

SSHRC Imagining Canada's Future Initiative
Knowledge Synthesis: Energy and Natural Resources

*Building Sustainable Partnerships:
Aboriginal Peoples and Canadian Extractive Industry in Global Perspective*

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Theme: The cultural, environmental, economic, gender, political and social implications of the quest for and extraction, production and use of energy and natural resources in Canada.

Sub-theme: How can Canadian natural resources be developed in such a way as to respect the rights, experiences and aspirations of Aboriginal peoples?

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Key Messages

This knowledge synthesis report identifies key factors in the building of sustainable partnerships between Aboriginal communities and extractive industry proponents seeking to work on traditional lands. The objectives of the study are to highlight promising policies and practices, to identify gaps in the literature that need to be filled, and to facilitate dialogue and the exchange of ideas between governmental and non-governmental stakeholders and rights holders on the topic. The study adopts a comparative approach by examining best practices in Canada and around the world. The study reveals a number of key findings:

1. Free, Prior, and Informed Consent (FPIC)--The First Step to Obtaining a Social License to Operate

For extractive sector activities to be compatible with Aboriginal peoples' rights, expectations and demands, the implementation of a regime of Free, Prior, and Informed Consent (FPIC), with the power to veto projects and plans that may impact their territories, is essential. FPIC regimes enable strong partnerships, nation-to-nation negotiations, and enhance Aboriginal-state relations. The presence of veto power more frequently results in a company securing a stronger social license to operate than a conventional consultation process might achieve.

2. Legal and Regulatory Standards--Voluntary Codes of Conduct are Not Enough

Indigenous communities worldwide are most vulnerable to asymmetrical power relations with extractive industries when there is legal uncertainty over land titles and a lack of recognition and respect for Indigenous rights. Negotiated agreements over benefits and impacts are a key mechanism to overcome power imbalances and ensure legal certainty. Impact and benefit agreements (IBAs) are standard practice in Canada. Similar agreements are needed to ensure protections for Indigenous peoples in countries without strong legal and regulatory standards.

3. Indigenous and Environmental Activism--The Importance of Respect, Meaningful Engagement, and Mutual Benefit

In the absence of FPIC and IBAs, Indigenous groups are more likely to resort to extra-systemic tactics to protect their lands and livelihoods. Confrontations with extractive industries pose significant risks for Indigenous peoples as well as to domestic political and economic stability. This is especially the case in countries of the Global South. Canadian corporations operating overseas must be willing go beyond the bare minimum of legal requirements in host countries and become employers of choice by following codes of conduct that are practiced at home.

4. Research Gaps: What Works and Why

More comparative, cross-regional studies on extractive industry best practices are needed. More in-depth research is needed on the gender and generational impacts of extractive industry operations in or near Aboriginal communities. New research is needed on the possibility of extending FPIC regimes to non-Aboriginal populations within affected areas and the potentially positive impact this might have on relations between Aboriginal and non-Aboriginal Canadians.

Executive Summary

Canada's greatest challenge, as a global energy leader, is to develop natural resources in such a way that not only respects Aboriginal rights, but improves Aboriginal-state relations. This knowledge synthesis report takes up the challenge by reviewing the ways in which Indigenous communities in the Global North and South are struggling to transform a historic relationship with the state that has been characterized by domination and marginalization into one based on mutual respect and understanding and in which both parties are able to pursue their economic, social, and political goals. The report reviews and synthesizes the existing literature in the area of Indigenous rights and Canadian extractive industry, at home and abroad, as a means to identify knowledge gaps and to highlight best practices in the field.

Growing academic and public concern over the environmental and social impacts of extractive industries, such as mining, oil, and gas operations, has led to highly polarized debates over the topic of sustainable development. On the one hand, mining and energy corporations argue that they are agents of progressive change, and that modern technology and new corporate social and environmental responsibility programs can make extractive activities sustainable and beneficial to all stakeholders (e.g. Dashwood 2007; Sagebien et al. 2008). On the other side of the debate, critics argue that extractive industries have too often failed to address the development needs of local communities—who demand the right to be consulted (including the right to say “no”), to share in the profits, and to receive compensation for damages and lost livelihoods due to environmental degradation—and that until such time that these conditions are met, large-scale extraction activities should cease (Coumans 2010; Gordon and Webber 2008; Kuyek 2006). In the middle of these debates are the communities, in the Global North and South, who accept mining or oil and gas operations as an activity that could, in some circumstances, bring about direct benefits to them, even if only in the short term (Hipwell, Mamen, Weitzner and Whiteman 2002; O’Faircheallaigh 2010). These divides raise the questions: Is socially and environmentally responsible extractive industry possible? If so, how can it be achieved?

