

Strategic Control of Private Security by Canadian Extraction Industries

By

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Abstract

In the absence of Canadian legislation this thesis conducts an exploratory study of the regulations Canadian extraction companies (mining and oil and gas) have implemented to control private security in developing countries. It focuses on discerning what private security policies extraction companies have in place and whether companies have adopted voluntary regulations such as the Voluntary Principles on Security and Human Rights. For this study a survey was conducted of almost all extraction companies listed on the TSX and TSX Venture Exchange. Publically available documents, such as company websites, codes of conduct, annual reports, and corporate presentations, were analyzed to determine what regulations companies have in place. The data indicates that regulation of private security is mainly limited to Canada's largest extraction companies and that private security is usually a small portion of a company's overall corporate social responsibility policy. This research also reviews incidents of human rights abuses committed by private security personnel working for Canadian extraction companies over the last ten years. Incidents are drawn from media outlets, NGOs, and academic articles. These cases help illustrate the challenges Canadian companies face employing private security personnel on the ground.

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Introduction

Canada is home to the largest extractive sector in the world by number and value – there are 1 483 mining companies and 389 oil and gas companies currently listed on the Toronto Stock Exchange – and \$660 billion in value (TSX Inc 2010).¹ Many of these extraction companies work in developing countries, or areas affected by conflict and require security to protect their property, assets, and personnel. Security for these extraction companies is often supplied by a combination of public security forces (state armies, police forces, and/or paramilitaries) and private security personnel. This research focuses on how the use of private security is voluntarily regulated by Canadian extraction companies and what challenges arise in applying regulations.

While there has been an international movement towards voluntary regulation of extraction companies the use of private security by the extractive sector is not a new phenomenon. Cecil Rhodes' British South Africa Company had its own paramilitary force, a subsidiary of De Beers employed a private police force to protect its diamond concessions in the Kono area of Sierra Leone and the East Africa Trading Company set up a private police force in Kenya in 1896 (Abrahamsen, Williams 2011, 10-11). Private security has historically followed global capital and opened up areas of violence or conflict for resource extraction (Abrahamsen, Williams 2011, 107). Today, however, extraction companies face increasing pressure to promote corporate social responsibility (CSR) and the use of private security needs to be considered in this context. In contributing to this new area of research this project will employ Michael Blowfield and George Frynas' definition of "CSR" as the expectation that:

(a) that companies have a responsibility for their impact on society and the natural environment, sometimes beyond legal compliance and the liability of

¹ As of 1 November 2010. TSX Sector Profiles, available at http://www.tmx.com/en/listings/sector_profiles/index.html

² No binding legislation resulted from this committee, but it did lead to greater interest from the Canadian government on the of CSR for extraction companies.

³ The Government of Canada can still decide to withdraw its diplomatic, financial, or even moral support to companies who are responsible for human rights abuses on an ad hoc basis although this research shows no precedence for this.

⁴ NGOs may appeal to the National Contact Point or the Office of the Extractive Sector CSR Counsellor to

individuals; (b) that companies have a responsibility for the behaviour of others with whom they do business (e.g. within supply chains); and (c) that business needs to manage its relationship with wider society, whether for reasons of commercial viability or to add value to society. (Blowfield, Frynas 2005, 503.)

Over the past 20 years the emphasis on CSR by Canadian extraction companies has grown. A 2009 report by the Canadian Centre for the Study of Resource Conflict surveyed 124 mining and exploration companies and found that 78% had some form of CSR policy (CCSRC 2009, 6). While policies varied in their comprehensiveness, it is important to note that most were rudimentary and very few companies had independent monitoring and auditing of their operations (Ibid). The same report also indicated that since 1999 there were 171 incidents where Canadian mining or exploration companies were involved in unethical practices, human rights abuses, or environmental degradation in a developing country (CCSRC 2009, 6). Such incidents involved Talisman Energy which between 1998 and 2002 supplied revenue to a Sudanese government involved in a brutal civil war (Drohan 2004; Dufrense 2004, 342); Cooper Mesa Minerals (then Ascendant Copper) which was implicated in an attack of Ecuadorian protestors by security forces in 2006 (Klippensteins March 2009); HudBay Minerals whose security personnel were implicated in the death of a Guatemalan community leader (Klippensteins 24 September 2010), and Barrick Gold's security guards at mine site in Papua New Guinea allegedly gang raped young women (Toronto Star 24 November 2009).

These incidents and others have contributed to increased scrutiny of Canadian extraction companies and their human rights practices overseas. In response, in 2007 the Government of Canada held several national roundtable meetings between government, civil society and the extractive industry. The Standing Committee on Foreign Affairs and International Trade also considered cases of alleged human right abuses by Canadian extraction companies, including private security guards (Canada 2005, Canada October 2005).² Actions taken in Canada to try to improve the behaviours of Canadian extraction companies include MP John McKay's private members Bill C-300

² No binding legislation resulted from this committee, but it did lead to greater interest from the Canadian government on the of CSR for extraction companies.

(defeated 27 October, 2010) which would have created a definitive set of Canadian CSR guidelines to include a set of punitive measures for companies who did not comply. Actions taken by the Government of Canada include the creation of the National Contact Point on the OECD Guidelines for Multination Enterprises and Office of the Extractive Sector Corporate Social Responsibility Counsellor who work to promote self-regulation of the extractive sector. In 2009 Canada published “Building the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian International Extractive Sector” as a roadmap to implementing CSR in the extractive sector. To date this initiative has had minor to moderate success (Lipsett, Lloyd, Hohn, Michelle, and Ian Thomson 2012).

Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries, was an attempt to create binding legislation to regulate how Canadian extraction companies operate overseas. The draft legislation covered several dimensions of CSR – private security included. It called on the Government of Canada to create definitive guidelines based on the IFC Performance Standards, the Voluntary Principles on Security and Human Rights, the Global Compact, and the Global Reporting Initiative (Canada, 9 February 2009). Extraction companies were to be investigated by the Government of Canada and if found to be in breach of the guidelines were to be sanctioned (a public report on violations was to be published, Export Development Canada [EDC] funding was to be revoked and diplomatic support cancelled) (Ibid).³

The defeat of Bill C-300 leaves extraction companies to continue to regulate themselves. This type of scenario can often lead to what The UN Special Representative on Business and Human Rights describes as a governance gap. The scope and impact of extraction companies far outstrips the capacity of societies to manage their adverse consequences (Ruggie 2008, 3). This governance gaps provides a permissive environment for wrongful acts by extraction companies and their subsidiaries without adequate sanctioning or reparation by host or home states (2008, 3). This research explores

³ The Government of Canada can still decide to withdraw its diplomatic, financial, or even moral support to companies who are responsible for human rights abuses on an ad hoc basis although this research shows no precedence for this.

to what extent voluntary regulation in the Canadian extractive sector is overcoming this governance gap. Specifically, it will look at what voluntary regulatory initiatives have been adopted by individual Canadian extraction companies (mining, oil and gas). It aims to influence considerations on whether voluntary measures are sufficient to properly regulate the use of private security companies by extraction companies. Such analysis is also related to the discourse on voluntary CSR regulation and whether they are sufficient to improve the behaviour of Canadian extraction companies operating in developing countries.

In this discourse members of the extractive sector who opposed Bill C-300 argued that voluntary regulation of the extractive sector would be sufficient. Tony Andrews, for example, executive director of the Prospectors and Developers Association of Canada (PDAC) expressed his thanks that Bill C-300 was defeated so that the PDAC could concentrate on its own “e3 Plus” initiative – an industry framework for responsible mining - and that companies could focus on meeting their CSR goals on their own (Scales, 28 Oct 2010). Likewise, Laureen Whyte, Vice-President of the Association for Mineral Exploration British Columbia, stated that “Canadian companies are already recognized as global leaders in CSR”, the implication being that further legislation was unnecessary (AME BC 2010).

The Government of Canada, for its part, has not mandated that extraction companies follow regulatory initiatives, but it has taken steps to clarify what standards of good governance it expects from Canadian extraction companies. With regards to private security, the Government of Canada promotes several voluntary international initiatives: the Global Compact, the Voluntary Principles, the Global Reporting Initiatives, the International Finance Corporation’s Performance Standards on Social and Environmental Sustainability and the OECD Guidelines for Multinational Enterprises. The Government of Canada uses the Office of the Extractive Counsellor (at arm’s length from the Department of Foreign Affairs and International Trade) and the National Contact Point (within the

Department of Foreign Affairs and International Trade) to promote the OECD Guidelines for Multinational Enterprises, the Voluntary Principles, the IFC Performance Standards and the Global Reporting Initiative (DFAIT 3 May 2011). Both offices can also act as mediators in disputes based on alleged violations of these guidelines (DFAIT 2009, 3 May 2011).

Interestingly, these international regulatory initiatives follow a boomerang-effect born out of the weakness of host states to prevent and punish human rights abuses and from the unwillingness of home states to regulate their companies abroad. In areas where those affected by resource extraction cannot seek justice at home, actors in developing countries seek out international advocacy networks which can provide leverage, access, and money (Keck and Sikkink 1998, 12-13). NGOs such as Human Rights Watch, MiningWatch Canada, and Global Witness can identify incidents of human rights abuse “all with an eye toward producing procedural, substantive, and normative change” (Keck and Sikkink 1998, 8). For instance, of the 171 incidents in CCSRC’s report on corporate responsibility 90% were reported by international human rights organizations and local NGOs (CCSRC 2009, 6). Incidents are frequently reported by the media and strengthens pressure on the Government of Canada and international organizations to regulate extraction companies. Such regulations then ideally work their way back to the local level by establishing operational best practices to protect human rights. This boomerang process relies heavily on monitoring and advocacy from non-state by no means ensures success without host country regulation of extraction companies, or Canadian legislation. NGOs and local stakeholders are left to rely on accountability politics – naming and shaming powerful extraction companies in order to ensure they adopt and follow their stated policies and principles (Keck and Sikkink 1998, 16).⁴

Given the non-binding nature of Canada’s initiatives to date, this paper aims to provide a picture of the control which the Canadian extractive sector has over private security in developing

⁴ NGOs may appeal to the National Contact Point or the Office of the Extractive Sector CSR Counsellor to mediate disputes with companies, but all parties must agree to mediation and can leave the process at any time (DFAIT 3 May 2011; DFAIT 2 February 2011).

countries. This research does not intend to name and shame. Rather it aims to consider what challenges to regulating private security each incident of abuse reveals. This research is intended to be exploratory and provide a baseline on where Canadian extraction companies are with regards to regulating private security on their own.

Methodology

This research relies on secondary sources – primarily company websites and news articles. Company websites were surveyed for information on a company's security policy, what CSR initiatives were in place, what regulatory initiatives were endorsed and in what countries the company operated. This survey reviewed company policies available online, codes of ethics, information available under the corporate responsibility sections of websites, newsletters, corporate presentations, and sustainability reports and annual reports. The websites of regulatory initiatives (such as the Voluntary Principles and the UN Global Compact) were also searched for listings of Canadian extraction companies that were adherents. Company information was compiled using statistic spreadsheets provided by the TSX, TSX Venture, the London Stock Exchange (LSE) and the Alternative Investment Market (AIM). Extraction companies under review for this study were any oil and gas or mining company listed on any of these markets and which were headquartered either in Canada or the UK. Every extraction company on the TSX, LSE, and AIM was surveyed, as was every oil and gas company on the TSX Venture. Given the number of mining companies listed on the TSX Venture every fifth company (by value) was surveyed.

Incidents of human rights abuse (harassment, assault, murder, sexual assault, and rape) involving private security working for Canadian extraction companies were also found using secondary online sources. First, a simple browser search was conducted, followed by a search of NGO websites such as MiningWatch Canada, Friends of the Earth, and Mines and Communities.

Canadian media websites – CBC, CTV, the Globe and Mail, etc – were also searched for incidents involving Canadian extraction companies. Lastly, a search was done of the Business and Human Rights Resource Center (www.business-humanrights.org) where all news items involving Canada from 2001 to 2011 (roughly 1100 in total) were reviewed to find any which involved Canadian extraction companies and private security.

Limitations

This research is limited by a methodological bias towards instances where human rights abuses have occurred (some of which occurred as CSR regulatory initiatives were being adopted) and towards organizations which publically announce their endorsement of regulatory initiatives or publish their security policies. Nor, does is this research investigate how private security policies are operationalized on the ground.

The focus of this research then is on incidents which have occurred over the last ten years. As Chapter Four demonstrates, this research has found five case studies involving human rights abuses by private security personnel working for Canadian extraction companies. This research was unable to uncover human rights abuses which were not publically known and was unable determine the number of Canadian extraction companies which use private security that are not reported to have committed human rights abuses. Incidents like the abuse of human rights abuse may easily occur in areas where NGOs and the media are not present and where local stakeholders do not have access to the Canadian legal system. It should also be noted that CSR practices are, by their nature, continually evolving and the behaviour of companies years ago may not be indicative of their current behaviour.

The number of incidents of human rights abuse discussed in this research (five) do not point to widespread abuses by private security,⁵ but they do indicate problems companies can have in operationalizing private security policies on the ground and demonstrate the potential for different types of extraction companies to be involved in human rights abuses if proper regulation of private security is not in place.

This research is limited to what companies publically endorsed and what abuses they have been publically reported to have committed. It is not able to peer into company practices to find how well CSR principles are being translated into day-to-day practice. Regardless, there is value in reviewing what CSR policies companies endorse first, to determine what the proposed norms are for company behaviour and second, to know what standards companies can be held to in cases of human rights abuses.

Overview

This research assess ways in which the Canadian extraction companies have incorporated private security into their CSR strategies and what challenges there are in implementing these strategies. The analysis will be valuable to Canadian policy analysts, the resource extraction industry, private security providers, and civil society organizations engaged in issues related to extraction.

Chapter One will discuss the nature of private security services as they are used by the Canadian extractive sector and will consider how private security services might be incorporated into a company's overall CSR strategy. Chapter Two will provide an overview of national and international regulatory initiatives endorsed by Canadian extraction companies and which apply to private security as used by extraction companies. Chapter Three will conduct a survey of company websites and publicly available information to determine which companies listed on the TSX and TSX Venture

⁵ In either case, despite the number of case studies, no amount of human rights abuse is acceptable.

endorse regulation of private security .⁶ This survey will help to determine how much of the Canadian extractive sector has embraced these regulatory initiatives discussed in Chapter Two. Chapter Four will present the results from a separate survey of media reports, articles from watchdog NGOs, and legal case related to human rights committed by private security personnel working for Canadian extraction companies over the last ten years. This survey will help to determine what challenges there are in implementing security policies on the ground. Through analyzing the data from these chapters a picture will emerge in Chapter Five of how Canadian extractive companies regulate the use of private security. This picture indicates that Canadian mining and oil and gas companies have not done very well at regulating self-regulating the use of private security.

The results of surveys in Chapter Three and Four on the adoption of regulatory initiatives and private security incidents indicates that the vast majority of Canadian extraction companies have not adopted regulatory initiatives related to private security, although the rate of adoption is considerably higher amongst the largest extraction companies. The number of human rights abuses reported by private security personnel over the past ten years is small considering the number of Canadian extraction companies operating in weak states and conflict zones. Despite their limited number, these alleged human rights abuses have demonstrated the need to regulate private security and highlighted the challenges associated with implementing private security regulation on the ground. Critically, both large and small extraction companies can be implicated in human rights abuses by private security personnel. This is significant considering that very few small extraction companies have publically endorsed any regulatory initiatives. Also, the convergence of private and public security poses a challenge for how extraction companies control and discipline security forces. Lastly, regulating private security is best seen as a process (in conjunction or conflict with community members and NGOs) rather than the straightforward implementation of regulatory initiatives. The

⁶ Company websites, documents (CSR reports, sustainable development reports, annual reports, policy documents, etc), and corporate presentations will be reviewed to determine what regulatory initiatives on private security have been adopted and what internal policies on private security are in place.

limited adoption of the regulatory initiatives and the challenges associated with controlling private security indicate that there may still be a considerable governance gap between the political and economic power of extraction companies and their regulation of private security in developing countries.

Chapter 1: CSR and Private Security

This chapter will discuss CSR in the extractive sector, types of private security providers and CSR's relationship to private security. CSR, especially for extraction companies, beyond being good to do is good for business. For extraction companies which operate for years next to local communities and who, in a globalized world, face scrutiny from NGOs, the Canadian government, and the media a good CSR policy is often key to long term sustainability. After making the case for CSR this chapter will describe the types of private security providers Canadian extraction companies may use. It will make the distinction between private security as opposed to private military companies and mercenaries. It will also describe the benefits, disadvantages, and regulation of international and local security services. Lastly, this chapter will introduce ways in which private security can be incorporated into a company's CSR strategy and ways in which a company's CSR strategy improves security.

Obligations to CSR

Good CSR policy is key to long-term sustainability. Far from "preaching pure and unadulterated socialism" (Friedman 1970), there are clear long term benefits to adopting a strong CSR policy. The extractive sector in particular can benefit from the peace dividends a good CSR policy can bring. The nature of extraction means that operations are almost certainly limited to a particular location for many years and will often have large operations.

Neoliberal policies which have increased the privatization of public goods and services have added to the confusion about how "public" security might be (Abrahamsen and Williams, 2007, 134). Privatization has meant that security is increasingly treated as a commodity, yet governments have remained involved in directing and mandating security providers - "steering rather than rowing" the security sector (Abrahamsen and Williams, 2007, 136). Security to this end remains under the

auspices of the government and can, therefore, be considered like other public good such as environmental protection.

Implementing CSR is crucial if government regulation of the Canadian extractive industry is unlikely, and is especially important given the nature of natural resource extraction and private security itself. Regardless of regulation, extraction companies, whether junior or minor, are certain to have a significant impact on the communities and countries within which they operate. Extraction companies, therefore, must be actively engaged in mitigating their negative impact.

On issues of security, companies cannot with good corporate conscience “operate in splendid isolation and cut [themselves] off from local realities behind a security fence” (Pearce 2004, 46). Good CSR policy on security requires planning and active engagement with local and national stakeholders. This type of engagement is unlikely to occur if companies feel that they only face a negative obligation to simply “do no harm”. For CSR initiatives to be successful (especially in the absence of government regulation, and third party evaluation) it needs to be part of an extraction company’s core business.

Adopting CSR, though, requires much more than public endorsement of initiatives. As detailed by the Prince of Wales Business Leaders Forum there are several principles to be followed to incorporate CSR into day-to-day business. The first is a strategic commitment - chief executive and board leadership should develop policies and operating standards and communicate a commitment to changing corporate culture (International Alert, Council on Economic Priorities, The Prince of Wales Business Leaders Forum 1999, 4). Second is preparation. Companies should work to develop skills and train employees or contractors in how to best implement company, or international guidelines (Ibid). The third principle is dialogue and consultation. Companies should conduct internal and external consultations with stakeholder groups on a systematic basis (Ibid). Fourth, companies should implement partnerships – work collectively with other companies and developing

partnerships with civil society organizations and government bodies when appropriate (Ibid). Lastly, companies should conduct ongoing evaluations of CSR practices (Ibid).

