extracted. They are a payment, not a tax, and are calculated on the basis of the volume and value of the extracted resource. The payment of royalties to oil-producing departments was first promulgated in 1929. However it was not until after the Chaco War that the Ley de Regalías established a percentage to be paid: 11%, which appeared to correspond to the percentage that Standard Oil handed over to the Bolivian government. In 1957, the Siles Suazo government attempted to recapture the 11% for the national treasury but was blocked by an oppositional alliance formed by the producing departments (Lema 2008).

9. The province of the Gran Chaco comprises three municipalities in the east of the department of Tarija: Yacuiba, Carapari, and Villa Montes. The Chaco as an eco-region extends from these provinces into Argentina, Paraguay, and parts of the departments of Santa Cruz and Chuquisaca.

royalty received by the department. However, in both cases it was often necessary to resort to civic mobilizations in order to force the government to disburse long-delayed payments owed for projects.

The bulk of these royalty monies were used to build roads connecting the city of Tarija with Argentina and the Chaco with Argentina, to pave the streets of urban Tarija, and later to build a series of provincial roads. Some royalty money, complemented by loans from international financial institutions (IFIs) received via the central government and the Bolivian Development Corporation (CBF), was also used to finance the construction of a sugar processing plant in Bermejo in 1968 and a vegetable oil plant in Villa Montes in 1979. Notwithstanding these investments in roads and agroindustry, the long-standing presence of hydrocarbon development in Tarija is not perceived as having contributed to the creation of a more dynamic and equitable regional economy, either at a departmental level or at that of the Chaco of Tarija, the area where most of the extraction has been taking place. The critical question today is whether the effects of the most recent round of gas expansion will be substantially different in a context in which, in 2008, the department's natural gas sector exports soared to US\$2.19 billion,¹⁰ dwarfing soya (US\$5.38 million) and more traditional products such as sugar (US\$5.33 million). This has produced windfall resources for Tarija.

Today about 70% of Bolivia's annual production of natural gas originates in the department of Tarija with the bulk of that production located in the two eastern provinces of O'Connor and Gran Chaco (INE 2009). This expansion of gas in Tarija has reverberated throughout the national economy. The contribution of the oil and gas industry to Bolivia's GDP rose from 4.46% in 1995 to an estimated 10% in 2005; the contribution to exports jumped from approximately 13% to nearly 50% in the same period, and the latest figure is higher still. The growth of the hydrocarbon industry has also dramatically shifted incentives and possibilities in the regional economy. The increase in the department's income, primarily through transfers to Tarija of revenue raised by royalties and the Direct Hydrocarbons Tax (IDH),¹¹ has been extraordinary. The income accruing to the prefecture (the departmental government) from royalties and taxes on hydrocarbons has quadrupled from BOB 522.8 million (approximately US\$74.7 million) in 2004 to BOB 1,982.2 million (approximately US\$283.2 million) in 2008. Over the same period the IDH transferred to Tarija's municipalities has increased from zero to BOB 443.5 million (US\$63.4 million). As a consequence, Tarija accounts for fully 35% of the entire budget for public investment across Bolivia's nine departments (though its capacity to spend this budget is severely reduced).¹² Indeed, it was because of such "imbalances" (to use Evo Morales's term) that the central government decided, in 2008, to redirect some of the transfers to Tarija to other regions through national income transfer programs.

10. These figures are from INE 2009. The jump in natural gas exports is primarily due to highly favourable prices though natural gas production in Tarija grew by 4% in 2008.

11. The IDH is a new tax created in the light of the Gas Wars that increased the government's share in the profits made from gas extraction. The IDH was created prior to the election of Evo Morales. The Morales government increased the rate of the tax.

12. All the data in the second half of this paragraph come from a public presentation made by the Ministry of Hacienda in Tarija in May 2008 (Ministerio de Hacienda 2008).

Though the overall budget for Tarija continued to increase from 2007 to 2008 (Ministerio de Hacienda 2008), it was this central decision that sparked intense conflict between Tarija and the government (Humphreys Bebbington and Bebbington, forthcoming).

Indeed, this financial windfall has triggered a series of conflicts. Some of these occur within the department, both among provinces (O'Connor and Gran Chaco), and between provinces and the departmental capital (Gran Chaco and Tarija); others occur between the department of Tarija and other departments (especially Chuquisaca) over the distribution of income from fields that cross political boundaries; and yet others occur between Tarija and central government. The most visible version of this third type of conflict has been that between the Prefecture and Comité Cívico of Tarija on the one hand, and the central state authorities on the other, though lowland indigenous groups in the Chaco have also had tense relations with central government and MAS over certain aspects of gas expansion.¹³

These conflicts can be read in the light of the territorializing projects we noted earlier. There is a direct confrontation between the project of the Morales government, which seeks to consolidate Bolivia as a territory¹⁴ within which resources are shared more evenly (on a per capita basis) between the eastern departments and the western highland departments, and that of Tarija's elites, whose project focuses on the modernization and integration of Tarija. Both projects require control over the resources generated by gas, not only to consolidate their own projects but also to weaken that of the other. Meanwhile within Tarija, the Gran Chaco has long had a project to separate from Tarija and create a tenth department of the Gran Chaco. This project also requires control over gas income in order to make such a department viable and has therefore lead to recurring tensions with the city of Tarija. The announcement by Evo Morales in August 2009 that the Gran Chaco would henceforth receive its royalties directly from the central government (currently they pass through Tarija), and would be allowed to vote on its own regional autonomy¹⁵ in December 2009, reflects a pact between his territorializing project and that of the Gran Chaco, to the cost of the project of Tarija's elites. Meanwhile, the Guaraní, Weenhayek, and Tapiete peoples pursue their own projects. However, as we will note in the next section, they have been the least favoured by, and the least able to consolidate their agendas through, the gas question.

Existing alongside these disputes sits another inequality which derives from the organization of the gas production chain (Bridge 2008) rather than the fiscal arrangements governing how profits from extraction are redistributed. While this inequality has not induced mobilization, it is an ongoing source of grievance and annoyance in

13. This issue has cropped up on various occasions in our interviews with indigenous leaders and organizations. See also Bebbington 2009.

14. This is made clear in the *New Political Constitution of the State* (2009). The Constitution also allows for departmental, municipal, regional, and indigenous "autonomies" within Bolivia. These autonomies (of which the indigenous autonomy is the strongest) will delegate authorities to these sub-national units. The principle of autonomies, however, has been recognized as part of a strategy to ensure the geographical integrity of Bolivia.

15. This is not the same as becoming a tenth department. It is instead an intermediate form, allowed for by the new constitution.

Tarija. Much of the extraction of gas in Tarija is governed from company offices in the city of Santa Cruz, and government offices in La Paz and Santa Cruz. Santa Cruz therefore becomes the point at which high-salaried positions are concentrated, where strategic decisions are made, and where many of the subcontracting arrangements are worked out with suppliers of strategic services or inputs (many of whom are also based in Santa Cruz). In terms of accumulation and decision-making power related to gas, Santa Cruz and Tarija thus stand in an unequal relationship. This same inequality plays out in the relationship between Tarija and the international locations of the companies operating Tarija's gas fields. These companies include Petrobras (Brazil), British Gas (UK), Repsol (Spain), and Total (France).

The persistence of imbalances and unequal treatment drives much of the increased social protest, mobilization, and conflict around hydrocarbon development within the department of Tarija. Increasingly, struggles around who controls and who decides how and where to drill and lay pipelines, and struggles over how the benefits derived from extraction should be shared, mean that gas has become a commodity that divides rather than unites. The inability of leaders to forge a common vision across these different territorializing projects threatens to undermine the social order and risks even greater fragmentation of society by giving rise to resource regionalisms and, indeed, indulging them, as in the recent decision to transfer royalties directly to the Gran Chaco.

Inequality and Indigeneity: Extraction and the TCO Weehayek

Beginning in the mid-1990s with the adoption of the Ley INRA,¹⁶ the government moved to formally recognize and title the ancestral lands of lowland indigenous groups under the denomination of originary communal lands (TCOs). In Tarija, the three TCOs with claims to land include the Guaraní TCOs of Itika Guasu (in the municipality of Entre Rios) and Yaku Igua (in Yacuiba), and the Weehayek TCO (in Villa Montes). All three TCOs have ongoing and/or proposed hydrocarbons operations located within their limits.

The fact that much of the hydrocarbon extraction now taking place is located in poor, remote areas occupied by these indigenous groups is a direct result of the loss of important oil and gas fields in the North. New technologies now permit companies to take a fresh look at old and abandoned fields as well as to identify new areas of hydrocarbon potential.¹⁷ While it is beyond the scope of this paper to address the impacts of hydrocarbon development on indigenous land claims and processes of territorial consolidation, suffice to say that there is strong evidence to suggest that where there are known reserves of hydrocarbons, indigenous efforts to claim formal title to those lands

16. *Law for the National Institute of Agrarian Reform*. This law was proposed in 1996 during the first government of Gonzalo Sánchez de Lozada to resolve the territorial demands of lowland indigenous groups.

17. The Chaco, a traditional area of production, has attracted some of the world's largest transnational energy firms (Petrobras, REPSOL, British Gas, British Petroleum, REPSOL, and Total ELF). These firms, and others, have agreements with the Bolivian government to jointly produce gas and condensates for export to Brazil and Argentina.

systematically fail. This is the case for both the Guaraní and Weenhayek in the Chaco of Tarija. However it is important to note that the trajectory of the different Guaraní TCOs in the Chaco of the department of Santa Cruz and their negotiations with the state have produced different results.¹⁸ The perceived inequality of treatment or opportunity that is felt by TCO leaders in the Chaco is one of the reasons why they have recently stepped up efforts to pressure the government to move forward in recognizing increased levels of indigenous autonomy.

The case of the TCO Weenhayek, encompassing some 3,500 inhabitants in 22 settlements located along the left-hand margin of the Rio Pilcomayo, illustrates how the unfolding of extractive industry has had a profound influence not only on the physical landscape but also on the social organization and social relationships that sustain both Weenhayek livelihoods and their capacity to pursue their territorial project. Exploration for gas, in an area that now forms part of the TCO, dates back to the decade of the 1980s when Tesoro Bolivia Petroleum Company, a US-Bolivian firm, carried out seismic testing in and around a number of communities. According to one community leader present at the time, the testing involved opening up trenches that “extended under our feet causing terrible vibrations and noise.”¹⁹ These trenches are still visible on satellite images. The same leader noted that there was no process of gaining community approval, much less compensation for damages: company representatives did not ask for permission, they merely set up videos for the children and passed out sweets. Tesoro went on to drill a number of wells but the lack of capital and suppressed world prices for oil and gas put further exploration on hold.

In the late 1990s, the multinational energy firm British Gas (BG Bolivia) acquired Tesoro Bolivia and came to own the concessions that overlap with the TCO Weenhayek.²⁰ BG Bolivia sought to further explore and develop wells as well as build a network of infrastructure in order to process and transport gas and condensates. In the early 2000s, two hydrocarbon transport firms, Transierra and Transredes, held negotiations with the Weenhayek regarding rights-of-way to lay pipelines across parts of their territory in order to transport gas from more distant fields to markets in Brazil and Argentina.²¹ In contrast to the exploratory activity of the 1980s, the operating environment had changed in important ways. Firstly, the Weenhayek were organized, albeit with much difficulty and many limitations, and had elected community representatives and a directorate — ORCAWETA (Organización de la Capitanía Weenhayek) — to represent and defend their interests.²² Thus negotiations between transnational energy

18. The clearest case here is that of the TCO Alto Parapeti. Among the factors that led to successful recognition of territory in this instance, the strength, maturity, and political connections of the NGOs working with the Guaraní were especially important.

19. All interviews have been kept anonymous.

20. The TCO Weenhayek claim was recognized by the Bolivian government on May 19, 1993 and encompasses a total area of 195,659 hectares; to date some 35,500 hectares have been titled.

21. For more on these negotiations between the Weenhayek and Transierra see Inturias and Aragón (2005).

22. See Alvarsson (2006) and Cortez (2006) for a discussion of Weenhayek social organization and the formation of ORCAWETA.

firms and the Weenhayek were to be conducted, at least in theory, via ORCAWETA and its higher level representative organization, CIDOB.²³ Secondly, the Weenhayek had a pending claim with the government to recognize an additional area of land that they argued also comprised part of their TCO.

Operating in a context of increasing resistance, energy firms sought to smooth the negotiation of their entrance and secure Weenhayek approval by offering payments to ORCAWETA to support development projects. BG Bolivia agreed to fund an "indigenous development plan" or PDI (an instrument that was first introduced by Transierra in its negotiations with the Weenhayek). The plan sought to provide support to those Weenhayek settlements most affected by the firm's activity. In this case, BG Bolivia determined which communities were most affected and what activities would be prioritized and funded, and then retained control over the administration of the funds. The plan was portrayed as part of the company's commitment to corporate social responsibility (CSR), but BG Bolivia did not accept that it was a form of compensation for damages caused by their operations; rather it was presented as an expression of the company's desire to help foster the development and betterment of the Weenhayek people. Still, in the minds of ORCAWETA leaders and community leaders, these payments are considered a form of compensation. As one former leader suggested, "They are taking something from our land so it must be replaced."

The development plan, which has been amended and expanded as BG Bolivia continues to work the gas field, has become the instrument that increasingly defines the relationships between the Weenhayek and the company, among the Weenhayek, and between them and their territory. As one observer noted, "You can be sure that every time the company wants to expand its operations, or when a community needs more resources, leaders will organize some sort of mobilization" in order to renegotiate the PDI. In short, the PDI has become the medium for the transfer of resources to Weenhayek leaders who, in order to maintain their standing and power within their communities, must be seen as successfully "collecting" resources to redistribute among their members. However, there is little evidence that the PDI has a pro-poor or developmental impact at the community level, much less at the level of TCO, given its limited scope, its preference for delivering in-kind donations, and a tendency toward funding an ad hoc list of activities favouring those communities most impacted by its operations. While in Weenhayek cosmology and culture the maintenance of harmony and equilibrium within and among communities is critical to peaceful coexistence, the PDI is premised on the notion that benefits will be unequally distributed, and is implemented through a relationship of inequity in which the power to decide resides with BG Bolivia. The resulting and persistent distributional imbalances within and among communities have led to a crisis in relationships, outbreaks of violence, and a breakdown of the social order.²⁴

23. CIDOB is the Confederation of Indigenous Peoples of Bolivia, a confederation of indigenous lowland organizations.

24. There is some resonance here with Foster's old notion of "the image of the limited good" (Foster 1965); such an image occupies an important place in sustaining certain cohesion in Ween-

More recently, the perception of imbalance and unfair treatment linked to BG Bolivia's proposed expansion within the TCO has led to a new round of internal conflicts resulting in the weakening of ORCAWETA. Confrontations between leaders who seek to gain control of the organization and access to rents have debilitated the organization at the very moment when internal cohesion is needed to analyze and debate the proposed expansion, and determine if and how it can be aligned with the Weenhayeks' own ostensible territorial project to consolidate and expand their TCO. Rival leaders have emerged to accuse ORCAWETA's leadership of negotiating behind the backs of community members and enriching themselves in the process. The lack of transparency and the secretive nature of company-ORCAWETA negotiations feed this distrust. Typically negotiations around the PDI involve only a company representative and the head indigenous leader (or at most a handful of leaders). The results of these negotiations tend not to be socialized or discussed with, or ratified by, the communities. The closed nature of negotiations and resulting agreements stems from the company's desire to keep the information from becoming public—and most likely to keep communities and groups from comparing results. Indeed, neither the government nor companies use a recognized or standardized methodology to calculate the value of a well or of one kilometre of pipeline, which results in wide variations in what communities are able to negotiate (Inturias and Aragón 2005, 153).

The forms taken by hydrocarbon expansion within the TCO Weenhayek and across Tarija derive from structured inequities in relationships of power. The history of these inequities dates back to the days of Standard Oil and runs through to transnational firms like BG Bolivia in the present. These inequities reside in the relationships between hydrocarbon companies and the central government, in the relationships between companies and territorially based indigenous populations, and in the relationships between central government and indigenous populations. Central government has had the power to grant concessions (and now contracts) without any free, prior and informed consent,²⁵ and the power of lead companies has given them the direct access to central government that has allowed them to progress more or less as planned. Regard-

hayek communities. The structurally uneven distribution of the "additional good" of benefits from the PDI contravenes this image.

25. In May 2005, the parliament approved the new *Hydrocarbons Law 3058*, which among other things recognized the rights of indigenous, peasant, and original communities to prior and informed consultation. In 2007, President Evo Morales promulgated *Supreme Decree 29033* to regulate the consultative process (known as *Consulta y Participación*). According to the guidelines issued by the Ministry of Hydrocarbons, there are two moments when the *Consulta y Participación* process should be applied: the first is prior to any concession or contract being accorded for new operations, and the second is when an operation proposes to expand its activity. In the case of the Weenhayek, one of the first consultative processes carried out under this government, the process comes in the second moment when BG Bolivia proposed to reactivate a well held in reserve. The *Consulta y Participación* process was led by the Ministry of Hydrocarbons and YFPB, and BG group representatives were not allowed to take part. This process ended in mid-2009 after which BG Group reassumed control of negotiations with the Weenhayek in the final round of talks over compensation for non-mitigable impacts. It also merits noting that Vice-President Álvaro García's comments about "superimposing" hydrocarbon extraction elsewhere in Bolivia (see opening quotation) suggest that these processes of *Consulta* offer little real negotiating power to communities.

less of whether this extraction has generated resources for local investment, it has been grounded in and made possible by structured inequities in political and decision-making processes in which indigenous communities remain by far the weakest player. Furthermore once extraction has installed itself in Tarija, these structured inequities have installed themselves as the central political fact in the territorial landscape. Whether the image is of Tesoro Bolivia doling out presents, or of BG Bolivia determining the design and governance of an indigenous development plan, the message regarding the relationships between power, and the governance of gas and territory is much the same.

In the face of these inequities, national social movements, the Morales government, the elites of the Gran Chaco, and the elites of Tarija have all, at different times, been able to mobilize in ways that have both enhanced the benefits that they can derive from gas and furthered their territorializing projects. This has not, however, been the case for the Weenhayek. While the Weenhayek's material gains from gas *have* increased marginally, in the form of the PDI, the institutional effect has been to weaken the integrity of their representative organizations and the quality of social relationships within Weenhayek society. This in turn weakens their territorial project. ORCAWETA are only too aware of their disadvantageous position in these processes, and the sense of powerlessness and injustice is deepened.

Conclusion

The history of hydrocarbons in Bolivia has been characterized by inequalities in the distribution of benefits, costs and risks, and by inequities in the ability of different actors to influence these distributions. This in turn has induced forms of social mobilization demanding institutional changes that would, in the eyes of those mobilizing, reduce these inequities and inequalities. In pursuit of such ends, a number of these mobilizations have been successful: they have won changes in the ownership of the industry, in levels of royalty and tax payments, and in the distribution of benefits. The mobilizations that have systematically been least successful have been those of the lowland indigenous peoples who live on top of, or alongside, hydrocarbon deposits and who are most immediately subject to the costs that extraction exacts on the human and physical environment. Among these lowland peoples, the Weenhayek and Tapiete have been the least able to defend their territorial projects in the face of the expansion of the extractive frontier.

Most, if not all, of these mobilizations have been linked to particular territorializing projects, and their interpretations of the inequalities and inequities surrounding gas extraction. This is all the more so in contemporary Bolivia. The territorial visions underlying these projects are not, however, consonant with each other. Indeed, the divergence among the objectives of these different, mobilized social groups has resulted in continuing cycles of conflict. At stake in these conflicts is the question of the territorial organization of modern Bolivia. Gas and its governance has become central to this

question. This, indeed, is the message of the quotation of Vice-President Álvaro García with which we opened this paper.

However, there is more at stake in these conflicts than just the territorial organization of Bolivia. Running through them are also ongoing debates on equity and fairness, and on how a criterion of "equity" should inform resource allocation in contemporary Bolivia. This is so both in a general sense and at a territorial scale. First, there is very significant debate on what constitutes a "fair" distribution of the benefits and costs generated by extractive industry. This fairness is partly discussed in terms of spatial justice. Here one issue is how benefits should be distributed in relation to the spatially uneven exposure of people and communities to the negative effects of extraction. What constitutes "fair" recompense to those localities most affected and from which resources are directly extracted? Another issue regards what constitutes a fair distribution of benefits among regions where extraction occurs and those where it does not occur. It was this debate that so rocked Bolivia during 2008.

Second is the issue of fair recompense for losses incurred by individuals and communities as a direct consequence of extractive activity. What would constitute a fair price for land and water taken by extractive activity? What constitutes a fair distribution of work opportunities for communities located adjacent to the site of extraction? What is a fair "geography" and distribution of company CSR activities? And in a similar vein, what constitutes fairness in access to information and decision making? Guaraní and Weenhayek groups in Tarija appear to feel that the ways in which decisions are made are not fair, and that furthermore they are treated by companies and the state in ways that are systematically unjust.

In the end there is of course no neutral, technical definition of "fairness," and the different groups involved in these conflicts approach notions of what is "fair" from their particular historical, cultural, and sociopolitical positions. To date the different processes of social mobilization noted in this paper have not converged to create a sphere in which the actors involved can move toward a relatively stable agreement on what they will collectively take to be fair. As long as this is the case, it is very likely that the inequalities produced by gas, and the inequities underlying gas extraction, will continue to generate conflict. As was clear during 2008, these arguments can be hugely volatile and they risk weakening even further the very public sphere in which debates over equity might occur. In this sense, while social mobilization has been a vehicle through which different groups in Bolivian society have been able to offset the inequities that affect them, mobilization has not yet served to produce an institutionalized notion of equity on the basis of which a collectively accepted approach to governing gas can be pursued.

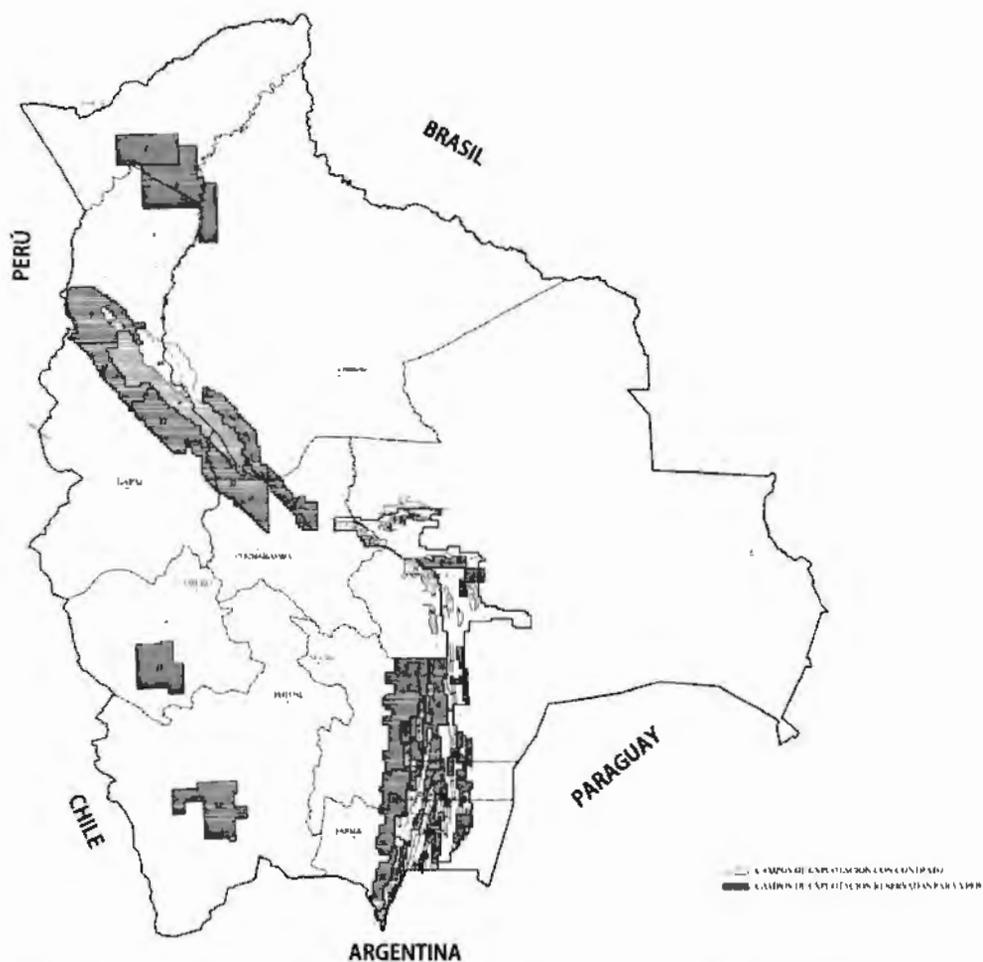


Figure 1. Hydrocarbon contracts and areas available for contracting in Bolivia. The light shaded area represents areas available for contracts, while dark shaded areas represent existing contracts. Note the contracts given in La Paz, Oruro, and Potosí, none of which has any history of hydrocarbon extraction.