A major area of research in the field concerns the implementation of the principle of free, prior and informed consent (FPIC). Under FPIC, community consent is sought at every stage of project development and it is given with full access to information and without coercion, intimidation or manipulation (Bustamante and Martin 2014; Szablowski 2010). The FPIC principle became popularized with the passage of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, in which free, prior, and informed consent is explicitly mentioned. Canada, alongside Australia, New Zealand, and the United States, stirred up considerable controversy when it voted against the adoption of the UNDRIP. Canada's stated objections included the portion of the text pertaining to the principle of free, prior, and informed consent when used as a veto against extractive activities (Coates and Holroyd 2014; Rice 2014). In November 2010, the Government of Canada reversed its decision and formally endorsed the UNDRIP. In its statement of support, the government emphasized the non-binding nature of the Declaration and its confidence that Canada can interpret its principles in a manner that is consistent with our constitution and legal framework (Woods 2013). The knowledge synthesis examines the way in which FPIC principles are slowly working their way into governmental and extractive industry discourse and practice.

A second major area of research concerns the strategies and tactics of Aboriginal groups who are faced with extractive industries in or near their traditional territories. The responses of Aboriginal groups are varied and diverse. In some instances, frustrated community members may resort to blockades and occupations in an attempt to signal a strong message to the government (Belanger and Lackenbauer 2015; Veltmeyer and Bowles 2014). In other cases, affected groups may wage legal battles at the national or international level to stop the advance of extractive projects that impinge upon their rights (Anaya 2004; Scholtz 2006). Yet, in some instances, potentially impacted communities may enter into binding contractual agreements with the extractive sector as a means to secure economic benefits and employment and training opportunities (Hipwell, Mamen, Weitzner and Whiteman 2002; O’Faircheallaigh 2010). The strong overlap between mineral deposit locations and Aboriginal communities poses a mix of peril and opportunity for Aboriginal peoples. These agreements offer significant entrepreneurial and business opportunities for Aboriginal peoples, but they come at a cost, including limiting the right to object to certain aspects of a project or to take legal action against a mining company. The knowledge synthesis reveals the importance of negotiated agreements for building trust, cooperation, and mutual benefit between Aboriginal peoples and extractive industry.

Finally, a third major focus of research concerns the relationship between Canadian extractive industry and Indigenous communities in countries of the Global South. Since 2003, global mineral prices have risen dramatically, making large-scale mining in the Global South extremely profitable (Canel, Idemudia and North 2010; North, Clark and Patroni 2006). Canada is a major player in the latest global mining boom and our corporations have been the target of growing global protests against extractive industries, particularly when they operate within Indigenous peoples’ territories and against their expressed wishes (Drost and Stewart 2006; Gordon and Webber 2008; Osuoka and Zalik 2010). In response, the Canadian government has taken the lead in developing innovative corporate social responsibility programs. Corporate social responsibility (CSR) refers to a set of voluntary social, environmental and economic best practices developed primarily by private actors in response to pressures and demands by social actors to address the social and environmental issues historically externalized by private firms (Dashwood 2007; Sagebien et al. 2008). There is considerable debate in the literature over the effectiveness of corporate social responsibility programs at reducing the social and environmental costs of extractive industries. CSR advocates suggest that it is a practical solution for reconciling economics and ethics, while its detractors argue that it is a hollow experiment in public relations—or a “talk and dig” approach (Hart and Coumans 2013; Hilson and Haselip 2004; Kuyek 2006; Walter and Martinez-Alier 2010). More recent work has focused on ways to improve the effectiveness of CSR programs, including enhancing governance gaps or deficits in host countries to provide an enabling environment for CSR initiatives (Idemudia 2010) and improving community engagement and participation in the CSR process (Szablowski 2006). The knowledge synthesis suggests the need for legal and regulatory measures that move beyond voluntary codes of conduct.

The objectives of the knowledge synthesis project are threefold: (1) to identify promising policies and practices that are supportive of a sustainable partnership between Aboriginal peoples and Canada’s extractive industry both at home and abroad; (2) to highlight important knowledge gaps that need to be filled; and (3) to facilitate dialogue and the exchange of ideas between

governmental and non-governmental actors, stakeholders, and rights holders based on the knowledge synthesis results.

The project's findings suggest that the critical ingredients for building a sustainable partnership between Aboriginal peoples and extractive industry are the implementation of a free, prior, and informed consent (FPIC) regime in conjunction with negotiated agreements and in the spirit of respect, meaningful engagement and mutual benefits.

The knowledge synthesis revealed four key themes. First, for extractive sector activities to be compatible with Aboriginal peoples' rights, expectations and demands, the implementation of a regime of Free, Prior, and Informed Consent (FPIC), with the power to veto projects and plans that may impact their territories, is essential. FPIC regimes enable strong partnerships, nation-to-nation negotiations, and enhance Aboriginal-state relations. It is the first step to obtaining a social license to operate. The presence of veto power more frequently results in a company securing a stronger social license to operate than a conventional consultation process might achieve.

Second, voluntary codes of conduct, such as Corporate Social Responsibility (CSR) programs, are not enough. Enhanced legal and regulatory standards are essential. Indigenous communities worldwide are most vulnerable to asymmetrical power relations with extractive industries when there is legal uncertainty over land titles and a lack of recognition and respect for Indigenous rights. Negotiated agreements over benefits and impacts are a key mechanism to overcome power imbalances and ensure legal certainty. Impact and benefit agreements (IBAs) are standard practice in Canada. Similar agreements are needed to ensure protections for Indigenous peoples in countries without strong legal and regulatory standards.