Many extraction companies have the financial and human resources to follow these principles and fully implement CSR practices. Even large companies, though, may lack experience in issues such as private security management. Barrick Gold's operations in Papua New Guinea (discussed in Chapter Four) is one such example. Smaller junior exploration companies may not have resources to dedicate to CSR, but they can alter their business practices towards more socially responsible behaviour.

In areas where security has traditionally been good the pressures of a new extraction site may dramatically degrade the security environment. A major mining company, for example, may begin operations in a rural area of a developing country. If public peace and security in the region may have been good, security may not be expected to be of particular concern. However, the mine may have significant effect on the area. Tailings and drainage from the mine can contaminate the water supply nearby and harm the crops of local farmers. The local villages may experience a boom town economy which brings social problems such as drugs and prostitution. Opposition to the mine can thus develop and the company may start to fear for the safety of its property and personnel. At this point, private security guards may be hired who may commit human rights abuses against local opposition groups. Conflict in the area may intensify and the mining company adopts a siege mentality – it increases security, but conflict increases still. Meanwhile watchdog NGOs and other civil society organizations begin to protest the actions of the mining company in its home country and country of operation. The mining company may spend considerable amount of money on security and combating negative media attention. These costs may make the mine a liability to the company.

Such a scenario is unlikely to happen to all extraction companies, but it illustrates the potential costs of not having a CSR policy in place before beginning operations. To mitigate risk it is,

therefore, in the enlightened self-interest of extraction companies to have robust, complementary CSR policies. To avoid scenarios where extraction companies are negatively affected by their effects on the community it is helpful to create a positive peace “beyond the security fence”. Improving security does not necessarily mean increasing security procedures and personnel (increased security can, indeed, have a negative impact). Rather a company should undertake activities which reduce its security profile – consulting with local communities, mitigating environmental damages, promoting alternative economic development, among others. As mentioned by an internal assessment by BP on its operation in Casanare, Colombia stated that “as a member of the community, BP cannot extricate itself from the conflict that affects everyone in Casanare. In sum, BP’s security concerns go hand and hand with those of the community” (Pearce 2004, 48).

There is a danger that companies may use regulatory initiatives to whitewash their reputations – that they will publically endorse an initiative without any intention of implementing it. This view contends that reputation is the keystone of CSR’s effectiveness – that a positive reputation is “the key to long-run commercial success for individual corporations in today's world... because profits depend on reputation, which in turn depends increasingly on being seen to act in a socially responsible way” (Henderson 2001). According to CCSCR, the idea that a corporation can be defined by consumers is fairly accurate - recent polls show that the public determines its opinion of a company based on social, environmental and ethical business practice rather than performance on the stock market (CCSRC 2006, 7). Whitewashing is a way for the extractive industry to project a positive image to the public and its critics. (Exxon Mobil, for example, “was effectively pressed to signing [onto the Voluntary Principles] by the risks to its reputation inherent in being the only major oil company not to participate” - Williams 2004, 480).

Corporations which engage in whitewashing sign onto conventions such as the Global Compact, the Voluntary Principles, the Equator Principles, etc make token changes to their operations.

These actions look good, especially in on a company website or in an annual report, but they often do not address the root cause of bad publicity – conditions on the ground. Companies which allow human rights abuses to continue are likely to face attention from media and advocacy NGOs.

Alternately, CSR may also be viewed as a means to legitimate primitive accumulation in developing countries (Haslam 2007,270). Extraction companies may buy-in to CSR in order to gain legitimacy with stakeholders empowered by the global CSR regime (NGOs, international financial institutions, and local stakeholders) (Haslam 2007, 283). Legitimacy can then be used as a means to continue resource extraction in developing countries.

Types of Security Providers

The vast majority of companies employed to provide security for resource extraction companies are private security companies –PSCs – (and private security personnel), as opposed to private military companies – PMCs – (and private military personnel). The distinction between private security and private military services is not always clear, but it is important to make since the laws and regulations which apply to them are different. Security services in general include static, on site protection for physical assets (buildings, installations, mines, pipelines, living quarters) or for employees. Private military services, on the other hand, often support military operations or provide military-like functions. Both employ the use of force if necessary and rely on the threat of violence. Private military companies like private security companies (PSCs), may be used for defensive tasks (providing perimeter security, screening personnel coming into and out of compounds, etc). However, if private military services are used for a defensive task, it is likely in an area of high risk or ongoing violence. Private military are often employed in areas of intense conflict (Iraq, Afghanistan, etc) where they act as “tip of the spear” operatives, advisors and trainers, or non-lethal service and support (Singer 2003, 93; Avant 2001, 2004; Bjork and Jones 2005). Private military companies also have the distinct

capability (or support the capability) to conduct aggressive military operations. They are ready (or support the readiness of other forces) to use lethal force and to take and hold ground. Such companies include, Xe (formerly Blackwater), DynCorp, MPRI, and Brown and Root. Private security contractors, by comparison, usually work in lower risk environments and often rely on the passive threat of violence to provide security – many are not even armed. Security personnel are not intended to use sustained lethal force against armed aggressors and do not have the capability (or support the capacity) to take and hold ground should the need arise. Such security personnel can be hired locally or can be international personnel working for security companies such as Securitas, Garda, and Group 4 Security.

Given their different natures, regulation will differ between those providing security services and military services.⁷ Military services personnel due to their capacity to use lethal force should understandably face stricter regulation than security personnel. This study will not discuss regulation of PMCs operating in conflict zones and in support of military operations. There were no recorded incidents this research could find within the last ten years of human rights violations by private military personnel working for a Canadian extraction company.

While private military and private security personnel are often associated with mercenaries, the two are separate and distinct. The “guns for hire” image which the idea of mercenaries often invokes is not representative of the structured and corporate nature of private military or private security companies – or to security as subcontracted to local personnel. The legacy of mercenaries, though, lingers over much of the discussion of private security. Academic articles such as “21st Century Mercenaries” (Bjork and Jones 2005), “Messiahs or Mercenaries” (Brooks Winter 2000), “Modern Condottieri in Iraq” (de Wolf 2006), “Public Wars, Private Profit” (Hasham 2004) and “From Cowboy Detectives to Soldiers of Fortune” (Weiss 2007) indicate a significant interest in how private

⁷ Private security companies may, on occasion, provide military services, and private military companies may conduct security tasks. Similarly, security personnel may be heavily armed in conflict zones.

military and private security companies may be employed to provide mercenary-like functions. This discourse, though, primarily deals with PMCs and PSCs as hired by states to provide traditional military services. Therefore, it does not apply well to private security as used to protect private extraction operations.

Concern over the use of mercenaries to control natural resources) stems from several incidents where PMCs were hired, at least in part, to maintain control of natural resources.⁸ In Angola Executive Outcomes was hired to overcome a rebellion by rebels and who where remunerated in part by control of diamond mines (Singer 2003, 107-110). In Papua New Guinea Sandline was contracted to quell an insurrection to reopen a controversial copper mine (Hellinger 2004, 205). This era of mercenary action, however, appears to be over. The fate of Executive Outcomes, Sandline, and a handful of other companies means that these types of operations are unlikely to be repeated. Several countries – in addition of the 1989 UN convention prohibiting the use of mercenaries (UN 1989) - have also passed national legislation restricting or prohibiting the use of mercenaries (Australia, 1978; New Zealand, 2004; South Africa, 2005; United Kingdom, 2001; United States, 2000). Security forces working for extraction companies rarely, if ever, meet the proper definition of mercenaries. Such forces are rarely considered illicit or illegal – many operate as legitimate, legal businesses whose services are publically available.

There are several types of security providers which may be employed by Canadian extraction companies. These are large international security providers, local security companies (which may employ moonlighting public force personnel), local personnel working directly for extraction companies (sometimes referred to as vigilantes), public forces under company command and control, and public forces under state command and control. Each type of security provider vary in their level of self-regulation and the amount of direct control extraction companies have over the personnel employed.

⁸ It is also worth noting the legal, 1989 UN definition of a mercenary is so particular that is rarely ever met.

Large international private military and security providers (Aegis, Control Risks Group, DynCorp, Group 4 Security, Securitas, Triple Canopy, and Xe) generally operate under various levels of regulation. At the international level PMCs and PSCs are signatories to international initiatives such as the Voluntary Principles on Security and Human Rights, the Montreux Document, and the International Code of Conduct for Private Security Providers. At the industry level, the British Association of Private Security Companies (BAPSC) and North America's International Stability Operations Association (ISOA) promote their own best practice guidelines (i.e. the BAPSC Charter, the BAPSC Due Diligence Documentation, the ISOA Code of Code Conduct and the ISOA Standards Compliance and Oversight Procedure. Lastly, at the company level, individual firms often conduct their own training, vetting, monitoring, and disciplining of personnel.

As far as regulation of international security companies is concerned, there is considerable overlap in regulation. The ISOA Code of Conduct, for example, shares many recommendations with the Voluntary Principles and the IFC Performance Standards. Common recommendations include: 1) conduct risk assessments (which in this case is addressed by making sure that personnel are properly informed, are insured and that contracts are clear and detailed); 2) "go beyond minimum legal requirements" and endorses international guidelines such as the Geneva Conventions and the Montreux Document on Private Military and Security Companies; (Switzerland 2010, 4) 3) vet personnel to avoid hiring and subcontracting personnel "whose conduct adversely affects their suitability, in particular in regards to violating international humanitarian and human rights laws" (Switzerland 2010, 5); 4) properly train personnel – "signatories shall utilize adequately trained and prepared personnel in all their operations in accordance with clearly defined company standards that are appropriate and specific to their duties undertaken and the environment of operations" (Switzerland 2010, 6); 5) while engaged in combat, show restraint, caution, and abide by the Rules for the Use of Force established in their contracts; 6) do not engage in contracts of an offensive nature;

and 7) “take firm and definitive action if their personnel engage in unlawful activities” (Switzerland 2010, 8). In fact, the only portion of the Voluntary Principles and the IFC Performance Standards not covered by the ISOA Code of Conduct is the establishment of a grievance mechanism. Otherwise, the same standards apply.⁹

Many private security companies are also signatories to the newly-created International Code of Conduct for Private Security Service Providers (ICoC). The ICoC clearly comes from the same background as the Voluntary Principles, the Montreux Document, and the ISOA and BAPSC Codes of Conduct. The same issues and language on vetting, training, use of force, and addressing abuse are also included in the ICoC; however, the ICoC also includes accountability and auditing mechanisms which are not included in previous initiatives (Switzerland 2010, 4). Companies are required to first, “establish and/or demonstrate internal processes to meet the requirements of the Code’s principles and the standards derived from the Code” and secondly, “once the governance and oversight mechanism is established, become certified by and submit to ongoing independent auditing and verification by that mechanism” (Switzerland 2010, 4). Auditing here consists of independent auditors, on-site audits, and periodic monitoring (Switzerland 2010, 4). Furthermore, if the ICoC is incorporated as a condition of contracts between extraction companies and private security companies (as the authors intend it to be) then its enforceability is increased. Security companies which commit abuses, for instance, may be sued by extraction companies for breach of contract in the PSCs home state. The same liability could be extended to PSCs and their subcontractors (such as local security personnel) who do not abide by the ICoC.

This research has not found any recorded incident over the last ten years where personnel from large, international private security companies working for Canadian extraction companies have been accused of human rights abuses. All incidents of abuse in this study have involved local security

⁹ It should be noted that the BAPSC’s Charter, while shorter and less thorough, incorporates many of these guidelines. The BAPSC also endorses the International Code of Conduct for Private Security Service Providers..

personnel. The lack of cases involving international personnel is either because international security companies have been successful in adopting and implementing best practices, their use rarely becomes public, and/or because international security personnel are seldom used by Canadian extraction companies.

International security personnel are almost always more expensive than local security personnel and so it is likely that they are used less often. As for their conduct, international security personnel, in all likelihood, are less apt to commit human rights abuses. In addition to the levels of regulation mentioned above international personnel will also tend to have more training and a stronger professional ethos than local security personnel.¹⁰ International security companies also face serious risk to their reputation should egregious human rights abuses be made public.

Another option for security, other than international companies, is local security providers. These can include local security companies, or local personnel employed directly by extraction companies. Many of these employees are likely to be retired members of public security forces (military or police) or, in some countries, may include active members who are moonlighting as private security guards. Local security personnel can be much cheaper than international security personnel, will have a better command of the local language, and will better understand local culture and environment. Providing local employment may also be a way for companies to demonstrate that they are a part of the local community since local security personnel in general provide a greater opportunity for extraction companies to collaborate with local communities.

Disadvantages of local security personnel, though, may include a lack professional training, personnel may begin to act as vigilante groups, or may be less likely to be respectful of human rights. In some cases they may feel entitled to commit human rights abuses with impunity (which is particularly the case of moonlighting soldiers or police officers who feel protected by their day jobs)

¹⁰ At the end of the Cold War the militaries of the world shrunk by approximately 6 million personnel (Hellinger 2004, 198). Many of such personnel are now employed by PMCs and PSCs and can be reasonably expected to maintain similar professional behaviour with their new employers.

(Nolte 2007). For instance, local security forces at Barricks Gold's Porgera Joint Venture mine site in Papua New Guinea committed several human rights abuses including "killings, torture, arbitrary arrest, and beatings" without a serious investigation (MiningWatch Canada 05 May 2010). In fact, all incidents of human rights abuses found in this study were committed by local security personnel. These incidents are discussed in further detail in Chapter Four.

Two other types of security providers are public forces under the command and control of the extraction companies - such as TVI Pacific's employment of military personnel in the Philippines (TVI Pacific 10 June 2009) - and public forces employed in support of extraction companies, but commanded and controlled by the state – such as the Colombian army protection the Caño Limón pipeline for Occidental Petroleum (Klare 2001, 2004). This research is not intended to study how public security forces are used by extraction companies, but it is worth noting that there is significant interaction between private and public security forces who protect extraction sites.

Private Security As Part of CSR Strategy

Private security for Canadian extraction operations will be more effective if part of an extraction company's CSR strategy. Company and industry policies which link security with other aspects of CSR (environment, community development, etc) will reduce their security risks, lower their operating costs, and be more successful. For many companies adopting security as part of their CSR strategy will mean re-thinking security to include the environment beyond the perimeter fence.

This research considers much of the onus to regulate private security personnel to be on the extraction companies which employ them. In the majority of situations extraction companies will have more power than the security companies they employ. Private security personnel, therefore, derive their power and authority not simply from the barrel of a gun, but from their ability to represent their respective extraction company (Abrahamsen, Williams 2011, 107). Private security personnel who are bound by contract to be under command of the extraction company. In the case

of in-house, local private security guards extraction company is in command of their day-to-day activities. There is a need then for regulatory initiatives that focus on influencing the behaviour of extraction companies and not just the private security companies which work for them.

Given their level of regulation and their track record, it may be that large international private security companies are the best option for extraction companies concerned with CSR and human rights. When compared to local security, it is more likely that the CSR norms of large international companies will match up with the CSR norms of Canadian extraction companies.¹¹ It may seem that there would be little need for Canadian legislation such as Bill C-300 if all private security companies working for Canadian extraction companies effectively self-regulated and adopted regulatory initiatives such as the ICoC.¹² Even though adopting regulatory initiatives can be included in security contracts and even if regulatory initiatives include their own auditing mechanism, their adoption remains voluntary. Furthermore, the enforcement of initiatives such as ICoC depend on a private grievance mechanisms and follow-up. Bill C300, by contrast, proposed ministerial responsibility for the investigation of grievances (Canada 9 February 2009).

One of the most important differences between Bill C300 and the private security industry self-regulation is that security self-regulation should complement the onus on extraction companies to prevent human rights abuses. Relying wholly on the regulations like the ICoC means that security would be separate and distinct from an extraction company's overall CSR policy. This research argues that this would make security less effective and increase the risk of human rights abuses.

Security-as-CSR (and CSR-as-security) means moving from negative to a positive view of security. A negative view of security is focused on protection and defines security as preventing

¹¹ A cynical view of CSR would propose that international private security companies and Canadian extraction companies both use CSR as a way to whitewash their reputations and gain legitimacy from local stakeholders and civil society organizations. Local security companies, on the other hand, may be less concerned with legitimacy and more sincere in their efforts to behave well in their communities.

¹² While Bill C300 proposed that all companies adopt the Voluntary Principles, any future legislation with regards to private security would be best to also include the ICoC since the ICoC is more robust than the Voluntary Principles and contains an auditing mechanism.

harm to personnel and equipment, while a positive view works to improve the operating environment in order to eliminate security threats. For example, collaboration between extraction companies and local communities will help create programs to limit the social and environmental impact of operations which will help alleviate animosity towards extraction companies and reduce the security risks for personnel and installations. Similarly, good private security practices can help to avoid human rights abuses which severely limit the cooperation of local communities. Adopting protocols such as the ICoC may prevent human rights abuses and garner legitimacy for private security personnel, yet they are limited in the extent to which they can help to improve an extraction company's overall security profile. Security policies built on an acceptance-based mode which incorporates environmental and community development practices and involves stakeholder engagement create a better security environment.

Adopting positive security policies means developing a tailor-made CSR strategy to improve a company's operating environment. This may appear costly and time consuming and the temptation will remain to rely on local and regional security or to only hire site-specific security. Similarly, some companies may view costly CSR expenditures as beyond the scope of their business. Extraction companies by the nature of their business and operations in developing countries often have positive obligations to conduct socially responsible business and improve local security beyond their own operations.

Security is dependent not only on the strength of a company's protection assets, but also a company's operating environment which extends beyond the perimeter fence to the public domain and includes all actors which might pose a threat to its operation. Extraction industries that have large assets and operate in an area for many years benefit more from positive security. Improving a company's operating environment (thereby lowering the company's risk profile) will reduce its security costs overall. Extraction companies who ignore their larger operating environment in favour

of short term negative security gains may increase their operating cost overall and risk the possibility of human rights abuses.

Avant's conception of the security triangle will help to illustrate the different aspects of security which support an extraction company's mission (see Figure 1).¹³ The triangle is meant as a way to conceptualize the possible security strategies adopted by non-state actors. Negative security is characterized by emphasis on the bottom two elements of the triangle – protection and deterrence (what can traditionally be thought of as physical security for property and personnel and the threat of repercussions or counter attack). This type of security is indicative of “a fixed concept intimately connected with states and their use of violence” (Avant 2007, 144). Positive security, on the other hand, works to build acceptance by local communities and local government. Security in this case is defined by the social context; therefore security can entail untraditional elements such as economic opportunity, environmental preservation, access to healthcare and more (Avant 2007, 144).



Figure 1. Source: Avant 2007.

¹³ The security triangle is originally used to describe security for NGOs; however, it can easily be adopted to describe security for corporations as well. Mission is simply used to represent the commercial objective of the corporation rather than the social objective of an NGO.