Source: Yacimientos Petroleros Fiscales de Bolivia (2008).

References

- Alvarsson, J.A. 2006. El Proceso de Etno(re)génesis entre los "Weenhayek" del Gran Chaco (1976–2006). http://gupea.ub.gu.se/dspace/bitstream/2077/4498/1/anales_9-10_alvarsson.pdf.
- Arellano-Yanguas, J. 2008. A thoroughly modern resource curse? The new natural resource policy agenda and the mining revival in Peru. IDS Working Paper 300, Institute of Development Studies, University of Sussex, Brighton.
- Aspinall, E. 2007. The construction of grievance: Natural resources and identity in a separatist conflict. *Journal of Conflict Resolution* 51 (6): 950–72.
- Auty, R., ed. 2001 *Resource abundance and economic development*. Oxford: Oxford University Press.
- . 1993. *Sustaining development in mineral economies: The resource curse thesis*. London: Routledge.
- Bebbington, A. 2009. The new extraction? Rewriting the political ecology of the Andes? *NACLA Report on the Americas* 42 (5) September: 12–20.
- , ed. 2007. *Minería, Movimientos Sociales y Respuestas Campesinas. Una Ecología Política de Transformaciones Territoriales*. Lima: IEP/CEPES.
- Bebbington, A., and M. Burneo. 2008. Conflictos mineros: freno al desarrollo o expresión ciudadana. In *Pobreza, Desigualdad y Desarrollo en el Peru. Informe Anual: 2007–8*, ed. Oxfam GB, 44–51. Lima, Peru: Oxfam.
- Bebbington, A., and J. Bury. 2009. Institutional challenges for mining and sustainability in Peru. *Proceedings of the National Academy of Sciences* 106:17296–17301.
- Bebbington, A., A. Dani, A. de Haan, and M. Walton. 2008a. Inequalities and development: Dysfunctions, traps and transitions, in Bebbington, Dani et al., 3–41.
- Bebbington, A., A. Dani, A. de Haan, and M. Walton, eds. 2008b. *Institutional pathways to equity: Addressing inequality traps*. Washington, DC: World Bank.
- Bebbington, A., L. Hinojosa, D. Humphreys Bebbington, M.L. Burneo, and X. Warnaars. 2008. Contention and ambiguity: Mining and the possibilities of development. *Development and Change* 39 (6): 887–914.
- Boix, C. 2008. Spain: Development, democracy and equity. In Bebbington, Dani et al., 217–44.
- Bridge, G. 2008. Global production networks and the extractive sector: Governing resource-based development. *Journal of Economic Geography* 8 (3): 389–419.
- Bury, J. 2004. Livelihoods in transition: Transnational gold mining operations and local change in Cajamarca, Peru. *Geographical Journal* 170 (1): 78–91.
- CIDSE. 2009. *América Latina: Riqueza Privada, Pobreza Pública*. Quito and Brussels: ALAI.
- Cortez, G. 2006. Cambios sociales y culturales en el pueblo indígena Weenhayek en los últimos cien años. In *Definiciones étnicas, organización social y estrategias políticas en el Chaco y la Chiquitania*, ed. I. Coombs. Colección Ciencias Sociales #7. Santa Cruz: Editorial El País.
- Davis, G.A. 1995. Learning to love the Dutch disease: Evidence from the mineral economies. *World Development* 23 (10): 1765–79.
- Davis, G.A., and J.E. Tilton. 2002. *Should developing countries renounce mining? A perspective on the debate*. Report prepared for the International Council on Mining and Metals (ICMM). London: ICMM.
- De Echave, J., A. Diez, L. Huber, B. Revesz, X. Ricard, and M. Tanaka. 2009. *Minería y Conflicto Social*. Lima: IEP/CIPCA/CBC/CIES.
- Foster, G. 1965. Peasant society and the image of limited good. *American Anthropologist* 67 (2): 293–315.
- Fox, J., and L.D. Brown. 1998. *The struggle for accountability: The World Bank, NGOs, and grassroots movements*. Cambridge, MA: MIT Press.
- García Linera, Á. 2009. Interview in *Le Monde diplomatique*, English translation at *Links: International Journal of Socialist Renewal*. <http://www.links.org.au/node/1241>.
- Haas, P. 1992. Introduction: Epistemic communities and international policy coordination. *International Organization* 46 (1): 1–36.
- Hochstetler, K., and M. Keck. 2007. *Greening Brazil: Environmental activism in state and society*. Durham, NC: Duke University Press.

- Humphreys, M., J. Sachs, and J. Stiglitz. 2007. *Escaping the resource curse*. NY: Initiative for Policy Dialogue, Columbia University Press.
- Humphreys Bebbington, D., and A.J. Bebbington. Forthcoming. Anatomy of a regional conflict: Tarija and resource grievances in Morales' Bolivia. *Latin American Perspectives*.
- International Council on Mining and Metals (ICMM). 2006. *Resource endowment initiative: Synthesis of four country case studies*. London: ICMM.
- Instituto Nacional de Estadística (INE). 2009. *Actualidad Estadística Departamental: Estadísticas e indicadores sociodemográficos del Departamento de Tarija*. La Paz: INE.
- Inturias, M., and M. Aragón. 2005. David y Goliat, Los Weenhayek y el Consorcio Petrolero Transierra, Bolivia. In *Encrucijadas Ambientales en América Latina*, ed. R. Borel. San José, Costa Rica: Programa CyC, Universidad de Paz.
- Isham, J., M. Woolcock, L. Pritchett, and G. Busby. 2005. Varieties of resource experience: Natural resource export structures and the political economy of economic growth. *World Bank Economic Review* 19 (2): 141–74.
- Karl, T.L. 2007. Ensuring fairness: The case for a transparent fiscal contract. In Humphreys, Sachs, and Stiglitz, 256–285.
- . 1997. *The paradox of plenty: Oil booms and petro-states*. Berkeley and Los Angeles: University of California Press.
- Kaup, B. 2008. Negotiating through nature: The resistant materiality and materiality of resistance in Bolivia's natural gas sector. *Geoforum* 39:1734–42.
- Kirsch, S. 2006. *Reverse anthropology. Indigenous analysis of social and environmental relations in New Guinea*. Stanford, CA: Stanford University Press.
- Lehmann, A.D. 1978. The death of land reform: "A polemic." *World Development* 6 (3): 339–445.
- Lema, L. 2008. Desarrollo Económico de Tarija a Partir de las Regalías. Unpublished paper.
- Ministerio de Hacienda. 2008. *Departamento de Tarija, May 2008*. Public presentation, Tarija.
- Perreault, T. Forthcoming. Nature and nation: Hydrocarbons governance and the territorial logics "resource nationalism" in Bolivia. In *Subterranean Struggles: New Geographies of Extractive Industries in Latin America*, ed. A. Bebbington, J. Bury, and K. Young.
- . 2006. From the Guerra Del Agua to the Guerra Del Gas: Resource governance, neoliberalism and popular protest in Bolivia. *Antipode* 38 (1): 150–72.
- Preston, D. 1998. Post-peasant capitalist graziers: The 21st century in southern Bolivia. *Mountain Research and Development* 18:151–58.
- Ross, M. 2008. Mineral wealth, conflict, and equitable development. In A. Bebbington, Dani et al., 193–216.
- Sachs, J., and A. Warner. 1995. Natural resource abundance and economic growth. Working Paper No. 5398, 1–46. Cambridge, MA: National Bureau of Economic Research.
- Saignes, T. 1990. Ava y Karai. Ensayos sobre la frontera chiriguano (siglos XVI–XX). La Paz: Hisbol.
- Stiglitz, J. 2007. What is the role of the state? In Humphreys, Sachs, and Stiglitz, 23–52.
- Tilly, C. 2004. *Contention and democracy in Europe, 1650–2000*. Cambridge: Cambridge University Press.
- Wainwright, J., and J. Bryan. 2008. Cartography, territory, property: Postcolonial reflections on indigenous counter-mapping in Nicaragua and Belize. *Cultural Geographies* 16:153–78.
- Wainwright, J., and M. Robertson. 2003. Territorialization, science and the colonial state: The case of Highway 55 in Minnesota. *Cultural Geographies* 10:196–217.
- Weber-Fahr, M. 2002. *Treasure or trouble? Mining in developing countries*. Washington, DC: World Bank and International Finance Corporation.
- Wilson, F. 2004. Towards a political economy of roads: Experiences from Peru. *Development and Change* 35 (3): 525–46.
- World Bank. 2006. *Equity and development: World development report 2006*. Washington, DC: World Bank.
- . 2005. *Extractive industries and sustainable development: An evaluation of World Bank Group experience*. Washington, DC: World Bank, IFC, MIGA.

———. 2004. Striking a better balance: The World Bank Group and extractive industries. Final Report of the Extractive Industries Review. World Bank Group Management Response. Washington, DC: World Bank.



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How to Be Heard When Nobody Wants to Listen: Community Action against Mining in Argentina*

Mariana Walter and Joan Martinez-Alier

ABSTRACT Since 2002, Argentina has witnessed a growing number of mining conflicts. While national and provincial governments promote mining as a basis for development, local communities have opposed and acted to prevent it. Between 2003 and 2008, 7 out of 23 provinces banned open-pit metal mining, thus challenging the institutional framework that promotes it. These challenges, moreover, began during a period of high unemployment. Why are communities opposed to an activity that could benefit local development? This article argues that these communities are demanding recognition for local visions of development that are not compatible with mining—and that cannot be adequately accommodated by current decision-making processes.

RÉSUMÉ Depuis 2002, l'Argentine a été témoin d'un nombre croissant de conflits miniers. Tandis que les gouvernements nationaux et provinciaux font la promotion du secteur minier en tant que base du développement, les collectivités locales réfractaires ont posé des gestes pour l'entraver. Entre 2003 et 2008, 7 provinces sur 23 ont interdit l'extraction de minerais métalliques à ciel ouvert, défiant ainsi la structure institutionnelle qui en fait la promotion. En outre, ces contestations ont débuté durant une période de chômage sévère. Cet article soutient que ces communautés demandent une reconnaissance des considérations locales en matière de développement qui ne sont pas compatibles avec l'exploitation minière et que les processus décisionnels actuels ne peuvent concilier.

Introduction

In January 2004, the Argentine government launched the National Mining Plan, announcing that mining would become one of the foundations for the country's development. The announcement was made in a favourable international context for mining, when metals such as gold had reached record price levels. In addition, Argentina was a particularly favourable site for extractive activity, with an attractive tax system and a

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recently devalued currency that allowed gold mining projects to achieve outstanding rates of return, among the highest in the world and exceeded only by those of South Africa and Chile (Prado 2005). By 2004, Argentina ranked ninth among the top ten world destinations for mining investment (Bridge 2004).

The government's announcement was made a decade after a legislative framework designed to promote mining had come into effect and as its results were becoming apparent. Between 2003 and 2007, the number of mining projects in the country increased from 40 to 336 (Bureau of Mining 2008), while the number of foreign mining companies grew from 7 to 55 between 1990 and 2004 (Prado 2005). International Financial Institutions (IFIs) supported the government's promotion of private investment, which was presented as the best means to strengthen the economy and stimulate development. This investment framework, moreover, was implemented jointly with strategic participative plans for local development that were meant to strengthen governance and legitimize foreign investment.

The mining boom came at a critical moment for Argentina. In 2002, government statistics registered record unemployment (21.5%) and poverty rates (the income of 57% of the population was below the poverty line), and the economy experienced a strong recession, with an 11% reduction in GDP (EPH 2002). In this context, new mining projects were perceived as an opportunity to reactivate the economy and generate new sources of income for the public purse. However, while the national and provincial governments were celebrating the increasing number of projects and encouraging mining as the engine of national, provincial, and local development, various communities began to take action against mining. The emergence of grassroots movements around the country pressed municipalities and provinces to ban open-pit metal mining activities. From 2003 to 2008, 7 out of Argentina's 23 provinces approved such bans, challenging the national framework that aimed to promote mining.

The challenges posed by this effective local opposition raise a series of questions. What motivated communities with high unemployment and poverty rates to oppose an activity that could potentially improve local economic conditions? Why have local groups acted to ban mining? The purpose of this article is to explore these issues through a case study of Esquel, the city in which anti-mining mobilization began in Argentina.

Esquel, a small city in the Patagonian Andes, was the site of the first public mining conflict of the twenty-first century in Argentina. It placed the discussion of mining—its environmental, social, and economic impacts, as well as the question of the right of local populations to choose their own development path—on the national political agenda. When Meridian Gold, an American corporation, arrived in Esquel with the intention of exploiting a gold and silver mine located seven kilometres from the city, a popular movement emerged to contest the agenda of the provincial government, which was perceived to have imposed the mining project in disregard of local development views. Official channels for participation proved ineffective at accommodating the community's vision of development, forcing residents to organize themselves to halt the initiative. The conflict was resolved (for the time being, since the gold remains underground) when a local plebiscite was held, in which 81% of the population voted

against the mine. This experience also prompted the organization of a national network of communities affected by mining.

In a town where a quarter of the population was unemployed and 20% was poverty-stricken, what reasons lay behind the opposition to a project that could have stimulated local development? Was the conflict triggered by a poor communications strategy, as claimed by government representatives?

This article argues that behind the Esquel conflict, which exemplifies a growing number of mining conflicts, is a collision of two institutional frameworks for decision making and of two different visions of the role of mining in local development. These different perspectives came to the fore when the local community in Esquel discovered that its points of view could not be accommodated by official channels for participation. In fact, official decision-making processes about mining provided no room for the values and visions of local actors; this, in turn, generated opposition and led to the community's mobilization.

Just before the arrival of Meridian Gold, Esquel was undergoing a process of great mobilization and participation. The need to review and rethink the foundations of the local economy and society in a time of crisis was reflected in several initiatives, such as the design of a local development plan (fostered by the municipality of Esquel) and numerous other examples of mobilization that occurred during those years. The introduction of the mining project contravened the dynamics of local participation and leadership, and represented a top-down process that attempted to impose an activity with significant local impact without properly involving or consulting with members of the local community.

After exploring some theoretical considerations and briefly explaining the research methodology, this paper will analyze the evolution of the conflict between proponents and opponents of a mining project in Esquel, Argentina, with reference to differing visions of development.

Environmentalisms and Visions of Development: Theoretical Considerations and Methodology

Environmentalists do not necessarily share a common vision of what development is or should be. While some question or oppose economic growth, others accept it under certain conditions and still others avoid taking a stand in the debate. These contradictory perspectives can emerge during environmental conflicts, not only through the discourses and actions of local protesters but also through their expressed perceptions of the motivations and interests of other actors.

Martinez-Alier (2002) has proposed that three main currents dominate contemporary environmentalism: the "cult of the wilderness," the "gospel of eco-efficiency," and the "environmentalism of the poor." These three approaches entail different outlooks on the relation between society and nature and the reasons behind environmental conflicts.

The "cult of the wilderness," or "deep ecology," is represented mainly by conservation movements established in the North that focus on the preservation of unspoiled wilderness and the restoration of degraded areas. This movement does not question economic growth as such but aims to preserve the remnants of pristine, natural spaces outside the market. However, it must be noted that this current tends to neglect other issues on the environmental agenda (Guha and Martinez-Alier 1997, 93).

An example of this "cult of the wilderness" approach can be seen today in the Cordillera del Condor, in Ecuador, where rich deposits of copper and gold have been found. This region holds one of the most biodiverse and still poorly known ecosystems on earth, and is home to indigenous communities and other local inhabitants who consider their livelihoods at risk from the proposed mining activities. In this context, international and national conservation organizations have focused their efforts on negotiating with the government and the mining companies. In effect, the conservation organizations accepted the inevitability of mining in the region and advocated for the creation of protected sites outside claimed areas. This strategy created distrust and led to conflict with other environmentalists concerned about the long-term impact of mining on local livelihoods and watersheds in the Cordillera, and about the unjust distribution of costs and benefits related to mining projects in the area.

The growth of the international conservation movement since the 1970s has been interpreted as part of a wider cultural shift. Ronald Inglehart (1977, 1981, 1990) associated this shift with the emergence of "post-materialist values," a thesis that by the end of the 1970s held hegemonic status in the political science and sociology literature (Guha and Martinez-Alier 1997; Brechin and Kempton 1994). "Post-materialism" refers to a shift in values that has taken place among the generations that reached adulthood in rich countries during the post-World War II era of affluence. According to this thesis, as these new generations had their material concerns satisfied (housing, food, etc.), they started to become concerned about other non-materialistic dimensions of life, such as the environment, the quality of life, sexual freedom, and human rights. This phenomenon would explain the formation during the 1970s and 1980s of European green parties and the emergence of the feminist, pacifist, and student movements. Furthermore, as post-materialist arguments reached widespread acceptance, different related theses emerged, such as the postulated positive relationship between income and environmental concern (Jones and Dunlap 1992; Albrecht 1995).

Nevertheless, since its formulation, the theoretical and methodological foundations of Inglehart's thesis have been widely questioned. Particularly when its conclusions are extrapolated to poor nations, how can we explain concern for the environment when material needs remain unfulfilled (Brechin and Kempton 1994; Peet and Watts 1996; Dunlap and Merting 1997; Guha and Martinez-Alier 1997; Brechin 1999; Dunlap and York 2008)?

The "eco-efficiency" environmentalists are concerned with the sustainable management of the environment and human activity. This position is not opposed to economic growth but stands for a rational and efficient use of natural resources, which distances it from other sacred or aesthetic appreciations of nature (Martinez-Alier 2002). Some of the key phrases associated with this stance are "optimal allocation of natural re-

sources," "sustainable development," "ecological modernization," and "environmental services." Experts, scientific knowledge, and innovative research play a key role in "eco-efficiency" environmentalists' ideas about reducing the past, present, and future environmental impacts of economic growth.

This perspective is represented by the "Kuznets environmental curve" (KEC). The original Kuznets curve hypothesis, published in 1955 by the economist from whom it gets its name, suggested an inverted U relation between income distribution inequality and per capita income. In the early 1990s this work was recovered and applied to link income and environmental degradation. According to this hypothesis, when a country starts to grow, it first experiences increasing pressure on the environment (emission of pollutants, degradation of resources). Then, when growth reaches a certain level, these pressures decline as new technologies emerge, new regulations are crafted, and material pressures decrease.

According to this view, then, poorer countries need to grow economically in order to decrease their impact on the environment and improve their environmental health conditions. Nevertheless, case study research shows that such improvement has occurred only with regard to some specific pollutants. Other indicators of environmental pressures show inconsistent trends or, on the contrary, indicate that pollution levels tend to increase in affluent societies (e.g., greenhouse gas production, waste generation) (Dinda 2004; Roca et al. 2001; Stern 2004).

Moreover, Bridge and McManus (2000) explain how the emergence of social concern about the environmental impacts of forestry and mining in the United States has prompted a radical change in industry discourses. The adoption of "eco-efficiency" and "sustainability" discourses was central to relegitimizing business practices and facilitating extractive activities in the context of increasing social unrest and concern about the environment. By adopting the rhetoric of sustainable development, mining industries were able to co-opt the language of environmental protest, at once disenfranchising opposition and establishing themselves as authorities on, and guardians of, the protestors' ideals (Bridge and McManus 2000, 38). From this perspective, "eco-efficiency" environmentalism can be interpreted as part of a business strategy that allows high-impact industries to discursively reframe their activities to make them more socially acceptable.

The "environmentalism of the poor" perspective, developed in the field of political ecology, regards environmental movements in poor countries or communities as a defence of local livelihoods against the impacts and risks of economic growth. From this perspective, similar to that of the environmental justice movement in the United States, mobilizations emerge from diverse ecological conflicts that are produced by forms of economic growth that entail the extraction of resources and the production of waste. Since the environment is perceived as the direct basis of material sustenance by poor people, they protest resource extraction and pollution (Guha and Martinez-Alier 1997). This thesis does not deny the existence of a "post-materialist" environmentalism in northern societies, but it questions the perspective that the rich are more concerned about the environment than the poor, or that the poor are too poor to be "green" (Martinez-Alier 1995).

From this vantage point, environmental conflicts can be seen as disputes about territorial control (Sabatini 1997). The key to the problem would then lie in the relationship established between a community and its environment (Folchi 2001). To such communities, the environment is not a luxury asset, something superfluous, but rather is part of a complex social system in which physical, cultural, social, economic, and cognitive issues articulate a relationship singular to that place and historic moment (Norgaard 1984). As proposed by Arturo Escobar (2006), environmental conflicts can be conceptually understood through three interrelated rubrics: economy, ecology, and culture.

Such movements at times can express themselves in terms of "environmental justice," an idea that should not be understood as justice for the environment *per se*—as the conservation movement might do—but rather as a demand for the fair distribution of the costs and benefits of polluting activities, the recognition of difference, and/or procedural justice (Dobson 1998; Fraser 1998; Schlosberg 2007; Young 1990).

These three distinct and sometimes conflicting forms of environmentalism lead to different attitudes toward the role of experts, local knowledge and visions of development, and environmental management strategies. The first and the second forms of environmentalism entail a top-down management approach where expert knowledge defines a sustainable path, identifying and protecting the natural heritage and developing the technological solutions and economic instruments for sustainable growth. The third perspective, however, allows for the incorporation of diverse movements that advocate for a locally defined development path. Escobar (1995, 222) emphasizes that "there are no grand alternatives that can be applied to all places or all situations . . . One must resist formulation of alternatives at an abstract, macro level; one must also resist the idea that the articulation of alternatives will take place in intellectual and academic circles." This perspective clashes with top-down, imposed perspectives on development and legitimizes local knowledge and institutions in decision-making processes. Alternatives so developed may be local to start with, but they may grow into regional or national proposals and policies. In some cases, as in the growing "climate justice" movements, the links between local and global issues are explicit.

To describe and analyze the conflict in Esquel—its actors and their visions of development—we draw on diverse sources of information. During the first stage of research, which took place in February 2003, we consulted documents, press releases, leaflets, posters, personal communications, newspaper articles, and personal notes from meetings and public events in Esquel. During a second stage in early 2006, we conducted 15 in-depth interviews with key actors, and carried out a thorough analysis of local and national press sources between April 2002 and March 2003. A matrix in which actions and perceptions were entered chronologically and by type of actor became the framework for the investigation.

Esquel Case Study

Mining Frameworks, Environment, and Participation

In the 1980s, following a decade of political instability in Latin America, in an effort to promote economic growth and reduce the enormous foreign debt, governments in the region set in motion a reform process to liberalize the market. The mining sector was given a prominent role in this new model of economic development (Haselip and Hilson 2005). Supported by loans from the World Bank, governments passed new mining regulations introducing incentives and reducing taxes on private investment (Morgan 2002). Similar reforms were pursued during the 1980s and 1990s in approximately 90 countries, which triggered a redirection of investment flows toward new extracting areas, such as Latin America (Bridge 2004). In fact, the Latin American region has experienced the most significant increases in mining development of any emerging market in the past 10 years (Haselip and Hilson 2005). In Argentina, this is reflected in the spectacular growth in mining investments, which, in the year 2002, when the Esquel conflict erupted, reached US\$175 million and grew by a factor of eight in four years (CAEM 2008).