Third, in the absence of FPIC and IBAs, Indigenous groups are more likely to resort to extra-systemic tactics to protect their lands and livelihoods. Confrontations with extractive industries pose significant risks for Indigenous peoples as well as to domestic political and economic stability. This is especially the case in countries of the Global South. Canadian corporations operating overseas must be willing go beyond the bare minimum of legal requirements in host countries and become employers of choice by following codes of conduct that are practiced at home. Extractive industries must operate in the spirit of respect, meaningful engagement, and mutual benefit in their interactions with Indigenous peoples.

Lastly, in terms of research gaps, the knowledge synthesis suggests that more comparative, cross-regional studies on extractive industry best practices are needed. Furthermore, in-depth research is needed on the gender and generational impacts of extractive industry operations on or near Aboriginal lands. New research is also needed on the possibility of extending FPIC regimes to non-Aboriginal populations within affected areas and the potentially positive impact this may have on relations between Aboriginal and non-Aboriginal Canadians.

The knowledge synthesis was undertaken with a team of graduate and undergraduate students at the University of Calgary. The students were divided into two teams, one focused on reviewing the literature on Aboriginal peoples and extractive industry in Canada and the other on Indigenous peoples and Canadian extractive industry in Africa, Asia, and Latin America.

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I. CONTEXT

In 2011, United Nations Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya (2008-2014), denounced natural resource extraction projects in or near Indigenous territories as the most significant source of human rights abuses for Indigenous peoples around the world (Buxton and Wilson 2013; North and Young 2013). The fact that in Canada more than 36% of First Nations communities are located less than 50 km from a major mining site highlights the urgency of the situation in this country (Hipwell, Mamen, Weitzner and Whiteman 2002, 4). Given that Canada is a global energy leader, our engagement with Aboriginal peoples on this issue is of paramount importance for setting global policy trends. The central question taken up by this knowledge synthesis project is: How can Canadian natural resources be developed in such a way as to respect the rights, experiences and aspirations of Aboriginal peoples; create sustainable benefits for Aboriginal communities, entrepreneurs and businesses; and encourage reconciliation and positive engagement between Aboriginal and non-Aboriginal Canadians?

Canadian extractive companies are at the forefront of contemporary conflicts with Indigenous communities over the extraction, production and use of energy and natural resources, both at home and abroad. Beginning in the 1990s, mining companies registered in Canada and trading on the Toronto and Vancouver stock exchanges began to buy up mining concessions at an unprecedented rate (Studnicki-Gizbert 2016). Since 2003, when global mineral prices rose dramatically and large-scale mining operations in the Global South became extremely profitable, Canadian extractive companies extended their reach around the globe. By some estimates, Canada is now home to 75% of the world's mining companies (Deneault and Sacher 2012, 1), many of which are so-called juniors or companies dedicated to mineral exploration and the preliminary development of deposits. The asymmetry between the gains for mining companies and those of the governments and communities in the host countries has become a persistent source of conflict between local groups, national governments, and transnational corporations. It has also opened up new discussions about home and host country responsibilities for ensuring a fairer distribution of the benefits that might be derived from their operations and compensation for the damages they often cause. The strong overlap between mineral deposit locations and Indigenous communities both within Canada and outside our borders means that consideration of Indigenous rights is of utmost importance in Canada's quest for energy and natural resources.

The objectives of the knowledge synthesis project are threefold: (1) to identify promising policies and practices that are supportive of a sustainable partnership between Aboriginal peoples and Canada's extractive industry both at home and abroad; (2) to highlight important knowledge gaps that need to be filled; and (3) to facilitate dialogue and the exchange of ideas between governmental and non-governmental actors, stakeholders, and rights holders based on the knowledge synthesis results.

The results of the study suggest that the critical ingredients for building a sustainable partnership between Aboriginal peoples and extractive industry are the implementation of a free, prior, and informed consent (FPIC) regime in conjunction with negotiated agreements and in the spirit of respect, meaningful engagement and mutual benefits.

II. IMPLICATIONS

The knowledge synthesis results have both domestic and international environmental, economic, political and social implications. The findings push the Government of Canada and Canadian extractive industries to move from consultation to consent and from conflict to negotiation in their interactions with Indigenous peoples, both at home and abroad, and to move in the direction of greater sustainability. The effect of this change in policy and practice will have enormous consequences on Canada's position on the world stage and on Aboriginal-state relations in Canada.

The first major implication of the knowledge synthesis is in regards to Canada's greater engagement with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The right to self-determination is at the heart of the UNDRIP (Anaya 2009). The challenge for Indigenous peoples in Canada and beyond is to operationalize that right. The duty to consult Indigenous peoples on proposed projects and plans that may affect them has already become a generally accepted principle in international law. There is growing momentum internationally to move further down the spectrum of obligations to achieve full consent (Clavero 2005). Free, Prior, and Informed Consent (FPIC) is an Indigenous peoples' right. It is established in international conventions, notably ILO Convention 169 on Indigenous and Tribal Peoples (1989), in non-binding or soft law, such as the UNDRIP (2007), and in a handful of cases, it is enshrined in national law, notably Australia, Peru, and the Philippines (Buxton and Wilson 2013). The Canadian government has introduced far reaching reforms that border on FPIC, without explicitly using such terminology. Nevertheless, as activists and policy makers continue to frame issues in the legal language of the UNDRIP, it is encouraging the Canadian government to further engage with it. The findings suggest that the UNDRIP is becoming entrenched in Canada's governing structures. This is the first step in bringing about positive change in the everyday lives of Indigenous peoples (Charters 2009).

