

**“Accumulation by Dispossession” by the Global Extractive Industry:
The Case of Canada**

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Dedication

I dedicate this thesis to my beloved family: my parents, Zeinab Hussein ('mummy') and Paul K. Kinuthia ('baba'), who brought me into this world, nurtured me, supported me, taught me, and loved me; my brothers (Kariuki 'Taimur' and Wanyee 'small') and my sisters (Fauziya, Wanjiku, Wanjiru, and Nyambura); my stepmother Nyokabi Kinuthia; my nephew Kinuthia; my maternal grandmother (Khadija 'bi Chipe') and my paternal grandmother, 'cucu' Wanjiku Wanyee, who is presently engaged in a legal land dispute involving the World Bank and a Government of Kenya parastatal – may justice prevail and may you have the right to be consulted.

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Abstract

This thesis draws on David Harvey's concept of "accumulation by dispossession" and an international political economy (IPE) approach centred on the institutional arrangements and power structures that privilege certain actors and values, in order to critique current capitalist practices of *primitive* accumulation by the global corporate extractive industry. The thesis examines how accumulation by dispossession by the global extractive industry is facilitated by the "free entry" or "free mining" principle. It does so by focusing on Canada as a leader in the global extractive industry and the spread of this country's mining laws to other countries – in other words, the transnationalisation of norms in the global extractive industry – so as to maintain a consistent and familiar operating environment for Canadian extractive companies. The transnationalisation of norms is further promoted by key international institutions such as the World Bank, which is also the world's largest development lender and also plays a key role in shaping the regulations that govern natural resource extraction. The thesis briefly investigates some Canadian examples of resource extraction projects, in order to demonstrate the weaknesses of Canadian mining laws, particularly the lack of protection of landowners' rights under the free entry system and the subsequent need for "free, prior and informed consent" (FPIC). The thesis also considers some of the challenges to the adoption and implementation of the right to FPIC. These challenges include embedded institutional structures like the free entry mining system, international political economy (IPE) as shaped by international institutions and powerful corporations, as well as concerns regarding 'local' power structures or the legitimacy of representatives of communities affected by extractive projects. The thesis concludes that in order for Canada to be truly recognized as a leader in the global extractive industry, it must establish legal norms domestically to ensure that Canadian mining companies and residents can be held accountable when there is evidence of environmental and/or human rights violations associated with the activities of Canadian mining companies abroad. The thesis also concludes that Canada needs to address underlying structural issues such as the free entry mining system and implement FPIC, in order to curb "accumulation by dispossession" by the extractive industry, both domestically and abroad.

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Introduction

In a letter dated June 22, 2007, the Canadian Network on Corporate Accountability (CNCA) – a network of 22 member organizations involved in developmental, labour, human rights, environmental, and faith-based work in Canada and abroad – urged Canada’s Prime Minister Stephen Harper to establish “a legal mandate...through binding legislation, to incorporate Free, Prior and Informed Consent for indigenous peoples and to protect the human rights of individuals and communities in developing countries that are affected by Canadian extractive activities.”¹ The CNCA was formed in order to advocate for a strong government response to a groundbreaking report released by the Government of Canada’s 2005 Standing Committee on Foreign Affairs and International Trade (SCFAIT). The SCFAIT report “recognized the root problem as the effective impunity of Canadian mining companies operating overseas in weak-governance zones, and understood the need for recourse in Canada.”² The report duly called on the Government of Canada to “establish clear legal norms in Canada to ensure that Canadian mining companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with activities of Canadian mining companies.”³

Canada is both the epicentre and the undisputed powerhouse of the global extractive industry. Nearly 60% of the world’s mining transnational corporations (TNCs) – the preferred terminology of the United Nations system – are based in Canada. Canadian stock exchanges provide more money to the global extractive industry than those of any other country in the world, with over

¹ Canadian Network on Corporate Accountability (CNCA). (2007). *Letter to Prime Minister Harper*. Ottawa, ON: Halifax Initiative

² Coumans, C. (2010). Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 27-48.