Since *Law 24.196* on investment in mining was passed in 1993, various additional regulations have broadened the range of incentives offered to mining projects. Examples include tax and exchange rate stability for 30 years, VAT refunds, and an exemption from various taxes on production, the import of machinery, and the export of minerals. However, all of this was not sufficient to regulate mining activity, since Argentina is a federal republic, and provinces own their natural and mining resources. In contrast to other countries in the region, the management of mining activities in Argentina is decentralized (Sánchez Albavera, Ortiz, and Moussa 1999). Therefore, to unify mining policies throughout the country a federal mining agreement was signed in 1993 between the provinces and the national government, limiting the application of local taxes and ratifying the benefits enshrined in national legislation. As a result, provinces may not set royalties that exceed 3% of the ex-mine price of mineral extracted, and municipalities may not charge taxes or stamp duties on mining activities.

Then, in 1995, an environmental protection act for mining activities (*Law 24.585*) was passed. Under this legislation, mining companies must submit an environmental impact assessment (EIA) before engaging in prospecting, exploration, extraction, or mine closure activities. No public participation is contemplated at any stage of the appraisal and approval procedure. In the province of Chubut, where our case study is situated, the provincial Bureau of Energy and Mining is responsible for assessing and approving EIAs.

During the 1990s, governments introduced another set of reforms aimed at improving participation and environmental protection. National and provincial constitutions and regulatory frameworks were updated, incorporating new rights for civic participation and environmental protection. These changes have had a direct impact on other areas of government, such as mining bureaus, which must now incorporate a public presentation of the EIA and ensure access to information on decision-making proce-

dures. With the support of IFIs, this process also promotes the formulation of local development plans as a means to consolidate local governance and optimize the identification of projects for private investment.

Esquel's Participation-Related Experiences and Development Plan

Esquel is a small city located in the Patagonian province of Chubut, bordering the Andes mountain range, 1,900 kilometres from Argentina's capital, Buenos Aires. It is the largest Andean settlement in the province, with 28,089 inhabitants. It has the most extensive infrastructure for transportation and services, and the best educational facilities in the region. The San Juan Bosco National University (UNSUB), the Agriculture and Forestry Experimental Centre of the National Institute for Agricultural Technology (INTA), and the Andes/Patagonian Forest Research Centre are all based in Esquel. Among other relevant organizations in the city are a local co-operative that manages water and power services, neighbourhood committees, and an indigenous movement that mobilizes around the demands of some of the Mapuche communities in the area.

Traditionally, economic activity in Esquel has been linked to its role as an administrative centre and to agricultural activity. Over the last few decades, tourism has grown, with attractions including fishing, mountaineering, a ski resort, and the nearby Los Alerces Nature Reserve, a protected area of lakes and forests that features larches that are several thousand years old. In the 1980s and 1990s, these established economic activities were plunged into crisis. Unfavourable weather conditions and decreasing wool prices combined with public sector restructuring and budget cuts at both the national and provincial levels contributed to paralyze the local economy (Esquel SEAS 2001). By the end of the 1990s, Esquel was confronting a social and economic crisis, with an unemployment rate of 25% and 20% of the population poverty-stricken (INDEC 2002).

In the midst of this crisis, a series of mobilizations and participatory experiences took place in Esquel that gave the community a leading role in setting the public agenda. One of these experiences was the development of a participatory, local development plan. Beginning in 1997, several Patagonian municipalities and NGOs participated in workshops to learn about the characteristics and advantages of such planning processes, which were presented as tools for improving governance, and as means by which to promote local development projects and investment.

In this context, the municipality of Esquel, in collaboration with a research group at the University of Esquel, initiated the design of a local development plan. The document was developed between December 1999 and July 2002, with Inter-American Development Bank funding (US\$600,000). The "Participatory Plan for Local Development," or Esquel SEAS, as the document was called, aimed to create a "model for social, economic, and environmentally sustainable development" for Esquel (Esquel SEAS 2001).

Community organizations were called upon to participate in the elaboration of the plan. Workshops were held with neighbourhood organizations (with an estimated participation of 150 people), and surveys were conducted. In the final proposal, which was presented in several community forums in Esquel in the course of 2002, five pillars

of local development were highlighted: agriculture, forestry, tourism, knowledge industries, and mining. However, when interviewed, researchers in charge of the report pointed out that mining was added to the list only in the final stage of the process, because at that time the Cordon Esquel mining project was being promoted, and local and provincial governments increasingly wished to include this emerging activity on the public agenda.

The level of participation and local empowerment generated by a series of mobilization and participation experiences that took place during these years should not be underestimated. In fact, in late 2001 and early 2002, four major social mobilizations occurred in Esquel related to growing social tensions and the economic crisis besetting the province of Chubut and the city of Esquel.

First, by the end of 2001, the national government decided to cancel gas price subsidies for the province, which would trigger a sharp price increase. This provoked massive mobilization among the population of the entire province, which many residents remember to this day. Second, in early 2002, the Bank of the Province of Chubut filed for bankruptcy, and a significant citizen mobilization emerged to face the possible closure of the entity that administered the funds and salaries of a large percentage of the Esquel population. Third, beginning in 2001, an important movement of Independently Organized Teachers (*Docentes Autoconvocados*) was created and consolidated in the province of Chubut. They were organized as an assembly and played a leading role in several mobilizations, such as protests and strikes demanding that authorities improve labour conditions. During these years, neighbourhood assemblies and solution-seeking forums cropped up in various areas of the country to confront the deepening social and economic crisis. Finally, in early 2001, a "barter club" (*club de trueque*) was set up in Esquel, as in many other places in Argentina, and it remained active until 2002, with great local participation.

These multiple incidences of participation, characterized by public mobilization and the emergence of new local organizations, contributed to the development of new skills among a population that was trying to regain a leading role in political decision making.

The Arrival of Mining in Esquel

The first news of the potential for mining in the area of Esquel became public in 1997. Deposits of gold, estimated at three million ounces, were found seven kilometres from Esquel, and the English junior mining company Brancote Holdings started exploration. In 2002, when gold prices in global markets reached historic highs, the US-based Meridian Gold (MG) purchased the mining project for US\$270 million. The purchase was seen as a promising development since it was expected to reactivate the economy of the town and the province. During the following weeks, thousands of residents approached the mining company, offering their résumés in hopes of obtaining a job (*El Chubut*, Esquel City, 23 May 2002).

Along with the announcement of MG's arrival, the provincial government publicized the imminent submission of the Environmental Impact Assessment and the or-

ganization of a public hearing, stating that mining would start “at the beginning of the following year” (*El Oeste*, Esquel City, 12 July 2002).¹ Table 1 provides an economic and technical summary of the mining project when the EIA was unveiled two months later.

Table 1: The Cordon Esquel Project

- The project was to generate a 4.6% increase in the GDP of the province, with annual revenue from mining royalties of approximately US\$981,253 (3.9% of the revenue from provincial taxes). At a local level, it was expected to generate approximately 300 direct and 1,200 indirect jobs.
- The working life of the project was estimated at eight to nine years for the extraction phase, based on estimated total extractable reserves of over 3 million ounces of gold and a production rate of 300,000 ounces of gold a year.
- An open-pit mine was envisaged, with the possibility of expanding to a mixture of open-pit and underground mining in the future. The average ore grades in the deposits were approximately 10 g/t for gold and 17 g/t for silver.
- Production during the working life of the mine was calculated as approximately 12 million tons of mineral (gold and silver) and 130 million tons of waste rock, at a rate of 3,000 tons of mineral per day, using 180 tons of cyanide a month.
- The proposed method for extracting the gold and silver was by leaching with cyanide in a closed tank, with the construction of a slag heap for the tailings close to the mine that was to cover a total surface area of 10 km² for extraction and processing.

Source: Meridian Gold (2002).

Initial Perceptions

In early 2002, when the confirmation of the mining project was imminent, the provincial government requested that a research group based at the San Juan Bosco National University, the same group that had drafted the local development plan, carry out a study of the mining project. With funds from the mining company, researchers prepared a report on local perceptions regarding the possible impact of the gold mining project (UATA 2002).

At this stage there was no detailed information available about the project, and the report could only assess perceptions, but its main conclusions identified some of the key elements of the conflict to come. The document highlighted six issues of concern to the community: (a) maximization of local employment; (b) adequate integration of mining into the local context of development; (c) forecasting social changes; (d) availability of reliable information; (e) minimization of environmental impact; and (f) the regulation of urban growth. With regard to the need to integrate mining with existing activities, concerns were raised about the possible interference of mining with ongoing agriculture, forestry, and tourism activities. Regarding social and urban changes, residents valued the then-current size of the city, as well as extant social relations and lifestyles; they also expressed concern about the social, cultural, demographic, and environmental transformations that mining might trigger (UATA 2002).

1. Quotations from interviews, newspaper articles, and written documents were translated from Spanish to English by the authors.

Interviews revealed that in 2002 there had been a general lack of local knowledge concerning the implications of open-pit mining. The initial image conjured up was of rudimentary mining, using no toxic substances. In the words of a local journalist who was interviewed, "It must be borne in mind that at this juncture the whole of Esquel knew absolutely nothing about what a mining scheme entails. I believe many of us saw mining as a pick, spade, and helmet with a light."

Local perceptions before the arrival of the mining project were also influenced by a then-recent experience that served as a backdrop to the community's initial views on the mining project: the construction of the Futaleufú hydroelectric dam. The project had engendered expectations that were never fulfilled of great improvements in living conditions and of low energy prices.

Informing the Community: Cyanide Risks

By mid-2002, the first details concerning the mining project, already presented to the national and provincial authorities, finally reached Esquel. To present the project to the local community, the supervisory authority for mining in the province, the provincial Mining Department, organized a series of talks. By then, some university lecturers from San Juan Bosco National University and organizations in Esquel had sounded the alarm about the centralized, non-participatory approach taken to presenting the project (Piz-zolón 2003). However, concern escalated into open conflict following one particular event during the government's official communication campaign.

A talk on cyanide use by a representative of Du Pont, the future supplier of cyanide to Meridian Gold, motivated university experts in chemistry to get involved. Doubts about the quality and reliability of the information presented, combined with mistrust about the way in which the information was disseminated by the Mining Department, prompted these academics to build alternative information channels that offered a different technical assessment of cyanide use and its related risks. "[The government's information campaign] was a slap in the face for science, and for the people, because it was like saying 'I am telling you these things and you believe them because you are stupid'" (Chemistry lecturer from UNSJB, in an interview with the authors).

While the university lecturers were not experts in mining, they had the knowledge and resources to conduct their own independent analyses. So they gathered information from chemistry texts and the Internet, organized discussions in schools and institutions, circulated reports by email, and raised their profile by accepting the invitation of a local TV channel to present a public explanation of their reports that was then broadcast regularly. In this way, they cast doubt upon the alleged certainties of the official experts.

On October 15, 2002, the authorities announced the presentation of the EIA, to be followed one month later by a public hearing. Mining activities were scheduled to start at the beginning of 2003. In this context, a consensus was gradually built among the various organizations and civil society sectors on the need to obtain more information about the project, its potential impacts and risks, and on the need to create spaces

for local public participation, where all doubts and concerns could be voiced and addressed.

Controversial EIA

The presentation of the EIA marked another turning point in the conflict. First, it was difficult to access the document. The company rejected the community's demand that it be distributed more widely, alleging that it contained industrial secrets. Second, other assessments began to emerge which indicated that the report was inadequate and contained inconsistencies. Nevertheless, the provincial government continued to support the project and kept to the original schedule for the public hearing and the commencement of mining activities.

In this context, various local, provincial, and national organizations requested a postponement of the public hearing, arguing that more time was needed to give the EIA due consideration. This request was rejected repeatedly by the provincial government based on the following argument, quoted in a local newspaper: "If the community wishes to analyse a specific point, a specialist may study and raise any particular issue in the report within no more than a week's time. For this reason, we consider the 60-day time limit excessive" (*El Chubut*, Esquel City, 7 November 2002). This reasoning was based on the idea that the EIA was a technical document intended for specialists and not for members of the public, who would not readily understand its contents.

These events again raised questions about the transparency of the company's methods, and about the government's role in monitoring the quality of the impact assessment and, more broadly, its credibility as a watchdog. In light of the haste to start operations and the lack of space for community participation, the project gradually came to be seen as an imposition from outside.

Let us bear in mind that the environmental issue is just as important as the social and cultural issues. We are changing the face of our town forever. The decision taken must not be subject to time constraints and, even less so, to the sensitivities of a few civil servants ... The emphasis that government officials are placing on supporting this project is obvious, clear, blatant, and almost grotesque. Even more serious is the fact that many of them are the officials who are going to exercise "control" over the implementation of the project. (Reader's letter published in the newspaper *El Oeste*, Esquel City, 13 November 2002)

Neighbourhood Assemblies

As more and more contradictory information circulated in the local community about the mining project—its impacts, risks, and benefits—and the public hearing was imminent, meetings were held to exchange views and hold discussions, first among groups of acquaintances, then in neighbourhood assemblies. New communication technologies played a central role in the learning processes of the community. Email and the Internet

were key tools, not only for finding and circulating information but also for building networks of contacts with movements in other parts of the country and the world.

The first assemblies convened informally toward the end of October in a local school where the Independently Organized Teachers (*Docentes Autoconvocados*) used to meet. This pressure group played a key role in the initial organizational arrangements, sharing, for instance, some basic guidelines on how to organize and moderate an assembly.

The first neighbourhood meetings produced no consensus on the project or on mining in general. Above all, they functioned as a forum for exchanging information and concerns, and brought together highly divergent points of view. Some participants wanted to gather information or to voice criticism, while others considered the project beneficial, provided that adequate controls were put in place (Pizzolón 2003; Zuoza 2005). In the course of the various meetings, data on mining activities, their precise nature, and previous experiences around the world were examined. "Concerns, comments, downloaded information from the Internet, newspaper cuttings, etc., were all brought together there. Everything served its purpose in a collective catharsis with the sole intention of chipping away at the unknown" (Pizzolón 2003, 152).

In mid-November, after a period of analysis and discussion, an assembly of 600 local citizens voted unanimously to adopt a position against the mining project and formed the Autonomous People's Assembly (*Asemblea de Vecinos Autoconvocados*, AVA)² with the slogan "No to the mine." This took place when the public hearing was imminent, the EIA was highly questioned, and the provincial government was ignoring repeated calls for postponement. In the AVA the idea that gained most ground was that the public hearing had been just a formality to lend legitimacy to a project that had already been approved. Beyond its heterogeneity, unlike other types of *Esquel* organizations, the AVA managed to become a forum of reflection for a broad cross-section of the local population critical of the project. In the months that followed, it led the way to building a movement opposed to the mine.

In the AVA the problems surrounding the project were defined and pieced together. At first, the principal concern centred on the risks posed by the use of cyanide and its impact on water resources (already scarce in the region). Later, dissemination of information and experiences from other communities in Latin America, such as Tambogrande in Peru (Muradian, Martinez-Alier, and Correa 2003), gave way to the emergence of new considerations regarding the project's impacts on the local community and the environment. Changes to the natural environment and new risks, such as accidents, pollution, and acid leaching, were added to the concerns about mining impacts, not only on the local populations but on their existing economic activities. At the same time, news of numerous new mining projects in the region heightened concerns about the future of nature reserves and respect for the territorial rights of the Mapuche indigenous communities located in the vicinity of the deposits.

In this broad public debate, the fact that citizens had no chance to inject their concerns and differences of opinion into the decision-making process led them to adopt

2. Literally, the "Independently Organized or Self-Organized Assembly of Neighbours."

a more complex and political understanding of the project. This is illustrated by the motto "out with them all" that was taken up by the local population during the activities and marches at the time of the plebiscite: a battle cry associated with the intense citizen mobilization of Argentina's 2001 national economic crisis, symbolizing loss of confidence in the political class. "It was a steady build-up. At first, it was limited to environmental aspects, then it moved on to what the government and the company were doing" (Member of AVA, in an interview with the authors).

Given the AVA's urgent need to express its opposition to the mining project publicly and to prevent a government-organized public hearing, the Assembly devised strategies to halt the project. At this stage, AVA was convinced that local visions of development were incompatible with large-scale mining. From the locals' view development efforts should aim at the improvement of ongoing, non-pollutant activities, such as agriculture and forestry, and the fostering of emerging ones, such as tourism. Concerns referring to the territorial transformations related to mining activities, previously identified by the university report, were also raised. A main demand of the AVA was not to compromise the social and environmental future of the city and the region.

AVA mobilization strategies also reflected the diversity of the movement, which brought together specialists—in chemistry, geography, medicine, journalism, law, and education—alongside members of the local population and spokespeople from the marginal sectors of the town's population. Some participants from poorer sectors of the city and others from more distant areas played a key role as intermediaries in bringing the information that was shared in the assemblies to their own neighbourhoods. The circulation of a documentary on the impact of mining activities in Peru and a mercury spill in Choropampa (near Yanacocha in Cajamarca) were also crucial for illustrating the effects of gold mining in other communities in Latin America.

Lawyers, including one with previous experience in defending indigenous people's land rights, prepared an *acción de amparo*—an injunction against infringement of environmental rights—which led to the suspension of mining activities in February 2003. Preliminary municipal legislation was drawn up and a campaign was launched to pass the new municipal laws. The campaign also sought out the involvement of a number of national and international institutions and organizations that supported and disseminated the views of the local population, thus tilting the balance of power in the conflict.

The most symbolic activities were the street marches that, as time went on and participation by the local population increased, turned into a platform that allowed highly diverse sectors, which were not participating in the AVA but which were against the mining project, to express their views. With regard to the wide participation in the marches, one interviewee recalled extraordinary images such as "a Mapuche walking shoulder to shoulder with a rancher who ... had tried to evict his family" (Local journalist, in an interview with the authors).

The emergence of the AVA transformed the political landscape. By December 2002 more and more voices (of local and provincial experts) were heard, pointing out the flaws in the EIA submitted by Meridian Gold. In this climate, the provincial government reiterated its support for the mining project by expressing its confidence about the project's technical viability. Governor Lizurume was quoted in *El Oeste* on No-

vember 26: "As long as we think that there is no risk, there is nothing to stop the investment from going ahead." The influence of the local movement was downplayed and associated with radical conservation movements (usually linked to the influence of international NGOs), irrationality, or political motives. On another occasion the governor said, "The project is in progress and nothing will get in its way, unless technical considerations, such as the environmental impact report, make it advisable to slow down" (*El Oeste*, Esquel City, 10 November 2002). The government's key argument was that there was a technical rationale for the project, beyond the comprehension of non-experts.

The official argument assumed that if the non-specialists (including university professors) had better information, they would reach the same conclusions as the experts. This official reasoning downgraded the public role of non-experts, who were considered ignorant about what was at stake, to being merely recipients of information about their decisions, one of the lowest rungs on the eight-rung ladder of participation proposed by Arnstein (1969). This attitude, in turn, created feelings of frustration and injustice among the sectors excluded from the decision-making process and heightened the climate of mistrust.

The Local Plebiscite

In an atmosphere of mounting tension within the local community, the municipal Deliberative Council finally approved, in the beginning of February, three municipal orders proposed by the AVA:

1. a ban on the use of cyanide in the territory of Esquel (subsequently rescinded by the mayor on the grounds that it possibly clashed with national law);
2. a municipal derogation of national and provincial mining laws on the grounds that they "are harmful to the tourist profile and the interests of the local community"; and
3. the announcement of a public referendum on the mining project, thus giving a new twist to the decision-making process (as in the Tambogrande case in Peru).

The approval of these municipal orders, particularly the call for a public vote in favour of or against the mine on March 23, for various reasons brought about a change in the dynamics of the conflict.

First, the referendum thrust local public opinion to the centre of the political stage; until that point, it had been marginalized in the official decision-making process. The laws passed by the municipality bear witness to efforts to create a forum for expressing local interests and values that give greater weight to local democracy than to other decision-making criteria such as economic growth or national interests.

In addition, the mayor of Esquel, who until then had aligned himself with the provincial government in support of the project, changed his tune and stated: "Although not binding, the plebiscite will place a moral obligation on this municipality that we can neither escape nor hide from. For this reason, we will respect fully the will of the people of Esquel" (*El Chubut*, Esquel City, 4 March 2003).

Finally, the call for a referendum polarized the sectors concerned, either in favour of or against the project. The spotlight moved from the environmental organizations

and the government and onto the 20,000 people of Esquel who were about to vote. At the same time, the referendum made the Esquel conflict more visible nationally and internationally.

On March 23, the plebiscite was duly held with a turnout of 75% of the 20,000 eligible voters. The result was that 81% said "No to the mine." In the days that followed, the company and the provincial government announced that they were halting the mining activities, the municipal Deliberative Council approved the ban in Esquel on mining that uses cyanide, and the provincial legislature approved a ban on open-pit mining. These bans, along with the political difficulty of moving the project forward, nevertheless represent only a partial closure of the mining project, since the project has subsequently been sold to the Canadian company Yamana Gold which, in spite of local resistance and bans, hopes to advance the project in the future.

Even so, the Esquel plebiscite had national consequences. In November 2003, representatives of communities from six provinces in Argentina, all opposed to mining projects in their respective areas, met in Buenos Aires and set up the National Network of Communities Affected by Mining. Its objective is to "coordinate the struggle against the ransacking and ecocide on our doorsteps that is condoned by the current mining legislation." The network identified the root causes of mining conflicts to be the laws that grant disproportionate advantages to private investment in mining over and above the right to participation and decision making at local levels. In the months that followed, new neighbourhood movements sprang up in different parts of the country. These movements successfully obtained bans on open-pit mining that uses toxic substances in seven provinces of the country: Chubut (2003), Río Negro (2005), Tucumán (2007), Mendoza (2007), La Pampa (2007), Córdoba (2008), and San Luis (2008).

Two Opposing Views on Development

While analyzing the conflict in Esquel, the authors found it evident that the conflict revolved largely around two opposing views on mining and development.

On the one hand, there was a coalition that incorporated the provincial and municipal governments (though toward the end of the conflict, the latter changed its position), the local chamber of commerce, and the construction workers' union, which saw mining as a beneficial activity if adequate technologies and controls were set up. This group did not dismiss environmental concerns altogether, but it displayed confidence in the EIA and related expert opinion, reflecting an eco-efficiency perspective that views economic growth as a necessary step toward sustainable development; environmental concerns were taken into consideration only through expert opinion and technological mitigation measures. Hence, it was a position in which sustainability is defined by experts who supposedly have the ability and knowledge to assess the possible impacts and risks while providing cost-effective, adequate solutions. This group also was convinced that mining activities were compatible with ongoing activities, and that they would offer new opportunities for local development, generating jobs and incomes and thus

improving livelihoods in the community. According to this group, criticism related to environmental uncertainty and questions regarding compatibility with local development views were alarmist and ignorant and often motivated by an "environmentalism of the rich" perspective imported from abroad by conservation organizations.

On the other hand, various sectors of the Esquel community were incorporated into the AVA: the water co-operative, a small businesses group (split from the chamber of commerce), Mapuche indigenous organizations, and regional NGOs among them. The scope of this coalition was reflected in the result of the plebiscite, which demonstrated that poverty-stricken and unemployed residents also opposed mining.

Although it would not be accurate to affirm that all residents opposed the Cordon Esquel mining project, they certainly did not agree with the way the project was introduced into the community. From the day of the first official announcement, the provincial government and mining bureau simply assumed that the project would go ahead, and announced a schedule and anticipated production figures. This attitude rankled a community that was mobilizing around, and deliberating upon, local development issues that had not been taken into account.

Throughout the conflict, local actors came to more explicitly embrace and celebrate certain values in relation to local development. An appreciation for participatory democracy had begun to form during previous participative experiences and was consolidated through the experience of the mining conflict. Second, local actors asserted a heightened level of appreciation for the environment, not only as a source of potable water in a region where water is scarce, but also as an inseparable part of the city's economy and the mode of life of its residents. Traditional activities like agriculture and forestry, and emerging activities such as tourism, were deemed valuable and considered to be environmentally and socially sustainable. Esquel's residents also deemed the small size and quiet lifestyle of the city to be valuable.