The second major implication of the knowledge synthesis concerns the potential to enhance Indigenous-state relations. Formal recognition of Indigenous rights, especially with regards to land and natural resources, and the presence of negotiated impact and benefit agreements (IBAs) provide for meaningful engagement between Indigenous peoples, the state, and extractive industry companies as well as the revalorization of Indigenous political institutions, sovereignty, and self-government (Szablowski 2010). According to Pereira and Gough (2013, 495): "The main threat to [I]ndigenous peoples' survival arises from national policies which disregard their land rights and their cultural rights, including policies which condone the invasion and expropriation of their lands and deprive them of the benefits arising from the use and extraction of their natural resources." The importance of establishing a land base for community well-being cannot be overstated. It opens the door to Indigenous political and economic development. In the absence of such protections, contemporary sub-surface land grabs have produced what Shale (2015, 776) calls "sacrifice zones," in which Indigenous communities and their lands are sacrificed in the name of economic growth and national development. In Canada, Australia, and other countries with strong legal and regulatory standards and protections, there is a clear trend toward Indigenous participation and co-management systems in extractive projects (Yakovleva 2011). This is not the case for most Indigenous communities in the Global South.

The third major implication of the knowledge synthesis relates to the potential to move toward greater sustainability within the extractive sector. The latest global mining boom is argued to be the most environmentally destructive in world history (Canel, Idemudia, and North 2010; North and Young 2013). The exhaustion of easily accessible deposits and the advancement of new technology have led to the unprecedented and unregulated geographical expansion and intensification of extractive industries, often to previously isolated areas where Indigenous peoples predominate. As a result of their geographic locations and special relationship with the land, Indigenous communities are at the forefront of contemporary struggles for the environment (Fidler 2010; Löwy 2014). International human rights norms and environmental concerns have strengthened the legitimacy of Indigenous peoples to contest extractive industry operations. In contrast with a more conventional environmental discourse that assumes an anti-mining stance, however, Indigenous-rights claims and demands open up the possibility for outside groups, such as governments and extractive industry proponents, to negotiate with local communities over the terms and benefits of proposed projects (McDonnell 2015). Given that the extraction of non-renewable resources cannot be considered ecologically sustainable by any measure, extractive industries must do more to ensure that their operations are sustainable in the sense of promoting local capacity building and opportunities, a more equitable distribution of the proceeds, and that they minimize environmental damages, both short and long-term (Sagebien et al. 2008).

III. APPROACH

The study employs a comparative research approach in an effort to identify best practices in Aboriginal-extractive industry relations around the world. The knowledge synthesis was undertaken with a team of six graduate and undergraduate students at the University of Calgary. The students were divided into two teams, one focused on reviewing the literature on Aboriginal peoples and extractive industry in Canada and the other on Indigenous peoples and Canadian extractive industry in Africa, Asia, and Latin America. The team leader for each group was tasked with supervising the literature searches and producing a literature map of the results. Each project participant was tasked with locating approximately 40 key sources/websites/databases in his/her geographic area of focus and producing an annotated bibliography. In terms of geographic focus, the Canada Team was subdivided into Northern Canada, Eastern Canada, and Western Canada. The International Team was subdivided into Africa, Asia, and Latin America.

The project leader met with each team on a monthly basis to discuss progress and major findings. Once the literature searches were completed, each project participant produced a report highlighting major themes arising from the literature in their specific area and a detailed annotated bibliography. The project leader then worked with the team leaders on the literature mapping exercise. The key messages for the knowledge synthesis report were derived from the group mapping exercise. This research design provided both depth and breadth of coverage of the emerging literature on this topic.

IV. RESULTS

The results of the knowledge synthesis can be divided into three main categories: a) Free, Prior, and Informed Consent; b) Legal and Regulatory Standards; and c) Socio-Environmental Activism.

a) *Free, Prior and Informed Consent (FPIC)*

FPIC is a standard against which governments and corporations can be measured. It is free in that consent is given without coercion, intimidation, or manipulation. It is prior in that consent is sought before every significant stage of project development. It is informed in that all parties share information, have access to that information in a form that is readily understood, and have enough information to make informed choices. And it is consent, meaning that it comes with the option of supporting or rejecting developments that significantly impact Aboriginal lands or culture (Bustamante and Martin 2014; Szablowski 2010).