³ Standing Committee on Foreign Affairs and International Trade (SCFAIT). (2005). *Mining in Developing Countries: Corporate Social Responsibility*, 38th Parliament, 1st Session, Fourteenth Report: June. House of Commons - <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1961949&Mode=1&Parl=38&Ses=1&Language=E>. See also: Marotte, B. (2013). *Guatemalan mine claims against HudBay can be tried in Canada, judge says*. The Globe and Mail, 23rd July 2013 - <http://m.theglobeandmail.com/report-on-business/industry-news/judge-says/guatemalan-mine-claims-can-be-tried-in-canada-judge-says/article13360800/?service=mobile>; Collette, P. (2013). *After HudBay ruling, Canadian firms on notice over human rights*. The Globe and Mail, 24th July 2013 - <http://m.theglobeandmail.com/commentary/after-hudbay-ruling-canadian-firms-on-notice-over-human-rights/article13386168/?service=mobile>; Canadian Manufacturing Daily Staff. (2013). *Canadian firms could be held liable at home for injustices abroad: CNCA organization calling for legal proceedings to be allowed in Canada for overseas incidents*. Canadian Manufacturing, 22 October 2013 - <http://www.canadianmanufacturing.com/general/canadian-firms-could-be-held-liable-at-home-for-injustice-abroad-121231>

80% of public financing for the industry since 2003 going through the Toronto Stock Exchange (TSE). This far exceeds the London and Australian exchanges, which handled about 9% each.⁴

However, there has long been concern over the example that Canada is setting in the global extractive industry. On 22nd November 2009, the *Toronto Star* reported that there had been numerous cases of human rights abuses involving Canadian mining companies in “at least thirty of the world’s poorest countries.”⁵ A similar report by the Canadian Centre for the Study of Resource Conflict (CCSRC) released in the same year stated that in the preceding decade Canadian mining companies were involved in more than 30% of the reported incidents of community conflict, human rights abuses, illegal practices or environmental degradation in developing countries.⁶ This number was three times as large as those involving Australia, Canada’s closest peer.⁷ Canadian mining regulations do not address social and environmental rights and standards,⁸ such as those espoused in international law and by numerous voluntary initiatives and norms,⁹ or even by the ‘sustainability’ principles included in both federal and provincial laws and policies.¹⁰ In addition, there is generally no public review of mining projects as well as “a lack of clear and functional consultation processes” for people affected by mining.¹¹

⁴ Canel, E., Idemudia, U., & North, L. (2010). Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25. See also: Lemieux, A. (2005). *Canada’s global mining presence*. Ottawa, ON: Natural Resources Canada - <http://www.nrcan.gc.ca/mms-smm/busi-indu/cmty-amc/content/2005/08.pdf>; Natural Resources Canada. (2007). *Overview of trends in Canadian mineral exploration* - www.nrcan-nrcan.gc.ca/mms-smm/busi-indu/pdf/explor/2007/exploration07-e.pdf

⁵ Cited in Canel, E., Idemudia, U., & North, L. (2010).

⁶ Hassanein, A., Lundholm, G., Willis, G., & Young, C. (2009). *Corporate Social Responsibility & the Canadian International Extractive Sector: A Survey*. Revelstoke, BC: The Canadian Centre for the Study of Resource Conflict

⁷ *Ibid*

⁸ Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University

⁹ For example: Brundtland Commission Report (1987), Rio Declaration (1992), Global Reporting Initiative (1997), Kyoto Protocol on Climate Change (1998), International Labour Organization’s Convention 169 (1999), Global Compact (2000), OECD Guidelines (2000), ICMM Sustainable Development Framework (2001), Johannesburg Summit (2002), Mining Association of Canada’s initiative Toward Sustainable Development (2004), Global Reporting Initiative for the mining sector (2005), Framework for Sustainable Mining (2005), Mine Certification Evaluation Project (2006), U.N. Declaration on the Rights of Indigenous Peoples (2007), etc.

¹⁰ For example: the Federal Sustainable Development Act (S.C. 2008, c. 33), the Manitoba Sustainable Development Act (C.C.S.M. c. S270), the Quebec Sustainable Development Act (R.S.Q. c. D-8.1.1), the Nova Scotia Environmental Goals and Sustainable Prosperity Act (S.N.S. 2007, c. 7), and the Newfoundland Sustainable Development Act (S.N.L. 2007, c. S-34).

¹¹ Lapointe, U. (2009).

The CCSRC report pointed out that nearly 80% of the Canadian mining companies involved in conflicts in developing countries between 1999 and 2009 already had voluntary corporate social responsibility (CSR) policies. Commissioned by the Toronto-based Prospectors and Developers Association of Canada (PDAC), the report was not made public until 2010,¹² perhaps because it concluded that “there are still significant improvements that these companies must undertake if their efforts are to be seen as legitimate by local communities.”¹³

The “vacuum” left by Canada’s current regulatory framework results in the failure to hold Canadian mining companies operating abroad accountable to any other authority than their own voluntary CSR policies.¹⁴ According to the *UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, John Ruggie, effective impunity arises from the “governance gap” – or “enforcement vacuum”¹⁵ – which he crucially defines as a lack of sanctioning and reparation:

“The root cause of the business and human rights predicament today lies in the governance gaps created by globalization – between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences provide the permissive environment for wrongful acts by companies of all kinds without adequate *sanctioning or reparation*. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.”¹⁶

Ruggie states that a key part of the problem is that the legal framework regulating TNCs operates in such a way that parent companies and their subsidiaries are considered to be distinct legal

¹² Mendleson, R. (2012). *Excellon Blockade: Mexico Conflict Highlights Shortcomings of Canadian Mining Oversight*. 8th August - www.huffingtonpost.ca/2012/08/28/excellon-blockade-protest-mexico_n_1828923.html

¹³ Hassanein, A., Lundholm, G., Willis, G., & Young, C. (2009). *Corporate Social Responsibility & the Canadian International Extractive Sector: A Survey*. Revelstoke, BC: The Canadian Centre for the Study of Resource Conflict

¹⁴ Mendleson, R. (2012).

¹⁵ Campbell, B. (2008). Regulation & Legitimacy in the Mining Industry in Africa: Where does Canada Stand? *Review of African Political Economy* (35)117, 367-385. The “governance gap” or “enforcement vacuum” has also been referred to as the “regulatory gap”, which results from the lack of binding rules or regulations, especially at the global level – due to economic globalization [Re: Bexell, M., & Morth, U (eds). (2010). *Democracy and Public-Private Partnerships in Global Governance*. New York, NY: Palgrave MacMillan].

¹⁶ Ruggie, J.G. (2008). *Protect, respect and remedy: A framework for business and human rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*. A/HRC/8/5 7 April (Emphasis added)

entities, generally rendering the former not liable for wrongs committed by the latter.¹⁷ Tipping the veil on a possible solution, Ruggie has pointed out that project-affected people in so-called weak governance zones do not have access to effective regulatory systems or well-functioning legal systems, and also that it may be a long time, if ever, before there is access to justice through a global regulatory regime or an international court pertaining to TNCs. He has consequently pointed to the home states of TNCs as a potential source of access to justice, stating that “there is increasing encouragement at the international level, including from treaty bodies, for Home states to take regulatory action to prevent abuses by their companies overseas.”¹⁸

These findings challenge the view that corporate social responsibility (CSR) policies can suffice as effective safeguards against ‘corporate abuse’. CSR refers to the concept of a company having responsibilities to a broader set of stakeholders, which includes any group that is affected by the company’s activities, including indigenous / local communities, employees, other companies sharing the same resources etc. The preference for CSR is primarily due to the fact that all CSR codes are strictly voluntary rather than mandatory. Thus, CSR codes do not provide the accountability mechanism that is required to fill the governance gap (i.e. enforcement vacuum or regulatory gap), which provides the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation.¹⁹ CSR has long been promoted as the solution to the problems posed by the extractive industry. According to Paul Haslam, this is in order to deflect or forestall calls for state regulation of the operations of TNCs.²⁰

The World Bank Group (WBG) has also acknowledged that without effective public policies to

¹⁷ Ruggie, J.G. (2010). *Governing Transnational Corporations* - <http://www.internationalrelations.com/2012/09/30/ruggie-governing-transnational-corporation/>

¹⁸ ----- (2011). *Protect, Respect and Remedy: a Framework for Business and Human Rights* - <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>, p3. See also: Marotte, B. (2013). *Guatemalan mine claims against HudBay can be tried in Canada, judge says*. The Globe and Mail, 23rd July 2013 - <http://m.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/guatemalan-mine-claims-can-be-tried-in-canada-judge-says/article13360800/?service=mobile>; Canadian Manufacturing Daily Staff. (2013). *Canadian firms could be held liable at home for injustices abroad: CNCA organization calling for legal proceedings to be allowed in Canada for overseas incidents*. Canadian Manufacturing, 22 October 2013 - <http://www.canadianmanufacturing.com/general/canadian-firms-could-be-held-liable-at-home-for-injustice-abroad-121231>

¹⁹ Coumans, C. (2010). *Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency*. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 27-48.

²⁰ Haslam, P.A. (2009). *Multinational Corporations*. In Haslam, P.A., Schaffer, J., & Beaudet, P (eds) *Introduction to International Development: Approaches, Actors and Issues*. Don Mills, U.K: Oxford University Press.

encourage economic growth, large-scale resource extraction does not automatically lead to long-term sustainable development.²¹ The WBG has stated that the successes of exploratory processes do not necessarily translate into mining projects, associated industries, employment, or economic growth, if the requisite conditions are not met.²² Although the WBG and other major institutions continue to promote resource-led development as a model for economic growth in developing countries, a paradox of underdevelopment generally accompanies resource-led economic growth.