As neighbours began to gather information about open-pit mining—its short lifespan, its environmental impact, the attendant social and urban changes, and its generation and distribution of profits—the idea that this activity was not compatible with their vision of local development consolidated. It is worth highlighting the fact that the region already had experience with another large project: the construction of a dam that never affected the level of economic growth or development in the way promised by those who had promoted it. This precedent generated a sense of "reasoned distrust" that was not taken into account by those supporting the mining project when making their own promises about positive outcomes.

The experience in Esquel reflected the fact that the community held and was willing to defend its own vision for long-term, local development. Even in a context of pressing crisis, the community chose strong, long-term sustainability over a project of uncertain environmental sustainability that privileged pecuniary income in the short-run (Pearce and Atkinson 1993). This is an example of an action stemming from the "environmentalism of the poor."

Decision-Making Processes: Exclusion and Participation

The Esquel case also raises questions about the ways in which decisions about large investments are made, investments that have important implications at the local level. In this case, there were two opposite approaches: the formal, top-down process implemented by the authorities under the umbrella of the new mining legislation, and the informal bottom-up process led by the AVA and supported by the institutional tools available to local actors for expressing their views (e.g., participation laws, plebiscite).

According to Vatn (2005), decision-making structures are value-articulating institutions that determine the values that can be expressed, the way in which they can be expressed, and, ultimately, the preferable choices. In other words, they establish procedures that frame the debate and that influence what will be negotiated, thereby skewing the outcome. An analysis of the official decision-making procedure in the Esquel case, its underlying values and preferences, allows us better to understand why local unrest increased and why an alternative decision-making space emerged, led by the AVA. The comparison between these two value-articulating institutions underlines how limited official decision-making processes are when it comes to accommodating local perspectives.

The government and the company responded to growing concerns about the project by avoiding public debate; they claimed that the issues were reserved for the experts, limiting public involvement in the formal assessment and approval process (Shepherd and Bowler 1997). To express their points of view, residents created an independent, inclusive, and critical space for deliberation, the Autonomous People's Assembly (AVA, *Asemblea de Vecinos Autoconvocados*).

The way in which the AVA was organized demonstrates the need for a different approach to the evaluation of extractive projects, with regard to both the shape and the content of the evaluative process. As far as content is concerned, in the framework of the AVA, different valuation languages are considered legitimate (environmental, cultural, social, indigenous, economic, ethical, and democratic), while the EIA was based only on technical responses to variables that had been pre-selected before the document was written. Therefore, the officially organized public hearing, designed to facilitate deliberation on the EIA, had a structural limitation because it was based on the restricted terms of reference of the document itself. This made it impossible to express certain "intangible" issues that were at stake (social identities, power networks, belief systems) (Suryanata and Umemoto 2005). The perceived lack of opportunity for participation via official channels led the AVA to boycott the event.

As far as shape is concerned, the Assembly is by definition a local and horizontal space for deliberation, while the EIA was a technical report written by experts in accordance with a procedure designed to be objective, impartial, and unbiased (Weston 2000)—assumed qualities that have all been seriously questioned (Owens, Rayner, and Bina 2004; Jay et al. 2007; Persson 2006). Regarding jurisdiction, the EIA's position was that the province should have the final word. The AVA arose specifically to champion the importance of local-level actors in the decision-making process.

Therefore, due to the structural limitations of the official decision-making process—with regard to its ability to incorporate different interests, values, and visions of development, as well as its ability to channel growing mobilization at the local level—the community was left with no choice but to oppose mining activities, pushing for a ban that would disarm the provincial government's agenda.

Finally, the Esquel case demonstrates that a decision-making process that acknowledges social learning dynamics requires a change in governance style, toward one based on greater collaboration. Such a decision-making framework also implies a different role for information, as a means to support communication, rather than as the sole domain of experts. This, in turn, recalls and reinforces the insight that management should not be understood as a process requiring the identification of optimal solutions in a predictable environment; instead, it should be seen as a process requiring many instances of learning in a rapidly changing world (Pahl-Wostl et al. 2007).

References

- Albrecht, S. 1995. Equity and justice in environmental decision making: A proposed research agenda. *Society and Natural Resources* 8:67–72.
- Arnstein, S.R. 1969. A ladder of citizen participation. *Journal of the American Institute of Planners* 35:216–24.
- Brechin, S.R. 1999. Objective problems, subjective values, and global environmentalism: Evaluating the post-materialist argument and challenging a new explanation. *Social Science Quarterly* 80:793–809.
- Brechin, S.R., and W. Kempton. 1994. Global environmentalism: A challenge to the postmaterialism thesis? *Social Science Quarterly* 75:245–69.
- Bridge, G. 2004. Mapping the bonanza: Geographies of mining investment in an era of neo-liberal reform. *Professional Geographer* 56 (3):406–21.
- Bridge, G. and P. McManus. 2000. Sticks and stones: Environmental narratives and discursive regulation in the forestry and mining sectors. *Antipode* 32:10–47.
- Bureau of Mining. 2008. *Minería en Números*. Secretaría de Minería de la Nación. <http://www.mineria.gov.ar/>.
- CAEM. 2008. *Evolución de las inversiones Mineras*. Argentinean Chamber of Mines. <http://www.caem.com.ar/index.php?sec=contenidos&esquema=1&tipo=2&id=78>.
- Dinda, S. 2004. Environmental Kuznets curve hypothesis: A survey. *Ecological Economics* 49:431–55.
- Dobson, A. 1998. *Justice and the environment*. NY: Oxford University Press.
- Dunlap, R.E., and A.G. Merting. 1997. Global environmental concern: An anomaly for postmaterialism. *Social Science Quarterly* 78 (1): 24–29.
- Dunlap, R.E., and R. York. 2008. The globalization of environmental concern and the limits of the postmaterialist values explanation: Evidence from four multinational surveys. *Sociological Quarterly* 49:529–63.
- Encuesta Permanente de Hogares (EPH). 2002. *Encuesta Permanente de Hogares*. Instituto Nacional de Estadística y Censo. <http://www.indec.gov.ar>.
- Escobar, A. 2006. Difference and conflict in the struggle over natural resources: A political ecology framework. *Development* 49 (3):6–13.
- Esquel SEAS. 2001. Plan Participativo de Desarrollo Local. Municipality of Esquel.
- Folchi, M. 2001. Conflictos de contenido ambiental y ecologismo de los pobres: no siempre pobres, ni siempre ecologistas. *Ecología Política* 22:79–100.
- Fraser, N. 1998. Social justice in the age of identity politics: Redistribution, recognition and participation. In *The Tanner lectures on human values*, vol. 19, ed. G. Peterson, 3–36. Salt Lake City: University of Utah Press.

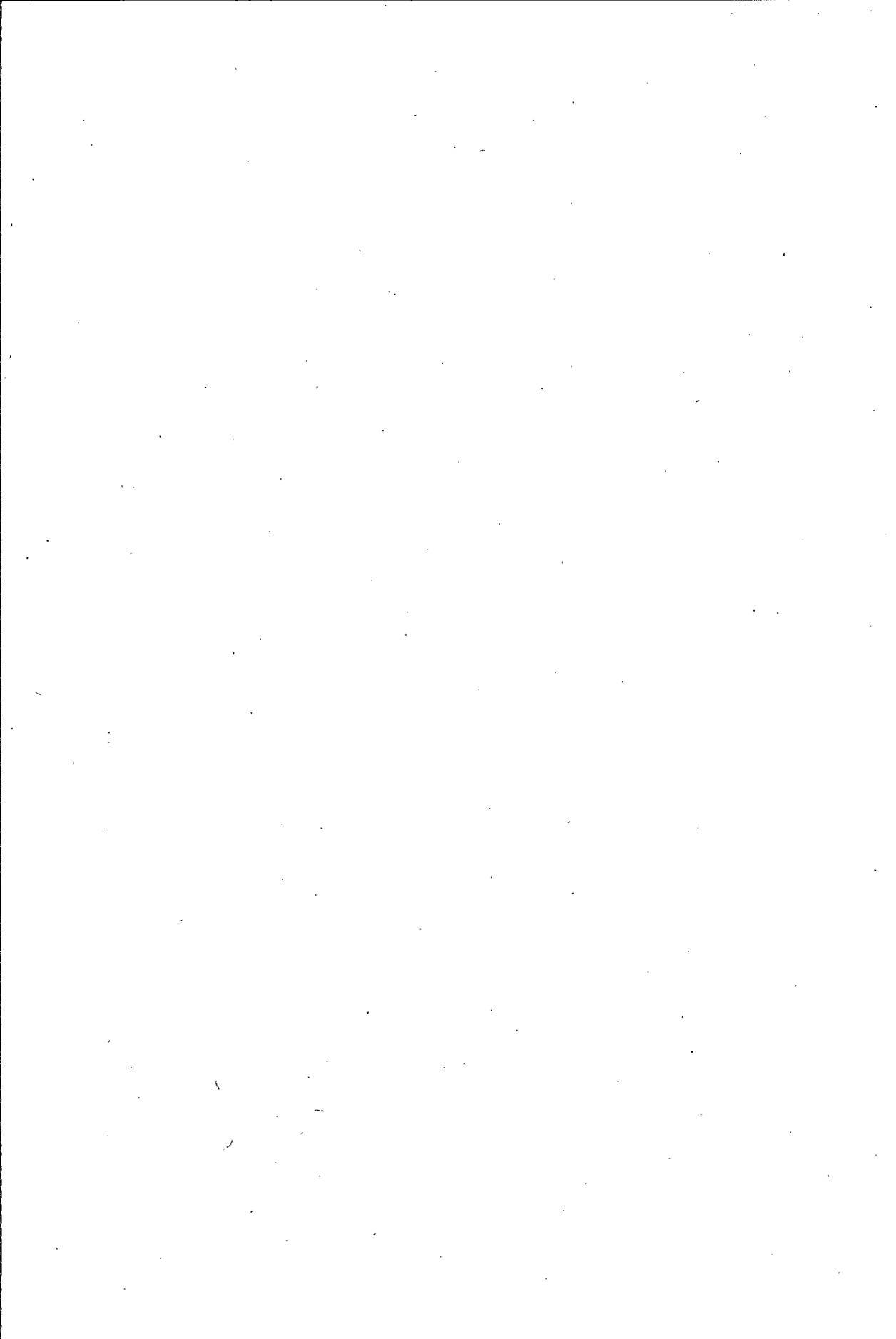
- Guha, R., and J. Martinez-Alier. 1997. *Varieties of environmentalism: Essays North and South*. London: Earthscan.
- Haselip, J., and G. Hilson. 2005. Winners and losers from industry reforms in the developing world: Experiences from the electricity and mining sectors. *Resources Policy* 30:87-100.
- Inglehart, R. 1977. *The silent revolution: Changing values and political styles among Western publics*. Princeton, NJ: Princeton University Press.
- . 1981. Post-materialism in an environment of insecurity. *American Political Science Review* 75:880-900.
- . 1990. *Culture shift in advanced industrial societies*. Princeton, NJ: Princeton University Press.
- Instituto Nacional de Estadísticas y Censos. (INDEC). 2002. *Censo Nacional 2001*. Buenos Aires: INDEC.
- Jay, S., C. Jones, P. Slinn, and C. Wood. 2007. Environmental impact assessment: Retrospect and prospect. *Environmental Impact Assessment Review* 27:287-300.
- Jones, R., and R. Dunlap. 1992. The social bases of environmental concern: have they changed over time? *Rural Sociology* 57 (1): 28-47.
- Martinez-Alier, J. 1995. The environment as a luxury good or "too poor to be green." *Ecological Economics* 13 (1): 1-10.
- . 2002. *The environmentalism of the poor*. Cheltenham: Edward Elgar.
- Morgan, P.G. 2002. Mineral title management: The key to attracting foreign mining investments in developing countries? *Applied Earth Science* 111:165-70.
- Muradian, R., J. Martinez-Alier, and H. Correa. 2003. International capital versus local population: The environmental conflict of the Tambogrande mining project, Peru. *Society and Natural Resources* 16:775-92.
- Norgaard, R.B. 1984. Coevolutionary development potential. *Land Economics* 60:160-73.
- Owens, S., T. Rayner, and O. Bina. 2004. New agendas for appraisal: Reflections on theory, practice, and research. *Environment and Planning A* 36:1943-59.
- Pahl-Wostl, C., D. Tàbara, R. Bouwen, M. Craps, A. Dewulf, E. Mostert, D. Ridder, and T. Taillieu. 2008. The importance of social learning and culture for sustainable water management. *Ecological Economics* 64:484-95.
- Pearce, D., and G. Atkinson. 1993. Capital theory and the measurement of sustainable development: An indicator of "weak" sustainability. *Ecological Economics* 8:103-8.
- Peet, R., and M. Watts. 1996. *Liberation ecologies: Environment, development, social movements*. London: Routledge.
- Persson, J. 2006. Theoretical reflections on the connection between environmental assessment methods and conflict. *Environmental Impact Assessment Review* 26:605-13.
- Pizzolón, L. 2003. La resistencia al proyecto minero: una perspectiva sobre los movimientos iniciales. In *La Patagonia de Pie*, ed. L. Chiappe. El Bolsón.
- Prado, O.A. 2005. *Recursos naturales e infraestructura: Situación y perspectivas de la minería metálica en Argentina*. Santiago de Chile: Comisión Económica para América Latina y el Caribe (CEPAL).
- Roca, J., E. Padilla, M. Farré, and V. Galletto. 2001. Economic growth and atmospheric pollution in Spain: Discussing the environmental Kuznets curve hypothesis. *Ecological Economics* 39:85-99.
- Sabatini, F. 1997. Conflictos Ambientales y Profundización Democrática. In *Conflictos Ambientales. Entre Globalización y la Sociedad Civil*, ed. F. Sabatini and C. Sepúlveda. Santiago de Chile: Centro de Investigación y Planificación del Medio Ambiente (CIPMA).
- Sánchez Albavera, F., G. Ortiz, and N. Moussa. 1999. *Panorama minero de América Latina a fines de los años noventa*. Santiago de Chile: Comisión Económica para América Latina y el Caribe (CEPAL).
- Schlosberg, D. 2007. *Defining environmental justice: Theories, movements, and nature*. NY: Oxford University Press.
- Shepherd, A., and C. Bowler. 1997. Beyond the requirements: Improving public participation in EIA. *Journal of Environmental Planning and Management* 40:725-38.
- Stern, D. 2004. The rise and fall of the environmental Kuznets curve. *World Development* 32 (8): 1419-39.

- Suryanata, K., and K. Umemoto. 2005. Beyond environmental impact: Articulating the "intangibles" in a resource conflict. *Geoforum* 36:750–60.
- UATA. 2002. *Identificación de las expectativas de los posibles impactos sociales, económicos, políticos y culturales del proyecto Oro de Esquel*. Unidad de Asistencia Técnica de Temas Ambientales. Esquel: Universidad Nacional San Juan Bosco.
- Vatn, A. 2005. *Institutions and the environment*. Cheltenham: Edward Elgar.
- Weston, J. 2000. EIA, decision-making theory and screening and scoping in UK practice. *Journal of Environmental Planning and Management* 43 (2): 185–203.
- Young, I. 1990. *Justice and the politics of difference*. Princeton, NJ: Princeton University Press.
- Zuozza, J.A. 2005. *Esquel y su No a la Mina*. Cronología de la lucha de un pueblo en contra de los abusos del poder político y económico. El Bolsón.



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Les acteurs de la lutte pour les droits des communautés face aux industries minières : le cas péruvien

José De Echave

RÉSUMÉ Les conflits entre communautés et entreprises minières n'ont cessé d'augmenter au Pérou depuis le milieu de la décennie 1990, alors que l'exploration et l'exploitation se sont rapidement intensifiées dans d'anciennes et nouvelles régions. L'article traite d'abord de la protestation des communautés, incluant la Confédération nationale des communautés affectées par le secteur minier (CONACAMI) et des actions entreprises par les organisations non gouvernementales (ONG) ayant formé le réseau Muqui pour traiter avec les conflits miniers. Par la suite, l'analyse se tourne vers les réponses des entreprises, qui sont passées du rejet pur et simple des demandes des communautés à l'engagement d'un dialogue, alors que l'État manquait de stabilité. L'article conclut en argumentant que la crise mondiale actuelle, qui a créé un décalage de l'expansion minière, représente l'occasion de formuler un programme de gouvernance pour l'avenir.

ABSTRACT Conflicts between communities and mining enterprises have been increasing in Peru since the mid-1990s as exploration and exploitation expanded rapidly in both old and new mining areas. The article first reviews community protest, including the organization of a National Confederation of Communities Affected by Mining (CONACAMI), as well as the actions taken by the non-governmental organizations (NGOs) that formed the network Red Muqui to deal with mining conflicts. It then turns to examine the responses of the enterprises, which have ranged from outright rejection of community demands to engagement in dialogue, while the state has vacillated. It concludes by arguing that the current global crisis that has created a hiatus in the expansion of mining provides an opportunity to formulate an agenda for governance for the future.

Introduction

La croissance de l'activité minière en Amérique latine depuis les 15 dernières années est sans précédents dans l'histoire économique contemporaine. Dans ce contexte d'expansion, les relations entre les entreprises minières et les populations occupent une place de plus en plus importante dans les conflits sociaux dans la région. Les dimensions de ces conflits ont dépassé les capacités des acteurs en cause : État, entreprises minières, populations et autorités locales, diverses organisations sociales et les organisations non gouvernementales. Les grandes tensions sociales dans les zones d'exploitation minière

ont non seulement mis en cause le type de croissance, mais également les stratégies employées par les différents acteurs.

Le cas du Pérou est un excellent exemple de ce conflit social. Les rapports réguliers de Defensoría del Pueblo du Pérou stipulent que la majorité des conflits sociaux au Pérou trouvent leur origine dans les problèmes environnementaux et de ceux-ci, plus de 70 % concernent l'activité minière. Considérant ces faits, la revue des incidents des dernières années, des événements, du contexte social péruvien, des relations entre les acteurs ainsi que des différents groupes d'intérêts permet de dresser un bilan et d'identifier les défis qui sont toujours en suspens et les plus récents dans le contexte où le pari du projet économique se concentre autour de la poursuite de la croissance des industries d'extraction minière.

Le Pérou représente également un parfait exemple de pays ayant une forte dépendance à l'activité minière. Depuis les réformes néolibérales des années 1990, le Pérou s'est réaffirmé comme destination pour les investissements miniers mondiaux. En 2007, ce pays était le deuxième producteur de cuivre, le cinquième producteur d'or et le plus grand producteur d'argent au monde. L'industrie minière compte pour une part importante des revenus nationaux d'exportation (62 % en 2007) et a su maintenir des cours élevés de matières premières jusqu'à la récente crise financière, contribuant à des niveaux élevés de croissance qui ont atteint un sommet en 2007 avec un taux annuel de 9,8 %.

L'analyse des actions et réactions entreprises depuis les années 1990 par les différents groupes engagés dans les luttes sociales en lien avec l'activité minière au Pérou (communautés, ONG, entreprises minières et autorités étatiques) révèle une période marquée par d'intenses apprentissages et des changements significatifs. Les communautés et leurs alliés ont réalisé des gains initiaux importants en matière de coordination et d'organisation à l'échelle nationale. Le secteur minier a dû composer avec la nature difficile des conflits sociaux dans le pays et l'approfondissement de leurs liens transnationaux. Tant les communautés que les entreprises ont démontré la diversité de leurs actions, allant de nouveaux mécanismes visant à supporter le dialogue et les accords entre entreprises et communautés jusqu'à des stratégies de résistance et de confrontation. Dans l'ensemble, ces expériences ont illustré le manque actuel de conventions publiques institutionnalisées dans la gestion des conflits sociaux reliés au secteur minier, la précarité des initiatives privées et l'urgent besoin de réformes des institutions démocratiques. Cependant, l'État et le secteur minier résistent toujours à la mise en œuvre d'importantes réformes, et les communautés et leurs alliés n'ont pas encore réussi à les engager dans un dialogue fécond sur les alternatives au cadre de gouvernance existant.

Les données et l'analyse présentées ici sont issues de près de 20 années de recherche et d'activisme sur les conflits miniers et les organisations internationales officielles, telles que l'Organisation internationale du travail (OIT), et d'ONG telles le Réseau international de l'exploitation minière et des communautés (MAC), le Réseau mondial sur l'exploitation minière, la Fédération nationale des travailleurs miniers du Pérou, Caritas France, l'Observatoire des conflits miniers au Pérou, le Mouvement pour la santé de La Oroya et CooperAcción (voir De Echave 2008; De Echave *et al.* 2008).

Les scénarios des conflits et les réactions des communautés et de leurs alliés

Les conflits du secteur minier des 15 dernières années peuvent être définis sous divers aspects : le degré et la nature de la production, leurs impacts (environnementaux, sociaux, économiques, culturels, etc.), la population en cause (rurale ou urbaine), etc. Un schéma complémentaire de classification¹ qui pourrait contribuer à les simplifier et les regrouper pour l'analyse, schéma choisi dans le présent article, se tourne vers la situation et les demandes soutenues par les communautés dans les anciennes et nouvelles zones d'activité minière.

Tel que mentionné, la croissance de l'activité minière au Pérou durant la dernière décennie a eu lieu tant dans les zones déjà exploitées que dans de nouvelles régions où cette activité n'était toujours pas significative. En général, dans les zones où l'exploitation minière était déjà présente, et malgré de fortes critiques envers les actions des entreprises minières, les demandes des populations ont été orientées de manière à changer radicalement les conditions antérieures et à faire reconnaître les droits économiques, sociaux et culturels affectés par l'activité minière. Ce qui était recherché était la construction d'une relation équilibrée entre la présence de l'industrie minière et le respect des droits économiques, sociaux, culturels et environnementaux des populations. Ce premier groupe de conflits comprend de nombreux cas au Pérou, comme ceux de la province de Yauli dans le Junín, où les opérations minières ont commencé au début du XX^e siècle et qui fut récemment identifiée comme une des 10 régions les plus contaminées de la planète (Blacksmith Institute 2007), des communautés riveraines du lac de Junín, entre les régions de Junín et de Pasco dans les montagnes centrales du pays, aussi affectées par les activités minières antérieures; celles de la province d'Espinar dans le Cusco, voisines de la mine de Tintaya, propriété de BHP Billiton dans la décennie 1990 et vendue au groupe minier suisse Xstrata en 2006, un cas où le conflit s'est éventuellement orienté vers le dialogue et des accords entre l'entreprise et la communauté (De Echave *et al.* 2005¹).

Un second groupe de conflits concerne les zones sans antécédents d'exploitation minière, particulièrement les régions du nord du pays, et où les populations font preuve d'une sérieuse résistance à l'arrivée de l'industrie minière sur ses territoires. Les cas de Tambogrande sur la côte nord du pays, dans la région de Piura, et du projet Río Blanco dans les provinces de Huancabamba et Ayabaca, également au Piura, représentent de bons exemples de populations qui résistent à l'activité minière. La vision de ces communautés est que ce secteur d'activité n'est pas inclus dans leur vision du développement et qu'au contraire sa présence les affecte négativement.

1. Le Pérou est divisé en 25 régions administratives (auparavant appelées « départements ») qui sont à leur tour divisées en provinces. Aucune de ces entités administratives n'exerce un pouvoir important, le pays étant hautement centralisé politiquement.

Les stratégies des communautés

Jusqu'à la seconde moitié des années 1990, les communautés affrontaient les conflits avec les entreprises de façon désorganisée, sans grand appui ou soutien. Graduellement, quelques cas ont attiré l'attention de certaines institutions se dédiant à la problématique de l'activité minière et environnementale : celui de la communauté de Vicco dans la région du Pasco (Sierra Central), qui s'opposait à un projet de l'entreprise El Brocal²; ceux des communautés déjà citées de Tintaya dans le Cusco (Sierra Sur); celui de La Oroya dans la province de Yauli dans le Junín (Sierra Central) et enfin les conflits à Cajamarca (Sierra Norte) ont figuré comme les premières références d'un conflit croissant (CooperAcción 2007).

Les principales centrales paysannes de niveau national ne se sont pas impliquées dans le sujet minier, malgré la demande d'attention et d'appui de plusieurs membres de leur base participative pour contribuer à la défense des droits face aux entreprises minières. Ni la Confédération paysanne du Pérou (CCP), ni la Confédération nationale agraire (CNA) n'ont intégré à leurs stratégies et priorités une attention à cette problématique.