FPIC is a necessary step in obtaining a social license to operate (SLO). A social license refers to the acceptance by local communities of both extractive sector companies and their projects. Social acceptance is granted by all stakeholders that are or can be affected by a project (e.g. Indigenous peoples) and other concerned groups (e.g. local governments and non-governmental organizations). It is based on the idea that extractive firms not only need government permission (and formal permits) but also social permission to conduct their business. Following Buxton and Wilson (2013, 16):

To secure a 'social license to operate' requires, at a minimum, compliance with laws and obligations to third parties. Yet, by going *beyond* compliance to mitigate so-called 'non-technical risks,' companies are increasingly realising that they can build greater trust and social legitimacy within local communities. This is particularly important in cases where legal frameworks are inadequate or poorly enforced.

Many companies now consider gaining a SLO as an appropriate business expense that ultimately adds to their bottom line. Obtaining and maintaining a SLO is essential for reducing the risks of social conflict and violence, litigation, operational delays, project closure, financial and even human loss, and in general, damage to a company's reputation.

The biggest concern of industry and government leaders in implementing a FPIC regime pertains to the threat of veto (Satterthwaite and Hurwitz 2005). Nevertheless, for a FPIC process to be genuine, it must offer the possibility of veto. The power to veto serves to enhance a community's negotiating power and ensures a more equitable outcome. It is important to remember that in a FPIC process, extractive companies have a seat at the negotiating table, whereas in a conflict situation they are subject to governmental and legal decisions that may close down their operations (Buxton and Wilson 2013). In general, communities only tend to exercise the power to veto in highly contentious and poorly managed projects. The refusal to issue a social license to operate is typically the result of a failure to consult and a lack of meaningful engagement between local communities and extractive industry firms (Szablowski 2010, 121). A genuine FPIC process helps to avoid such outcomes.

The courts in Canada in recent years have pushed the law towards consent over consultation with Aboriginal peoples in matters of resource development on or near Aboriginal lands. The 2014 *Tsilhqot'in Nation v. British Columbia* decision of the Supreme Court of Canada is suggested to be a game-changer for Aboriginal-extractive industry relations (Bains 2015; Bankes 2015). In June 2014, the Supreme Court granted the *Tsilhqot'in* First Nation title to 1,700 km² of traditional lands outside of their reserve lands. The conflict began in 1983 when

the province of British Columbia granted a logging license on land southwest of Williams Lake that served as the Tsilhqot'in First Nation's traditional hunting lands. The Supreme Court decision not only granted the First Nation title to that land, but found the province breached its duty to consult with the First Nation before approving the logging license. Prior to the Tsilhqot'in decision, natural resource companies dealt exclusively with the government as resource owner in non-treaty areas. According to Bankes (2015, 203), "This has the potential to move Canada from a consultation regime to a free, prior and informed consent regime even prior to the confirmation of title." Furthermore, the October 2015 Supreme Court of Canada decision on Saik'uz First Nation and Stellat'en First Nation v. Rio Tinto granted the First Nations the ability to sue a private company for damages even without having proven title (Bains 2014, 2). Previously, Aboriginal litigation was limited to provincial and federal governments. In short, a commitment to FPIC now will serve to avoid costly legal battles and stricter laws later.

For example, a Canadian federal cabinet decision in November 2010 canceled Taseko Mines Ltd. proposed Prosperity Mine project near Williams Lake in British Columbia over its potential adverse effects on the environment as well as to Aboriginal land rights. The Prosperity Mine was to be a twenty-year open-pit gold-copper mine that was expected to create over 1000 jobs in the local area. While the mining company spent close to \$100 million to secure the required formal approvals for the project, it failed to obtain a social license to operate (Pockey 2011, 4). Intense resistance by the Tsilhqot'in First Nation, on whose traditional territory the mine was to be located, ultimately unraveled the project. Yet, at the same time that the decision was handed down, the federal government announced the go ahead for the Thompson Creek Metals Company's proposed Mt. Milligan gold-copper mine project located near Prince George, British Columbia on the traditional lands of the McLeod Lake First Nation. According to Pockey (2011), Thompson Creek Metals had carried out an intensive consultation process that led to a revenue-sharing agreement with the First Nation. In announcing both decisions at the same time, the federal government sent a strong signal to extractive firms about the importance of obtaining adequate stakeholder support.

The case of Vancouver-based Canadian Bear Creek Mining Company in Puno, Peru reveals a similar dynamic. In 2007, the Government of Peru transferred mineral rights in the department of Puno (which borders the country of Bolivia) to Bear Creek Mining Company in clear violation of a constitutional ban on mining concessions within 30 km of national borders (McDonnell 2015, 112). In Peru, as in Canada, there is a significant overlap between mineral deposits and Indigenous communities. Community members balked at the lack of consultation by the government and the transnational corporation and the real potential for the proposed open-pit silver mine to contaminate local water sources. In May 2011, 25,000 protesters gathered in the city of Puno to voice their concerns over the project, effectively bringing the city to a halt. President Alan García declared the situation a national emergency. When six demonstrators were killed in skirmishes with the military police, it provoked a national crisis. In response, President García revoked Bear Creek Mining Company's operating license and issued a three-year ban on new mining licenses in the department. Later that year, the Peruvian national congress passed by unanimous vote a Law on the Right of Consultation of Indigenous Peoples which mandates that Indigenous communities be consulted on any development plans or initiatives that may take place on their territories. Despite the new law, oftentimes violent conflicts over mining continue to occur. Peru has one of the highest levels of social protest in Latin America (Rice 2012).