Chapter 2 - Stakeholders and Regulation

Globalization has created a complex business environment where multiple stakeholders influence company operations. Globalization creates an environment where private and public stakeholders at local, national, and international levels can influence how extraction companies operate and how they are perceived. It is, therefore, necessary to map stakeholders and different regulatory initiatives. There are several regulatory initiatives which Canadian extraction companies have publically endorsed. These vary greatly in their pertinence to private security and in their specificity and enforceability. The purpose of this chapter is to define the regulatory environment within which extraction companies and private security work. This chapter will outline various stakeholders, the types of regulation Canadian extraction companies and private security companies face, and will describe several of the most commonly endorsed regulatory initiatives. It will include an explanation of how each regulatory initiative relates to private security, and how initiatives relate to each other. It also considers trends and commonalities among these regulatory initiatives.

Private security working for extraction companies, for example, operates at various levels. At the same time it is influenced by stakeholders who are global, local, bilateral, private and public. The use of private security is also constrained by international conventions, regional trade agreements, memorandums of understanding, a social licence to operate, and government regulation. These various levels of formal and informal regulation can profoundly influence how extraction and security companies operate on the ground. Regulations and stakeholders also interact in dynamic ways. Between and within each level there are opportunities for conflict and cooperation. Local interest groups, for example, can work with an international NGO, bring forward a legal claim against a company in a home country's national court, or they can appeal to a company directly. In one case study, in an effort to regulate a Canadian mining company, community members in Ecuador relied on

the Canadian legal system to sue a Copper Mesa Minerals while also engaging international NGOs, pressuring host and home governments, and resisting the mining company on site (Klippensteins, March 2009). States (while vital and essential) are not isolated actors in regulating private security and resource extraction. There are several public and private stakeholders of various sizes which regulate how extraction companies use private security.

Public stakeholders include local community members, governments (and the bilateral relations between governments), and international institutions. Local stakeholders provide companies and security personnel with their “social license to operate”. For private security personnel the social licence means being perceived as having legitimate authority to use force on behalf of an extraction companies. For extraction companies the social licence means approval by the local communities to operate in their location and can greatly reduce security concerns.

National and bilateral regulation includes laws and legislation regulating extraction and security companies in host and home countries. This can include laws governing the use of force and firearms, or national law dictates provisions in contracts between extraction companies and security companies. Bilateral regulations can include memorandums of understanding and regional trade agreements which can incorporate regulations on how extraction companies use private security.

International regulations consist mainly of guidelines established by international organizations such as the UN, the World Bank, or between a collection of governments, NGOs, and companies. Such regulation includes many of the most pertinent regulatory initiatives for Canadian extraction companies. These include the Voluntary Principles, the IFC Performance Standards, the GRI and the UN Special Representative on Business and Human Rights, John Ruggie’s, Protect, Respect, and Remedy framework.

Private stakeholders include extraction and private security companies themselves, industry associations, and the market in general. Company level regulations include formal company policies

regarding the use of private security and each company's informal business culture. Private security companies (depending on their size) may have their own policies regulating the use of force and respect for human rights, or security companies may rely solely on the extraction companies policies. Business cultures may also strongly influence a company's behaviour. A principled business culture which keeps human rights top of mind are less likely to commit abuses.

Industry regulations involves industry produced guidelines such as the Towards Sustainable Mining initiative produced by the Mining Association of Canada (MAC) and the International Council on Mining and Metals' (ICMM) Sustainable Development Framework. Members of industry associations may be expected to adopt such regulations as a condition of membership. International security organization also have similar initiatives such as the International Stability Operations Association's Code of Conduct or the British Association of Private Security Companies charter.

Market level regulation (the propensity of the market to favour companies which have a positive human rights record, or to disfavour companies which have a bad human rights record) is more nebulous than other forms since markets lack the *structural* authority or capacity to oblige companies to protect rights (Lipschutz and Rowe 2005, 174). However, markets can choose to favour extraction and security companies with good human rights records with an increase in share price and to lower the share price those with reputations for human rights abuses. Companies deemed unsavoury may be also exempted from investment by ethical funds and investors.¹⁴ For extraction companies, though, it is likely that their share price will depend much more on the price of gold or oil than their human rights record.

With regards to private security, Canada's *Bill C-300 An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries* proposed that Canadian extraction companies abide by the Voluntary Principles on Security and Human Rights (Canada 2009).

¹⁴ Activist shareholders which use shareholders meetings to voice dissent against the unethical behaviour of a company may also be considered a market-level form of regulation.

Similarly, the *National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries Advisory Group Report* also recommends that the Government of Canada encourage adherence to the Voluntary Principles in addition to peace and security assessments (Canada March 2009, 6). The *National Roundtable* further suggested that the Voluntary Principles and the International Finance Corporation's (part of the World Bank Group) Performance Standards form the basis of Canada's CSR policy for the short-term (Canada March 2009, 13).

It should be noted that the sections on private security in the Voluntary Principles and IFC Performance Standards are 1 – 3 pages of text. These recommendations are best to be considered as guiding principles rather than detailed standard operating procedures. Therefore, companies which wish to abide by these two documents will require significant work to translate these principles into effective corporate policy. Even if Bill C-300 were passed, the heavy lifting of applying security regulations would still have to be done by extractive companies themselves.

Types of Regulatory Initiatives

There are three general types of regulatory initiatives which will be discussed in this chapter – principles, guidelines and standards (CCSRC 2007). Each vary according to their specificity and enforceability. Principles are broad (sometimes universal) in scope and work to establish a fundamental truth. They provide a set of a set of values rather than guidance on how organizations should act. Principled initiatives are generally very interpretive and not enforceable. The UN Declaration of Human Rights and the UN Global Compact are examples of principles related to this research – both are used as a basis for company values, but are also highly interpretive and unenforceable.

Guidelines, on the other hand, provide a set of procedures on how companies should address certain CSR concerns. Guidelines are not intended as an exhaustive set of prescriptions – they aim to

be vague enough to be flexible for different companies. Guidelines feature moderate, if any, enforcement mechanisms. It is anticipated, though, that companies will conduct due diligence in translating guidelines into company behaviour on the ground. Despite its name, the Voluntary Principles, for example, is best categorized as a guideline. It provides general normative prescriptions on the use of security (which must be implemented into company policy) and does not demand strict adherence to specific tenets. The vast majority of regulatory initiatives study here are, in fact, best categorized as guidelines: the IFC Performance Standards, the OECD's Guidelines on Multinational Enterprises; the Guiding Principles on Business and Human Rights; United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; ISO 260000; International Alert's Conflict-Sensitive Business Practices; International Council on Mining and Metals' Sustainable Development Framework; and, Towards Sustainable Mining.

Standards are proscriptive models or measures for companies. They are the most detailed and prescriptive type of regulatory initiatives and feature the strongest compliance mechanisms. There are no strict standards adopted by Canadian extraction companies related to private securities. The most standard-like regulatory initiative studied here is the Global Reporting Initiative (which requires detailed reporting from extraction companies). There is no certification standard on CSR or private security for the extraction sector comparable to initiatives such as ISO 14001 (which provides specific requirements for environmental management systems). The lack of strict standards is likely due to the relative newness of CSR and, more importantly, to the complex nature of implementing CSR on the ground.

Beyond these initiative there are other organizations which promote and monitor their adoption, or provide assistance to companies on how to put these regulatory initiatives into practice. The majority of these organizations are at the national level - in Canada, the Office of the Extractive Sector Corporate Social Responsibility Counsellor, the National Contact Point for the OECD Guidelines

for Multinational Enterprises, Canadian Business for Social Responsibility, and – to a lesser extent - the Mexican Center for Philanthropy.

International Regulatory Initiatives

There are many international regulatory initiatives that might be considered applicable to Canadian extraction companies that use private security in developing countries. The international regulatory environment may appear overcrowded and most companies (especially junior mining companies with limited staff and resources) may not be able to make sure that all their activities are in compliance with all international regulatory initiatives. There is, however, considerable overlap and commonality between regulatory initiatives. The Government of Canada through the National Contact Point and the Office of the Extractive Sector has decided to promote the OECD Guidelines, the Voluntary Principles, the IFC's Performance Standards, and the Global Reporting Initiative (Canada 2009).

Regulatory initiatives will also often complement different levels of business.¹⁵ Principled documents such as the UN's Global Compact are best suited to influence a company's strategic vision statement or business culture. Guidelines like the Voluntary Principles and the IFC Performance Standards are more specific and can be used to shape company policy while other more in-depth documents like International Alert's 2005 Conflict Sensitive Business Practices – Guidelines for Extractive Industries can be used to coordinate day-to-day activities.

Although international and national regulatory initiatives vary in their scope and intent from the regulatory initiatives presented here it is possible to create a composite list of reoccurring

¹⁵ The different types of regulatory initiatives may in part reflect the nature and mandate of the organizations from which they come. For example, the high-level, principled nature of the UN is reflected in the nature of the Global Compact and International Alert's practical experience on the ground can be seen in its step-by-step guidelines in the Conflict Sensitive Business Practices. Civil society and international organizations may also rush in fill an apparent background in the regulatory environment.

recommendations for private security as used by extraction companies. Recommendations which are common to many initiatives include:

- 1) *Only engaging in legitimate security work* – This includes only working for legitimate companies with license to operate within the country and local area. Also, no task given to security forces shall be in violation of basic human rights.
- 2) *Abide by national and international laws* – Security and extraction companies must obey all laws applicable to their industry even if those laws are not enforced. Participation in a voluntary initiative is not a substitute for nor does it supersede national and international laws.
- 3) *Conduct risk assessments* – Before and during operations map stakeholders, consider what security and human rights impact extraction operations may cause, and act to address security and human rights risks.
- 4) *Vet personnel* – Personnel shall be screened for any previous human rights abuses, or criminal actions.
- 5) *Provide appropriate training* – Personnel shall be trained in the use of their weapon, security practices and company policies (to include human rights training).
- 6) *Establish a grievance mechanism* – Provide a means for stakeholders to bring incidents of misconduct to the attention of the employer. Employees who act as whistleblowers must also be encouraged and protected.
- 7) *Discipline personnel* – Companies shall investigate allegations of misconduct and, if true, discipline personnel accordingly.
- 8) *Minimal use of force* – Security personnel shall use only the amount of force necessary to resolve a situation. Personnel are to abide by establish rules of engagement. Weapons and ammunition shall not be altered to increase suffering.
- 9) *Engaging in primarily defensive work* – Security forces are not to engage in offensive actions. They shall not under their own initiative attack other persons or groups.
- 10) *Contribute to ending human trafficking* – Security forces shall not engage in human trafficking or offer support of any kind to those who do.
- 11) *Anti-corruption* – Security personnel shall abide by internationally accepted standards against bribery and corruption.
- 12) *Workplace conduct* – Security forces shall operate in a safe workplace environment which is free from harassment of all kinds. Security personnel shall be hired impartially based on merit.

To be effective, companies will have to conduct due diligence in implementing and enforcing them. The trend, though, according to a 2001 survey of CSR regulatory initiatives by the OECD, is that while “the effectiveness of codes in influencing the behaviour of corporations depends also on a strong enforcement mechanism not all of the codes surveyed describe responses to breaches of codes in great detail” (OECD, 11). In the same survey, in fact, external monitoring was “the least used implementation technique examined – only two percent of the company codes mention it” (Ibid).

With regards to endorsement, the following are the most commonly listed international regulatory initiatives which Canadian extraction companies have endorsed.

Voluntary Principles on Security and Human Rights

The Voluntary Principles on Security and Human Rights establishes guidelines (according to the three categories above: principles, guidelines, and standards) for how extraction companies are to conduct risk assessments and outlines best practices on the employment of public and private security forces. The Voluntary Principles were created in 2000 as a joint venture between the United States, the United Kingdom, NGOs, and a handful of the world’s largest extraction companies such as Shell, Exxon, and BP. Participants of the Voluntary Principles includes Canada, the United States, the United Kingdom, the Netherlands, Norway, nine NGOs, two industry associations (with observer status), and 18 extraction companies (Voluntary Principles 2010). Of those 18 companies two, Barrick Gold Corporation and Talisman Energy, are Canadian - Canada’s largest mining company and its sixth largest oil and gas company, respectively. While this is a relatively small number considering the size of Canada’s extractive sector it is worth noting that the Government of Canada itself only joined the Voluntary Principles in 2009 (Voluntary Principles 2010, 4).¹⁶

¹⁶ Considering the size of Canada’s extractive sector, the nine year delay in joining the Voluntary Principles indicates an ambivalence in the Government of Canada to implementing regulatory initiatives.

The Voluntary Principles cover all of the 12 general recommendations mentioned above, are intended as non-binding, and “offer an operational approach to help companies function effectively” (Voluntary Principles 2010). In 2007, the plenary group for the Voluntary Principles decided on additional criteria for participation which includes: “minimum requirements for participation; a dispute resolution process to raise concerns about the performance of a participant; accountability mechanisms that include the possibility of expulsion” and “commitment by participants to report publicly on their implementation” (Voluntary Principles 2010, 1). The Voluntary Principles are complemented by Performance Indicators (first developed by International Alert) and the Implementation Guidance Toolkit. The Performance Indicators provide a series of concrete measures by which implementation of the Voluntary Principles can be measured on the ground (Voluntary Principles 2010, 3). Implementation Guidance Toolkit is intended to serve as a practical tool to guide managers and employees on tangible ways the Voluntary Principles can be implemented in day-to-day operations (Voluntary Principles 2010, 3). The Implementation Guidance Tool is broken down into four modules on stakeholder engagement, risk assessment, using public security and, using private security (Voluntary Principles Implementation Guidance Tool 2011).

International Finance Corporation’s Performance Standards on Social and Environmental Sustainability

In 2006, International Finance Corporation (IFC), a member of the World Bank Group, created eight Performance Standards which are meant to “establish standards that are to be met throughout the life of any investment by IFC” (IFC 2006, i). The fourth standard covers “Community Health, Safety and Security” and includes relatively extensive recommendations regarding the use of private security (IFC 2006, 17-18). Like the Voluntary Principles, the IFC Performance Standards feature almost all the 12 recommendations listed above.

Canadian extraction companies who wish to receive World Bank funding for their operations in low-income or conflict areas must comply with the IFCs Performance Standards as a condition for investment. Companies engaged in projects with considerable risk (such as those operating in conflict areas) are instructed to “retain qualified and experienced external experts” to monitor their business practices and then implement “corrective and preventive actions, and follow up on these actions to ensure their effectiveness” (IFC 2006, 6). This requirement for external monitoring and the threat of being denied funding gives the IFC Performance Standards the strongest compliance mechanism of any regulatory initiative on private security here studied.

The United Nations Declaration of Human Rights

The UN’s Universal Declaration of Human Rights was endorsed by all states of the General Assembly in 1948 and consists of 30 articles which establish the freedom and equality of all people. It acts as a common standard on human rights for nations, individuals, and “every organ of society” (UN 1948). For Canadian extraction companies the Universal Declaration is the most commonly endorsed regulatory initiative (see chapter three). As with states, the Declaration provides a baseline understanding of human rights for businesses. The declaration does not expressly mention any of the 12 recommendations above although several articles are relevant to this study. These include: Article 3 – the right to life, liberty, and security of person; Article 8 – the right to effective remedy from competent national tribunals for violation of one’s constitutional or legal rights; Article 9 – no one shall be subject to arbitrary arrest, detention, or exile; Article 12 – no one shall be subject to arbitrary interference with one’s privacy, home, family, correspondence and nor to attacks on one’s honour (UN 1948). The Universal Declaration is best categorized as a principled regulatory initiative – it is highly interpretive and often unenforceable. The articles listed above, for example, do not provide guidance on how rights might be safeguarded or enforced. The utility of the Universal

Declaration for extraction companies is as a set of values on which to base company policy and practices.

Endorsing the Universal Declaration, therefore, is not in and of itself a guarantee that extraction companies will act in an ethical way, or make value-based decisions. Due to its interpretive and unenforceable nature the Universal Declaration can potentially be used to “bluewash” a company – to gain the reputational benefits associated with the UN without committing to changing business practices to reflect the UN’s values. Due to the general interpretive nature of the Universal Declaration it is difficult to determine which companies make a genuine effort to implement the UN Declaration and which might be whitewashing themselves. The low cost of endorsement and compliance compared to other regulatory initiatives may also contribute to the popularity of the Universal Declaration among Canadian extraction companies.

Global Reporting Initiative

The Global Reporting Initiative (GRI) is intended as a guide on reporting CSR performance. It was developed in 2006 to act as a widely accepted framework for several different types of companies to report on their CSR activities (Canadian Business for Social Responsibility 2008, 9). In addition to the GRI, a Mining and Metals Sector Supplement was developed in conjunction with GRI and the International Council on Mining and Metals in 2010(ICMM).

There is only one indicator in the GRI and the Mining and Metals Sector Supplement which relates specifically to private security - HR8 which measures the percentage of security personnel “trained in the organization’s policies or procedures concerning aspects of human rights that are relevant to operations” (GRI 2010, 38). Such training can be part of dedicated training, or part of a general training program (GRI Human Rights Performance Indicators 2006, 10). Other relevant indicators on human rights include the percentage of contractors which have undergone human

rights screening, the percentage of operations which have had human rights reviews or impact assessments, and the number of grievances filed and resolved which relate to human rights (GRI Comparison Sheet 2011, 2).

There three levels of reporting for the GRI – A, B, and C. Each letter grade relates to how many of the GRI indicators a company has reported on. Only companies which report of nearly every indicator, for example, attain an A rating. Those reports which have independently verified are given an additional “+” indicator (GRI Application Level Information, 2011). GRI is the second most adopted regulatory initiative after the Universal Declaration of Human Rights and is responsible for much of the publically available material on company sustainability.

The UN Global Compact

The UN Global Compact is a principled regulatory initiative which features ten principles on human rights, labour, the environment and anti-corruption. Participating in the Global Compact requires that a business pay an annual fee, adopt the principles of the Global Compact as part of their business strategy, include the principles in their governance decisions, and include in their annual reports the ways in which the business has enacted the principles (UN Global Compact 2001). Adopting the Global Compact is relatively easy for companies and can provide strong reputational benefits.

Of the ten principles those most relevant to security and human rights are: 1) Businesses should support and respect the protection of internationally proclaimed human rights; and 2) make sure that they are not complicit in human rights abuses (UN Global Compact). According to these principles security forces under the direct command and control of extraction companies should abide by customary human rights. Likewise, companies should ensure that private security personnel who have been subcontracted do not commit human rights abuses as well.

The OECD Guidelines for Multinational Enterprises and the OECD Risk Awareness Tool for Multinational Enterprises Operating in Weak Governance Zones

The Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises are voluntary guidelines established by the OECD member countries. The Guidelines are not as detailed or prescriptive as the Voluntary Principles or the IFC Performance Standards, nor are the OECD Guidelines as popular with Canadian extraction companies. The OECD Guidelines do not specifically mention private security, or incorporate any of the 12 recommendations above. There is also no compliance mechanism associated with the OECD Guidelines although the Canadian National Contact Point act as a mediator between companies and stakeholders when there are alleged breaches of the OECD Guidelines.¹⁷ Local communities, or NGOs can register a complaint with the Canadian National Contact Point if a company's actions are believed to have violated the tenets of the OECD Guidelines.