Ironically, countries with abundant resources tend to perform less well economically, than countries that are considered resource-poor.²³ Large-scale resource extraction has often ruined traditional means of livelihood and natural environments worldwide, leaving behind formerly sustainable societies and local economies dependent on foreign corporations and external markets.²⁴ A World Bank report has confirmed that local economies do “not appear to have benefitted from large-scale mining through sustained economic growth and improved services” and that often “local people feel no perceptible benefit from the resources extracted from ‘their’ land”.²⁵ Many local people also complained about the lack of jobs and access to land for farming.²⁶ In fact, the World Bank now admits that exploitation of resources leaves affected communities poorer.²⁷ This has been labelled the “resource-curse”.²⁸ In a report titled *Where is the wealth of nations?* the World Bank states that ‘natural capital’ such as natural resources has been grossly undervalued, and that preserving this natural capital is vital to reducing poverty in

²¹ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

²² World Bank. (1996). *A Mining strategy for Latin America and the Caribbean: Executive summary*. Mining Unit. Industry and Energy Division. Technical Paper No. 345, Washington, DC: World Bank

²³ Bush, R. (2007). *Poverty and Neoliberalism: Persistence and Reproduction in the Global South*. London, U.K: Pluto Press

²⁴ Evans, G., Goodman, J., & Lansbury, N. (2002). *Globalisation: Threats and Opportunities*. In Evans, G., Goodman, J., & Lansbury, N (eds) *Moving Mountains: Communities Confront Mining and Globalisation*. London, U.K: Zed Books

²⁵ World Bank. (2003). *Project Performance Assessment Report: Ghana Mining Sector Rehabilitation Project (Credit 1921-GH) and Mining Sector Development and Environment Project (Credit 2743-GH)*. Sector and Thematic Evaluation Group, Operations Evaluation Department, report no. 26197, Washington, D.C. p.21

²⁶ *Ibid*

²⁷ Bond, P. (2006). *Looting Africa: The Economics of Exploitation*. Scottsville, South Africa: University of KwaZulu-Natal Press

²⁸ Auty, R. (1993). *Sustaining Development in Mineral Economics: The Resource Curse Thesis*. London, U.K: Routledge. See also: Reed, D. (2002). ‘Resource extraction industries in developing countries’. *Journal of Business Ethics* 39, 199-226; Ross, M. (2001). *Extractive Sectors and the Poor*. Boston, MA: Oxfam America

areas such as Sub-Saharan Africa.²⁹

The World Bank's 2003 Extractive Industries Review (EIR) brought the resource-curse thesis into a broader public arena.³⁰ According to the EIR, while per capita Gross Domestic Product (GDP) had been growing by an average of 1.7 per cent in all developing and transitional economies, it was contracting by 2.3 per cent a year in those where minerals accounted for more than 50 per cent of exports.³¹ The World Bank has concluded that "for every percentage point increase in a country's extractive dependency, that country's potential GDP falls by 9 percent."³² Recent studies in the Philippines found that GDP grows by only 0.15 per cent for every 10 per cent increase in mining-related income. These statistics demonstrate that far from being a driver of economic growth, "GDP growth responds weakest to growth in the mining sector."³³

Rather than generating substantial and uninterrupted revenue flows at predictable levels, or providing employment and infrastructure that can help build nationally integrated markets to meet domestic requirements, resource dependence has primarily served the interests of TNCs and their global markets.³⁴ According to Ray Bush, "the dynamics of imperialism, promoted by TNCs in the political and economic internationalization of capital, continue to shape the relations between mineral economies and the international economy."³⁵ One consequence of this is "the reproduction of ways in which communities bordering mines are abjected."³⁶ James Ferguson has summarized this as the way people are *thrown aside, expelled, or discarded* and also *thrown down, debased and humiliated*.³⁷

²⁹ World Bank. (2005). *Where is the wealth of nations? Measuring capital for the 21st century*. Washington, DC: Conference Edition. See also: Reuters. (2010). *Rethink foreign deals, African nations advised*. The Daily Nation (Kenya), 25th May 2010

³⁰ Stevens, P. (2003). *'Resource impact: a curse or a blessing?'* Dundee, Scotland: CEPMLP

³¹ Pegg, S. (2003). *'Poverty reduction or poverty exacerbation? World Bank group support for extractive industries in Africa.'* Report sponsored by Oxfam America, Friends of the Earth-US, Environmental Defense, Catholic Relief Services and the Bank Information Centre. p.15

³² World Bank. (2005). p.24

³³ Rovillos, R.D., & Tauli-Corpuz, V. (2012). *Development, Power, and Identity Politics in the Philippines*. In Sawyer, S., & Gomez, E.T (eds) *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State*. New York, NY: United Nations Research Institute for Social Development (UNRISD). p.132-133