b) Legal and Regulatory Standards

Extractive industry is inherently risky business. Negotiated agreements over benefits and impacts are a key mechanism to ensure greater stability and legal certainty for extractive firms, governments, and Aboriginal communities. Political and legal certainty is not only a goal for governments and industry, but also for Aboriginal groups so that they can plan for the future (Fidler 2010; Frilet and Haddow 2013; Malcolm and Newman 2015). The negotiation of contractual agreements between Aboriginal communities and mining companies, for instance, is now standard practice in Canada. In 2008, there were approximately 120 negotiated agreements in Canada (Fidler 2010, 236), and by 2012 there were an estimated 280 such agreements (Aragón 2015, 7). Typically, negotiated agreements reduce the predicted impacts of an industrial operation on the environment while securing economic benefits for affected communities. They may contain a range of provisions from Aboriginal employment and training opportunities to royalty sharing (Hipwell, Mamen, Weitzner and Whiteman 2002; Wanvik 2016). Almost all negotiated agreements come with a confidentiality clause that prevents affected communities from discussing the project with the media or seeking legal action against the company in question (O’Faircheallaigh 2010). Impact and benefit agreements are now negotiated in almost all new mining projects on or near Aboriginal lands in Canada and are regarded as a best practice by the mining industry.

There is an important association between the settlement of comprehensive land claims (or “modern day treaties”) and an increase in mining agreements in Canada (Aragón 2015, 6). The aim of the government’s comprehensive land claim policy is to exchange undefined Aboriginal rights for formally defined rights and benefits. For example, eleven of the Yukon’s fourteen First Nations have successfully negotiated comprehensive land claims and self-government agreements that provide them with an impressive array of formal powers, the scope of which are unprecedented in Canada and perhaps the world. In terms of territorial rights, self-governing First Nations in the Yukon enjoy surface as well as sub-surface rights to much of their settlement lands, including mineral, oil, and gas rights. The comprehensive land claims agreements are accompanied by strong co-management boards dealing with land, wildlife, and environmental issues, through which First Nations communities have strong input into natural resource development activities (Alcantara 2007; Cameron and White 1995). As a result, mining companies in the Yukon, such as the successful Canadian-owned Minto Mine that operates in the Selkirk First Nation’s territory, have a strong incentive to partner with local communities and to formalize commitments between the parties (Lavoie and Newman 2015; Prno 2013).

Similarly, in Alaska, USA, the Alaska Native Claims Settlement Act (ANCSA) has improved legal certainty and led to a number of highly successful joint ventures between mining companies and Indigenous communities. Red Dog Mine is an example of a project with a strong social license to operate. It is a joint venture between NANA Regional Corporation Inc. (owned by the Iñupiat of northwest Alaska) and Canadian-owned Teck Resources Limited. Red Dog is an employer of choice in the state (Prno 2013). Its success is the result of strong legal and regulatory standards and the willingness to meaningfully engage with local communities.

Negotiated agreements between extractive industries and Aboriginal communities are a best practice that appears to be exclusive to the Global North. In the weak regulatory

environments of the Global South, Indigenous communities are more vulnerable to asymmetrical power relations with transnational extractive industries (Suescun Pozas, Lindsay, and Du Monceau 2015). And more often than not, these companies are Canadian. One of the most egregious examples is that of Canadian mining giant Goldcorp in Guatemala. The Marlin Mine open-pit gold mine is operated by Vancouver-based Goldcorp's local subsidiary, Montana Exploradora of Guatemala. Since 2004, when it began operations, the Marlin Mine has come under intense resistance by local Mayan communities who overwhelmingly disapprove of the project owing to perceived irregularities in the company's land acquisition, the lack of adequate consultation processes, the contamination of local water sources and health-related impacts, and the hugely inequitable distribution of mining proceeds: 0.5% of the proceeds go to the Guatemalan government, 0.5% go to the local municipal government, and 99% goes to Goldcorp shareholders (Rodríguez 2009, 16). Local community activists who speak out against the project have reported receiving direct threats against themselves and their family members by agents from the mining company. In an interview, Indigenous activist Gregoria Crisanta Pérez stated the following (reported in Rodríguez 2009, 17):

What the majority of the population wants is for Montana Exploradora to leave San Miguel Ixtahuacán. We demand our rights because we do not want to be poisoned or killed violently by the mining company. We ask the government to please listen to our demands, because we are the legitimate owners of those territories. We are Indigenous people, we were born there, and we should die there. But God, not the mining company, should decide our deaths.

In response to such public charges of environmental and social wrong-doing, Canadian extractive firms have adopted new corporate social and environmental responsibility programs as the cornerstone of their operations, particularly overseas.