While the guidelines do not deal specifically with security, there are aspects of the OECD Guidelines which can relate to private security personnel. These articles, under the general policy section, includes: 2) respect for human rights of those affected by the enterprise's activities; 7) apply self-regulatory practices to foster relationships with local societies; 8) promote employee compliance with company policies; 10) encourage subcontractors to apply principles compatible with the *Guidelines* (OECD 2008, 14).

In addition to the Guidelines the OECD has produced the Risk Awareness Tool for Multinational Enterprises Operating in Weak Governance Zones (OECD 2006). Based on the Guidelines, the Risk Awareness Tool provides additional guidance for enterprises operating in areas where governments cannot or will not protect basic human rights or provide basic public services

¹⁷ Responsibility to act as the National Contact Point lies with the Department of Foreign Affairs and International Trade.

(OECD 2006, 11).¹⁸ The Risk Assessment Tool, like the OECD Guidelines, provides few recommendation related to the management of private security services. The recommendations include: conducting thorough risk assessments, promoting local as well as site-specific security consultation with stakeholders, vetting personnel, reporting and investigating misconduct of security personnel, and promoting the compliance of subcontractors to company standards (OECD 2006, 17, 21). The Risk Assessment Tool also suggests that companies consider following the Voluntary Principles (OECD 2006, 16, 17, 19). Unlike the OECD Guidelines, though, alleged breaches of the Risk Assessment Tool cannot be used as a basis for mediation by the National Contact Point (OECD 2006, 12). Recently the Guidelines have also been updated to support the UN Guiding Principles on Business and Human Rights (OECD 2011, 31).

Guiding Principles on Business and Human Rights

The Guiding Principles on Business and Human Rights is a set of guidelines endorsed by the United Nations Human Rights Council which aims is to provide guidance on safeguarding human rights for states and business enterprises. The Guiding Principles are the culmination of the work of John Ruggie, the UN's Special Representative on Business and Human Rights and are based around Ruggie's "Protect, Respect and Remedy" framework. While the Guiding Principles focus on the promotion of human rights overall, its guidance can be easily applied to the use of private security. Relevant recommendations include: respecting national and international law, conducting human rights assessments, monitoring and track the implementation of human rights policies, remedying the impacts of human rights abuses, and establishing operational-level grievance mechanisms (United Nations Human Rights Council 2011). On security, the Guiding Principles states that the use

¹⁸ Many developing countries in which Canadian extraction companies work in are not considered weak governance zones by this definition.

of other actors (such as security forces) in conflict areas may increase the risk of companies being complicit in gross human rights abuses (United Nations Human Rights Council 2011, 21).

*United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials /
United Nations Code of Conduct for Law Enforcement Officials*

A limited number of Canadian extraction companies list endorsement of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials. While these two documents relate to public security forces it can be reasonably expected that their principles might be extended to the use of private security. The most relevant tenets of these documents is the importance placed on: screening and vetting personnel, providing professional and human rights training, controlling the use of force (including providing non-lethal options), disciplining officers for the inappropriate use of force, supervise and monitor police officers, and provide legal remedy for those affected by the inappropriate use of force (United Nations 1979, 1990).¹⁹

ISO 26000

International Standards Organization's (ISO) ISO 26000: Guidance on Social Responsibility is a regulatory initiative which provides broad guidance on how to operate in a socially responsible manner for private and public sector organizations (ISO 2011). Unlike ISO 9001 and 14001, for example, ISO 26000 is a voluntary guidance, not a certification standard. In ISO's view, a certificate standard (which ISO is best known for) would have required so much prescription that ISO 26000 would have become "enormous and potentially lacking flexibility" (ISO 2011, ISO Sec-Gen Perspective). Instead, ISO 26000 was drafted to complement conventions of the United Nations (the Universal Declaration of Human Rights, the International Bill of Rights) and the International Labour

¹⁹ These principles are to be applied by governments, but are also suitable for extraction companies.

Organization and ISO has signed memorandums of understanding with the UN Global Compact Office and the OECD (ISO 2011). Canada is also listed as a participating state.

ISO 26000 does not specifically provide guidance on the use of private security and only briefly mentions security in general. ISO 26000's sections on human rights, though, can be applied to the use of private security. "Non-state organizations", claims ISO 26000, "can affect individuals' human rights, and hence have a responsibility to respect them" (ISO 26000 2010, 23), and there is a high risk of human rights abuses associated with operation with "a need for extensive measures to ensure security of premises or other assets" (ISO 26000 2010, 26). The expectations which ISO 26000 outlines are that an organization should have: a human rights policy; a means to integrate a human rights policy throughout the organization; a means to assess how activities affect human rights; a means to track human rights performance; and, should take action address negative impacts of its activities (ISO 26000 2010, 25).

International Alert's Conflict-Sensitive Business Practices – Guidance for Extractive Industries

International Alert's Conflict-Sensitive Business Practices (CSBP) (International Alert 2005) is a toolkit for extraction companies interested in applying CSR best practices in conflict areas. The CSBP is focused on practically implementing tangible on the ground policies. With regards to private security CSBP relies heavily on the Voluntary Principles and incorporates many of the 12 recommendations mentioned above. CSBP also lists considerations which should inform companies when formulating their own security practices. The main theme of CSBP's suggestions is that security cannot be bought in isolation from good community relations (International Alert 2005, 4-7, 3). Security for company operations will, therefore, require creating a positive security environment at the local and national level. For extraction companies, the CSBP aims to create a holistic security plan which is built in collaboration with many different level of stakeholders.

The comparative advantage of CSBP over other regulatory initiatives is that it includes macro and micro risk assessment tools which consider the lifecycle of extraction. An initial screening tool, for example, is included which provides a quick one or two day risk assessment that can be conducted even by small junior exploration companies (International Alert 2005, 2, 3). The Macro-level Conflict Risk and Impact Assessment (M-CRIA) conducts a national or regional conflict analysis and is used to determine whether company operations might contribute to conflict and destabilization (by contributing to corrupt regimes, or by increasing competition for land) (International Alert 2005, 2, 5). The Project-level Conflict Risk and Impact Assessment (P-CRIA) assesses conflict from the local level and aims to build relationships with local stakeholders (International Alert 2005, 2, 5). While the CSBP is comprehensive, very few Canadian extraction companies (for no known reason) publically mention using it.

Empresa Socialmente Responsable

Finally, the “Empresa Socialmente Responsable” (socially responsible company) is a distinction worth mentioning because it is mentioned by several Canadian extraction companies. It is presented annually by the Mexican Center for Philanthropy, a Mexican NGO. There are no specific requirements related to security associated with this distinction although it does reference human rights (Mexican Center for Philanthropy 2011). This CSR distinction promotes the UN Global Compact, the OECD Guidelines, ISO 26000 and the GRI. Public reporting and the self-test for the Mexican Centre for Philanthropy, furthermore, are based upon the GRI (Mexican Center for Philanthropy 2011).

Industry Regulatory Initiatives

Towards Sustainable Mining

Towards Sustainable Mining (TSM) is an initiative of the Mining Association of Canada. All Mining Association of Canada members are required to adhere to the TSM guidance principles. Abiding by the TSM is mandatory for members' operations in Canada, but some members have voluntarily adopted the initiative in their international operations as well. Members began domestic reporting in 2004, but in 2012 MAC members will begin reporting on their international operations as well (Mining Association of Canada 2011, 4, 12). Each year members of the Mining Association of Canada are required to produce a self-assessment based on the TSM Performance Indicators and have their assessment independently verified every three years (Mining Association of Canada 2011, 11).

Although TSM includes many aspects of CSR the focus of the initiative is on the technical aspects of Canadian mining operations. Security, therefore, does not figure prominently in the initiative. Of note regarding the use of private security in the TSM guidance principles, though, are the precepts that companies must support "human rights and treat those with whom we deal fairly and with dignity" and "respect the cultures, customs and values of people with whom our operations interact" (Mining Association of Canada 2004, 1). Also included is the requirement to implement a grievance mechanism for local communities (Mining Association of Canada 2011, 16). The TSM features its own reporting procedure and there is no requirement in TSM for companies to adopt other regulatory initiatives (Mining Association of Canada 2011).

International Council on Mining and Metals' Sustainable Development Framework

The International Council on Mining and Metals (ICMM) consists of 21 major mining companies, four of which – Barrick, Goldcorp, Teck Resources and Newmont Canada Ltd – are Canadian. Sherritt International, Gabriel Resources also adhere to ICMM's Sustainable Development Framework. All ICMM members are required to implement ICMM's Sustainable Development Framework. The Sustainable Development Framework includes 10 principles and seven supporting statements which

are to be incorporated into corporate policy and reporting (ICMM 2011). Public reporting for ICMM members includes annually publishing a sustainable development report based on the GRI and to include GRI's Mining and Metals Sector Supplement (developed between by ICMM and GRI) (ICMM 2011). ICMM's Assurance Policy, furthermore, requires that members conduct third party assessments of their sustainability reports (ICMM 2011). With regards to security and human rights the ICMM supports the "Protect, Respect and Remedy" Framework of UN Special Representative John Ruggie (ICMM also made three submissions from 2005 to 2008), has been granted observer status for the Voluntary Principles (ICMM 2011), and takes the UN Declaration of Human Rights as an agreed definition of human rights (ICMM 2009, 3).²⁰

ICMM Sustainable Development Framework addresses security in Principle 3 – "Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities" (ICMM 2011). Additional guidance in ICMM's human rights overview specify that companies should "develop clear policies covering all relevant human rights issues facing their operations", provide human rights training to staff (including security personnel), "ensure security personnel and contractors follow human rights principles" and include human rights as part of company risk assessments (ICMM 2009, 4-5). The ICMM's human rights overview also promotes rules on use of force, professional training for security forces, and establishing a grievance mechanism (ICMM 2009, 18, 23).

Dow Jones Sustainability Index

The Dow Jones Sustainability Index is a list of 342 companies from across the world (Dow Jones Indexes 8 Sept 2011, 1). Companies are invited to self-report on their sustainability performance and,

²⁰ Other regulatory initiatives mentioned in the ICMM human rights overview are the Global Compact, IFC Performance Standards, the OECD Guidelines for Multinational Enterprises, the International Labour Organization's Tripartite Declaration Concerning Multinational Enterprises and Social Policy.

if interested, a sustainability assessment follows. Of note for this study, the Corporate Sustainability Assessment include a superficial measurement of how many regulatory initiatives a company has publically endorsed such as the Universal Declaration of Human Rights, the International Labour Organization's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multinational Enterprises (SAM Research Group). Otherwise, there are no recommendations of the Dow Jones Sustainability Index which relate to private security.

Canadian Regulatory Initiatives

Despite not having legislation to regulate extraction companies overseas, the Government of Canada has a number of initiatives to promote CSR by extraction companies abroad. Initiatives from the Government of Canada are aimed at promoting the primary regulatory initiatives – the Voluntary Principles, the IFC Performance Standards, the GRI, and the OECD Guidelines for Multinational Enterprises. Canadian Business for Social Responsibility in turn focuses on helping businesses implement those initiatives. Also of note is that Canadian initiatives rely on the willingness of Canadian companies to adopt independent voluntary initiatives.

The Office of the Extractive Sector Corporate Social Responsibility Counsellor

The Office of the Extractive Sector Corporate Social Responsibility Counsellor was established in March 2009 as an organization at arm's reach from the Government of Canadian. Its mandate is to "review CSR practices of Canadian companies operating outside of Canada, and to advise stakeholders on the implementation of the endorsed performance standards" (DFAIT 3 May 2011). Those standards are the IFC's Performance Standards, the Voluntary Principles and the GRI.

The CSR Counsellor is one of four pillars of the Government of Canada's overall CSR Strategy for the International Extractive Sector - the other three of which are enhancing capacity of

developing countries to manage mineral development, promoting three CSR guidelines (the IFC Performance Standards, the Voluntary Principles, and the Global Reporting Initiative), and the creation of the CSR Centre of Excellence in the Institute of Mining, Metallurgy and Petroleum (Ibid).

The Office of the Counsellor, like the National Contact Point, works to promote corporate social responsibility and act as an honest broker between disputing parties (extraction companies, CSOs, and local communities) to facilitate dialogue and promote problem solving (DFAIT 3 May 2011). Parties in dispute with a Canadian extraction company can bring their matter to the CSR Counsellor if there is a perceived violation of any of the three regulatory initiatives listed above. Given the scope of those three guidelines, it is conceivable that almost any issue could be brought before the Office.²¹ Issues which specifically relate to the OECD Guidelines for Multinational Enterprises, though, are still to be handled by the National Contact Point.

National Contact Point for the OECD Guidelines for Multinational Enterprises

The National Contact Point operates similarly to the Office of the CSR Counsellor. It works to promote the OECD Guidelines for Multinational Enterprises and acts as an honest broker which can facilitate dialogue between parties in dispute over a specific breach of the OECD Guidelines (DFAIT 2 February 2011). Also like the CSR Counsellor, parties can voluntarily withdraw from negotiations at any time.

Over the last ten years eight instances have been brought before the National Contact Point for resolution. Four have been considered specific instances for further review - all of which have

²¹ As of writing there have been two cases brought before the CSR Counsellor. The first involves Excellon Resources Inc.'s La Platosa mine project in Mexico. State police were called in to investigate the theft of copper and allegedly assaulted several miners during the process (CSR Counsellor October 2011, 11). The National Union of Mine and Metal Workers of the Mexican Republic brought forward a request for review to the CSR Counsellor over this issue and over unsafe working conditions at the La Platosa mine (Ibid). Excellon initially participated in the review process, but withdrew just prior dialogue and before the release of the CSR Counsellor's final report (CSR Counsellor October 2011, 2). The second case (now listed as closed) involved tax evasion by First Quantum Minerals in Zambia (DFAIT 21 February 2012; CNCA 12 April 2011).

involved Canadian extraction companies. Of these four instances, one involved private security personnel. The request for assistance was brought forward by Copper Mesa Minerals (then Ascendant Copper Corporation) and MiningWatch Canada, Friends of the Earth Canada and DECOIN (a local anti-mining association) in regards to a mining conflict in Intag in Ecuador. The specific breaches of the OECD Guidelines which relate to private security which were listed in the claim against Copper Mesa were: “Chapter 1) paragraph 7) regarding respect for national law; Chapter II) paragraph 2) regarding human rights” and “10) regarding subcontractors and the OECD Guidelines” (OECD 2006). These breaches were related to alleged incidents in which bodyguards pretending to be Army Corp of Engineers threatened local mining opponents (Zorrilla 2006). MiningWatch Canada, Friends of the Earth and DECOIN withdrew from the process in January of 2006 citing disagreement with the requirement to maintain “confidentiality” in meetings with Ascendant Copper. The conflict in the region continued. After having left the dialogue process Ascendant Copper (now Copper Mesa Minerals) hired additional private security forces which were later involved in a critical incident in November of 2006 where personnel assaulted and fired on anti-mining community members (Toronto Star, 24 November 2009).

Canadian Business for Social Responsibility

Canadian Business for Social Responsibility (CBSR) is a Canadian NGO which enjoys a relatively high amount of support from Canadian extraction companies. CBSR does not have its own regulatory initiative – it offers its members CSR advice on performance standards and guidelines, and provides access to a CSR network (CBSR 2011). Members of CBSR come from across all sectors and its services include: a CSR report assessment, stakeholder mapping, benchmarking, training workshops, extractive sector working groups, and CSR strategy sessions (CBSR 2008). With regards to the extractive sector “much of CBSR’s work includes on-site assessments of existing CSR policies and

practices and facilitation of stakeholder engagement and community development efforts” (CBSR 2008).

CBSR offers expertise on regulatory initiatives and works with extractive companies to implement many of the initiatives mentioned in this chapter. Of note, CBSR list human rights and security as a key area of CSR and offers companies advice on how to implement the Voluntary Principles, the IFC Performance Standards, the GRI, TSM, the ICMM Sustainable Development Framework, the UN Global Compact, ISO 26000, and the OECD Guidelines for Multinational Enterprises (CBSR 2011 – CBSR Workshops, Presentations and Events).

Conclusions

Many of Canadian initiatives heavily rely on four international regulatory initiatives - the Voluntary Principles, IFC’s Performance Standards, the GRI, and the OECD Guidelines for Multinational Enterprises. The Government of Canada’s support for these initiatives likely influences the decision of extraction companies to adopt these four initiatives. As we will see in Chapter Three, though, the adoption rate of these initiatives is low and does not differ greatly from adoption rate of extraction companies in the United Kingdom. This indicates that promotion of initiatives by the Government of Canada has not, as of yet, spurred on widespread adoption across the Canadian extractive sector. Also, the defeat of Bill C-300, it should be noted, sends a mixed message to extraction companies. While the government promotes compliance with regulatory initiatives it is unwilling to incorporate these initiatives into legislation.

There are 17 regulatory initiatives mentioned in this chapter based on initiatives companies have publically endorsed. While there are certainly many different regulatory initiatives they are not all in competition with one another. Many initiatives reference each other, build on the guidance of another, or provide overlapping recommendations. An extraction company may also endorse the Universal Declaration without having to compromise its adoption of the IFC Performance Standards.

Other initiatives - the Office of the Extractive Sector, the National Contact Point, Canadian Business for Social Responsibility, the Dow Jones Sustainability Index, and the Mexican Center for Philanthropy – all promote the adoption of other regulatory initiatives.

On the issue of private security, the Voluntary Principles and the IFC Performance Standards are the most relevant and useful regulatory initiatives. They both cover major issues with the use of private security, are two of the most widely-used regulatory initiatives, and are also endorsed by the Canadian Business for Social Responsibility and the CSR Counsellor. The Voluntary Principles and IFC Performance Standards also enjoy a relatively high level of support from Canadian extraction companies as will be shown in the following chapter. Most other regulatory initiatives have limited application to private security (the GRI and the Guiding Principles on Business and Human Rights) or are tangentially related to private security through recommendations on human rights (the Universal Declaration of Human Rights, the OECD Guidelines for Multinational Enterprises, the UN Global Compact, Towards Sustainable Mining, ICM's Sustainable Development Framework, ISO 26000). The remaining initiatives (the CSR Counsellor, the National Contact Point, the Dow Jones Sustainability Index, and the Empresa Socialmente Responsable) do not specifically reference security or human rights – they are best considered as meta-regulatory initiatives in that they promote other initiatives.