En conséquence, une première rencontre convoquant 40 communautés de différentes régions où l'activité minière était présente a eu lieu à Lima en novembre 1998³. Cette réunion a permis un premier rapprochement entre des communautés de six régions, un échange des expériences et l'élaboration d'un diagnostic commun de la problématique. Durant cette rencontre, un accord a permis d'initier un processus de mise sur pied d'une organisation des communautés affectées par l'activité minière et de demander la création d'une commission chargée de l'organisation d'un premier congrès.

C'est ainsi qu'en octobre 1999, après 12 congrès dans les principales régions minières du pays, s'est tenu un congrès comptant sur la participation de 400 délégués de presque toutes les régions du pays affectées par l'exploitation minière. Cette réunion a résulté d'un accord portant sur la fondation d'une nouvelle organisation de communautés : la Confédération nationale des communautés affectées par le secteur minier (CONACAMI).

Miguel Palacín Quispe, représentant de la communauté de Vicco de Cerro de Pasco, fut élu à titre de premier président et le premier conseil de direction a compté sur la présence de dirigeants des principales zones de conflits, de tout le pays : de Cajamarca au nord, Yauli/La Oroya et Pasco dans la Sierra Central, les régions de Cusco et Huanavelica dans la Sierra Sur, la région de la capitale Lima, jusqu'à la région d'Arequipa au sud. Le premier congrès de CONACAMI fut un événement important dans la première étape qui se voulait une tentative d'organisation des populations affectées par la croissance minière de la décennie 1990.

La dénonciation des cas a caractérisé cette première étape de la CONACAMI. La nouvelle organisation s'est positionnée comme étant l'instance la plus représentative des populations affectées par l'activité minière, développant une intense campagne

2. Le projet de zinc de San Gregorio.

3. La réunion, convoquée par CooperAcción, a eu lieu les 23 et 24 novembre 1998.

autour des principaux conflits dans les diverses régions. La CONACAMI et les institutions partenaires⁴ ont ainsi déployé leurs efforts afin d'appuyer les populations en conflit. L'approche initiale s'est concentrée essentiellement sur la dénonciation et la défense des droits des populations face à une activité minière en pleine croissance.

Les principales stratégies déployées par la CONACAMI se sont articulées autour du renforcement organisationnel, du développement des capacités, de la construction d'alliances et du développement de campagnes. La jeune organisation a misé sur la création d'organes de coordination régionale dans les différentes zones⁵ et son premier plan de travail a mis en tête de liste des priorités un ensemble de cas considérés emblématiques (voir www.conacami.org; en espagnol seulement).

Le refus de l'arrivée de l'activité minière dans diverses localités ou encore des projets d'expansion a provoqué le développement de la mobilisation de divers acteurs et d'initiatives telles que l'organisation de consultations citoyennes (Bebbington *et al.* 2007). C'est dans la localité de Tambogrande au Pérou que s'est organisée la première consultation citoyenne reliée à l'activité minière en Amérique latine en juin 2002, et il en a résulté le refus indiscutable du projet minier que voulait mettre en place l'entreprise canadienne Manhattan Minerals sur le territoire⁶.

La consultation à Tambogrande a représenté un moment charnière dans le dossier des conflits miniers dans le pays. Pour les organisations communautaires et les ONG, la consultation a signifié la mise en pratique d'un plein exercice de participation citoyenne dans lequel la population affirmait sa vision du développement et dans lequel étaient démontrées dans un même temps les limites du cadre légal en cours. Pour les entreprises et les autorités du ministère de l'Énergie et des Mines, ce fut un vrai signal d'alarme et une défaite d'envergure qui mettait en péril les plans d'expansion minière.

L'exemple de Tambogrande a été suivi dans d'autres pays de la région. Dans la ville d'Esquel, dans la province du Chubut dans la Patagonie argentine, un plébiscite fut organisé en mars 2003, qui a résulté par le refus du projet minier aurifère de l'entreprise Meridian Gold, également canadienne. Le 18 juin 2005, dans la localité de Sinpacapa, de San Marcos, au Guatemala, les citoyens votèrent contre le projet aurifère et argentifère de l'entreprise Montana Exploradora, une filiale de Glamis Gold.

L'organisation de consultations et de débats autour de ces cas considérés emblématiques mis peu à peu à l'ordre du jour la nécessité d'approfondir les discussions sur le thème de la gouvernance reliée aux industries minières. La remise en question des cadres légaux en place a été un élément central important pour les communautés et leurs organisations, tout comme la demande de création de vrais mécanismes de participation citoyenne.

4. Essentiellement des organisations non gouvernementales nationales et internationales, comme OXFAM-Amérique.

5. Dénommées Confédérations régionales (CORECAMI).

6. « Le NON a gagné avec 25 381 votes, soit 93,95 % des votes émis en considérant les votes annulés ou blancs. Le taux d'absentéisme fut de 26,8 %, une moyenne acceptable considérant que le vote n'était pas obligatoire – contrairement à la pratique du vote lors des élections officielles – et que le taux d'absentéisme aux élections générales de 2001 a été de 15 % dans le district ». Droit et démocratie Canada, *Rapport de la mission d'observation de la consultation de district de Tambogrande, Pérou*.

Dans un même temps, le conflit minier avançait dans un contexte de relance des investissements miniers à partir de 2003, conséquence de l'augmentation des valeurs boursières et des investissements dédiés à l'exploration. Les conflits allaient en augmentant et les événements à venir présentaient de nouveaux défis.

Cette situation a été dénotée dans l'évolution des récents conflits miniers, dans des cas aussi différents que ceux de Cerro Quilish et Combayo dans la Sierra Norte dans le Cajamarca, et de Tintaya dans le Cusco, et encore plus récemment comme ceux de Majaz-Río Blanco dans le Piura et Las Bambas dans l'Apurímac. Ces cas sont différents tant par les positions adoptées par les entreprises impliquées (leur disposition au dialogue ou non) que par les niveaux d'organisation et de pouvoir des communautés.

Les cas de Combayo et de Tintaya, où les communautés négocièrent avec les entreprises minières des fonds de développement local et divers aspects compensatoires, permettent d'apprécier les difficultés et les défis s'étant présentés aux communautés dans la phase de mise en place d'accords dans la conduite des processus de dialogue et la gestion des conflits. Identifier les agendas légitimes ou, dans le cas contraire, les repenser, consolider les organisations représentatives de l'ensemble et non seulement de groupes d'intérêts internes aux communautés et donner une orientation stratégique aux processus propres sont quelques-uns des thèmes toujours en suspens et qui doivent être abordés afin que les stratégies de dialogue et de négociation ne s'épuisent pas ou encore que ces espaces ne se convertissent pas en simples tables de demandes ponctuelles (De Echave *et al.* 2005).

Dans le déploiement des stratégies comme dans le cas de Río Blanco (Mine Majaz) dans le Piura, il est également possible d'apprécier les particularités du scénario actuel. D'un côté, l'expansion minière dans deux provinces de Piura a entraîné tout un travail d'incidence locale, nationale et internationale, d'organisation d'acteurs locaux et régionaux divers, de construction d'alliances avec des ONG, des médias et le monde universitaire. Dans un même temps, les stratégies de résistance sans grande élaboration d'alternatives pour le développement local et sans entrer à fond dans un débat plus programmé ont démontré leurs limites et n'ont pas permis d'en arriver à la construction d'un discours rassembleur, convaincant et ayant une incidence avec les autres acteurs, par exemple, les médias, certaines autorités étatiques, le milieu universitaire, etc.

Une autre caractéristique des mouvements et conflits récents est la prédominance des agendas locaux et les énormes difficultés qui existent toujours dans la connexion des demandes de chacune des zones avec une proposition plus intégrale à caractère national. Depuis Tintaya dans le Cusco et Combayo dans le Cajamarca, en passant par Majaz dans le Piura, Las Bambas dans l'Apurímac et La Oroya dans le Junín, les mouvements ayant affronté certaines corporations minières ayant leur siège social dans divers pays peuvent en arriver éventuellement à la capacité de retenir l'expansion de la mine ou de négocier certaines conditions, mais n'ont pas pu entrer dans le débat programmé, qui vise non seulement à remettre en question les règles du jeu, mais aussi à proposer des alternatives de changement.

La manière d'articuler les demandes locales selon un agenda à caractère national demeure une tâche à accomplir. Aborder cette tâche permettrait de rapprocher, par exemple, les directions nationales d'une organisation comme la CONACAMI et les

instances à caractère local et/ou régional et leurs propres agendas. La plupart des différences actuelles présentes entre les directions nationales et les organisations locales et régionales sont en grande partie dues à la déconnexion entre les agendas qui se gèrent depuis Lima, et au fait que quelques cas éprouvent de la difficulté à se connecter aux environnements régionaux. Assembler les agendas, créer des processus de rétroaction entre ces derniers, renforcer les organisations et les réseaux de travail représentent quelques lignes d'action qui devraient être travaillées à l'intérieur des mouvements et des ONG du secteur minier afin d'en arriver à un impact plus grand et cohérent dans les débats nationaux et internationaux, et ainsi progresser vers une gouvernance démocratique et durable dans un dialogue entre le gouvernement et les entreprises.

Il importe d'indiquer que ces thématiques viennent à être analysées et commencent à être travaillées par quelques institutions non gouvernementales et la CONACAMI, cherchant à reprendre les alliances et les structures appropriées. Des processus communs d'évaluation, des modifications aux structures d'organisation et la nécessité d'insuffler aux processus de développement institutionnels une planification stratégique adéquate ainsi que la convergence dans l'attention à quelques cas emblématiques sont quelques-uns des aspects ayant motivé ces initiatives et nouvelles rencontres qui, pour le moment, se situent à un stade initial.

Le travail des organisations non gouvernementales

Un groupe d'organisations non gouvernementales a joué un rôle crucial dans les processus d'articulation des acteurs sociaux dans les zones d'influence du secteur minier. Initialement, dans la période 1996-1999, ce fut un groupe réduit d'institutions qui provenaient d'expériences de travail reliées aux thèmes miniers, agraires et dans une proportion moindre se dédiaient également à la problématique environnementale. Dans ce groupe figuraient des organisations telles que le Groupe de recherche économique ECO, l'Association civile du travail⁷, le Centre péruvien des études sociales (CEPES), la Société péruvienne de droit environnemental (SPDA) et CooperAcción⁸.

Selon divers degrés d'intensité et d'implication, ce groupe d'institutions a appuyé le processus initial d'articulation et de réalisation du premier congrès des communautés qui a donné lieu à la fondation de la CONACAMI. Quelques institutions ont assumé un engagement d'accompagnement permanent de la nouvelle organisation, alors que les autres l'effectuaient en fonction des zones géographiques, des cas ou des thèmes spécifiques.

Ce qui est certain, c'est que cette étape a identifié un travail voisin entre ce groupe d'institutions et la CONACAMI. En termes généraux, les stratégies qui appuyaient ces organisations étaient les mêmes que celles considérées prioritaires par les communautés : renforcement organisationnel, développement des capacités, construction d'alliances, campagnes et incidence.

7. Jusqu'à la fin des années 1990, LABOR développait principalement ses activités dans la ville de Ilo, Moquegua dans le sud du pays, où se trouvaient de grandes mines de cuivre.

8. Fondée en juillet 1997.

Un second moment de rapprochement du travail des ONG a été l'appui au cas de Tambogrande. Dans un contexte de conflit plus virulent, à partir de l'année 2000, la décision fut prise de former une table technique afin d'appuyer dans ce cas-ci une initiative issue des secteurs de l'Église catholique de Piura⁹ et qui fut soutenue par la Commission épiscopale de l'action sociale (CEAS).

La création de la Table technique de Tambogrande s'est avérée la principale expérience d'un travail formellement articulé au niveau des ONG dans un cas de conflit à caractère minier. Cette initiative vient de la nécessité de profiter des spécialités, expériences et relations de chacune des institutions dans un espace permettant d'accroître les capacités et d'intervenir dans le conflit de façon organisée.

Le cas de Tambogrande fut aussi un nouveau moment de renforcement du travail interinstitutionnel avec l'intégration de nouvelles organisations provenant du champ de la défense des droits de la personne, comme Diaconía de Piura, la Coordination nationale des droits humains, la Fondation Ecuménica pour le développement et la paix (Fedepaz) et l'Association ProDerechos Humanos (APRODEH), qui ont fait partie de la Table technique dans un deuxième temps.

L'influence de la Table technique à divers moments du conflit de Tambogrande a été décisive : ses membres ont fourni des informations sur le projet et l'entreprise, ont structuré la campagne médiatique au niveau national, ont donné un appui-conseil pour les thèmes environnementaux, économiques, légaux et organisationnels, ont participé aux débats, ont appuyé l'organisation de la consultation, et ont établi des contacts et des campagnes au niveau national (Meloche 2006). L'expérience développée par la Table technique dans le cas de Tambogrande et les résultats atteints ont été évalués très positivement par les organisations non gouvernementales et ont été élevés au rang de référence pour d'autres espaces formés postérieurement pour l'appui d'autres cas de conflits : La Oroya dans le Junín, Cajamarca et plus récemment celui de Majaz dans le Piura.

Toutefois, cette expérience a également été le point de départ d'un nouveau moment d'articulation plus ample et permanent, qui s'est soldé par la fondation du réseau Muqui en 2004 (voir www.muqui.org; en espagnol seulement). Sous l'initiative et la coordination antérieure de la CEAS et avec la participation d'un groupe assez vaste d'institutions non gouvernementales, tant de Lima que de diverses régions, un travail permanent en réseau a pris forme, organisé selon le caractère géographique et les axes thématiques.

Le réseau Muqui s'est défini comme « un espace de travail coordonné entre les institutions nationales et locales qui promeuvent le développement durable et la défense des droits des communautés locales dans les zones d'influence minière et métallurgique ». De cette façon, il était question d'en arriver à la consolidation d'un travail soutenu dans un espace permettant la génération d'un effet multiplicateur des actions que chaque institution pourrait développer séparément.

9. Initiative appuyée par l'évêque de Piura à l'époque et l'institution Diaconía pour la justice et la paix.

Avec la définition d'objectifs et de plans stratégiques communs, le réseau Muqui a organisé le travail au niveau national et dans les différentes régions où il intervenait à partir du travail de ses associés. Les institutions formant le réseau proviennent essentiellement de trois noyaux : les organisations munies d'une grande expérience dans les thèmes miniers, celles travaillant sur les thèmes reliés à l'environnement et, en troisième lieu, les organismes provenant du mouvement de défense des droits de la personne.

La formation du réseau n'a pas annulé le développement des initiatives et stratégies de chaque institution. Les différentes perspectives ont été respectées; de cette façon, et malgré l'absence d'un accord commun, quelques-unes des institutions ont maintenu leur présence dans les espaces de travail comportant plusieurs acteurs, par exemple le Groupe de dialogue minier ou les tables de dialogue spécifique, comme celles qui se développent dans quelques régions (voir www.grupodedialogo.org.pe; en espagnol seulement).

En 2006, en pleine campagne électorale, le réseau Muqui a présenté au pays *una agenda para una minería que aporte al desarrollo sostenible* (« Un agenda pour une exploitation minière contribuant au développement durable »). Cette proposition reconnaissait l'importance économique de l'exploitation minière, le potentiel existant de croissance et, de plus, les défis en suspens qui devaient être abordés pour rencontrer des sorties harmonisant la croissance économique, les variables environnementales et sociales, et le respect des droits des populations. L'agenda du réseau Muqui cherchait à affirmer un caractère de propositions et d'alternatives dans cet espace.

Actuellement, le réseau Muqui est coordonné par l'institution Fedepaz et son noyau de direction est formé par des représentants des institutions APRODEH, Grufides, CEAS et CooperAcción.

Les entreprises et le rôle de l'État

Les stratégies des entreprises

Bien que dans le contexte international les entreprises minières aient reçu beaucoup d'attention au Sommet de la Terre en 1992, ces dernières ont développé, jusqu'à la fin de la décennie 1990, quelques initiatives sans grande organisation. Ces initiatives se sont exprimées à travers quelques codes de conduite et alignements de politiques de responsabilité sociale.

Jusqu'à la seconde moitié de cette décennie, le conflit social avec les communautés voisines au Pérou ne s'évaluait pas comme étant une vraie menace à l'expansion minière et il était jugé que quelques interventions ponctuelles, selon une logique de compensation des impacts, pouvaient surmonter les résistances qui se faisaient sentir dans quelques zones. La formation de la CONACAMI en 1999 s'est avérée un premier signal d'alarme et a créé la préoccupation des entreprises minières au Pérou. La réponse fut également un processus de regroupement et d'adéquation institutionnelle : la Société nationale des mines, du pétrole et de l'énergie (SNMPE) a créé un Comité des affaires

sociales afin d'aborder de façon articulée un conflit qui était visiblement en croissance en nombre et en magnitude (voir www.snmpe.org.pe; en espagnol seulement).

D'un autre côté, la présence rénovée et la plus grande influence de groupes miniers transnationaux au Pérou ont permis un lien avec les processus internationaux et le conflit a commencé à se faire reconnaître comme étant global à la fin de la décennie. En 1999, les principales entreprises minières de niveau mondial avaient lancé l'Initiative globale des mines, dans laquelle d'un côté il était reconnu que « l'industrie n'avait pas répondu adéquatement face aux problèmes sociaux et environnementaux » et de l'autre côté était proposé le développement avant le second Sommet de la Terre (Rio +10) – fixé pour le mois de septembre 2002 – d'une initiative concrète sur trois continents : le projet Mines, minerais et développement durable (voir www.iisd.org; Glave et Kuramoto 2002).

Au milieu de ces initiatives globales, les stratégies d'un secteur de dialogue à l'intérieur des entreprises furent identifiées avec une plus grande clarté au Pérou, cherchant à se rapprocher des autres groupes d'intérêts et misant sur divers changements. Ce secteur a commencé à s'occuper des espaces intégrant de multiples acteurs qui s'étaient créés, comme le Groupe de dialogue minier et diverses tables de dialogue, entre autres celle de Tintaya dans la province d'Espinar dans le Cusco, qui impliquait l'entreprise BHP Billiton et les communautés voisines. Également à cette étape, les processus de structuration des nouvelles gérances des affaires sociales ont été notoires, avec de nouveaux contingents de professionnels provenant de spécialités des sciences sociales et des relations avec des entreprises consultantes qui commencèrent à conseiller les entreprises sur les thèmes sociaux.

Toutefois, et même si les tendances plus conservatrices des entreprises étaient perceptibles, ces dernières résistaient à l'idée de perdre des espaces dans des unions comme la Société nationale des mines, du pétrole et de l'énergie. Dans chaque éclatement de conflit ou situation de polarisation, il était noté la prédominance d'un discours de confrontation qui tentait d'expliquer les problèmes uniquement et exclusivement par l'existence d'un « complot anti-minier », propulsé par la CONACAMI et un groupe d'ONG. Un moment de grande polarisation fut la consultation de Tambogrande, dans laquelle, malgré que de nombreuses entreprises eurent reconnu les erreurs commises par la jeune entreprise canadienne Manhattan, la Société nationale des mines, du pétrole et de l'énergie a terminé en s'aliénant face à la menace et la crainte que se généralisent les consultations.

Cette situation a provoqué un durcissement des stratégies entrepreneuriales qui s'exprimaient dans des communiqués publics et dans l'affrontement ouvert avec des organismes comme la CONACAMI. Par exemple, les entreprises refusaient d'accepter un processus de dialogue national proposé par la CONACAMI, suite à une marche nationale en 2003. Cette organisation avait réussi à faire accepter par le gouvernement la formation d'une instance de dialogue selon un schéma tripartite : État, entreprises et communautés représentées par cette organisation. Les entreprises n'acceptaient pas la représentativité de CONACAMI et la reconnaissaient comme n'importe quelle organisation non gouvernementale. Finalement, l'initiative de dialogue n'a jamais réussi à s'installer, ce qui fut considéré comme une victoire par les entreprises.

Un secteur plus sensible aux thèmes d'image institutionnelle et de responsabilité sociale des entreprises – formé principalement par des représentants d'Antamina et BHP Billiton – ont développé par exemple un code de conduite de la Société nationale des mines, du pétrole et de l'énergie¹⁰, la pratique de bilans sociaux pour les entreprises et l'appui aux expériences de dialogue comme celui de la Tintaya ou l'audit externe sur les thèmes sociaux à Antamina (Szablowski 2002, 2004); mécanismes dans lesquels les processus de négociation et de participation innovèrent et parvinrent à quelques accords inédits.

Des éclatements de conflits précédents, comme ceux de la mine Yanacocha dans le Cerro Quilish, à Cajamarca, ou encore la prise de la mine de Tintaya¹¹, ont mis à l'épreuve les différentes stratégies corporatives. Bien que dans le cas de Cerro Quilish les premières réactions de l'entreprise en appelèrent à l'argument de « la manipulation, l'agenda caché, les positions anti-investissements et anti-mines, etc. », le discours changea vers la fin du conflit. L'entreprise minière Yanacocha, dans un événement sans précédent, accepta dans un communiqué public le fait que sa présence eut « affecté le mode de vie et les coutumes de la population » et reconnut qu'elle n'avait pas toujours compris « la magnitude de ces changements, ni écouté les demandes et préoccupations justifiées exprimées durant ces années par la communauté de Cajamarca¹² ».

Dans le cas de Tintaya, la prise violente de la mine le 21 mai 2005 a mis à risque les accords pris avec les communautés. Cependant, et sans prendre en compte les conseils et les critiques du secteur plus conservateur de la Société nationale des mines, l'entreprise BHP Billiton a poursuivi en misant sur le processus et s'est plutôt appuyée sur ses membres – parmi eux, les organisations communautaires et des ONG – pour surmonter la crise (De Echave *et al.* 2005).

Est-il question de deux cadences ou de deux stratégies en cours du côté des entreprises? Une, portée plutôt sur le dialogue et la seconde, plus dure et dite de confrontation? Il est difficile d'affirmer que ces deux stratégies ont marché de façon permanente en parallèle ou de manière dissociée. Apparemment, plusieurs entreprises ont passé d'une à l'autre en fonction de l'évolution de leurs propres conflits et objectifs particuliers.

Les marches et contremarches depuis l'État

Les conflits ont fait ressortir que le cadre légal mis en place dans la première moitié de la décennie 1990, quoiqu'il pouvait être catalogué comme étant efficace afin d'attirer des investissements, présentait de sérieuses limitations pour faire face aux problèmes sociaux et environnementaux causés par la croissance de l'activité minière. En réponse à cette situation, un ensemble d'initiatives peu articulées ont émané depuis l'État, reflé-

10. Qui fut finalement approuvé à la fin de 2003.

11. En août 2004 et mai 2005.

12. Déclarations journalistiques du 10 avril 2008, de Manuel Pulgar Vidal de la Société péruvienne de droit environnemental et Ivan Lanegra, gérant des ressources naturelles et de la gestion de l'environnement du gouvernement régional de Junín.

tant dans un même temps des avancées et reculs et, jusqu'à aujourd'hui, ne répondant pas aux problèmes de fond.

Un exemple fait référence au thème sensible qu'est l'environnement. Divers aspects ont été absents de la gestion environnementale du secteur minier au Pérou : parmi ceux que nous pouvons souligner, l'absence d'une approche transsectorielle, d'institutionnalisation et de ressources afin de mener la gestion environnementale, le développement de normes de référence aux limites maximales permises d'impacts, la gestion des passifs et la mise en place de vrais mécanismes de décentralisation et de participation citoyenne donnant accès à de l'information utile afin que les populations affectées puissent exiger le respect de leurs droits.

Les tentatives de construire un nouveau cadre légal répondant aux défis de la gestion environnementale au pays ont rencontré jusqu'à maintenant de sérieuses résistances et un manque de volonté politique vers une réforme. Une proposition de nouvelle *Loi générale de l'environnement*, présentée en 2004 est finalement approuvée avec plusieurs amendements : par exemple, les standards de l'Organisation mondiale de la Santé furent refusés, sous prétexte que les pays en développement « ont droit à des standards spéciaux ».