Corporate Social Responsibility (CSR) refers to a set of voluntary social, environmental and economic best practices developed primarily by private actors as the standard for conducting business (Sagebien et al. 2008). In the absence of an international regulatory system to hold transnational corporations to account, CSR is often the only mechanism for protecting Indigenous interests with regards to extractive industry operations in the Global South. Canada, as a global leader in CSR, should hold its own corporations to account (Coumans 2010). Until such time, corporations remain the prime decision makers with respect to CSR. They decide whether it is in the interest of the company to adopt and implement a given set of standards. A corporation can also decide to abandon a CSR course of action if it is too expensive. For example, the Canadian joint venture firm Compañía Minera Antamina (CMA) in San Marcos, Peru adopted and dropped a CSR program in the late 1990s. Based on community consultations, the company agreed to a land-for-land resettlement program to compensate affected Indigenous and peasant landholders. Five months after the conclusion of the final land sale agreements, the company decided that a cash-based resettlement program would be cheaper and quicker and so changed its course of action without consulting the community. The affected Indigenous and peasant communities reached out to various actors for help, including the human rights ombudsman in Peru, the office of the President, the national congress, the Canadian embassy and the World Bank. Ultimately, it was the World Bank which launched an investigation into the matter and forced the Canadian company into compliance with its own CSR program (Szablowski 2006).

c) Indigenous and Environmental Activism

In the absence of free, prior and informed consent (FPIC) and negotiated agreements, Indigenous groups are more likely to resort to extra-systemic tactics to protect their lands and livelihoods. Confrontations with extractive industries pose significant risks for Indigenous peoples as well as to domestic political and economic stability. This is especially the case in countries of the Global South. Canadian corporations operating overseas must be willing to go beyond the bare minimum of legal requirements in host countries and become employers of choice by following codes of conduct that are practiced at home. If sustainable development based on extractive industries is to be achieved, it will require constructive inputs from government, business, and civil society (Idemudia 2010).

Indigenous peoples' responses to extractive industry proposals range from acceptance and negotiation to activism and confrontation. Indigenous resistance efforts are most effective when they ally with other civil society actors in the struggle to halt unwelcomed extractive activities (Hipwell, Mamen, Weitzner and Whitema 2002; Veltmeyer and Bowles 2014). The latest global resource boom has sparked innovative civil society initiatives, including community-led referendums on mining, international legal actions, and South-South citizen action networks against mining and oil and gas transnational corporations (Osuoka and Zalik 2010). The McGill University Research Group on Canadian Mining in Latin America recorded 85 cases of socio-environmental conflicts against Canadian mining companies in 2013 alone (Studnicki-Gizbert 2016, 105). Clearly, it is time for a new approach.

The 1996 Marcopper mining disaster in Marinduque, Philippines at the hands of Placer Dome Inc. of Canada is emblematic of the failure of voluntary codes of conduct to develop natural resources in a way that meets the rights, demands, and expectations of local communities. The Marcopper mine on Marinduque Island experienced a structural failure of its tailings pond in 1996 that sent close to 4 million tons of contaminated mine waste into the Boac River, rendering the waterway "biologically dead" (Holden and Jacobson 2006; Wurfel 2006). Instead of cleaning up its mess, the Vancouver-based company closed down its operations in the Philippines and fled to Canada. It has never admitted any wrong doing. How did this ecological disaster happen?

As early as 1956, Placer Dome became involved in an exploration project on the island province of Marinduque. In 1964, the Marcopper Mining Corporation was established with 40% Canadian ownership and 60% ownership by the Government of the Philippines. In 1969, the Tapian Mine began operations. All presidents and managers of Marcopper, from 1969 to 1996 (when the mine was shut down) were appointed by Placer Dome. Placer Dome provided the technical expertise for the mine. Marcopper was the only mining company on the island. In the 30 years of mining under Placer Dome's management, island residents endured one mining-related environmental disaster after another. Between 1975 and 1991, Placer Dome oversaw the dumping, via surface disposal, of more than 200 million tons of mine tailings directly into the shallow waters of Calancan Bay, covering corals and seagrasses and the bottom of the bay with 80 square kilometers of tailings (Coumans 2002).

Local villagers protested the dumping for 16 years and continue to demand that the bay be rehabilitated and that they be compensated for their losses. Placer Dome executives met

regularly with Canadian NGOs during the 1980s over this issue but the dumping was not halted until the Tapian Mine was depleted in 1991. In that year, new operations on the San Antonio mine began. Instead of dumping the mining waste into Calancan Bay, now heavily contaminated, the mining company filled up the exhausted Tapian mine with the tailings from the new mine site, a practice that defies mining protocols. To block the drainage tunnel at the bottom of the Tapian mine, which ran directly underground into the Boac River, the company plugged it with cement. To prevent run off from the new tailing pond going into the nearby Mogpog River, an earthen dam was constructed. In 1993, the dam burst, flooding downstream villages and the town of Mogpog so severely that houses were swept away, two children were reported dead, and livestock and agricultural crops destroyed. Placer Dome's resident manager blamed unusual rainfall from a typhoon as the culprit (Holden and Jacobson 2006). The dam was rebuilt, but this time an overflow system was added, in an implicit acknowledgement of faulty engineering.