The general trend for adopting initiatives is for companies to prefer more principled, easy to adopt initiatives such as the UN Declaration on Human Rights and the UN Global Compact. The low cost of entry for principled regulatory initiatives and relatively high reputational benefits may explain this trend.²² The Voluntary Principles and the GRI also enjoy high rates of adoption even though they are more prescriptive in nature. The GRI is unique in that it appears to be the most widely held standard across the industry for sustainability reporting. The promotion of the GRI by extraction

²² It should be mentioned that while regulatory initiatives such as the UN Declaration on Human Rights would be easy for many junior mining and oil and gas companies to endorse they have not done so.

industry organizations, the Canadian government, and Canadian CSR organizations may go some way to help explain its popularity. The (relative) success of the Voluntary Principles may be due to its support from governments and other large extraction companies (Exxon, Shell, etc) in addition to pressure from international civil society.

Successful use of all these initiatives requires companies to incorporate them into company policy and to adapt their operating procedures at their installations. Case studies on incidents of human rights abuse by private security in chapter four will demonstrate that implementing a regulatory initiative requires much more than endorsement. Even companies which implement many of the 12 recommendations above may have incidents involving private security personnel.

Chapter 3 – Adoption of Regulatory Initiatives

This chapter seeks to determine how many Canadian companies have corporate policies on private security and to list how many have adopted regulatory initiatives related to private security.

For the purpose of this study, a Canadian extraction company was determined to be any mining or oil and gas company (junior and senior) listed on the TSX or TSX Venture which is headquartered in Canada. Company websites were surveyed for information on their security policies (if available), regulatory initiatives endorsed, information on their CSR initiatives, and their company code of ethics. Also surveyed were company documents such as newsletters, corporate presentations, annual reports, and sustainability reports. This chapter shows that Canadian extraction companies which operate in developing countries vary greatly in their level of adoption of CSR and security policies. Given the size of the extractive sector in Canada there are few companies which have adopted regulatory initiatives although the rate of adoption is much higher amongst the largest extraction companies.

This feature a survey of 953 Canadian oil and gas and mining companies.²³ Of these 953 extraction companies 267 (28.0%) were considered to operating in developing countries.²⁴ Extraction companies operating in OECD countries such as Australia and relatively secure developing countries such as China have been excluded from this survey. All extractive companies on the TSX and all oil and gas companies on the TSX Venture were surveyed. Due to the number of mining companies on the TSX Venture, though, a sample size was taken. Mining companies on the TSX Venture were arranged by total value (largest to smallest) and then every fifth company was selected. Of the 1130 mining companies listed on the TSX Venture 230 were surveyed of which 76 (33%) were deemed to operate in developing countries. While this sample does not give a complete picture of mining

²³ No statistical difference was made between mining and oil and gas companies for this survey. All were considered Canadian extraction companies.

²⁴ Most companies surveyed had domestic operations only.

companies on the TSX Venture, it provides a reasonably representative sample. Overall, 333 mining companies were surveyed on the TSX , 230 mining companies on the TSX Venture, 120 oil and gas companies on the TSX and 270 on the TSX Venture. The combined value of all extraction companies surveyed on the TSX was \$229.4 billion dollars. Also included in this study as a point of comparison extraction companies on the United Kingdom's LSE and AIM were surveyed. 174 companies were surveyed, 121 companies were found to have international operations and 17 were found to endorse some form of regulatory initiative.

The data presented here is based on data voluntarily provided by companies on their public websites. The metric for this study was whether a company has a publically available private security policy, or endorse it endorse a voluntary regulatory initiative. Specifically this survey looked for: what countries the company operates in (does it operate in a developing country), is there a private security policy publish on its website, does the company mention endorsing a regulatory initiative, is private security covered in its annual or sustainability report, what initiatives are listed under CSR section of the company's website, is security or CSR mentioned in a company's corporate presentation, and is voluntary regulation mentioned in any of the company's news releases. Factors which contributed to extensive and robust regulation of private security were considered to be: an internal private security policy, incorporation of voluntary regulation into corporate reporting (annual and sustainability reports), external auditing of CSR practices, grievance mechanisms, and cooperation with organization which promote regulation such as International Alert or Canadian Business for Social Responsibility.

It is possible that companies may have internal policies on security, CSR, or philanthropic initiatives which they have chosen not to mention on their website. However, given that one of the primary benefits of adopting regulatory initiatives and conducting philanthropic activities is the

reputational benefits they bestow upon a company, it seems likely that companies will publicize their engagement in such initiatives.

Only 48 of the companies surveyed which operated in developing countries mentioned some form of regulation related to security. A similar number of companies, 47, mentioned participating in philanthropic initiatives (providing equipment for schools, building medical facilities, supporting community groups, etc) without adopting any regulatory initiatives. Industry guidelines, such as Mining Association of Canada's Towards Sustainable Mining, or the International Council on Mining and Mineral's Towards Sustainable Development Framework, had a much lower level of adoption with only 11 companies found to have adopted such regulatory initiatives. National regulatory initiatives were found to have the lowest recorded level of adoption with a total of 8 companies. Roughly half of the companies, 130, were found to have no policies on security, CSR, or philanthropic initiatives.

As one might expect, major Canadian extraction companies such Barrick Gold, and Talisman Energy had the most robust and extensive security and CSR policies (and the most philanthropic initiatives). The vast majority of extraction companies which report regulatory initiatives are listed on the TSX as opposed to the TSX Venture. Indeed, of all the extraction companies surveyed which were listed on the TSX Venture none listed adhering to an international regulatory initiative, and only one mentioned industry guidelines. More companies on the TSX Venture listed being engaged in philanthropic initiatives – 9 companies, 11% of companies surveyed compared to 34 companies or 23% of those listed on the TSX. Although these numbers are small, they demonstrate that junior extraction companies are more likely to engage in philanthropic initiatives than regulatory initiatives.

This data expands on a 2009 study by the Canadian Centre for the Study of Resource Conflict (CCSRC) on adoption of CSR initiatives by Canadian extraction companies.²⁵ That study surveyed 124 mining companies and found that 78% had some form of CSR policy (CCSRC 2009, 6). The vast

²⁵ The CCSRC study did not focus on private security – rather CSR as a whole.

majority of companies were described as having “only a few paragraphs describing what is done and what they aim to do regarding CSR” and only a few companies “adhered to any form of independent monitoring and auditing of their CSR policies” (Ibid).

Canadian companies were reported to be involved in one third of all incidents in developing countries and were much more prone to conflict with local communities than companies from other countries (CCSRC 2009, 10). Poor community relations were the cause 60% of incidents while 40% involved environmental damage (Ibid). The CCSRC study also noted that 79% of incidents of environmental and human rights abuse involved mining operations and 21% involved exploration companies (CCSRC 2009, 9). The 21% of incidents involving exploration companies is significant since most exploration companies are listed on the TSX Venture and no company on the TSX Venture surveyed mentioned regulation of private security. Regulation of private security as an aspect of CSR follows overall trends in CSR so one cannot expect private security to be well regulated in a weak CSR environment. This study follows two years after the CCSRC report and finds that the regulatory environment for private security is weak as well.

International Regulatory Initiatives

The result of this survey shows a surprising similarity between the adoption of regulatory initiatives on the British and Canadian stock exchanges. The total number of regulatory initiatives differ, but the top five initiatives, in terms of popularity, are the same. The most referenced regulatory initiative in both countries, for example, is the UN Declaration of Human Rights. The second most referenced regulatory initiative is the Global Reporting Index while the third is the Voluntary Principles on Security and Human Rights. The fourth and fifth initiatives were the UN Global Compact and the IFC Performance Standard / Equator Principles respectively. Other initiatives such as John Ruggie’s

Framework for Business and Human Rights, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the OECD Guidelines have the lowest level of acceptance.

It is important to note that number of companies which have adopted even the most popular initiatives is still relatively small (see Figure 2). Only 15 companies, for example, have expressed their support for the UN Declaration of Human Rights, 13 for the GRI, and 11 for the Voluntary Principles. The least popular regulatory initiatives boast only 3 adherents. Expressed as a percentage, only 5.5% of the 267 companies operating in developing countries have adopted the most popular initiative – the UN Declaration of Human Rights. The value of the companies which support the UN Declaration of Human Rights, though, is roughly \$90 billion – 39.2% of the companies operating in developing countries by value. Similarly, the Voluntary Principles have an adoption rate of 4.1% by number, but has a surprising 50.7% adoption by value. This trend continues for all other regulatory initiatives – which indicates that regulatory initiatives are almost much more likely to be adopted by the largest extraction companies. Smaller companies are more likely to report engaging in philanthropic initiatives only. 47 companies (17.3% of the TSX and TSX Venture by number and 18.2% by value) report engaging in philanthropic initiatives only. It should also be noted that more than half of Canadian extraction companies by number (176 or 64.9%), reported no security or CSR policy, and no philanthropic initiatives. These companies, though, make up only 3.1% of Canadian extraction companies by value.²⁶

²⁶ Companies which did not have a website were not included in this total. The percentage of companies who do not have a security, CSR, or engage in philanthropic initiatives is, therefore, likely slightly higher.

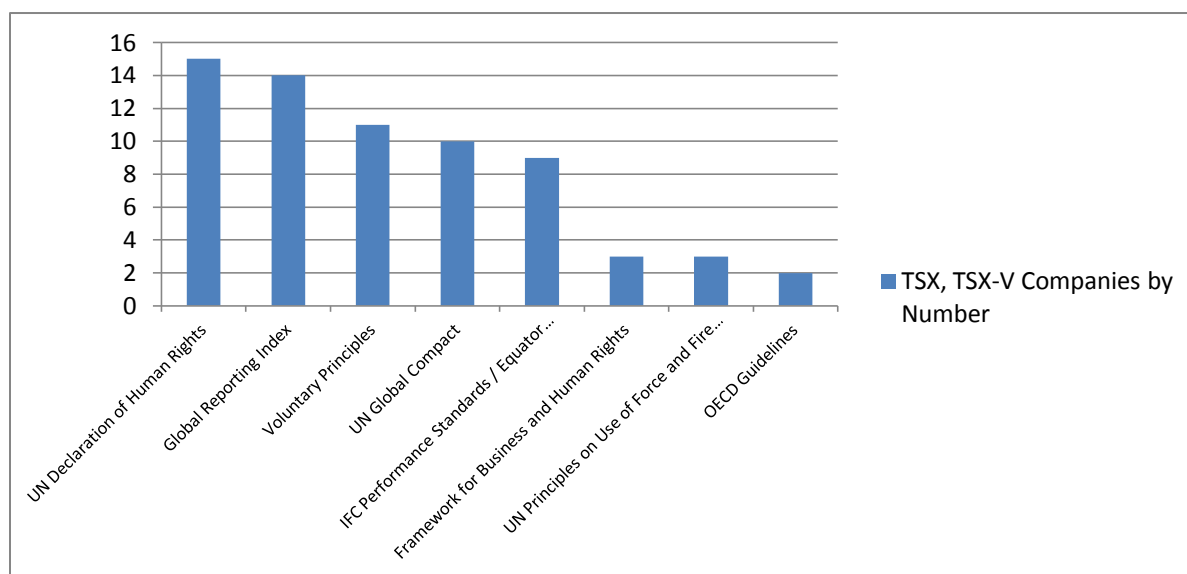


Figure 2 Number of Initiatives Adopted

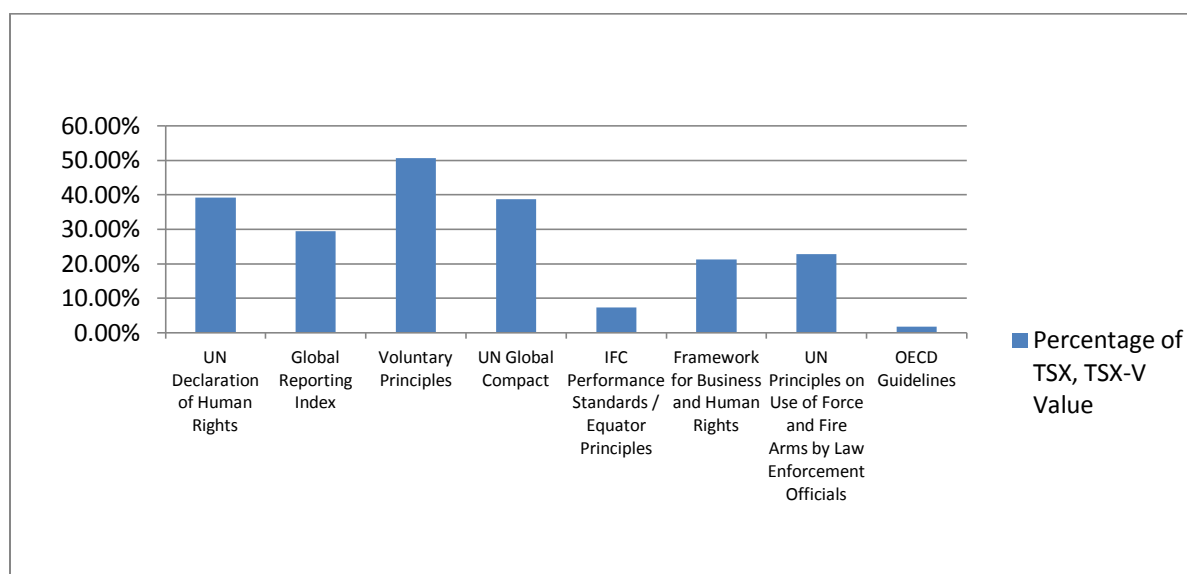


Figure 3 Initiatives by company value

This data shows that the Voluntary Principles are, when considering number and value of companies, the most widely adopted regulatory initiative among Canadian extraction companies. One can assume that the Voluntary Principles enjoy this popularity in large part because of its relative procedural value (establishing best practices for security) in addition to its reputational benefits. The Voluntary Principles, as discussed in the previous chapter, are best described as guidelines—they

provide direction and are less prescriptive and enforceable than standards such as the Equator Principles and the IFC Performance Standards. While the Voluntary Principles may enjoy popularity because of international “peer pressure” among the largest extraction companies, it may also be that Canadian businesses find this mix of direction and reputational benefits (without serious enforcement mechanisms) attractive. By comparison, the IFC Performance Standards are endorsed less often. The IFC Performance Standards promote very similar security practices as the Voluntary Principles, but is enforced only when companies seek World Bank funding.

Although Canadian extraction companies do not generally adopt regulatory initiatives which resemble standards, there is a variety of other regulatory initiatives represented in the survey data. Principled regulatory initiatives (those which are based on “truths” or rights and are highly interpretive) such as the UN Declaration of Human Rights and the Global Compact are just as widely referenced as guidelines - the Voluntary Principles, John Ruggie’s Framework for Business and Human Rights, etc. It should be noted that the Global Reporting Index is slightly different than other initiatives as it is a format for companies to measure their human right and security policies. It should be noted though, that while the GRI was widely used the one indicator relevant to private security, “HR8 - the percentage of security personnel trained in human rights” was reported by only one company.

Industry Regulatory Initiatives

Few companies surveyed reported adopting industry regulatory initiatives and half of those who did had also adopted several international regulatory initiatives. Only two industry regulatory initiatives were reported which were relevant to this study.²⁷ Both are initiatives from the mining industry -

²⁷ Notably absent in this survey was the Prospectors and Developer Association of Canada’s (PDAC) e3 Plus initiative. PDAC represents junior exploration companies and its e3 Plus initiative features a number of guidelines on human rights based on the UN Declaration of Human Rights and John Ruggie’s business and human rights framework.

the International Council of Mining and Metals' (ICMM) Sustainable Development Framework and the Mining Association of Canada's Towards Sustainable Mining (TSM) initiative.²⁸ Only eight companies reported adopting these initiatives and, as with international regulatory initiatives, all eight were major mining companies. The four who reported adopting the ICMM's Sustainable Development Framework (Teck Resources, Goldcorp, Sherritt International, and Gabriel Resources), represent \$24.1 billion in net worth (10.5% of companies surveyed by value). Similarly, the other four companies (Agnico-Eagle Mines, IAMGold, HudBay Minerals, and Breakwater Minerals) who adopted the TSM initiative represented \$20.6 billion in net worth (9% of companies surveyed by value). This data further points to the conclusion that regulatory initiatives are by and large adopted by the largest extraction companies.

National Regulatory Initiatives

There are several type of national regulation – Canadian state regulation (while there is no formal Canadian regulation there have been several cases of abuse brought before Canadian courts); Canadian self-regulation (i.e. voluntary regulatory initiatives established in Canada and Canadian organizations which promote self-regulation); host country regulation (laws, policy, etc); and host country self-regulation (initiatives developed in the host country, or host country organizations which promote self-regulation).

Ten companies in this survey mentioned some form of national regulatory initiatives. Five related to host country self-regulation. Namely, awards from host-country CSR organizations – four Socially Responsible Company distinctions from the Mexican Center for Philanthropy and one distinction from Peru's Native Federation of Cacataibo Communities (an initiative to protect isolated indigenous populations). With regards to Canadian self-regulation - nine companies mentioned participating in

²⁸ As discussed in the previous chapter, both these initiatives mention relatively little that relates to private security.

the Canadian Business for Social Responsibility (CBSR). The CBSR does not have its own regulatory initiative, but does provide consultation on how companies can improve their CSR practices (CBSR 2008). Two companies reported participating in the Devonshire Initiative – a forum for NGOs and mining companies to improve CSR practices – and one company reported adopting the Canadian Government’s own *Canadian CSR Strategy for the Canadian International Extractives Sector*.

Again, the companies which adopted these initiatives were the largest of the extraction companies. Combined the net worth of these ten companies is roughly \$32.4 billion. This represents 14.1% of the total value of the companies surveyed.

Company Security Policies

Among the 267 companies surveyed 20 made reference to internal security policies featuring the use of private or public forces. Barrick Gold, for example, has published its security policy and made reference to separate security management systems (Barrick Porgera Joint Venture 2011). Most references to security, however, tend to be cursory. Ivanhoe Minerals Ltd in its annual report, for instance, writes, “we are committed to the assessment of potential human-rights risks associated with security arrangements that may be required from time to time to maintain public and employee safety and to secure corporate assets in compliance with prevailing laws” (Ivanhoe 2009, 4). The amount of information on these policies varies although commonalities include respect for human rights, human rights training for personnel, risk and impact assessments, community consultation, and several companies also mentioned using the Ethics Point Hotline to collect anonymous grievances.

By number these 20 companies represent 7.5% of the companies surveyed, but make up a significant 54.9% of companies by value. Again, this indicates that the majority of very large extraction companies have some form of (internal) security policy. 15 of these companies mentioned

adopting at least one international regulatory initiative as well. Eight of these 15 mentioned adhering one of the two in-depth regulations on private security - the Voluntary Principles, or the IFC Performance Standards. An internal policy on security will complement a company's commitment to regulatory initiatives, especially since the relatively sparse text of many regulatory initiatives will need to be translated into more concrete policies. Even comprehensive toolkits such as International Alert's Conflict Sensitive Business Practices will need to be translated into practice.

There are 19 companies which stated support for regulatory initiatives, but did not mention an internal security or human rights policy. These companies may have security policies that they have not made publically available. It may also be that companies have adopted regulatory initiatives with no intention of creating a security policy.