Une autre demande permanente a été la construction d'une véritable autorité nationale environnementale autonome. En 2007, au moyen de la *Loi 28964*, les fonctions de supervision et de fiscalité des activités minières furent transférées à un organisme du secteur de l'énergie (OSINERG), qui jusqu'alors était chargé de la régulation et de la fiscalité des sous-secteurs de l'électricité et des hydrocarbures. C'est ainsi qu'est né OSINERGMIN.

Cette décision a été analysée par Defensoría del Pueblo (2007). Dans un rapport portant sur les conflits socio-environnementaux, il était souligné que « la décision de charger la OSINERGMIN du contrôle environnemental minier ne solutionnait pas le problème à moyen et long terme, considérant que cette entité n'avait pas sous son contrôle les fonctions de régulation et d'évaluation environnementales ». En effet, cette proposition du ministère de l'Énergie et des Mines a maintenu les compétences centralisées, comme celles de l'approbation des études d'impacts environnementaux.

Cette situation s'est répétée avec la création du ministère de l'Environnement du Pérou. Selon plusieurs spécialistes¹³, les instruments efficaces pour résoudre les problèmes environnementaux du pays n'ont pas été donnés à la nouvelle entité et le ministère de l'Environnement n'a pas le pouvoir d'approuver les études d'impacts environnementaux des projets d'investissement comme ceux des industries minières.

En conclusion, les processus mis en place par l'État n'ont pas produit les changements permettant de s'occuper des dimensions sociales et environnementales des conflits reliés à l'exploitation minière. La prédominance d'une gestion sectorielle déficiente n'a pas permis de répondre adéquatement aux demandes des acteurs et n'a pas non plus renforcé les dynamiques de participation citoyenne opportunes et de contrôle indépen-

13. Déclarations journalistiques du 10 avril 2008, de Manuel Pulgar Vidal de la Société péruvienne de droit environnemental et Ivan Lanegra, gérant des ressources naturelles et de la gestion de l'environnement du gouvernement régional de Junín.

dant. L'essor d'une nouvelle génération d'initiatives de réformes du fonctionnement de l'État demeure un travail à accomplir.

Les pressions du nouveau cadre

Un premier élément à préciser est relié aux caractéristiques du cadre actuel en lien avec les industries minières au Pérou et l'agenda du débat. Nous ne devons pas perdre de vue que depuis les quatre dernières années nous sommes arrivés à un nouveau moment dans lequel l'activité minière et les autres activités d'extraction – comme celle des hydrocarbures – ont cherché à consolider un cadre de croissance de moyen et long terme. Quelques indicateurs clés des dernières années démontrent un dynamisme similaire à celui des meilleures années de la décennie 1990 : augmentation des investissements en exploration, croissance des concessions, etc. D'un autre côté, les objectifs du gouvernement péruvien et des entreprises ont été fixes : plus de 16 milliards de dollars d'investissement minier dans les prochaines cinq années et la récupération des niveaux de croissance de la décennie de 1990.

Toutefois, l'éclatement de la crise financière au niveau mondial et ses impacts dans le secteur de l'économie ont ouvert un nouveau moment : la récession déclarée dans les principales économies mondiales, surtout en Amérique du Nord et dans les pays de l'Union européenne, jumelée à la baisse du dynamisme des économies comme la Chine et l'Inde, a fait baisser depuis octobre 2008 les prix des principaux métaux. Un mois suite à l'annonce de la crise, la baisse des cotes boursières de presque tous les métaux a été importante : -38,62 % pour le cuivre, -38,91 % pour le nickel, -36,67 % pour le zinc, -31,87 % pour l'étain, -30,45 % pour le plomb, -18,26 % pour l'aluminium. Il en fut de même pour l'or et l'argent, mais en proportion moindre, pour ensuite retrouver leur valeur initiale.

La question essentielle est : « Combien de temps durera ce nouveau moment et quels seront les plus grands effets de la crise internationale sur le secteur minier »? En premier lieu, nous ne pouvons mettre de côté qu'au milieu de l'essor des cotes des métaux des dernières années, les budgets finançant les activités d'exploration partout dans le monde se sont envolés depuis 2003, jusqu'au sommet record de 2008. Il est connu que les activités d'exploration minière sont les premières à ressentir les changements issus des situations de crise et les baisses conséquentes des cotes boursières. En général, les entreprises minières tendent à réduire leurs budgets d'exploration dans un contexte de turbulence, tout comme les jeunes entreprises – aussi actives en exploration dans les dernières années – réduisent leurs activités compte tenu de leur dépendance à l'obtention de ressources dans les marchés financiers. Ainsi, avec des marchés financiers fermés et la chute des actions des entreprises minières dans les principales bourses du monde, tout pointe vers une chute des flux d'investissement des activités d'exploration, et dans plusieurs cas de manière radicale, comme cela s'est produit à partir de 1997 au moment de la crise russe et asiatique.

D'un autre côté, il est prévu, selon ce contexte, qu'il y aura un retard dans de nombreux projets d'investissement déjà identifiés comptant déjà sur des opérateurs et un calendrier établis. Le portefeuille de projets miniers au Pérou annonçait de manière optimiste plus de 16 milliards d'investissements jusqu'à 2012, portant sur des agrandissements, explorations et développement de projets. Cependant, selon le nouveau cadre, les projets de métaux industriels (les plus nombreux au Pérou) seront assurément restreints.

En réalité, l'évolution des cotes boursières en évitant une chute encore plus grande dépend du comportement des économies de la Chine et des autres pays émergents comme l'Inde. Il est connu que la Chine est devenue le principal consommateur international de produits, avec la consommation d'environ 25 % de la production mondiale des principaux métaux : la Chine est un importateur net et menaçant de cuivre, de fer, de plomb, de nickel et de zinc. Une bonne partie de la demande de métaux de la part de la Chine est due aux énormes investissements dans les infrastructures publiques, à la production manufacturière du pays et à l'activité de construction en général.

En conséquence, l'évolution de l'économie chinoise influencera de manière décisive le comportement des prix internationaux des métaux. Il est également certain que ce qui arrive avec ces cours boursiers dépendra également du comportement mondial des niveaux de production, de la gestion des stocks de minéraux et des fluctuations du dollar.

L'agenda en suspens et le besoin d'une nouvelle génération d'initiatives

Le conflit minier a constamment été en évolution et le contexte actuel voit apparaître de nouveaux thèmes, défis et processus. Par exemple, des différends sont apparus au Pérou sur le thème des ressources, comme dans le cas de la redistribution des redevances minières ou des réclamations portant sur la gestion des fidéicomis miniers dans quelques régions.

Il est également question de prendre en considération l'apparition de sujets comme les menaces de déplacement de quelques populations suite au développement de nouveaux projets, tels que les cas du projet Toromocho dans le district de Morococha dans la province de Yauli, Junín, et du développement du projet Las Bambas et de la communauté de Fuerabamba, dans la province de Cotabambas dans l'Apurímac. Dans un cas comme dans l'autre, l'absence d'instruments adéquats et de l'État, ainsi que la prédominance d'une relation totalement asymétrique entre les entreprises et la population sont évidentes.

Un autre thème dans le cadre des conflits miniers est celui du travail, selon divers aspects. D'un côté, le malaise des travailleurs miniers est évident, pour les conditions de travail et le salaire, et se reflète dans l'augmentation du nombre de grèves, des travailleurs s'y investissant et surtout, l'indicateur principal, le nombre d'heures-hommes perdues. Pour le moment, ce conflit est présent dans l'espace des relations bilatérales

entre les syndicats et les entreprises, à l'intérieur des conventions de travail et non dans les convocations aux grèves nationales.

D'un autre côté, un autre sujet peu exploité fait son apparition dans la relation entre les entreprises minières et d'hydrocarbures et les communautés : les accords de travail. Par exemple, il est fréquent de constater que les entreprises optent pour l'octroi de contrats, pour divers travaux, à des membres des communautés voisines. Cela se produit tant dans le secteur minier comme dans celui des hydrocarbures et les cas les plus notoires ont été les conflits entre les membres des communautés d'Achuar et Pluspetrol en Amazonie (essentiellement pour une question de demande salariale des travailleurs des communautés du lot 1AB, qui demandaient une augmentation de 1 000 à 1 500 soles) et dans la zone d'influence du projet Las Bambas (en Apurimac, dans la Sierra Sur) pour une demande d'augmentation salariale. Dans les deux cas, les opérations ont été paralysées.

Il est certain que ces cas proposent de nouvelles balises dans le contexte des conflits sociaux avec des entreprises d'extraction. Les accords entre les entreprises et les communautés qui abordent les aspects du travail répondent à différentes stratégies : pour les entreprises, il est clair que ce type d'accords cherche à rencontrer un appui dans au moins quelques secteurs des communautés, pendant que pour les communautés, il est question d'en arriver à des avantages à court terme avec des revenus au-dessus de la moyenne de la zone.

Toutefois, ces deux stratégies retardent et/ou n'abordent pas les questions de fond. Les conflits démontrent l'extrême fragilité des accords. De plus, ils favorisent certains pendant que les autres se sentent exclus, ce qui provoque la division des communautés, tant à l'interne qu'avec les communautés voisines.

En termes généraux, les conflits et l'ensemble de leurs variantes peuvent être vus en même temps comme cause et conséquence. Bien que les entreprises et les derniers gouvernements préfèrent les conceptualiser exclusivement comme la cause principale de stagnation des rythmes de croissance, ils peuvent être vus comme la conséquence de ce qui ne fonctionne pas adéquatement : par exemple, dans le cadre des régulations et/ou dans les mécanismes institutionnels reliés à ce secteur. Dans cette situation, il importe de se questionner sur la possibilité que les entreprises et les autorités pensent à de nouvelles étapes d'expansion du secteur minier sans changements substantiels dans les règles du jeu.

Dans ce contexte, les principaux points en suspens de l'agenda minier devraient être repris, surtout les rapports aux aspects sociaux et environnementaux, qui ne résisteront pas à une nouvelle expansion accélérée de l'industrie minière sans mécanismes effectifs de régulation et de contrôle, et sans un agenda la reliant de manière claire et effective au développement durable dans les zones concernées. Donc, réforme institutionnelle, développement de nouveaux instruments de gestion pour les questions sociales et environnementales, amélioration substantielle des processus de participation citoyenne et gestion optimale des profits que génère l'activité minière sont quelques-uns des sujets apparaissant à l'agenda des débats de nos jours.

Nous ne pouvons oublier que l'évolution récente du secteur minier et celle des conflits démontrent de sérieux problèmes de gouvernance dans le pays. Le défi, par conséquent,

réside dans la récupération de la gouvernance et surtout la récupération de la gouvernance démocratique. Cela signifie de construire un caractère institutionnel ayant une capacité réelle de répondre aux demandes qui se présentent et de gérer la dimension sociale et environnementale du développement durable dans le pays.

Le renforcement de la gestion publique reliée au secteur minier est un aspect déterminant pour la construction d'une gouvernance démocratique. Le défi consiste à générer une gestion équilibrée et indépendante, rendant propice à la participation citoyenne opportune et informée. C'est uniquement de cette façon que les organismes de l'État péruvien pourront retrouver la confiance des populations et surmonter la perception de partialité et d'incompétence de leurs actions.

La réforme de la gestion publique reliée au secteur minier doit partir d'un bon diagnostic intégral de son fonctionnement, pour ensuite définir sa refonte. Ce sujet génère des débats et de sérieuses résistances, comme le prouve la création récente d'un ministère de l'Environnement, qui a vu le jour avec des fonctions amendées. Un nouveau caractère institutionnel, générant des mécanismes confiants pour traiter les demandes des diverses populations et des autorités locales, sera de grande utilité dans la gestion des conflits et l'amélioration des relations entre les différents groupes d'intérêt dans les zones d'influence de l'activité minière.

Cependant, dans le dernier contexte, la situation s'est avérée beaucoup plus complexe et a évolué en direction opposée. N'oublions pas que, dans le cadre des facultés accordées au pouvoir exécutif pour l'implantation du traité de libre-échange avec les États-Unis, près d'une centaine de décrets ont été publiés, faisant la promotion de l'investissement privé dans le pays, en même temps que se dégradaient les normes de protection sociale et environnementale.

Cet ensemble de décrets législatifs a préoccupé dans la mesure de leur impact sur les droits des communautés paysannes et autochtones du pays, comme le prouvent les récentes mobilisations dans la jungle péruvienne et le dénommé conflit de Bagua (Federación Internacional de Derechos Humanos 2009). Aux côtés des propositions cherchant à réduire le niveau de votation afin de prendre des décisions sur les dispositions de la terre communautaire s'est ajouté un décret, le 1064, qui tentait de délaïsser la norme qui favorisait l'accord et par conséquent de rendre superficielle la négociation entre les titulaires de l'activité minière ou d'hydrocarbures et les propriétaires terriens. Il faut ajouter que ces changements normatifs n'ont pas pris en compte la résolution législative 26253, selon laquelle est approuvée la convention 169 de l'OIT, qui établit dans son article 6 que « [l]a consultation des peuples indigènes doit être mise en place selon des procédures appropriées, de bonne foi, et à travers les institutions représentatives de ces peuples » à chaque fois que sont prévues des mesures législatives ou administratives susceptibles de les affecter directement.

Dans un contexte comme celui décrit, il n'est pas difficile de supposer que des cas présentant des aspects complexes suivront et qu'il sera nécessaire de poursuivre les efforts pour faire évoluer ces conflits par les canaux démocratiques contribuant à une réelle gouvernance démocratique dans le pays. Cela est d'autant plus nécessaire dans le cadre de la crise internationale où, bien que cette dernière apportera moins de flux d'investissement dans le secteur minier, les entreprises pourraient en profiter afin de

conserver – et s'il est possible – de baisser les normes sociales, environnementales ou de pression fiscale.

Selon ce scénario, pour avancer vers la gouvernance, il devient pertinent d'insister sur la reprise des principaux dossiers en suspens dans l'agenda minier, surtout les relations avec les aspects sociaux et environnementaux, qui ne résisteraient pas à une nouvelle expansion accélérée de l'activité minière sans mécanismes effectifs de régulation et de contrôle, et sans un agenda la reliant clairement au développement durable dans les zones où elle s'implante. Conséquemment, les réformes institutionnelles approfondies, le développement de nouveaux instruments de gestion des thèmes sociaux et environnementaux, l'amélioration des processus de participation citoyenne et la gestion optimale des profits que génère l'activité minière sont quelques-uns des thèmes qui apparaissent dans l'agenda minier au Pérou.

Est-ce que les processus d'articulation ayant vu le jour durant toutes ces années et qui ont contribué à la défense des droits des communautés sont adéquatement préparés pour ce scénario? Une des tâches à accomplir consiste précisément à réaliser une sorte d'analyse de l'ajustement entre ce que nous avons, ce qui a été réussi, les besoins qui doivent être comblés et les initiatives qui doivent être prises. Cette analyse peut nous aider à identifier les avancées et ce qui manque : quelles nouvelles capacités et quelles nouvelles stratégies devraient être développées en réponse au nouveau contexte.

De nos jours, les conflits génèrent des scénarios et des défis distincts de ceux de la fin des années 1990. Différents acteurs comptent sur une capacité de réponse différente : de nouvelles initiatives et instances opérationnelles s'organisent ou sont en voie de construction, et les entreprises ont également évolué et présentent des discours et des stratégies beaucoup plus élaborées.

Bien que les organisations reliées à la lutte pour les droits des communautés présentent des expériences et des réussites importantes, comme le travail à Tambogrande, Tintaya, La Oroya ou encore le récent cas de Majaz, il existe quelques preuves de l'affaiblissement des structures. Du côté des communautés, un dynamisme plus faible est perceptible, tout comme la présence d'espaces de structuration nationale qui viennent couvrir quelques régions avec l'émergence d'acteurs locaux : fronts de défense, rondes, fédérations, tables. Cependant, ces organisations réussissent à répondre au conflit qui les affecte directement, avec des demandes précises et un agenda local qui éprouve de la difficulté à considérer une échelle nationale.

De son côté, les organisations non gouvernementales jouent un rôle crucial, mais n'ont pas réussi à construire des espaces et des mécanismes opérationnels permettant des actions plus efficaces avec des contenus plus élaborés et se projetant dans un espace plus grand. Il faut approfondir les alliances, construire des ponts avec d'autres espaces qui devraient déjà être des alliés importants, comme pourraient l'être le milieu universitaire, quelques organismes comme Defensoría del Pueblo, les institutions régionales, les réseaux internationaux, etc.

Pour les organisations communautaires et les réseaux d'organismes non gouvernementaux, les principaux succès se trouvent dans le contrôle de la résistance et la défense des droits. Ils ont démontré une capacité de réponse et de remise en question des règles

du jeu, mais présentent actuellement des difficultés à entrer dans un débat de fond à caractère programmé.

Ce qui a été atteint par ces organisations et réseaux n'est pas sans signification. Cependant, dans un contexte comme celui décrit ici, il est facile de supposer que des situations de conflit continueront à éclater dans les prochaines années et qu'il sera nécessaire d'avoir des répercussions à l'aide d'instruments plus efficaces et des alliances plus importantes. S'il n'y a pas d'initiatives de structuration ayant la capacité de faire passer ces conflits par les canaux démocratiques et pacifiques et en fonction d'un agenda commun, nous continuerons à voir des mouvements isolés. Ces mouvements pourront avoir une certaine efficacité de réponse dans les conflits locaux, thèmes et cas spécifiques, mais ne pourront structurer l'agenda national relié au secteur minier.

Le défi semble être passé à d'autres niveaux : une piste est celle du débat relatif au programme, qui remet en question les règles du jeu, les stratégies qui prétendent maintenir le *statu quo* et qui met sur la table en même temps des propositions alternatives, aptes à regrouper non seulement les acteurs de toujours, mais aussi à attirer de nouveaux alliés. Donc, l'objectif ne devrait pas être seulement de récupérer les niveaux de structure perdus, sinon de développer de nouvelles stratégies répondant de manière efficace aux nouveaux défis.

Structurer les composantes qui cherchent à construire la gouvernance démocratique avec l'agenda du droit et générer des processus permettant que ces composantes se rétro-informent et puissent identifier de nouveaux points d'équilibre économiques, sociaux, culturels et environnementaux, sont des tâches centrales pour l'ensemble des organisations reliées à la défense des droits des communautés affectées par les entreprises minières.

Références

- Bebbington A., Humphreys Bebbington D., Bury J., Langan J., Muñoz J. P., Scurrah M., 2007, « Los movimientos sociales frente a la minería: disputando el desarrollo territorial andino », dans http://idinfo.idrc.ca/Archive/Corpdocs/123072/123073_9-2_Cap_11.pdf.
- Blacksmith Institute, 2007, *The world's worst polluted places. the top ten of the dirty thirty*.
- CooperAcción, 2007, *Informe de conflictos mineros. Los casos de Majaz, Las Bambas, Tintaya y La Oroya*, Lima : CooperAcción.
- Defensoría del Pueblo, 2007, *Informe Extraordinario. Los conflictos socioambientales por actividades extractivas en el Perú*, Lima.
- De Echave J., 2008, *Diez años de minería en el Perú*, Lima: CooperAcción.
- De Echave J., Diez A., Huber L., Revesz B., Tanaka M., 2008, *Minería y conflictos sociales*, IEP, CIPCA, CBC.
- De Echave J., Keenan K., Romero M. K., Tapia A., 2005, *Los procesos de diálogo y la administración de conflictos en territorios de comunidades: el caso de la mina de Tintaya en el Perú*, Lima : CooperAcción.
- Federación Internacional de Derechos Humanos (FIDH), 2009, *Perú-Bagua. Derramamiento de Sangre en el contexto del Paro Amazónico*, Paris : FIDH (octobre).
- Glave, M. A., Kuramoto J., 2002, « Minería, Minerales y desarrollo sustentable en Perú », in *Minería, Minerales y desarrollo sustentable en América del Sur*, Londres : MMSD.
- Meloche G., 2006, « Resultados de la investigación en el terreno realizada en Tambogrande, Perú, entre el 6 de Mayo de 2002 y el 6 de Agosto de 2005 », extrait de la thèse de doctorat en communications intitulée *Metodología para una nueva ética de la cooperación internacional: apropiación*

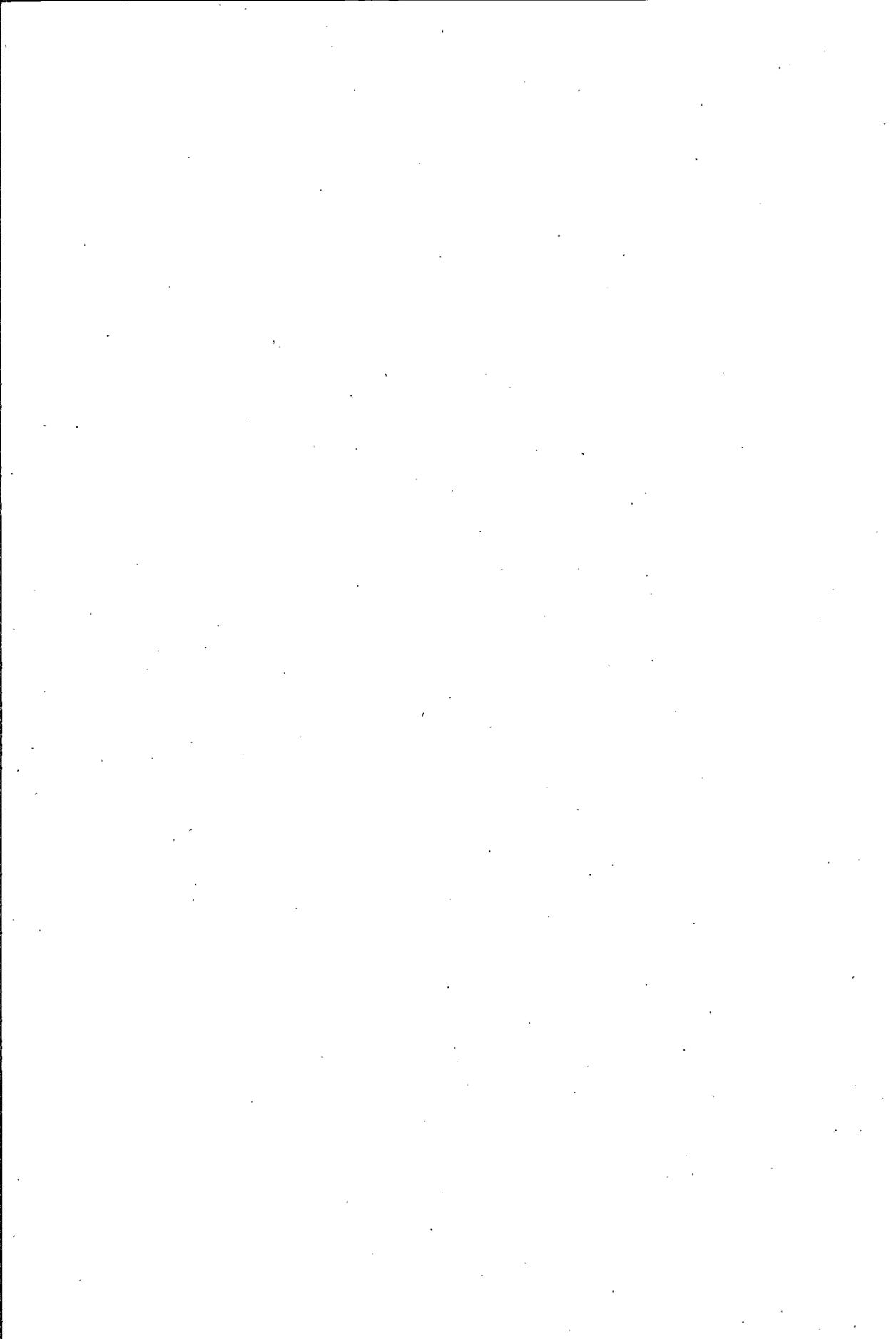
del desarrollo por las comunidades en un contexto de conflicto. El caso de Tambogrande en el Perú, Québec : Université du Québec à Montréal.