In March 1996, the cement plug at the base of the Tapian mine tailing pond gave way. Approximately 3 to 4 million tons of tailings rushed through the original drainage tunnel and into the Boac River. In a letter by then-CEO of Placer Dome to the President of the Philippines, the company stated that it was committed to the clean-up and rehabilitation of the site. Over the next several years, Placer Dome put in a number of requests to dispose of the mining waste by the controversial practice known as submarine tailings disposal (STD)—the direct disposal of mining waste into the ocean by way of a submerged pipe. The applications were denied with the fact cited that such a practice is illegal in Canada (Wurfel 2006, 20). The Philippine government ordered Placer Dome to implement the recommendations of an independent consulting firm. Instead, Placer Dome pulled its personnel out of the country. The Marcopper mining disaster serves as a cautionary tale about the ravages of irresponsible mining.

V. ADDITIONAL RESOURCES

There are numerous on-line resources for companies and policy-makers seeking to implement FPIC principles in practice:

Convention No. 169 Indigenous and Tribal Peoples, 1989:
(<http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>)

Ethical Investment Research and Information Service (EIRIS), *Indigenous Rights: Risks and Opportunities for Investors*, 2009:
(<http://www.eiris.org/files/research%20publications/indigenoustrightsjun09.pdf>)

Inter-American Development Bank (IDB), *Operational Policy on Indigenous Issues*, 2006:
(<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1442299>)

International Council on Mining and Metals (ICMM), *Good Practice Guide: Indigenous Peoples and Mining*, 2010:
(<http://www.icmm.com/page/84155/our-work/projects/articles/indigenous-peoples>)

United Nations Permanent Forum on Indigenous Issues:
(<http://undesadspd.org/indigenouspeoples.aspx>)

United Nations Declaration on the Rights of Indigenous Peoples, 2007:
(http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

VI. FURTHER RESEARCH

The knowledge synthesis calls for more research on contemporary best practices and comparative case studies on Indigenous peoples, state, and extractive industry relations. We still know very little about the institutional arrangements required to implement a FPIC regime. According to Szablowski (2010, 127), “it is not much of an exaggeration to say that FPIC is discussed everywhere but it is practiced virtually nowhere.” More research is needed to develop a useful understanding of what works where and why.

More in-depth research is also needed on the gender and generational impacts of extractive industry operations on or near Indigenous lands. The extractive sector as a whole has paid little attention to the impact of its activities on women (Eftimie 2009; Lahiri-Dutt 2012). Specifically, women who become active in extractive industry conflicts do so at a great personal cost. In addition to the risk of repression and criminalization of their activities, in some countries when women step out of their traditional roles to mobilize collectively against mining and other extractive operations they may trigger deeply ingrained hostility toward them from the men in their communities (Li 2008; Rondon 2009). Clearly, the impacts of extractive activities are not gender neutral. Yet there is scant literature making this reality evident.

Similarly, much of Indigenous peoples’ acceptance of extractive industry operations in or near their lands tends to be driven by the hope for future opportunities for young people in their communities (Dylan, Smallbody, and Lightman 2013). Yet, little information is available on the long-term prospects for youth employment within the extractive sector (see for instance Davison and Hawe 2012). More research is needed on how to maximize the potential benefits of partnering with extractive firms for local people, especially youth.

Finally, new research is needed on the possibility of extending FPIC regimes to non-Indigenous populations within affected areas and the potentially positive impact this may have on relations between Indigenous and non-Indigenous peoples. Emerging best practice in this area is to apply the spirit of FPIC not only to Indigenous communities but to all significantly affected local communities (Buxton and Wilson 2013, 6). More research is needed on how to extend the FPIC principle into new areas.

VII. KNOWLEDGE MOBILIZATION

The target research audience for the knowledge synthesis project includes policy makers, the academic community, business leaders, concerned members of the public, Aboriginal organizations, leaders, and community members, the media, and social activists in Canada and abroad. The topic of Aboriginal rights and Canadian extractive industry is timely and relevant to a diverse group of stakeholders and rights holders. The results of the knowledge synthesis are to be shared with the target audience by the project leader through the distribution of this open access final synthesis report, public lectures, academic presentations, and participation in public policy consultation forums.

The project leader is an active member of two international research networks that will aid in the dissemination of the results of the knowledge synthesis: Collaboration for Research on Democracy (CORD) based at the University of Toronto, Scarborough campus and the Pan-American Indigenous Rights and Governance Network (PAIR-GN) based at Wilfrid Laurier University. Both networks include academics, activists, national leaders, development workers, government officials and public policy specialists from the Global South and Global North.

VIII. CONCLUSIONS

Cooperative relations between extractive industry companies, governments and Aboriginal peoples are the result of consultation and negotiation with the objectives of obtaining free, prior, and informed consent (FPIC), a social license to operate (SLO), and an impact and benefit agreement (IBA). In the absence of these conditions, Canada's quest for energy and natural resources cannot be made compatible with Aboriginal peoples rights, expectations, and aspirations. The challenge for Canada is to make sure that these emerging best practices become standard practice in our extractive sector operations, both at home and abroad. In the words of Butzier and Stevenson (2014, 334), "the most effective investment a company can make is to devote the time and resources necessary to study and learn from the mistakes of the past and identify and emulate those who have succeeded in instilling a culture of respect for indigenous rights and policies of inclusion..." The knowledge synthesis is presented in the hope of advancing discussion on this future challenge.

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