Philanthropic Initiatives

Philanthropy is by far the most commonly used approach to CSR by Canadian extraction companies. Of the 267 extraction companies in this survey 47, or 17.6%, reported being involved in only philanthropic initiatives of some sort. Philanthropic initiatives are the only CSR related activity mentioned by junior mining and oil and gas companies listed on the TSX Venture.²⁹ Many of the companies listed on the TSX Venture are small exploration companies with limited resources and they likely do not have (or consider themselves to have) the human or financial resources needed to implement some of the larger, more complex regulatory initiatives such as the Voluntary Principles. Small extraction companies may not consider their operations large enough to have a security policy.

The reliance of smaller extraction companies on philanthropy is worrying because it demonstrates a rudimentary understanding of CSR and, more importantly, because it is ineffective in preventing human rights abuses – by private security or otherwise. It is understandable that small

²⁹ Philanthropy is often the only initiative mentioned by smaller mining and oil and gas companies listed on the TSX as well.

companies may not have a dedicated private security policy, or even a fully-fledged CSR policy, but there are several off-the-shelf toolkits – such as International Alert’s Conflict Sensitive Business Practices, or Rights and Democracy’s human rights assessment - which even companies of only a few people may use.

The wide use of philanthropy, though, does indicate that a significant portion of extraction companies of all sizes considered community engagement an important part of their business – either as a means to improve public image, or as a sincere means to improve life around their operations. Given this trend it is possible that if regulatory initiatives become the expected company norm then regulatory initiatives may become popular with small companies. A larger paradigm shift in the extractive sector would still be needed, though, to make CSR a key concern for all extraction companies.

Other Initiatives

Canadian Business for Social Responsibility and the Devonshire Initiative are not regulatory initiatives or regulatory institutions per se but work with extraction companies to promote regulatory initiatives. Of the companies surveyed 11 work with the Canadian Business for Social Responsibility and two mentioned involvement with the Devonshire Initiative. Canadian Business for Social Responsibility, as mentioned in the previous chapter, provides guidance to companies on implementing regulatory initiatives. The Devonshire Initiative is a collaborative forum for extraction companies, NGOs, academics and other stakeholders to improve CSR practices in host countries (Devonshire Initiative, 2012).

Three companies also mentioned using the Ethics Point Hotline, a third party, confidential, grievance mechanism. The hotline provides a multi-lingual call centre, web reporting and compiles information on cases of alleged abuse or misconduct (Ethics Point 2012). This service appears

intended for occupational incidents, but could potentially be used to report human rights abuses, if promoted by companies as such.

Canadian versus British Stock Exchange

The same survey conducted of the TSX and TSX Venture was conducted of the London Stock Exchange (LSE) and Alternate Investment Market (AIM) in order to compare how regulation of private security may differ between countries. The LSE – the British listing for major extraction companies - and the AIM – the listing for smaller, venture companies – also features a large number of extraction companies and are comparable to the TSX and TSX Venture (although the LSE and AIM have fewer extraction companies than the TSX and TSX-V). The LSE and AIM, therefore, are a good point of comparison. This comparison will help indicate whether Canadian extraction companies are taking the lead on regulating security, or if they are following a global trend.

For this survey 174 extraction companies were chosen from the LSE and AIM based on the list of oil and gas and mining companies provided by both markets. The same methodology was then applied to this sample – companies were surveyed on their endorsement of regulatory initiatives. The results were relatively similar to Canadian companies. This is to say that British companies (those which are listed on the LSE or AIM and are have headquarters in the UK) adopt international, national and industry regulatory initiatives in roughly the same numbers as Canadian companies. They also adopt a similar number CSR policies and participate in a similar number of philanthropic initiatives. Of the 174 companies surveyed 121 operated in developing countries and 12 adopted international regulatory initiatives and five adopted industry regulatory initiatives. 28 companies, furthermore, participate in philanthropic initiatives. Although it is hard to draw a firm conclusion from this brief comparison, the similarity between the LSE/AIM and the TSX/TSX-V appears to indicate that the international extraction industries are adopting regulatory initiatives at roughly the

same rate. There does not appear to be a significant difference between countries in the rate of adoption. This may indicate that Canadian government agencies which have promoted voluntary compliance with regulatory initiatives may have had limited success.³⁰ Or that government promotion of regulatory initiatives has the same rate of success in the UK. This also puts into question Canada's claim to be a leader in CSR for the extraction industry.

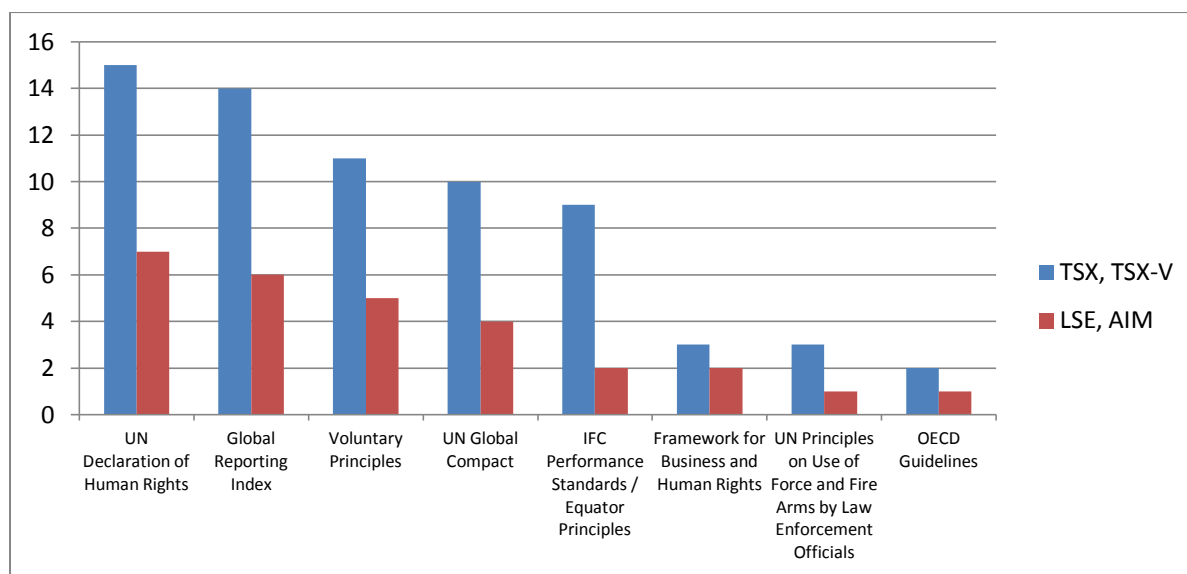


Figure 4 Initiatives as adopted by the TSX and LSE

Conclusions

This chapter concludes that, by number, roughly 65% of Canadian extraction companies included in this survey have no CSR policy. Of the remaining companies, roughly 18% claimed to be only involved in philanthropic initiatives. Only about 17% of Canadian extraction companies reported endorsing a regulatory initiative related to private security. By value, though, those firms which endorse some form of private security regulation represent 78% of the TSX and TSX Venture. This indicates that security regulation is predominantly endorsed by large extraction companies.

Companies such as Barrick Gold and Talisman Energy are far more likely to endorse several regulatory initiatives than are small exploration companies. While larger firms appear to see the value in

³⁰ For example, there appears to be little support for the OECD Guidelines by Canadian companies despite the efforts of the Canada's National Contact Point to promote the Guidelines since 2001.

endorsing regulatory initiatives it cannot be said that regulation of private security is a norm across all of Canada's extractive sector.

This chapter finds that the Canadian extractive sector advantage with regards to regulating private security is dubious at best. Despite the endorsement of large extraction companies few companies have adopted CSR initiatives. Moreover, Canadian extraction companies when compared to extraction companies in the United Kingdom do not appear to adopt regulation at a greater rate. In absence of Canadian legislation and government regulation of Canadian extraction companies it cannot be said that the extractive sector as a whole has publically demonstrated its commitment to regulating itself.

Chapter 4 - Incidents of Human Rights Abuse by Private Security

This chapter features cases involving incidents over the last ten years where private security guards working for Canadian extraction companies in developing countries have committed, or are alleged to have committed human rights abuses. A list of incidents was drawn from a survey of Canadian media outlets watchdog NGOs, Special Representative John Ruggie's resource centre, and cases brought before the OECD Guidelines National Contact Point and the CSR Counsellor for the Extractive Sector, and legal cases brought against Canadian extraction companies. This list is not intended to be comprehensive. It is very likely that there are incidents of human rights abuses by private security guards which have not been reported by the media or NGOs, or which have been resolved or covered up before they reached public attention. Also, incidents which occurred several years ago may not be representative of how companies currently do business. Accordingly, this chapter is not intended to be a "report card" on how Canadian extraction companies are implementing regulatory initiatives on the ground. Rather, the cases will be used to explore challenges companies have in implementing regulatory initiatives, despite their public endorsement. These challenges include problems of command and control, training, supervision, reporting, and community relations. Studying these cases will give an indication of the work required to translate abstract principles into company best practices and the level of due diligence required to implement those practices on the ground.

This chapter assumes that host governments bear the ultimately responsibility for the security of its people and territory. Instances of murder, torture, and sexual assault, for example, are best dealt with by local police and courts. Extraction companies, though, are expected to take all reasonable precautions to prevent human rights abuses by their security personnel and to take remedial actions when abuses occur. Extraction companies operating in developing countries in some cases have more resources than local or national governments. In areas of weak governance

companies may have significant influence in preventing human rights abuses by private security personnel. In areas where human rights abuses are more likely to occur (in areas prone to violence, where there is ethnic conflict, or where security forces are known to abuse their power) extraction companies face a greater challenge in ensuring they are not complicit in and do not facilitate abuses. Put another way, human rights abuses by private security personnel is a risk associated with operating in certain parts of the world and while extraction companies are not responsible for establishing rule of law, they can be reasonably expected to mitigate the risk of human rights abuses being committed by private security guards which they employ.

This chapter, and this research, focuses on private security personnel instead of state security forces because they have the clearest command and control relationship with extraction companies. Extraction companies have more power and authority to dictate how private security personnel interact with local communities (since they work on the company's behalf), as opposed to public security forces which are at least nominally under the command and control of the state. Accordingly, extraction companies also bear more responsibility to ensure that security personnel respect human rights. The previous chapter, though, demonstrates that few Canadian extraction companies have publically adopted regulatory initiatives related to private security. This chapter intends to illustrate what types of problems might arise from not implementing such initiatives, the problems related to implementing an initiative once it has been adopted, and analyzes factors that should be considered when incorporating private security into company policy.

The focus here is on four incidents where private security working for Canadian extraction companies have been involved in human rights abuses and one which involves public forces. It highlights incidents involving: Barrick Gold and Placer Dome at the Porgera mine in Papua New Guinea, Barrick Gold at its North Mara mine site in Tanzania, HudBay Minerals at the Fenix mine in Guatemala, Copper Mesa Minerals at a potential mine site in Junin, Ecuador and, Toronto Ventures

Incorporated (TVI) Pacific in Siocon, the Philippines. Each incident involved human rights abuses committed by security forces employed a Canadian extraction company. In each case abuses were committed against non-employees living nearby to an extraction site (or potential extraction site).

Placer Dome and Barrick Gold in Papua New Guinea

The most well documented cases of human rights abuses by private security personnel (courtesy of a 2011 report from Human Rights Watch) started in 2006 around the Porgera Joint Venture (PJV) mine in Papua New Guinea owned by Canada's largest mining company, Barrick Gold. The Porgera mine opened in 1990 and was taken over by Barrick Gold in 2006 (Human Rights Watch 2011, 2).³¹ The Porgera mine has produced an large amount of gold – 16 million ounces, or \$20 billion worth, and it is expected to continue production into 2023 (Ibid). The Porgera mine alone is responsible for 11% of Papua New Guinea's GDP (Barrick Gold 2011). The mine is situated in the Enga province – a traditionally restive area of Papua New Guinea. The province is known for tribal infighting and violent crime. The mine itself has attracted many illegal miners – most of whom simply chip away at waste rock, but there are others who often attempt to raid the mine site (Human Rights Watch 2011, 9).

The government provides an insufficient, poorly equipped, number of police officers to police the mine site and area surrounding it (Human Rights Watch 2011, 9). The public also widely distrusts the police “due to the force's reputation for violent abuses and incompetence” (Ibid). Barrick Gold, therefore, currently employs 443 private security personnel around Porgera as part of their Asset Protection Department (APD) - 279 local hires from around Porgera, 153 national hires (from outside the area), and 11 international hires in training and supervisory roles (Human Rights Watch 2011,

³¹ Barrick Gold owns 95% of the Porgera Mine. The remainder is owned by the Papua New Guinea government (Barrick Gold 2011)

43).³² The APD provides site security under direct command and control of Barrick Gold. Also, in order to promote security in the area around the mine site, in 2009 Barrick paid much of the cost for the Government of Papua New Guinea to deploy a temporary 150 person mobile police squad to the area (Human Rights Watch 2011, 9). Roughly 70 personnel remain as part of this deployment (Human Rights Watch 2011, 56).

Before and after Barrick took over PJV, local activists have regularly claimed that police deployed to the area and private security personnel working for the mine have murdered and abused illegal miners and local residents (Human Rights Watch 2011, 5). The 2011 report by Human Rights Watch documents six allegations of gang rape since Barrick Gold took over the mine from Placer Dome in 2006 (Human Rights Watch 2011, 9). Women reported being abducted, brutally beaten, and repeatedly raped by groups of security guards (Human Rights Watch 2011, 10). Several were given a “choice” of being raped or going to jail (the local mine site lock-up) (Ibid). None of these instances were reported to local police since the women feared retribution and punishment for illegal mining (Ibid). Women were also reluctant to report to the police given that charges of sexual assault by police officers are common in the area (Ibid).

Despite these abuses which occurred during Barrick’s ownership of PJV, Human Rights Watch notes that Barrick Gold had taken several measures to improve the conduct of security personnel around Porgera after gaining control of it in 2006. Barrick Gold adopted the Voluntary Principles in 2010 (after many of the abuses by private security took place) and also claims adherence to Papua New Guinea law, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement

³² APD’s local hires generally have no background in security work and do not carry firearms; PJV uses them primarily to carry out relatively straightforward tasks like guarding fixed positions and acting as points of contact with illegal miners and other community members. In contrast, many of APD’s “national hires” have a police or military background. Some are police reservists, and at least a few are regular police officers who have taken extended leave from their jobs to accept better-paid positions with PJV. The national hires do the heavy lifting; they are assigned the most dangerous duties, including confronting illegal miners in the open pit, and they constitute the bulk of APD personnel who carry firearms. Human Rights Watch 2011, 43-44.

Officials, the UN Code of Conduct for Law Enforcement Officials, and the UN Global Compact (Barrick Gold - Porgera Joint Venture – Illegal “Mining”, 2011; Human Rights Watch 2011, 55, 60). Barrick Gold took measures to implement the Voluntary Principles, but these were not sufficient to prevent abuses by security guards.

Barrick Gold funded several independent assessments of its mining operations to determine how their operations can be implement the Voluntary Principles (Human Right Watch 2011, 63) and internally, the company has produced the “Voluntary Principles Standard” that “defines the company’s interpretation and detailed requirements for implementation of the [Voluntary Principles], including responsibilities and accountabilities” (Human Rights Watch 2011, 63). Barrick Gold’s efforts to implement the Voluntary Principles include: 1) carrying out training on human rights principles and the Voluntary Principles for personnel in the Assets Protection Division; 2) investigating every incident involving use of force by APD personnel; 3) carrying out rigorous investigations of alleged incidents of abuse by APD personnel; 4) implementing policies regarding the use of force that the company says are “aligned with” the Voluntary Principles; and, equipping APD personnel with a range of less-lethal weaponry such as tear gas, rubber bullets, and beanbag launchers (Human Rights Watch 2011, 63-64). Practical measures to limit abuses included training in Papua New Guinea law (Barrick Gold – Porgera Joint Venture – Illegal “Mining”, 2011), radio networks, close-circuit tv, visual monitoring, and physical site inspections of the open pit, stockpile, and underground areas, as well as other central parts of the mine(Human Rights Watch 2011, 66).

Despite these efforts Human Rights Watch lists several security concerns Barrick Gold failed to address. Most notably, Barrick’s monitoring and grievance mechanisms were regarded as inadequate. Barrick Gold, for instance, did not initially know about the alleged sexual assaults that had been committed by its security guards (Human Rights Watch 2010). Many attacks occurred in isolated areas near the waste dump, away from close-circuit tv, radio networks, and site supervisors

(Human Rights Watch 2011, 66). Monitoring problems were compounded by issues of reporting – victims of abuse, too scared to go to the police and too ashamed to tell their community, did not have a means to complain directly to Barrick. Barrick Gold did establish a Community Affairs section to collect complaints, but it has never been used (Ibid). Community members either did not feel safe contacting the Community Affairs section, or did not know of its existence. With regards to disciplining security guards, Barrick Gold, according to Human Rights Watch, has left investigation of abuse to the police (2011, 67).

Barrick Gold in North Mara, Tanzania

The North Mara gold mine is a 42 square kilometre property consisting of three open pit deposits located near Tanzania's border with Kenya (Barrick – North Mara, 2011). In 2009 the mine produced \$204.8 billion in revenue and every day it produces 100 million pounds of waste rock (Simpson 23 December 2010). Local people scavenge this waste rock to glean trace amounts of gold (Simpson 23 December 2010). The mine is surrounded by seven villages which, aside from subsistence farming, heavily rely on mining waste rock for income (Legal and Human Rights Centre 2010, 47). There are few signs to distinguish mine property from local villages (Simpson 23 December 2010). Before the mining rights were sold to an Australian mining company 1996 roughly 40,000 small-scale miners depended on the mine for income (Simpson 23 December 2010). Barrick Gold acquired the mine in 2006 (Ibid).

Each day illegal miners flood the mounds of waste rock and conduct a “cat and mouse game” with security guards – illegal miners will typically have 30 minutes to sift stones before security guards appear and force them to flee. Miners will lie low for 10 or 15 minutes then return (Simpson 23 December 2010). Figures provided by Barrick claim 800 people trespass on the mine site everyday (Globe and Mail, 8 June 2011). Sometimes miners can bribe security guards to buy time on the waste

rock, but guards can quickly turn on miners if other guards arrive (Simpson 23 December 2010).

Barrick had set up a fence to keep out trespassers, but local miners tore it down (York, 8 June 2011).

The company currently plans to build a three-meter-high concrete wall around the mine site and waste heaps (Ibid).

A report by the Legal and Human Rights Centre of Tanzania (LHRC) estimates suggest that between 2009 and 2010, 21 people have been killed by police and security around the North Mara mine (LHRC 2011, 8). Additionally, five people were killed on 16 May, 2011 (LHRC 2011, 9). On that day 800 to 1 200 illegal miners crowded onto the waste rock piles, drawn by the rumour of waste rock high in gold (York, 8 June 2011). Barrick's private security guards were allegedly bribed to allow villagers in to scavenge the waste rock, but guards turned on villagers when police officers arrived (LHRC 2011, 9). In order to disperse the crowd police officers (it is undetermined whether private security guards were also involved) opened fire. In addition to killings, 12 police and security guards are alleged to have sexually assaulted women caught on the mine site (York, 30 May 2011).