Szablowski D., 2002, « Mining, displacement and the World Bank : A case analysis of Compania Minera Antamina's operations in Peru », *Journal of Business Ethics* vol 39 n° 3, 247-273.

Szablowski D., 2004, « Legitimacy and regulation in the global economy: Legal mediation of conflicts between communities and transnational mining companies », thèse de doctorat, Université York.



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*Reviews * Recensions*

Earth Matters: Indigenous Peoples, the Extractive Industries, and Corporate Social Responsibility

Ciaran O'Faircheallaigh and Saleem Ali, eds.

Sheffield, UK: Greenleaf Publishing, 2008. hb, 272 pp. ISBN 978-1-906093-16-7

As its title indicates, this thought-provoking volume discusses the topical subject of corporate social responsibility (CSR) in the extractive industries and the impact of large-scale resource development on indigenous peoples' traditions, cultures, and livelihoods. The book critiques the corporate strategies, processes, and practices of extractive companies in their dealings with indigenous communities, and questions whether CSR can help bring about fundamental change in the distribution of the benefits and costs of large-scale resource exploitation. Overall, the authors ably demonstrate the complexity of issues, relationships, and interactions between and among extractive companies, indigenous communities, NGOs, and governments in natural resources development.

The book makes a valuable contribution by helping readers understand the contextual nature of CSR, the specific political, social, and legal contexts that encourage corporations to act either responsibly or irresponsibly, and the different response mechanisms employed by NGOs (local, national, and international), governments, and indigenous peoples to hold corporations accountable for their business decisions, policies, and practices. We are introduced to strategic options that different actors adopt to move their individual and common interests and agendas in resource exploitation, and we are offered explanations as to why their success significantly varies.

The authors employ diverse disciplinary and theoretical lenses to present captivating readings on themes spanning stakeholder engagement, multi-stakeholder networks, contractual agreements, shareholder activism, gender, employment, and environmental justice. However, readers not already familiar with the concept of CSR will find the introductory chapter does little to advance their comprehension of the subject or of the alternative theoretical perspectives underpinning CSR.

The geographical coverage of the case studies is diverse, representing experiences of indigenous peoples from Australia, Canada, Ecuador, New Zealand, Papua New Guinea, Indonesia, Peru, Russia, and the United States. Unfortunately, we do not get to read of the experiences of indigenous peoples in Africa or from within the mega-economies of China and India.

As the book reveals, indigenous peoples have historically been treated as second-rate citizens in places where corporations exploit natural resources on a large-scale basis. The volume contributors highlight very well the plight of indigenous communities affected by the operations of extractive companies. The catalogue of negative impacts includes loss of livelihoods, lack of employment opportunities, violence, denial of access to land, intrusion upon ancestral lands, lack of participation and representation in decision-making arenas, and pollution and deforestation.¹ It is therefore not surprising that all the contributors explicitly or implicitly discuss the violation by extractive companies (in some instances with the help of governments) of the principle of free, prior, and informed consent, a concept that, although mentioned on various occasions, is not explained.

For practitioners who might be seeking a how-to manual, this book offers numerous lessons but no quick answers to the question of how to ensure extractive companies practice meaningful CSR in operations affecting indigenous communities. Beyond having their thoughts provoked, readers hopefully will begin to visualize some of the challenges corporate managers and CSR practitioners face in their attempts to uphold, respect, and protect the principle of free, prior, and informed consent. These challenges relate to the complex political, social, and legal contexts within which extractive companies operate. It is evident from the case studies presented in the book that there is no one-size-fits-all approach to overcoming the ethical, political, social, and economic challenges faced by indigenous communities the world over, or for resolving the issues corporations have to address on a regular basis.

Nonetheless, if CSR is to become an effective mechanism by which to ensure that corporations respect, promote, uphold, and fulfill the rights of indigenous peoples, students of business and society, scholars, policy-makers, and practitioners across all sectors will have to continue questioning the fundamentals of how business is conducted in the extractive industries. Extractive companies will need to work closely with state and non-state actors to transform the social, political, and economic dimensions of the competitive contexts in which they conduct business. Importantly, all actors will have to continue working tirelessly to radically change business practices and how they relate to one another so as to let indigenous peoples live a dignified life, since this is their right, not a privilege.

This book is a must-read for all students broadly interested in business and society, business and development, public social responsibility, and good governance.

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1. It must be said that these challenges are not unique to indigenous peoples but are also experienced by non-indigenous communities where there are extractive, large-scale agricultural companies and other companies using huge amounts of natural resources, especially in developing countries.

Corporate Citizenship in Africa: Lessons from the Past, Paths to the Future

Wayne Visser, Malcolm McIntosh, and Charlotte Middleton, eds.
Sheffield, UK: Greenleaf Publishing, 2006. hb, 285 pp. ISBN 978-1-874719-55-7

By including chapters written by academics, practitioners, and corporate actors on and outside the continent, this book takes a multidisciplinary approach to the subject of corporate social responsibility (CSR) in Africa. Commendably, it presents the debate from different perspectives, describing both successful and unsuccessful experiences, identifying gaps, and offering ways for improvement. The book shows how the practice of CSR has affected specific challenges facing the African continent, and with case studies further examines some of the best practices of companies in Africa and the challenges faced by companies that engage with the concept. The book also explores what the African continent might learn from other parts of the world and what it can contribute to the wider global debate on the subject.

The core chapters of the book are grouped by theme into seven parts. These include leadership and governance, community and environment, health and HIV/AIDS, industries and sectors, supply chain and small and medium enterprises, and globalization.

The two chapters in the first part serve as the introduction to the book. Visser, McIntosh, and Middleton first set the background and offer reasons why corporate citizenship has acquired important relevance in the African context. They underscore the historical perception of the continent as presenting a "moral dilemma for the rest of the world," which has led to a problem-focused approach to research on Africa (11). The editors show that the literature about the continent generally neglects emerging and significant positive changes in its development. They also explore the interconnectedness of the problems facing Africa with regard to the policies of Western countries. Against this backdrop they discuss the role of big business in Africa, which has generated mixed results over the past 100 years. On the one hand, there is the much publicized involvement of big business in corruption, environmental degradation, exploitation of labour, and human rights violations, and on the other, there is the contribution of business to development in the form of foreign investment, creation of jobs, transfer of skills, infrastructural development, and social responsibility programs (12).

A core argument that has emerged in this discussion about the role of business in Africa's development holds that the private sector may have a significant, still untapped potential role to play in solving social, economic, and environmental problems in Africa. In the literature, it is widely contended that corporate citizenship in Africa has its own unique features, different from those found in other regions of the world. The complexities of the African context require innovative, original approaches, which the book encourages and successfully explores.

The second chapter, by Visser, reviews ten years of CSR research in Africa. He notes the low quantity of published research, the focus in this literature on business ethics, and its predominant concern with South Africa. He advocates increasingly diverse (in content and geographic scope) research on corporate citizenship in Africa, and ob-

serves that there had indeed been a significant increase in research output in Africa since the chapters of the volume had been prepared. However, this is not unusual for a book dealing with a fast-changing area.

The four chapters in the second part of the volume deal with leadership and governance, and focus on corporate strategies and management commitment toward embedding corporate citizenship in a governance framework. The chapter by Lynham et al., arguably the best chapter in this section, discusses the role of business in furthering socio-political goals. The authors focus on the progressive action of some business leaders in helping to realize the democratic transformation of South Africa. Using the theoretical framework of the "servant leadership concept," the chapter examines the experiences of South African business leaders in the mid-1980s to mid-1990s. The writers conclude that the servant leadership philosophy underlies the business leaders' approach in South Africa, and that their experience may be instructive for future debates, especially in the global context.

The third part of this volume focuses on the social and ecological dilemmas often faced by businesses on the continent. Hayes argues in favour of moving environmental issues up the corporate citizenship agenda, as has been done in Europe and North America. He considers this an essential ingredient of corporate responsibility. The other two chapters in the section present evidence from the field on how the environmental practices of business are being transformed in Africa.

The next three sections describe how corporate practices in various sectors and industries are affecting various issues, especially in the area of HIV and health. Hartig et al. provide a notable evaluation of the performance of multi-million-dollar projects in the pharmaceutical industry targeted at finding sustainable livelihood solutions for women, children, and communities affected by HIV/AIDS in South Africa. The chapter contends that early and continued consultation with various stakeholders, including government officials and local community members, is important. It further argues that transparency is required to achieve success.

The last section, on globalization, also doubles as the conclusion to the book. The section links the African debates to the wider international context. Orock faults multinational corporations for not globalizing their notion of corporate citizenship from their Northern "home" to their African "host" locations. McIntosh, on the other hand, reflects on how businesses in Africa should take CSR more seriously in order to contribute positively to the continent's development.

While the book correctly notes the narrow geographical focus of the literature on corporate citizenship in Africa, it can be faulted for the same thing. More than a third of the chapters in the volume focus on South Africa. The remainder cover a handful of countries that appear to be randomly selected. It is interesting to note that despite the tremendous importance of corporate citizenship in Nigeria, and especially in the oil industry, this is not reflected in the book. Another shortcoming arises from the questionable objectivity of some of the chapters. An example is Peterson and Shaw's contribution (arguably the weakest in the book), which reads more like a public relations article for De Beers than an analysis.

In addition, the book does not pay adequate attention to the legal aspect of CSR in Africa. A notable exception is Muthuri and Mwaura's work on how corporate law reform can encourage social responsibility to alleviate the uneven distribution and use of information and communication technology in Africa.

Notwithstanding its shortcomings, *Corporate Citizenship in Africa* provides an invaluable contribution to the academic discussion of the topic. It offers a bridge between theory and practice, and is essential reading for those interested in corporate citizenship in Africa.

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Minería transnacional, narrativas del desarrollo y resistencias sociales [Industrie minière transnationale, relations au développement et résistances sociales]

Maristella Svampa et Mirta A. Antonelli (dir.), 2009,
Buenos Aires : Editorial Biblos, 319 p.

Profondément traumatisée par ses débâcles économiques depuis au moins le milieu de la décennie 1970, l'Argentine se trouve maintenant confrontée à un certain nombre d'agitations sociales bien fondées face à la croissance des investissements dans le secteur minier. Les complexités, tensions et risques du développement minier dans ce pays du cône Sud ont été soigneusement analysés par Maristella Svampa et Mirta A. Antonelli dans leur ouvrage « Minería transnacional, narrativas del desarrollo y resistencias sociales » [Industrie minière transnationale, relations au développement et résistances sociales]. Les huit chapitres de leur ouvrage répondent au défi de dresser un portrait détaillé et vigoureusement analysé du secteur minier argentin depuis sa croissance exponentielle à l'aube des années 1990 jusqu'aux réactions sociales qui en ont découlé.

L'ouvrage est divisé en deux sections principales. Les quatre premiers chapitres traitent de thèmes tels que les modèles d'investissement, la nature de l'exploitation minière dans les plus récentes phases de croissance, le nouveau rôle de l'autorégulation corporative ainsi que certaines caractéristiques principales des luttes ayant émergé dans diverses communautés affectées par l'exploitation minière. Adoptant une approche plutôt générale, ces chapitres réussissent l'exploit de bien présenter ces thèmes centraux vers une bonne compréhension du développement du secteur minier depuis les années 1990. Alors que les chapitres de cette première section se concentrent sur l'évolution de l'exploitation minière en Argentine, les personnes s'intéressant au secteur minier

trouveront un bon nombre d'informations très utiles portant sur des questions essentielles : la responsabilité sociale des entreprises, les régimes nationaux et internationaux d'investissement et les stratégies discursives développées par l'industrie pour pallier les résistances des communautés locales face à l'exploitation minière.

Toutes les contributions à l'ouvrage utilisent les outils conceptuels requis pour bien comprendre la nature et l'ampleur du phénomène analysé. Le premier chapitre, rédigé par Maristella Svampa, Lorena Bottaro et Marian Sola Álvarez, s'avère très important : les auteures y traitent des caractéristiques contemporaines de l'industrie minière en Argentine et dressent un portrait plus que juste de la magnitude des changements dans les communautés affectées par l'extraction minière à ciel ouvert. Ce chapitre donne le ton pour ce qui est d'un des apports les plus essentiels de l'ouvrage : la conceptualisation des moyens par lesquels les entreprises d'extraction ont exercé leur pouvoir au niveau local, national et régional. Les auteures prétendent que cette conceptualisation doit prendre en compte le déclin de la position hégémonique du néolibéralisme et des notions de progrès et de modernisation qui, selon plusieurs variantes, forment la base du développement dans la région. De plus, cette conceptualisation doit se faire selon une référence à une nouvelle – et probablement irréconciliable – tension entre le développement et les luttes pour l'émancipation (p. 50). En bref, le développement est un processus qui doit être considéré selon ses multiples facettes, dont son pouvoir de réduire au silence les visions alternatives de participation et de modernité.

Les divers thèmes développés dans l'ouvrage s'articulent autour des préoccupations des auteurs face à l'inclusion sociale. Plus spécifiquement, le contraste entre les alternatives de participation et d'inclusion mises en relief par les communautés locales, et entre le pouvoir de l'État et des acteurs du secteur privé présentant leur propre agenda, comme étant au-delà de la sphère politique, est particulièrement frappant. C'est d'ailleurs le sujet du chapitre de Mirta Alejandra Antonelli sur l'exploitation minière et l'intervention culturelle. Ici, les concepts tels que le développement durable et l'exploitation minière responsable sont analysés selon leur implication dans la construction des discours empêchant toute forme possible de discussion. Ces discours deviennent des réalités absolues supportées par le contrôle qu'exercent les entreprises sur la production et la diffusion de la connaissance face à l'organisation communale.

De son côté, María Eugenia Arias Toledo traite de l'importance fondamentale de l'infrastructure régionale, qui est venue à supporter la croissance de l'investissement privé dans les projets de développement. Son analyse de certains projets tels que l'Initiative pour l'intégration des infrastructures régionales sud-américaines (IIRSA) représente le point de départ de l'enjeu de la centralisation de l'État pour rendre viable et localement adapté un projet de développement d'ampleur régionale.

Le second chapitre de Maristella Svampa, Lorena Bottaro et Marian Sola Álvarez fournit les éléments principaux de l'analyse des mouvements sociaux ayant été développés suite aux projets miniers dans diverses communautés argentines. Depuis les confrontations dans la ville d'Esquel, dans la province du Chubut, des communautés à travers le pays se sont organisées afin de dénoncer les pratiques des entreprises d'extraction minière et les conséquences environnementales de leurs actions. À la fin de l'année 2008, approximativement 70 assemblées communales étaient composées

d'acteurs provenant de classes multiples (p. 123-124). Ce chapitre détaille avec clarté et justesse théorique la constitution de ces mouvements, leur évolution et leur capacité de relever les divers défis qu'ils ont affrontés.

Les quatre chapitres de la seconde section se concentrent sur des études de cas des mouvements de résistance parmi les plus emblématiques d'Argentine : Esquel (par María Cecilia Marín), Minera Alumbrera (par Horacio Machado Aráoz), La Rioja (par Norma Giarracca et Gisela Hadad) et San Juan (par Mauro Orellana, Silvina Giovannini, Angélica Vega et Dolores Rocchietti). Ces études de cas proposent un examen bien documenté sur les aspects causant des frictions entre les communautés et les projets miniers, par exemple sur l'utilisation de l'eau ou la pollution inhérente à l'exploitation à ciel ouvert, en relation avec des expériences de communautés présentes dans d'autres pays et régions. Plus encore, ces chapitres rendent une signification politiquement concrète de la responsabilité sociale des entreprises et des énormes asymétries de pouvoir à la construction des consensus entourant l'établissement d'un projet d'exploitation minière. Malgré les efforts concertés des institutions internationales, des États et des entreprises afin de présenter l'exploitation minière en tant qu'alternative économique socialement responsable et durable, il apparaît clairement que seule la résistance des communautés affectées par l'exploitation minière peut fixer les limites de l'effet destructeur de ce type d'activité.

En conclusion, alors que l'ouvrage traite de plusieurs façons des notions de pouvoir et de résistance, certains aspects de ces luttes n'ont pas fait l'objet de l'attention qui aurait été nécessaire. Par exemple, le rôle du travail dans l'évolution des conflits analysés n'a pas été très considéré. Il en va néanmoins d'un excellent ouvrage qui contribuera certes aux moyens fondamentaux de développement des outils conceptuels et analytiques requis pour une meilleure compréhension de la logique et la dynamique de la plus récente phase de croissance du secteur minier en Argentine et en Amérique latine.

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Traduit de l'anglais par Francis Brown

Mining and Development in Peru With Special Reference to The Rio Blanco Project, Piura, [Exploitation minière et développement au Pérou : Le projet Rio Blanco, Piura]

A. Bebbington, M. Connarty, W. Coxshall, H. O'Shaughnessy, et M. Williams, 2007
Peru Support Group (PSG), 2007. 71 p.

Dans un récent article en tribune libre du *Financial Times* (19 août 2009), Moises Naim met en lumière le rôle désolant joué par les entreprises extractives, particulièrement celles

du secteur minier et des hydrocarbures, dans la construction d'une économie politique orientée vers la stabilité du développement social et de la démocratie. L'auteur déplore le fait que les pays ayant évité les pièges de la « malédiction de la ressource », comme le Chili, constituent plutôt des exceptions et non la règle d'usage. Le Conseil international des mines et métaux (ICMM), un groupe industriel, a répondu à Moises Naím en prétendant avoir en main des exemples de collaboration entre tous les acteurs en jeu qui auraient produit ce qui serait considéré comme le « prix du développement » (Lettre au *Financial Times*, 25 août 2009). Parmi les cas cités, le ICMM met en relief celui du Pérou.

Dans un rapport opportun et accessible pour tout lecteur, le Groupe de soutien au Pérou (GSP¹), duquel l'auteur de ce compte rendu est un membre, analyse un projet spécifique dans le nord du Pérou, qui sera d'intérêt aux étudiants intéressés par les industries extractives et par le concept de développement. L'étude démontre comment le rôle des entreprises ayant pour activité principale l'exploitation minière au Pérou est vu comme un moteur de développement économique. Pendant de nombreux siècles, le secteur minier s'est avéré la principale bouée de sauvetage de l'économie avec l'exploitation de l'argent, du cuivre et de l'or, qui représente aujourd'hui la principale exportation. La volatilité de la demande de minerais provient un modèle de développement instable alors que l'extraction minière a, comme dans de nombreux pays riches en ressources, longtemps contribué à aggraver les inégalités sociales. Un afflux important d'investissements dans ce secteur depuis la décennie 1990 a servi à accentuer de tels problèmes de disparités sociales au Pérou. Et malgré les affirmations de l'ICMM, il demeure impossible de déterminer si l'exploitation minière aide à réduire le taux élevé de pauvreté et d'iniquité dans le pays, ou encore si cette activité contribue vraiment à renforcer les institutions démocratiques faiblement constituées du Pérou.

Une des difficultés d'évaluation du rôle des industries extractives dans le développement réside dans le manque de rigueur et de détails des cas sur lesquels se base l'analyse. L'étude du GSP, sous la direction d'Anthony Bebbington de l'Université Manchester, en est un excellent exemple. L'analyse porte sur le potentiel du développement de la mine de Rio Blanco au nord du Pérou, un projet ayant généré énormément d'acrimonie, allant même jusqu'à des conflits violents entre les acteurs impliqués. Bien que les circonstances de Rio Blanco puissent être vues comme étant particulières, l'étude du cas offre un aperçu intéressant des raisons pour lesquelles ce récent projet minier dans les montagnes péruviennes s'est avéré si conflictuel.

Tel que le mentionne l'étude, le bureau du protecteur du citoyen du Pérou fournit de nombreuses preuves du nombre et de l'intensité de conflits récents similaires à Rio Blanco à travers la cordillère des Andes. La collaboration et le consensus entre les acteurs en jeu ne semblent donc pas être la norme.

L'étude du GSP est proposée comme une réponse au conflit verbal lors d'une rencontre au Parlement britannique entre les représentants des communautés de Rio Blanco et ceux de l'entreprise Monterrico Metals, qui a son siège au Royaume-Uni. Le rapport contient les résultats d'une délégation formée d'experts envoyée à Rio Blanco, composée d'Anthony Bebbington, d'un député (Michael Connarty), d'un anthropologue

¹ Peru Support Group.

(Wendy Coxshall), d'un journaliste (Hugh O'Shaughnessy) et d'un expert en hydrologie (Mark Williams). L'étude en question cherche à analyser et contextualiser cette lutte portant sur le développement minier, et à mettre en lumière les leçons à retenir de ses conséquences. Malgré que les actions en bourse de Monterrico Metals aient été reprises depuis lors par le conglomerat chinois Zijing, le développement de la mine demeure paralysé.

Les six premiers chapitres sont consacrés au contexte du Rio Blanco, aux conflits y sévissant et au travail d'évaluation de la délégation d'experts. Ces chapitres soulignent la nature troublée des rapports entre l'exploitation minière, le développement, la démocratie et l'environnement, au Pérou, tant dans la région de Piura que dans les autres régions du pays. Il est également question de l'origine et de l'évolution du conflit entre l'entreprise Monterrico Metals et les communautés dans lesquelles la mine devait être construite, mais dont le consentement explicite n'a jamais été donné selon l'étude. Cette partie du rapport inclut quelques références utiles sur des problématiques telles que le drainage des mines acides, la planification de l'utilisation du territoire et la perte pour les communautés de cette partie du Pérou. Il est également question d'importants rapports émis par l'entreprise en cause.

La seconde partie de l'étude (chapitres 7 à 10) se penche sur les divers problèmes au cœur du conflit et sur les arguments utilisés par les deux groupes d'acteurs. Cela implique une évaluation des impacts probables du développement du projet minier dans la région, des conséquences possibles sur l'environnement des communautés et des autres régions limitrophes ainsi que des impératifs institutionnels visant les apports politiques, environnementaux et de développement bénéfiques aux régions concernées par le projet. Sur ce dernier point, l'analyse se concentre sur l'absence d'institutions étatiques efficaces au niveau local afin d'en venir à des accords et capables de fournir un cadre global de développement harmonieux d'un projet ayant d'importantes retombées locales et régionales. La section du professeur William sur les risques environnementaux, pas exclusivement en lien avec ceux spécifiques au projet, est particulièrement utile. Le chapitre 11, quant à lui, formule quelques suggestions générales au sujet des critères appropriés qui doivent être pris en considération dans toute décision d'aller de l'avant ou non et sur les structures de gouvernance à adopter pour éviter les risques de dérapage si le projet est adopté.

L'étude apporte donc une réponse évidente à la question posée par Moises Naím. Plus les institutions étatiques légitimes sont déficientes dans les régions concernées par un projet minier, plus le projet est en proie aux conflits et aux mésententes. Cela est dû au rapport inégal de pouvoir entre les entreprises minières, une compagnie étrangère dans le présent cas, et les autres acteurs. Cet écart de pouvoir ne peut permettre une médiation efficace et bénéfique d'un tel conflit. Nous pouvons penser qu'il y a ici une différence entre le Pérou et le Chili, un pays ayant un développement étatique plus marqué.

Le GSP a su prouver par son étude que le cas du Rio Blanco, tout comme d'autres projets dans les régions éloignées des Andes péruviennes, souffre d'un manque total de présence étatique au niveau local. Les entreprises d'exploitation minière se retrouvent souvent à assurer plusieurs fonctions autrement assumées par l'État, comme le maintien de l'ordre public. Le rapport démontre également comment le travail du ministère

de l'Énergie et des Mines pose les bases d'éventuels conflits d'intérêt : sa tâche principale est d'attirer les investissements étrangers, alors que l'évaluation des impacts environnementaux et sociaux relève de son mandat. Une des recommandations de l'étude portait sur la création d'un nouveau ministère de l'Environnement, donc d'une instance indépendante à la recherche d'investissements. Cette recommandation a été depuis lors suivie, toutefois sans que ce nouveau ministère ne dispose de tout le mordant nécessaire pour faire face à la musique.