During another incident in 2008, 3000 – 4000 villagers invaded the North Mara mine site, stoned security personnel and destroyed \$15 million worth of equipment (Saunders 14 December 2008). Barrick implied that the invasion was prompted by high levels of crime in the area (Ibid). It is also suggested, though, that local people attacked the property because of anger over the presence of the mine and harassment by Barrick's private security forces and government police officers. Local riot police were called in to disperse the intruders and at least one intruder was killed in the process (Simpson 23 December 2010).

Following these instances of abuse and after adopting the Voluntary Principles in 2010 Barrick Gold commissioned an independent investigation of its security services for the North Mara mine by the Tanzanian Ministry of Home Affairs (Barrick September 2011; York 30 May 2011). The investigation yielded further allegations of sexual assault against local women (Ibid). Women were

reportedly taken to holding cells on the mine property and threatened with imprisonment if they did not submit (Ibid). Barrick Gold mentioned that instances of human rights abuse would be “fully investigated and publicly reported” and “pledged to dismiss any employee involved in human-rights violations, or any employee who has knowledge of human-rights abuses and fails to report them” (Ibid)³³.

Prior to the events of 16 May 2011 and allegations of sexual assault by security guards Barrick Gold reportedly provided human rights training for security personnel and established a grievance mechanism with local communities (Barrick 30 May 2011). Ongoing initiatives after these events include: conducting human rights assessment of its operations, installing fences and walls, operating closed-circuit tv in sensitive areas and personal radio tracking (Barrick 30 May 2011). Reports are not yet available on how effective these efforts have been. It is still important to note, though, that Barrick, one of Canada’s largest extraction companies with a relatively robust CSR policy, was still not able to prevent human rights abuses.

HudBay Minerals’ Fenix Mining Project in Guatemala

The Fenix Mining Project is situated in eastern Guatemala and was operated by mining giant Inco from 1968 to 1982. The project features a functional nickel mine and smelting operation (HudBay Minerals 2010, 4). The property also includes 250 km of property for exploration concessions (Klippensteins 28 March 2011). In the 1960s Inco is alleged to have redrawn their property concessions to include nickel-rich land promised to indigenous Mayans. Currently, a portion of the mine property is contested by indigenous Mayan Q’eqchi’ who believe they have rightful claim to the land due to the provisions in the 1996 Guatemalan Peace Accords (Klippensteins 28 March 2011). In 1996 the mining concession was purchased from Inco by another Canadian company, Skye Resources,

³³ As of writing a public report from Barrick Gold is not yet available and neither is information on any private security personnel dismissed based on human rights abuses.

and in 2005 measures were taken to restart mining operations and remove Mayan inhabitants from the land. In 2008 HudBay Minerals bought the mine from Skye Resources for \$460 million (National Post 23 June 2008). The Fenix Mine is now operated by HMI Nickel, a wholly owned subsidiary of HudBay Minerals, which is worth approximately \$3.5 billion (TSX 30 September 2010).³⁴ HudBay minerals acquired HMI Nickel (formerly Skye Resources) 18 months after the incident at Lote Ocho (CTV 29 March 2011). Crucially, “at the time of the rapes despite the existence of subsidiaries, HMI/Skye legally and in fact directed, controlled, managed and financed all aspects of CGN’s operations” (Klippensteins 28 March 2011).

To provide security at the Fenix site HMI Nickel/Skye Resources hired a third party, Integracion Total S.A. (a local PSC) to augment public security at the Fenix property (Klippensteins 28 March 2011). Many employees were reportedly also members of previous security company, EXMIBAL, which worked for Inco and was also implicated in human rights abuses (Rights Action October 2003). The security situation in Guatemala is notoriously difficult and there are ongoing conflicts and tension between indigenous peoples and security forces. Indigenous populations suffered forced evictions, rape, and scorched earth campaigns during the 1960-1996 civil war and security forces in Guatemala continue to be prejudice against the Mayan population (Amnesty International 28 February 2002; Amnesty International 26 March 2006).

Before being purchased by HudBay Skye Resources reopening the Fenix mine faced resistance from local villagers and from indigenous people living on the mining concession. On January 17, 2007 hundreds of police, military and private security guards from the Fenix Mine forcibly evicted indigenous Mayan community members from Lote Ocho, an area which the community felt was traditionally theirs (Klippnsteins 28 March 2011). This operation followed a previous, smaller and unsuccessful eviction on January 8-9, 2007 (Klippensteins 28 March, 29). During the second

³⁴ In September 2011 HudBay sold the Fenix Mine to Russian Solway Group for \$170 million (Reuters 5 August 2011).

eviction private security guards from Compañía Guatemalteca de Niquel (CGN), a subsidiary of HMI Nickel (a subsidiary of HudBay Minerals) along with police and military personnel gang raped 11 Mayan women (Klippenstein 28 March 2011). CGN's private security guards employed at the Fenix Project "were directly or indirectly controlled by HMI/Skye from its head-offices in Canada and were engaged under instructions from and subject to continuing supervision by HMI/Skye" (Klippenstein 28 March 2011). HMI Nickel / Skye Resources did not adequately ensure that no human rights violations were committed during the forced eviction. Plaintiffs in an ongoing Ontario court case claim that HudBay Minerals is vicariously liable as it now wholly owns HMI Nickel (Klippenstein 28 March 2011). The 11 women in total are seeking \$11 in general damages and \$44 million in punitive damages (CTV 29 March 2011).

A second incident occurred, on 27 September, 2009 during an unexpected visit of the Governor of the Department of Izabal to the area (Klippenstein 28 March 2011). Security personnel employed by HMI Nickel/Skye Resources were present in the area at the time they allegedly killed Adolfo Ich Chamán, a Mayan community leader who opposed the Fenix Mining Project (Klippensteins 24 September 2010). While approaching a gathering of protesters Adolfo was intercepted by a dozen security guards including the head of CGN security, Mynor Padilla (Ibid). Without provocation, the security guards beat Adolfo and then Mynor Padilla fatally shot him at close range (Ibid). Angelica, Adolfo's widow is suing HudBay for \$12 million in damages in Ontario courts (Klippensteins 24 September 2010).

A third incident during the same day, 27 September 2009, involves the unprovoked shooting of local resident, German Chub Choc. German was standing on a soccer field near the Fenix compound fence when he was approached by CGN head of security Mynor Padilla (Klippensteins 26 September 2011, 11). Mynor Padilla allegedly shot German as he was trying to run away from CGN security. German survived the shooting, but is now a paraplegic and has lost the use of his right lung

(Ibid). German is suing for \$12 million in damages (Klippensteins 26 September 2011, 2). As with the previous two cases Klippenstiens, the law firm representing the victims, claims “HudBay Minerals negligently authorized the reckless and provocative deployment of heavily armed security personnel into Mayan Q’eqchi’ communities ... and negligently authorized the excessive use of force by its security personnel” (Klippenstein 26 September 2011, 2). Furthermore, regarding the subcontracting of security to the local security company Total, Klippensteins claims that:

The contract failed to include rules of conduct for security personnel, failed to impose standards regarding the use of force and failed to require adequate training of security personnel. Further, HMI/Skye failed to review the background of Integration Total prior to contracting with it to determine whether its members had been implicated in human rights abuses in the past. (Klippenstein 28 March 2011, 9.)

HudBay Minerals in response to the legal cases against it claims that CGN personnel were not involved in the death or injury of anyone on September 27, 2009 and cites independent observers and reports by the Guatemalan attorney general which claim that the January 17, 2009 evictions were carried out legally (HudBay 2011, 14). HudBay’s public response to the allegations in Klippenstiens’ statement of claims states that the company also adheres to the “UN Voluntary Principles on Security and Human Rights” (even though the Voluntary Principles is not a UN initiative) (HudBay Minerals 29 March 2011).

Starting in 2011 HudBay also included security regulation in its annual sustainable development report. The 2010 report (released in 2011) states that the company’s adherence to the Voluntary Principles, the UN Code of Conduct for Law Enforcement Officials, and Towards Sustainable Mining’s Sustainable Development Framework (HudBay Minerals 2011). The 2010 reports that HudBay was, at the time and after the allegations of abuse, conducting “extensive training of security personnel” and actively participated “in community groups promoting security and dialogue, and supported of the community’s call for greater government security assistance” (HudBay Minerals

2011, 14).³⁵ The statement of claims made against HudBay acknowledge that the company has adopted the Voluntary Principles but charges that “HudBay did not, in fact, implement or apply these standards in the hiring, directing or supervising of security personnel engaged at its Fenix Project” (Klippenstein 26 September 2011, 7-8).

Copper Mesa Mining Corporation in Intag, Ecuador

Copper Mesa Mining (formerly Ascendant Copper) is a junior Canadian mining company which was involved in a conflict over mining concessions in Ecuador between 2004 and 2008. The two proposed copper mines are located in Intag, a small, rural village in Ecuador. This area is part of the Ecuadorian cloud forest, known for its beauty and biodiversity. Local resistance to mining in the area began in the early 1990s when two mining concessions were sold to a Japanese company, BishiMetals (Friends of the Earth 2012). BishiMetals left after violent opposition from the community –buildings and equipment were destroyed during community protests (Ibid). Copper Mesa bought the mining concession in 2004 and began to prepare an environmental impact study, raise capital, and seek community approval (Ibid). Community resistance continued against Copper Mesa and community members often prevented those associated with the mining company access from having access to the concessions.

Between 2004 and 2008 Copper Mesa was involved in a conflict with the people of Intag over a proposed mine near the village of Junin. After raising capital on the TSX, Copper Mesa’s hired a private security force (56 personnel) which allegedly included many former members of the Ecuadorian military (Klippenstein 3 March 2009, 16). These security forces reportedly threatened anti-mining community members and on November 2006, they were involved in a conflict with anti-

³⁵ The percentage of security guards given human rights training – a GRI performance indicator – was not provided.

mining protesters in which “tear gas, machetes and guard dogs were used to disperse the crowd” (Ibid).

On December 2, 2006, the same private security personnel confronted community members who had set up a roadblock near the village of Junin. After a brief confrontation with community members, security forces used pepper-spray and fired small arms into the air (Ibid). This show of force, though, was not able to disperse the crowd at the roadblock and the security personnel were forced to leave. The next day the same security forces were surprised and captured by a group of local villagers. The security guards were then held for five days in the Junin church. The men were released once the government of Ecuador was able to negotiate their release. Three villagers who were injured during this confrontation later attempted to sue Copper Mesa and the TSX.³⁶

Many of the personnel in this incident were former military personnel who worked for a private security firm called Falericorp which, in turn, is a subsidiary of international security firm Honor and Laurel based in Colombia (Zorrilla 17 April 2007; Zorrilla 11 July 2007; MiningWatch Canada 24 December 2009). Falericorp reportedly hired another firm, Segurivital,³⁷ to quickly recruit the 56 personnel involved in the December 2nd incident (MiningWatch Canada 24 December 2009).³⁸ The newly-hired guards were given uniforms and weapons and sent to Junin to try and secure a mining camp (Ibid). Falericorp also allegedly hired an Ecuadorian army helicopter to ferry supplies to the mining camp which was never establish (Ibid).

Copper Mesa Minerals is no longer listed on the TSX Venture and no longer has a company website either. It cannot be determined if Copper Mesa currently claims to adopt any regulatory initiatives, but while still in operation the company claimed to endorse the UN Global Compact. With

³⁶ The court case against Copper Mesa was dismissed in May 2010. The Ontario court stated that there should be guarantees that “the actions of [Canadian] companies are carried out with the same care and attention as if they were in Canada”, but that it was a matter for legislature, not the courts (Klippenstein 7 May 2010).

³⁷ It is uncertain whether Copper Mesa was aware that Segurivital was subcontracted, or what command and control relationship it had to personnel on the ground.

³⁸ Guards were reportedly taken “off the street” (Zorrilla, Decoin 11 July 2007)

regards to these incidents a local NGO based in Intag, DECOIN (Defensa y Conservacion Ecologica de Intag) claims that human rights violations by Copper Mesa “can be attributed to the lax, or practically non-existent regulation by the Canadian authorities of its corporations, and the ease of listing in the Canadian stock exchanges” (Zorrilla, 21 December 2009). The response from President Raphael Correa’s government was to order Copper Mesa to suspend operations in September 2007. Later the government of Ecuador withdrew Copper Mesa’s concession in January of 2008 after claiming that they (and 586 other companies) did not pay their annual fees on time (Mines and Communities 28 January 2008).

TVI in the Philippines

Toronto Ventures Inc Pacific (TVI) is a senior mining company valued at approximately \$12 million that has faced ongoing opposition of its mining operation in the region of Canatuan in the Philippines (TSX September 2010). In 2005, TVI Pacific began operating a copper and zinc mine in the Province of Zamboanga del Norte on the island of Mindanao in the Philippines. The mine is situated on Mount Canatuan which the local Subanon tribe considers to be sacred - and which is slowly being levelled by the mine (Mines and Communities 24 May 2011). Tension between TVI Pacific and the community also exists because the mine has displaced families, has affected rice farmers and fishermen downstream, and has interrupted the livelihood of artisan and small-scale miners (Rights and Democracy 2007, 38). The Subanon also argue that free and prior informed consent was not given before the mine was established (MiningWatch 17 May 2004).

Security in the area surrounding the TVI mine has been a concern for the last 30 years as the government battles the Abu Sayyaf Group and the Moro Islamic Liberation Front in an ongoing low-intensity conflict (Rights and Democracy 9 September 2005, 10). The roads in the Canatuan were also known for ambushes. TVI’s use of security is difficult to categorize for the purpose of this study.

TVI hires members of the Special Citizens Armed Forces Geographical Unit Active Auxiliary (SCAA) who are trained and equipped by the Armed Forces of the Philippines but employed by TVI (Mining Watch 13 August 2005). When TVI moved into the area in the 1990s it established checkpoints along the roads to its mining site using the SCAA and private security personnel from the Golden Buddha Security Agency (Ibid).

Other points of contention are that the TVI open-pit mine was in place before the passing of the Indigenous Peoples Rights Act which requires free, prior and informed consent from local communities before beginning extraction operations and there is concern that the mine is destroying a mountain to considered sacred by locals (BASES 2011). In response, community members have staged ongoing protests to the mine and applied for (and been granted) a Certificate of Ancestral Domain Title which covers the entire mine site (Mines and Communities 20 June 2007).

In March and December of 2002, members of the Moro Islamic Liberation Front killed 15 people along one of the Canatuan roads – including members of the SCAA, mine employees and civilians (Ibid). In response to violence in the area TVI signed a memorandum of agreement with the Philippine Army to protect the property of the company – although TVI corporate affairs advisor stated that the SCAA was also employed to protect the surrounding population from the Moro Islamic Liberation Front as well (Ibid).³⁹

Despite their charge to provide peace and security to the region, members of the SCAA on several occasions were charged with aggression towards local people. During a protest on 17 March, 2004, for example, SCAA troops, led by a retired Filipino army colonel, opened fire on a group of protesters wounding four (MiningWatch Canada 17 March 2004). SCAA guards have also been accused of threatening villagers marked for forcible eviction (MiningWatch Canada 24 October 2006),

³⁹ As of January 1, 2008 this memorandum of agreement was terminated and security of the Canatuan region was to be handled by TVI's in-house private security firms TVI Security Force Inc, TVI Community Protection Inc, and the Philippine National Police (TVI Philippines 26 October 2007). In 2012, many of the SCAA now work for TVI's private firms.

controlling the movement of goods and people on public roads (MiningWatch Canada 13 August 2005), attacking the daughter of a prominent community leader (Mines and Communities 1 February 2007), and aiding in the forcible eviction of community members (Mines and Communities 20 June 2007). In March 2011 there were also unconfirmed reports of a rural protester shot dead by security guards when he set up an impromptu roadblock (Martin and Nally 22 March 2011).

TVI publically endorses the Voluntary Principles, John Ruggie's Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (TVI 2011). On its website also claims to have conducted internal studies on human rights and its human rights practices and is also involved in several philanthropic initiatives (Ibid). Even in the reporting on TVI there is sometimes confusion between the SCAA and company security forces (MiningWatch 13 August 2005; MiningWatch 24 October 2006; Mining and Communities 22 June 2007). Although this case does not strictly fulfill the definition of private security set out in this study, it is worth considering because TVI had some influence the command and control of the SCAA as a cohesive unit and because TVI took similar steps to regulate the SCAA as if it were a private security force. This case also demonstrates the confluence of private and public security forces.

In 2006 TVI reportedly underwent a restructuring to incorporate human rights into its operations (BASES 2011). In 2007 TVI partnered with the Filipino military and the Commission for Human Rights to implement a human rights training program for the SCAA based on the Voluntary Principles (TVI 27 April 2007). The aim of the training was to sensitize security personnel to human rights and to familiarize them with Filipino and international law (Ibid). This training is in addition to human rights training provided to recruits by the Filipino military (Ibid). Also, TVI has implemented a grievance mechanism whereby community members can bring a grievance directly to TVI through its Communication-Education-Information campaigns, or indirectly through meetings of the Tribal Council of Elders (BASES 2011).

Conclusions

These five incidents are not a sufficient basis to draw reliable conclusions about how Canadian extraction companies are implementing regulatory initiatives on the ground. However, after surveying Canadian media outlets, NGOs, government documents and all incidents documented by John Ruggie's resource portal it can be safely assumed that Canadian extraction companies are not wild and reckless in their use of private security. Considering that there are currently 267 extraction companies operating overseas, four reported cases (five if one includes TVI in the Philippines) of human rights abuses by private security over the last ten years does not indicate a crisis.⁴⁰ Regardless, these incidents indicate that extraction companies of all sizes can be implicated in human rights abuses and that endorsing regulatory initiatives does not, in and of itself, prevent human rights abuses by private security personnel. These incidents provide some insight into how private security can be successfully regulated on the ground.

These incidents, first of all, show that extraction companies of all sizes can be responsible for human rights abuse perpetrated by private security personnel. Barrick Gold, Canada's largest mining company, despite its extensive resources was not able to prevent human rights abuses at two of its mine sites. Skye Resource – a medium sized mining company – and Copper Mesa – a small, junior mining company – were implicated in human rights abuses by private security personnel as well. That private security guards working for any sized extraction company may be involved in human rights abuses is particularly important given that very few of the junior exploration companies listed on the TSX and TSX Venture publically endorse regulation of private security. Given that the risk of human rights abuses by private security appears to apply universally to extraction companies large

⁴⁰ Unfortunately, this research is not able to determine how many Canadian extraction companies make significant use of private security in developing countries.

and small a universal system of regulation would be more apt, rather than a voluntary system of regulation that only the largest companies tend to endorse.