Tout en donnant un espace sympathique aux opposants au développement minier dans le nord du Pérou, le rapport du GSP ne se positionne pas pour autant comme un ennemi à l'exploitation minière. L'argument principal utilisé est que le développement minier devrait procéder de manière à respecter les intérêts de ceux et celles affectés de près ou de loin par de tels projets d'exploitation, particulièrement en ce qui a trait à la préservation de l'environnement et à la minimisation des impacts sociaux négatifs qui accompagnent trop souvent le développement minier. Considérant la nécessité de gérer des différences fortement problématiques entre les divers groupes d'intérêts, la présence d'un État effectif, démocratique et participatif peut être un *quiproquo* pour tout « prix du développement » appelé à être réalisé.

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Traduit de l'anglais par Francis Brown

Navigating Neoliberalism: Self-Determination and the Mikisew Cree First Nation

Gabrielle Slowey

Vancouver: UBC Press, 2009. hb, 160 pp. ISBN: 978-0774814058

I approached this text with a mixture of trepidation, wariness, and intrigue, prepared for yet another work that continued to document the "Indian Problem,"¹ wary that neo-liberalism and globalization would be presented as complementary to indigenous peoples, and intrigued by how the author planned to support her argument that neo-liberalism and globalization could contribute to creating conditions conducive to indigenous self-determination. The voluminous academic literature, government reports,

1. The "Indian Problem" is the public policy paradigm that sees indigenous peoples as problems that need to be solved. In a Canadian context, see Noel Dyck, *What is the Indian "Problem"? Tutelage and Resistance in Canadian Indian Administration* (St. John's, NL: Institute for Social and Economic Research, Memorial University, 1991).

and local experience strongly suggest the inimicality of these two ideological and structuring forces toward Native peoples. The indigenous encounter with globalization (at least of the European variety) in this hemisphere began more than half a millennium ago, and the experience has not been positive. The standard development narrative presents indigenous peoples as policy objects reacting more to external policies and actions than acting on their own sets of ideas to pursue a desired future. They are presented as possessing limited power and a set of outdated and unproven ideas as well as cultural mindsets not conducive to engaging in creative ways with modernity. Thus, it was a pleasure to read a text that challenged this simplistic narrative and presented indigenous peoples—in this case, the Mikisew Cree First Nation (MCFN) in northern Alberta—as fully cognizant and active agents in shaping their own future.

Navigating Neoliberalism is a case study that explores the actions of a small, First Nation community in northern Alberta as it has sought to improve its living conditions over the last two decades. The Mikisew Cree First Nation signed *Treaty 8* in 1899, was made promises with respect to lands, spent the next 87 years trying to convince the Government of Canada to make good on those promises, and eventually in 1986 settled their claim by accepting approximately 12,000 acres of land and CDN\$26.6 million. In exploring their progress, Slowey makes a link between the historical fur trade and contemporary oil development, showing that the MCFN had dealt with globalization first through the North West Company and later through the Hudson's Bay Company, both of which have been in this area for at least 200 years. The MCFN have plenty of experience to draw upon.

In Slowey's view, neo-liberal globalization is a powerful force that is restructuring the social, political, and economic institutions of capitalism developed after World War II. Slowey argues that governments, reacting to neo-liberal forces, act to create stable investment environments and to dismantle, or at least reduce, the scope of action of the contemporary welfare state. Particularly in Canada, indigenous peoples have been beneficiaries of the welfare state, although many would argue that the modern nation-state, regardless of political characterization, is hostile to them. The Treaty Land Entitlement policy,² which provides some certainty over land title, is one way this neo-liberal objective is pursued. Another is the policy of program transfer from the federal government to First Nations governments. Slowey argues that these restructuring actions are conducive to indigenous self-determination because they provide land and capital for improved market participation of the Natives as business owners and/or equity partners. Corporations have done their bit by focusing on improving the skill and knowledge of the labour pool. The conditions for what Slowey calls "market-driven self-determination" are set. It is unclear, though, what the parameters and limitations of this type of self-determination are or how it might proceed under different market conditions.

Slowey examines the various changes that have occurred since the 1986 *Treaty Land Entitlement* settlement that provided the MCFN with opportunities for a more robust

2. The Treaty Land Entitlement Policy is part of the Government of Canada's *Comprehensive Policy on Indian Land Claims*. It provides funds to First Nations to buy lands, or the right to select Crown land, or both where the full amount of land provided for in historic treaties was not actually provided.

engagement with the modern capitalist economy, particularly in the oil sector. She seeks to understand how this small First Nations community is navigating the forces of neo-liberal globalization. In her estimation, the MCFN leadership has proved adept at adapting to the current time. They have created a set of local institutions that facilitate more effective market participation, developed linkages and relationships with members of the local and provincial market economy that promote mutual benefit, created modern institutions that support local development, and implemented a local governance structure that organizes the local economy in ways that enable outsiders to have a sense of familiarity, comfort, and trust.

The MCFN leadership's action to improve their community is occurring in the context of a neo-liberal environment that provides an ideological and structural opportunity for indigenous peoples to advance self-determination (but not necessarily self-government) agendas as the Canadian state itself adjusts to these same forces.

The brief six-chapter text provides a historical and contemporary overview of the Mikisew Cree First Nation at Fort Chipewyan as well as a discussion of the link between political and economic self-determination (which is consistent with the findings of the various endeavours of the Harvard Project on the American Indian Economy and the 1996 *Report of the Royal Commission on Aboriginal Peoples*). The core of the text (chapters 3, 4, and 5) explores the actions of and consequences for the MCFN in three areas: self-determination, politics, and economics. A final chapter focuses on governance questions and issues arising from this latest encounter with globalization.

This study makes two contributions to the literature on indigenous self-determination and development. On a practical level, it demonstrates the importance and necessity of a coherent and consistent political vision to drive development, as well as the importance of measuring outcomes in more than economic terms. The link between governance and economic action is again highlighted. The need for a long-term consistent and adaptive development effort is also reinforced. Development in Mikisew terms is measured as an improvement in the overall quality of life for the nation as a whole, not just for individuals within it. While materiality is an important aspect of this quality of life, other aspects, such as political agency and control, quality economic engagement and participation, and identity reinforcement and development are significant and cannot be neglected.

On a theoretical level, the case study illustrates the emerging use of indigenous knowledge and thought as a paradigm in thinking about development. Although not presented in this fashion, in my reading, it is clear that the MCFN leadership has not abandoned its cultural ideas regarding the importance of collective effort, community, or holism but has used them as foundations for navigating neo-liberal political forces. It would be helpful to examine the MCFN experience through the lenses of post-colonial theory and alternative modernities.³ The MCFN, in my view, is creating its own ver-

3. See Bill Ashcroft, *On Post-Colonial Futures: Transformation of a Colonial Culture* (London: Continuum, 2001); Bill Ashcroft, *Post-Colonial Transformation* (New York: Routledge, 2001); Dilip Parameshwar Gaonkar, ed., *Alternative Modernities* (Durham, NC: Duke University Press, 2001).

sion of modernity, illustrating the emerging view of multiple modernities rather than a single universal modernity based on European assumptions and ideas.

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Escaping the Resource Curse

Macartan Humphreys, Jeffrey Sachs, and Joseph Stiglitz, eds.

New York: Columbia University Press, 2007. hb, 408 pp. ISBN 978-0-231-14196-3

The socio-economic and environmental crises attendant upon the exploration and production of oil have garnered increasing attention in recent years. Stories of the environmental and conflict-driven devastation of the Niger Delta (and its effects on oil prices), or the smooth flow of oil out of Iraq despite large-scale infrastructure devastation, have entered common knowledge. Perhaps fewer have noticed that vast new areas of oil exploration are being opened up in the global South, particularly in sub-Saharan Africa. However, global awareness that oil development is often a "curse" has certainly grown. In part, this growing awareness has led to the popularity of campaigns for transparency in oil revenue management in the global South, such as the "Publish What You Pay" campaign led by a large network of international NGOs, or the Extractive Industry Transparency Initiative, led by the British Department for International Development and the other G8 bilateral donor agencies. In this light, *Escaping the Resource Curse* provides a salient, in-depth presentation of macro-political and macroeconomic considerations for states looking to avoid the resource curse.

In the foreword to the book, George Soros describes its purpose as "provid[ing] practical and independent advice from leading experts to policy makers in resource-rich countries about how to maximize long-term benefits from their natural wealth and avoid the pitfalls of the resource curse" (xv). Following this goal, Humphreys, Sachs, and Stiglitz bind the discussion in the volume within a narrow definition of the resource curse: the phenomenon by which "[c]ountries with large endowments of natural resources, such as oil and gas, often perform worse in terms of *economic development* and *good governance* than do countries with fewer resources" (1; emphasis added).

The book is divided into three parts. The first section presents prescriptions for oil-rich states to better negotiate with international oil companies (IOCs), including through a better understanding of the fiscal terms of oil contracts (David Johnston), negotiating strategies for oil agreements (Jenik Radon), and concession auction models (Peter Cramton). The comparative analyses of oil contracts, auction models, revenue management laws, and the broader regulatory structures for the oil and gas

industry in oil-dependent states is expertly compiled and more comprehensive than any I have seen in comparable volumes. In particular, Johnston's chapter provides a level of detail useful to those looking to understand "industry best practice" in fiscal incentives. This alone makes the book an invaluable resource for analysts, policy-makers, and civil society groups interested in the macroeconomics and macro-politics of the oil and gas industry.

The second section addresses macroeconomic management strategies, including analysis of economic indicators of oil-producing countries internationally (Geoffrey Heal), and of macroeconomic management strategies for oil wealth to avoid the so-called Dutch Disease (Jeffrey Sachs), and a chapter that bridges the political and economic analysis by bringing an understanding of how economic decisions in oil-producing states are inherently political (Humphreys and Sandbu). While this section does not provide much new analysis, it does challenge some of the assumptions common to the dominant arguments about the resource curse. For instance, Sachs unpacks the economics of the Dutch Disease—the tendency for oil revenues to lead to declining terms of trade for non-oil export sectors—and argues that it is only a disease if oil revenues are not invested in a national development strategy. Additionally, Humphreys and Sandbu elaborate the political challenges to natural resource funds, a financial tool often uncritically promoted.

The three chapters in the final section address the macro-political aspects of the resource curse. Michael Ross discusses the issue of reducing inequality in mineral-rich states. Bell and Faria's comparative analysis of revenue management laws and their prescription for drafting new ones are quite detailed, making the chapter a valuable resource. Terry Lynn Karl bridges the macroeconomic and macro-political concerns of the resource curse with the local socio-economic and socio-environmental concerns of people at the sites of extraction, and argues for the establishment of a transparent, fiscal social contract between states and citizens. Her analysis provides the most comprehensive discussion of the politics of petro-states included in this volume.

The different chapters include some pleasantly surprising nuances that are missing in much of the current work on the resource curse, and on transparency more generally. These include a brief discussion of governance failures and opacity issues within IOCs (27), the often valuable function that opacity serves for IOCs in dealings with states and civil society (266), and more generally a recognition of the global oil system into which both IOCs and state actors fit (270). These topics have seldom been breached in mainstream discussions of transparency and extractive industries.

The concluding chapter contains some interesting suggestions that address the environmental impacts of the oil industry, another topic often neglected in resource curse analyses. One suggestion would require corporations to post bonds to ensure environmental cleanup (324). Another would involve reducing the ability of parent companies to claim "limited liability," or legally limited responsibility, for their subsidiaries when they violate environmental and ethical standards (327). Unfortunately, however, these are only briefly noted in the conclusion of a volume that otherwise focuses exclusively on the macroeconomics and politics of the producing state. This is disappointing, given the painfully clear and well-documented links between oil industry modes of operation,

the local environmental and socio-economic impacts of those operations, resultant social upheaval and political disillusionment, and the macro-structural context of the oil industry.

Overall, the book largely accomplishes its stated goal, within the narrow definition of the resource curse noted above. However, because of this narrow focus, the book devalues the importance of the broader structure of the global oil system, the local environmental and socio-economic realities of oil development zones, and the connections between these levels in policy decisions. Given the added weight the book carries due to the Nobel-laureate editors, the highly respected contributors, and its place as the third volume in the Revenue Watch Series—intended to provide stakeholders in oil and gas development with the tools necessary to ensure greater transparency in extractive industry revenue flows—its narrow focus unfortunately contributes to the growing notion that transparency is a silver bullet for the ills of oil development.

In slight discordance with the rest of the volume, but summing up what I found most problematic in the book, Terry Lynn Karl argues at the end of her chapter that the vast majority of “economic and technocratic” (270) solutions proposed (in general) for avoiding the oil curse are destined to fail because they are directed purely at the oil-producing nations rather than “the symbiotic relationship between these states and the oil companies.” She concludes by arguing for a more comprehensive approach, one that unfortunately is missing from the majority of this volume’s policy recommendations.

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Under Rich Earth (2008)

Producer and Director: Malcolm Rogge
www.underrichearth.com

This film is a moving account of a confrontation between farmers in a remote valley in Ecuador, and a Canadian mining company registered in British Columbia and trading on the Toronto Stock Exchange. What is remarkable about the story is the filming of the capture of 56 armed paramilitaries by 100 villagers. What is important about the film is its impact on the ultimate fate of the mining company.

The community of Junin is located in the lush Intag Valley. The local farmers grow coffee, raise cows and chickens, and move their goods on pack animals. Carlos Zorrilla, an expatriate Cuban-American and long-time resident, calls this “paradise.” However, in the eyes of the mining industry, the community is poor, uneducated, and in need of jobs. The government of Ecuador issued a concession in 1996 to Mitsubishi Metals.

Opposition forced them to leave, and the Canadian company Ascendant Copper acquired the same concessions several years later from the Ecuadorian government. They decided to brand opponents of the mine as “eco-terrorists” and hired paramilitaries to intimidate and tear-gas local residents. Company representatives claim they were helping the communities by setting up economic development projects and introducing training programs for future jobs in the mining industry.

In 2006, about twenty “rogue” police tried to arrest Zorrilla and he was forced to go into hiding. A couple of months later, two busloads of paramilitaries were dropped off in the jungle near the community of Junín. Fearing they would be surrounded, community members organized a march into the valley and encircled the paramilitaries. The movie captures the electrifying confrontation between the two groups. In the end, not a single shot is fired as the villagers negotiate the removal of the bulletproof vests from the intruders and march them into the village. The only building large enough to house the men is the village church, which is turned into an ad hoc detention centre. The next five days are passed waiting for government authorities to show up, while the community cooks for the detainees and the visitors. Eventually, the intruders are released into police custody.

I do not think it is any accident that director Malcolm Rogge has a law degree. The film is put together with precision and focus, and he uses effective cross-examination techniques to catch Ascendant executives in outrageous lies. William Jurika, Chairman of Ascendant Copper, says, “We are not trying to push ourselves on to people,” while footage shows armed paramilitaries tear-gassing and shooting at unarmed villagers. Francisco Ventimilla, General Manager of Operations in Ecuador, quotes CEO Gary Davis as saying that the company “never had a single armed person in the area.” Yet footage shows the villagers disarming the paramilitaries who are carrying handguns, bullets, and tear-gas canisters.

From a legal perspective, just as important is the fact that the film uses the voices of the community members themselves to tell their story. Although the witnesses are not in a court of law, they are testifying. As any litigator will tell you, nothing can beat a coherent recounting of events from the victims. Like a documentary filmmaker, a lawyer must facilitate the sharing of a particular perspective on the unfolding of a series of events over time. The advantage of the filmmaker is that the images add a texture and immediacy that is impossible to reproduce in testimony given from a witness box. Rogge does a masterful job giving us a feel for the community: villagers talk while doing their daily tasks, making soup, weaving cloth, and loading their horses.

The film has received rave reviews since its world premiere at the Toronto International Film Festival in 2008. It was first screened in Ecuador and since then has had showings in Mexico, Brazil, Germany, and the United States. I have shown parts of the film to several of my law classes not only because it is a good film but mainly because it has influenced the development of the law.

Crusading lawyer Murray Klippenstein has gone to visit the community in Junín and has commenced groundbreaking lawsuits against the Canadian directors of the company and against the Toronto Stock Exchange. While it will be many years before these suits are resolved, films like *Under Rich Earth* will provide crucial background

to understanding how events unfolded. For example, the *Northern Miner*, Ontario's newspaper for the mining industry, reviewed this movie and said that it depicted "a classic example for companies on how not to handle community relations." So this is a cautionary tale: mining company hires thugs to tear-gas and intimidate local farmers. Graphic scenes of violence are recorded and distributed internationally. Ecuadorian government rejects the company's environmental impact report and suspends mining operations in the area. Lawsuit commences in Canada.

The last chapter (perhaps) is unfolding as I write this review in October 2009. Ascendant Copper has changed its name to Copper Mesa. The Ontario Securities Commission has issued a notice that they may de-list the stock from the Toronto Stock Exchange. It is not known whether there is a direct connection to the events in Junin or to the film but it is certainly ironic. Near the end of the film, Francisco Ventimilla of the mining company, looking full and smug, predicts that the "opposition will fail."

Shin Imai

Osgoode Hall Law School



As documented in *Under Rich Earth*, Intag, Ecuador, is the site of a confrontation between the local community and a Canadian mining company. The hand-painted sign says: "Entry of mining companies prohibited. These lands are not for sale. They are to be protected." Photo by Malcolm Rogge

New Guidelines for Reviews

The *Canadian Journal of Development Studies (CJDS)* is pleased to introduce our new guidelines for reviewers, updated as of March 2010.

CJDS is an interdisciplinary, bilingual forum where scholars, practitioners, and policy-makers explore and exchange ideas on both conventional and alternative approaches to development. In line with its aims, *CJDS* will consider reviews in English and French of academic and policy works that are thought-provoking, scholarly in nature, and relevant to an interdisciplinary and international readership in international development.

In selecting reviews for publication, *CJDS* seeks to strike a balance between disciplinary fields, conceptual frames, and sectoral foci; theoretical, policy, and research-oriented works; and comparative and single-case studies. At this time, the journal is particularly interested in publishing reviews on works addressing issues in Canadian development policy and practice, emerging powers, conflict-affected contexts, and sectors, regions, or countries that are otherwise underrepresented in the journal. Works by Canadian authors and published by Canadian presses, research, or development organizations are especially welcome. In general, reviews are of books, however, reviews of other material, such as documentary films, that would be of interest to our readers will be considered.

The work should be approved by the Review Editor prior to submission of the review. Suggestions for works to be reviewed are welcome. Reviewers may not review their own works or those with which they have a conflict of interest.

General Guidelines

Reviews should:

- Be mindful of the audience, which is interdisciplinary and international. Avoid technical jargon and overly specialized language which may be unfamiliar to a wider audience.
- Ideally be of 1000 words in length. Longer reviews will be returned for revision unless they are double reviews.
- Provide a balanced, critical analysis of the work in a thought-provoking and engaging style.
- Comment on the intended audience and identify who would find the work useful, and provide a brief background of the author/editor.
-

Particular considerations:

- The focus of the review should be on the academic contribution of the work to the topic and scholarship in the field and/or its significance to policy or practice.
- If the work is an edited volume or includes chapters by different authors, the review should focus on the overall theme and content. Reviewers can focus on chapters that they find particularly significant, explaining the significance in the context of the work or topic.
- Outline the main thesis and major objectives and how effectively they are achieved. Highlight particularly original content.
- Place the work within the current thinking, scholarship, and policy context as appropriate, providing a comparison with other works. Readers are particularly interested in how the work adds to or breaks new ground in the knowledge base.
- Analyse the soundness of methods (if appropriate).
- The review should conclude with implications for research, policy, or practice as appropriate.

Formatting

- Reviews should be double-spaced on 8½ × 11 inch paper with 1 inch margins.
- Use in-text citations for references. Refer to *CJDS* journal style.
- The header of the review should include: Author(s) or editor(s) first and last name(s) (indicate if it is an edited book); title of book; year of publication; place of publication; publisher; number of pages; price (indicate paperback or hard cover) if available; ISBN. If the work is an electronic document, provide permanent URL and retrieval date.
- At the end of the review, please include reviewers first and last names; institution and affiliation; email address.

Deadline and Submission Procedure

Reviews are expected within six weeks of receipt of the book/document by reviewers. Earlier receipt of reviews will permit faster publication in upcoming issues.

Please submit completed reviews to cjds@uottawa.ca with a copy to the Review Editor electronically as a Microsoft Word document. The subject heading of the email should state the review number (in the form of a code beginning with BR which will be supplied to reviewers) and the title of the work.

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In the first instance, please address general queries to cjds@uottawa.ca with a copy to the Review Editor.

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Nouvelles lignes directrices pour les comptes rendus

La *Revue canadienne d'études du développement* (RCED) présente avec plaisir ses nouvelles lignes directrices, mises à jour en mars 2010, à l'intention des rédacteurs de comptes rendus.

La RCED est une tribune interdisciplinaire bilingue où praticiens, universitaires et décideurs peuvent explorer et échanger des idées sur les approches classiques et nouvelles en matière de développement. Conformément à ces objectifs, nous acceptons des comptes rendus, en français et en anglais, de travaux scientifiques traitant de théories et de politiques novatrices; ils devraient être pertinents pour un lectorat multidisciplinaire, à l'échelle mondiale, qui s'intéresse au domaine du développement international.

Pour choisir les comptes rendus, nous cherchons à atteindre un équilibre entre divers éléments : disciplines, cadres conceptuels et thèmes sectoriels; travaux axés sur les théories, les politiques et les recherches; études comparatives et études sur des cas uniques. En ce moment, nous cherchons en particulier des comptes rendus de documents sur les politiques et les pratiques dans le domaine du développement au Canada, les pouvoirs émergents, les milieux touchés par les conflits ainsi que les secteurs, les régions ou les pays sous-représentés dans les pages de la RCED. Nous sommes très intéressés aux textes d'auteurs canadiens publiés par des éditeurs canadiens ou des organismes de recherche ou de développement. En général, il s'agit de comptes rendus de livres, mais il est possible de traiter d'autres types de documents susceptibles d'intéresser notre lectorat, par exemple des films documentaires.

Les documents qui feront l'objet d'un compte rendu doivent recevoir l'approbation préalable de la responsable des recensions. Les suggestions de documents à recenser sont aussi les bienvenues. Les rédacteurs ne peuvent présenter un compte rendu traitant de leurs propres travaux ni de travaux par rapport auxquels ils se trouveraient en conflit d'intérêts.

Lignes directrices générales

Le compte rendu devrait :

- S'adresser à un lectorat multidisciplinaire à l'échelle internationale. Il faut donc éviter le jargon technique et le langage trop spécialisé que ne connaîtrait pas un public plus général.
- Respecter, idéalement, la longueur maximale de 1 000 mots. Tout compte rendu plus long sera retourné à l'auteur pour révision, sauf s'il traite de plusieurs documents.
- Présenter une analyse critique équilibrée du document recensé, dans un style inspirant et stimulant.
- Préciser à quel public s'adresse le document recensé et à quel public il serait utile; donner un bref aperçu des antécédents de l'auteur ou du directeur du recueil.

Considérations particulières

- Le compte rendu devrait faire ressortir la contribution scientifique qu'apporte le document recensé au thème abordé ou aux recherches dans le domaine et/ou sa signification pour les politiques ou les pratiques.
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- Il faut analyser le bien-fondé des méthodes utilisées (s'il y a lieu).
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The CJDS is particularly interested in the policy applications of innovative theory and research, and the role of countries such as Canada toward the promotion of international development and a more equitable world order.

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La RCÉD s'intéresse particulièrement aux applications pratiques de la théorie et de la recherche novatrices, ainsi qu'au rôle de pays tels le Canada dans la promotion du développement international et d'un équilibre mondial plus équitable.

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This double issue responds to growing academic discussion and public concern about the environmental, social, political, and economic impacts of the rapid globe-spanning growth of the mining and petroleum industries over the past twenty years. The recent boom in mineral and petroleum exports has renewed debate about the potential developmental contribution of extractive industries. It has also opened new discussions about international, and home and host country responsibilities for ensuring both a fairer distribution of the benefits derived from their operations and compensation for the damages they often cause.

This volume — assembled by scholars of the Extractive Industries Research Group (EIRG) at the Centre for Research on Latin America and the Caribbean (CERLAC) at York University — includes contributions on regulation, accountability, contracts, informed consent, Aboriginal participation, community action, and global resistance, and spans the globe from Nigeria to Labrador and Bolivia to Australia.