Neither did voluntarily endorsing regulatory initiatives in any of the cases in this chapter prevent human rights abuses by private security personnel. In all cases is a large gap between endorsement and implementation. Barrick Gold, HudBay, Copper Mesa, and TVI have all endorsed regulatory initiatives such as the Voluntary Principles, but these initiatives do not describe specific procedures companies should put in place to prevent human rights abuses. Most regulatory initiatives are guidelines - vague and general enough to apply to all companies – which means they need to be translated into concrete company policies. Even when regulatory initiatives have been implemented as company policy there should still be an ongoing learning process on how to improve day-to-day operations in order to prevent human rights abuses.

These five case studies indicate how challenges in preventing human rights abuses might be successfully overcome by implementing human rights policies and procedures. Overcoming these challenges will require strong business practices related to: vetting personnel, conducting human rights training, command and control of personnel on duty, and disciplining misconduct. Human rights abuses can occur quickly out of chaotic situations (such as a rush of villagers entering a mine site) and can be committed by any security personnel on the ground. The actions of a nervous and untrained private security guard who shoots at community members, for example, can cause serious suffering to local community members in addition to costing a company millions in legal fees and harm to its reputation. The more human rights are institutionalized into an extraction company's day-to-day operations the less likely individuals are to commit abuses.

Vetting private security personnel,⁴¹ for example, if incorporated into business practice, might have prevented human rights abuses by security guards working for HudBay Minerals and

⁴¹ To include a thorough background check to make sure that personnel do not have a criminal record and are not implicated in any previous human rights abuse (or associated with any groups or organization which was).

Copper Mesa. In both cases security guards were sub contracted (or sub-sub contracted) shortly before being tasked (to remove indigenous residents from Lote Ocho in Skye Resource's case, or to gain entry to the Junin concession in Copper Mesa's case). Taking time to put personnel through a vetting procedure would have first, given HudBay and Copper Mesa greater situational awareness of their operations and, second, provided an opportunity to remove personnel responsible for abuses in these incidents.

In all of the cases in this chapter human rights violations may have been avoided by providing substantial human rights training to all personnel. This may include training on universal human rights, a company's code of ethics, rules of engagement. Training on rules of engagement, for example, may have prevented the shootings at Barrick's North Mara Mine and the attack on villagers by Copper Mesa's security guards in Junin. In both cases security guards used an unnecessary escalation of force which could have been avoided. Training, of course, may not always prevent abuse, but it establishes standards and asserts that extraction companies will not be complicit in human right abuses by their security personnel.

Command and control procedures should be implemented to monitor and direct security personnel. In the case of the shootings in North Mara, the evictions in Lote Ocho, and the attack in Junin company leadership from Barrick, Skye Resources, and Copper Mesa respectively were not able to control the conduct of security personnel. Communication with security personnel was not established so companies could not monitor them. Security personnel, therefore, worked with semi-tacit approval from the extraction companies. Barrick at the Porgera mine it should be noted has implemented radio networks, close-circuit tv, visual monitoring, and physical site inspections of the mine site, yet even these efforts did not extend far enough to prevent human rights abuses from being committed by security guards beyond the central mine site (Human Rights Watch 2011, 66).

Additionally, despite HMI Nickel/Skye's professed adoption of the Voluntary Principles and the IFC Performance Standards, key personnel at HMI Nickel/Skye were responsible for deciding to commit private security personnel to participate in the forced evictions without adequate control or supervision.⁴² The use of CGN and Total personnel in the force evictions indicates a misunderstanding of regulatory initiatives or an unwillingness to incorporate regulatory initiatives into corporate decision making.

Procedures for disciplining misconduct should have also be implemented on the ground. Disciplining personnel (through fines, dismissal, etc) reinforces the standards for behaviour which the company expects and helps prevent future human rights abuses. All personnel must be well aware of the punishment for misconduct. In all the cases in this chapter a well established disciplinary procedure would have given security personnel pause before committing abuses.

For Barrick, HudBay, Copper Mesa, and TVI to have properly implement regulatory initiatives on the ground these challenges (vetting, training, command and control, and discipline) needed to be overcome by institutionalizing human rights policies into their company's day-to-day operations. Institutionalizing human rights needed to incorporated into a new approach to operations – a commitment which is well beyond making a regulatory initiative fit into a company's old way of operating.

Also of note is that in all cases private security guards were connected to public forces in some way. Private security guards were either working directly with public security forces (military or police), private security personnel were ex-military or police force, or private security forces had logistical support from public forces. The host state, therefore, can be seen to implicitly - or in some cases, explicitly – support human rights abuses by company forces. The close relationship between

⁴² The Statement of Claim against HudBay Minerals indicates that HMI/Skye appointed specific managers – a country manager, a VP Environment, Health, Safety and Community Affairs, and a VP Operations – to oversee security personnel at the Fenix Project (Klippenstein 28 March 2011, 13). These personnel, located in Canada, were responsible implementing the Voluntary Principles and IFC Performance Standards at the Fenix Project.

public forces and private security for extraction companies often means that symbolic capital is shared between the two. This relationship can become even more convoluted when the police or the military are asked to investigate human rights abuses by private security – as was the case with Barrick Gold at the Porgera mine. The challenge for companies then is to supervise personnel and exert command and control over private security forces in an environment in which private personnel may feel they act with the tacit support of the state. Companies should be aware of the moral hazard they place private security personnel vis-a-vis their relationship with public forces.

Although this research focuses on private security it bears consideration that there is often a murky distinction between private and public security forces. In cases where public and private security personnel work together they can often be seen to operate as part of a hybrid security network which links private and public actors. In several of the cases presented here both private and public security personnel work in the combined interest of the extraction company and the state (which hold a share in extraction operations). Public forces gain symbolic and financial capital from extraction companies while private security personnel gain legitimacy and authority from working with public forces.

The upshot of this relationship is that regulation of private security cannot be done in isolation from public forces. In places where public forces create a permissive environment for human rights abuses (in North Mara, for example) extraction companies put private security personnel in a position of moral hazard where they may feel able to commit abuses with impunity. In regulating private security extraction companies should also consider their relationship with public forces. Part of regulating private security will include promoting human rights among public forces working around extraction sites. This research does not intend to cover regulation of public security forces, but it is important to note their relationship with private security.

An interesting point to note is that NGOs have shown that they can play a crucial role as a watchdog over the implementation of regulatory initiatives. Due to weak or corrupt governance and the often close relationship between private and public security at and around extraction sites, NGOs may often be the most effective censure of private security. Human Rights Watch's *Gold's Costly Dividend* in particular makes specific practical recommendations on how Barrick might better implement the Voluntary Principles at the Porgera mine. It is possible that extraction companies may improve their implementation of regulatory initiatives in dialogue (and potentially in conflict with) NGOs like Human Rights Watch. NGOs also have the resources to monitor extraction companies and often have leverage with the Government of Canada and international organizations. Community members may need assistance from NGOs to access legal support, or to request a review by the CSR Counsellor, or the OECD National Contact Point. In all five cases presented here NGOs have monitored the behaviour of private security and acted as a public grievance mechanism on behalf of local communities.

While the Canadian extraction companies, according to the Voluntary Principles, are responsible for the behaviour of private security guards they employ, extraction companies were also at least partially responsible for increasing the security risks around their operations. At Porgera and North Mara mines, for example, illegal miners pose an ongoing security concern. Barrick Gold (in both locations) has indirectly promoted an increase in illegal mining. By forcibly removing artisanal miners from the land and destroying agricultural land, Barrick left community members with few other economic options. One community member near North Mara states that they "used to farm and raise livestock, but now there are no pastures because the mine has almost taken the whole land ... we have no sources of income and we are living only through God's wishes. ... We had never experienced poverty before the mine came here" (Lissner 2008, vi). Similarly, in the other case

studies the presence of a mine, or the potential of a mine has lead to conflict with local communities which has led the company to employ use of private security.

It is also acknowledged that operating in a conflict zone, or area of weak governance may lead to human rights abuses by private security guards despite the best intentions and efforts of extraction companies. In areas where human rights abuses are likely to occur voluntary regulation of private security is part of a company's due diligence to prevent abuse. Part of such due diligence is ensuring that regulations are translated into practices on the ground such as: CCTV monitoring, human rights training, weapons training, non-lethal weapon options, providing local grievance mechanisms (hotlines, townhall meetings), constructing fences, establishing relationships with local communities, ensure guidelines are followed by sub-contractors (and sub-sub contractors), adding human rights guidelines in the contracts with security providers, and supervising large operations (such as home evacuations). Robust and extensive voluntary regulation allows companies to avoid complicity in human rights abuses. If an extraction company has demonstrated due diligence then press

As stated, it is difficult to make generalizations with a small sample of incidents. What these cases demonstrate, though, is that there are considerable challenges which can face large and small extraction companies when applying regulatory initiatives on the ground. Challenges are not limited to one aspect of implementing private security either. Vetting, human rights training, command and control, community engagement, and the relationship between private and public security can all increase the likelihood of human rights abuses if not managed properly. Improving the use of private security in these cases is a process which requires an extraction company to make significant changes to its day-to-day business. Some companies have demonstrated at least a willingness to continue to improve their use of private security, but the difficulties associated with its use on the ground

indicate that Canadian extraction companies do not have extensive expertise or a comparative advantage when using private security.

Chapter 5 - Conclusion

The aim of this research was to explore how many Canadian extraction companies are voluntarily regulating their use of private security and it considers what challenges extraction companies have in implementing those regulations. The decision of the Government of Canada not to impose legislation on extraction companies working overseas and its recent announcement that it will partner with extraction companies on development projects are built on the assumption that the extractive sector is able to regulate itself. This research is intended to challenge that assumption and contribute to a body of analysis on how Canadian extraction companies are adopting CSR practices in developing countries.

This study featured a survey of 1127 extraction companies – 953 on the TSX and TSX Venture and 174 on the LSE and AIM. From publically available corporate material (websites, codes of conduct, sustainability reports, corporate presentations, and newsletters) it was determined which extraction companies had endorsed regulatory initiatives related to private security. Overall, roughly 17% of Canadian companies were found to publically endorse some level of regulation of private security (a rate which is similar to British extraction companies at 14%). Canadian extraction companies which endorse regulation of private security, though, represent 78% of the companies on the TSX and TSX Venture by value. The largest extraction companies which make up the bulk of the TSX and TSX Venture by value have endorsed CSR initiatives even if the vast majority of smaller companies have not.

The five case studies of human rights abuses by private security guards presented here indicate that there are considerable challenges in implementing regulatory initiatives on the ground. Barrick Gold, for example, Canada's largest mining company was unable to prevent human rights abuses at two of its mine sites despite endorsing several regulatory initiatives, including the Voluntary Principles. Alternately, Copper Mesa, a small junior mining company, and Skye Resources,

a medium-sized firm, were involved in human rights abuses as well. These incidents indicate that all types of extraction companies can have challenges in regulating private security. Additionally, this research indicates that mitigating the risk of human rights abuses requires a significant shift in the business practices of a company well beyond endorsing an initiative. It is not clear whether Canadian extraction companies are willing

On this topic the Government of Canada, in 2007, held a series of roundtables with extraction companies, NGOs, and government officials aimed at improving the corporate social responsibility of Canadian extraction companies operating overseas. The findings formed the basis of the Government of Canada's 2009 document - *Building the Canadian Advantage: A CSR Strategy for the Canadian International Extractive Sector*. Also in 2009, *Bill C300 An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries* was introduced which proposed that the Government of Canada create an enforceable CSR strategy based on international regulatory initiatives. The proposal was that Canada would use this strategy to censure the behaviour of Canadian extraction companies operating overseas. Unfortunately, *Building the Canadian Advantage* has not gained traction within the Canadian government or with Canadian extraction companies and Bill C-300 was narrowly defeated in 2010 after considerable opposition from Canadian extraction companies (Lipsett, Hohn, and Thomson 2012, 11). As a recent report by the Mining Association of Canada states, because of the delays in developing the government's CSR strategy and "the retrenchment of stakeholders into polarized positions over *Bill C-300*" the momentum towards national regulation of the extractive sector has been lost (Lipsett, Hohn, and Thomson 2012, 11). Now "leadership and momentum on CSR issues is often happening at the international level, not in Canada" (Ibid).

As there is a movement away from national regulation of Canadian extraction companies there has been a recent push towards involving Canadian extraction companies in Canada's

development assistance (Payne 19 January 2012, Nutt 25 January 2012, Leblanc 29 January 2012).

This leaves the onus on Canadian extraction companies to regulate themselves.

Mining companies in particular, though, are being sought out on development projects based on Canada's expertise in mining and the "added value" which Canadian extraction companies can provide to international development (Payne 27 January 2012). These development partners are being chosen based on their adoption of regulatory initiatives - the IFC Performance Standards, GRI, etc (CBC, January 26). Export Development Canada also bases lending on whether companies have adopted the OECD Guidelines and the IFC Performance Standards as part of its lending practices (Lipsett, Lloyd, Hohn, Michelle, and Ian Thomson 2012, 3).

The growing role of international regulatory initiatives places additional pressure on extractive companies to voluntarily adopt regulation. CIDA's partnership with Canadian extraction companies, in fact, assumes that Canadian companies have a comparative advantage in CSR. This research indicates, though, that the level of adoption of voluntary initiatives by Canadian extraction companies is concentrated among the largest companies and is low overall. Extraction companies are far more likely to be involved in philanthropic initiatives than have a comprehensive CSR strategy. Moreover, Canada does not appear to have a competitive advantage in adopting regulatory initiatives. The rate of adoption of regulatory initiatives by Canadian extraction companies listed on the TSX and TSX Venture does not vary greatly from companies listed on the London Stock Exchange and the Alternative Investment Market (AIM) – London's venture market. With regards to regulating private security, this research indicates that Canadian extraction companies cannot justifiably be called world leaders and cannot be considered sufficiently self-regulated as to not warrant additional regulation by the Government of Canada.

Chapter Four also indicated that due diligence is required by extraction companies to implement regulatory initiatives. There are a number of complex challenges which extraction

companies face when controlling private security on the ground. Command and control of local security guards by key decision makers thousands of miles away is difficult – especially when security is subcontracted several times, when private security is heavily connected with public security forces, where there is a culture and history of human rights abuse, and when resource extraction has created poverty and violence in the area.

Regulating private security is best thought of as an on-going process of overcoming such challenges rather than a matter of claiming support for various regulatory initiatives. Regulatory initiatives take time to be adopted and adapted to the operations of each company. A public commitment to an initiative such as the Voluntary Principles should be followed by an internal policy on private security, human rights concerns must influence the thinking of key decision makers, private security must factor into company procedures and extend to practices on the ground such as human rights training and extending closed circuit tv coverage. One can expect that companies will become more proficient at implementing regulatory initiatives over time.

This research was not able to definitively state which companies might have used regulatory initiatives as whitewash, although all had trouble implementing those initiatives. Barrick Gold at the Papua New Guinea Porgera mine took several measures to control private security which were ultimately unsuccessful in preventing and addressing the rape of several women around the mine site, yet it demonstrated greater effort towards implementing the Voluntary Principles than HudBay and Skye Resources did at the Fenix mine site in Guatemala. In either case, each company either adopted the Voluntary Principles in bad faith or did not conduct enough due diligence to prevent human rights abuses by private security personnel.

In these cases the repercussions for not following the Voluntary Principles – and other regulatory initiatives – are few. NGOs such as MiningWatch Canada, Human Rights Watch, and Rights and Democracy have been able to name and shame companies who fail to live up to

regulatory initiatives. As James Rowe writes “condemning an organization for unethical behaviour is easier when the said organization has already and openly agreed that ethical behaviour is virtuous... hypocrites are far more interesting than mere wrongdoers” (2005, 132).

Canadian extraction companies are bound by the laws of the countries in which they operate and it is the host country’s responsibility to investigate and punish human rights abuses. In areas of weak governance and corruption, however, it can be almost impossible for local communities and NGOs to find justice at home. Some of the victims of human rights abuses by private security personnel have, therefore, tried to sue Canadian companies in Canadian courts.⁴³ The lawsuit against Copper Mesa Minerals was struck out of the Ontario courts (Klippensteins, 7 May 2010), but three others involving HudBay Minerals and private security at the Fenix property remain. In the Copper Mesa Minerals’ case the Court stated that it understood the concern of citizens impacted by Canadian businesses, but “that would be a matter for the legislatures and not the courts” (Ibid).

These cases can be attributed, in part, to the failure of the Government of Canada to adequately regulate and discipline extraction companies operating in developing countries. The only other official avenues of recourse through the Government of Canada are the National Contact Point and the Office of the Extractive Sector Corporate Social Responsibility Counsellor. Both these organizations act as mediators and rely on parties to voluntarily agreed to conflict resolution. In the case of Copper Mesa Minerals the people of Junin Ecuador appealed to the National Contact Point, but with no result (OCED 2006).

⁴³ As of writing the people of Kilwa, Democratic Republic of Congo, are taking their suit of Anvil Mining to the Supreme Court of Canada after their case was dismissed by Quebec courts (Canadian Centre for International Justice, 31 January 2012). Anvil allegedly provided material assistance to the DRC army which raped and murdered many in Kilwa. This incident did not involve private security, but is another example of people in a developing country seeking justice in a Canadian court and would set a precedence for other victims in developing countries.

Paradoxically, by leaving the matter of regulating private security to international initiatives and voluntary compliance of extraction companies, victims of human rights abuses are left to find restitution through official, legal means. There is a double movement of sorts where the Government of Canada moves away from formal regulation of the extraction industry which has lead victims in developing countries to seek formal punishment of extraction companies by the Canadian legal system. Legal recourse is hampered, though, by the question of whether Canadian courts have jurisdiction to try Canadian companies operating in other countries. Cases against Copper Mesa Minerals and Anvil Mining Ltd have been dismissed by the Ontario and Quebec courts, respectively, but there has yet to be a definitive precedence set by the Supreme Court of Canada (MiningWatch Canada 11 February 2012). It is also uncertain what burden of proof will be necessary to successfully sue company decision makers. Court cases against Canadian mining companies may not be successful, but they show that, despite the Government of Canada's failure to create legislation which would regulate the behaviour of Canadian extraction companies, there is an expectation – by Canadians and affected local communities – that Canada is still responsible for protecting and safeguarding the human rights of those affected by its companies.

Private security remains one of many aspect of regulation which has been left to international initiatives, industry associations, and extraction companies themselves. It is part of an apparent trend towards greater self-regulation by extraction companies. Recent news of partnerships between CIDA and extraction companies signals further independence of extraction companies from national regulation and implies that the Government of Canada and certain NGOs consider some Canadian extraction companies proficient enough in CSR to be partners in development. This research cannot speak to the environmental, or social capabilities of extraction companies (covered by other regulatory initiatives such as the Extraction Industry Transparency Initiative and the Kimberly Process), but it does indicate that there is not widespread regulation of

private security by Canadian extraction companies. It also shows that regulating private security is a complex process which extraction companies can have difficulty mastering. This should give pause for thought as Canada moves towards greater self-regulation of the extractive sector and reliance on voluntary initiatives.

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