³⁴ Bush, R. (2010). *Mining, Dispossession, and Transformation in Africa*. In Fraser, A., & Larmer, M (eds) *Zambia, Mining, and Neoliberalism: Boom and Bust on the Globalized Copperbelt*. New York, NY: Palgrave MacMillan

³⁵ *Ibid*. p.254

³⁶ *Ibid*

³⁷ Ferguson, J. (2008). *Global Shadows: Africa in the Neoliberal World Order*. Durham, U.K: Duke University

This thesis approaches these issues from the perspective of international political economy (IPE), and suggests that contemporary natural resource extraction lays bare modern imperialism,³⁸ given that “the dominant mechanism used...to extract...wealth is the persistence of strategies of primitive accumulation...through raw material extraction.”³⁹ According to Patrick Bond, resource extraction has recently intensified, revealing “some of the same kinds of primitive looting tactics” enshrined “within the framework of neoliberal (free market) policies adopted nearly universally across the...world.”⁴⁰ David Harvey argues that under neoliberal globalization, contemporary capitalism is distinguished by its tendency toward increased reproduction and the process of “accumulation by dispossession”, which is the distinguishing feature of primitive accumulation.⁴¹ Accumulation by dispossession refers to the persistence and increase of accumulation practices that Karl Marx had regarded as ‘primitive’ or ‘original’ during the birth of capitalism. These include “the commodification and privatization of land and the forceful eviction of peasant populations; conversion of various forms of property rights (common, collective, state, etc.) into exclusive private property rights; suppression of rights to the commons...colonial, neo-colonial and imperial processes of appropriation of assets (including natural resources).”⁴²

The concept of “free, prior, and informed consent” (FPIC, sometimes called FIPC, or “fully, informed, prior consent”) has therefore become the focus of negotiations between project-affected communities, mining companies, civil society, and governments, regarding access to natural resources. According to Szablowski, FPIC refers to decision-making or engagement in which the free and informed consent of those affected by development projects is obtained before-hand.⁴³ To date, mining corporations have “almost universally failed to recognize this

Press

³⁸ Bush, R. (2007). *Poverty and Neoliberalism: Persistence and Reproduction in the Global South*. London, U.K: Pluto Press

³⁹ Bond, P. (2006). *Looting Africa: The Economics of Exploitation*. Scottsville, South Africa: University of KwaZulu-Natal Press. p.34

⁴⁰ *Ibid*

⁴¹ Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press. p.174-175

⁴² ----- (2006). *Spaces of Global Capitalism: Towards A Theory Of Uneven Geographical Development*. London, U.K: Verso. p.43

⁴³ Szablowski, D. (2010). Operationalizing Free, Prior, and Informed Consent in the Extractive Industry Sector? Examining the Challenges of a Negotiated Model of Justice. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 111-130.

right,”⁴⁴ and communities are rarely involved in conceptualizing or designing projects that affect them.⁴⁵ The central moral contradiction of dependent development is acutely raised by TNC-driven mining projects: “those with the most to lose have the least control over their future”⁴⁶ In fact, the exclusion of communities from effective civic participation, or in the planning and implementation of projects that concern them, is a systemic and enduring crisis of neoliberal globalization.⁴⁷

Accumulation by dispossession by the global extractive industry is facilitated by the “free entry” or “free mining” principle, which inspired the nineteenth-century formulation of mining legislation / regulatory frameworks in North American and British spheres.⁴⁸ One distinctive feature of past and present Canadian mining regimes (or laws) that requires special attention with respect to current public policy is the free entry mining system, which essentially sets out a process for accessing mineral resources in a specified area. Dawn Hoogeveen argues that the roots of free entry and its significance to current resource regimes requires more careful consideration, rather than focusing on discourses regarding sustainability and best practice procedures, which tend to obscure the power of mineral rights regulations and the impact of the free-entry system. Tracing the historical path of the free entry mining system in various countries, and its impacts on individual and collective rights to lands and resources, is an issue that requires more attention from researchers, organizations, and policymakers concerned about the extractive industry.⁴⁹

The principle of free entry can be basically defined as the “right of any person to freely access

⁴⁴ Moody, R. (2007). *Rocks and Hard Places: The Globalization of Mining*. Black Point, NS: Fernwood Publishing. p.11

⁴⁵ Weitzner, V. (2010). Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons Can Canada and Others Share? Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 87-109.

⁴⁶ Burill, G., & McKay, I (eds). (1987). *People, Resources, and Power: Critical perspectives on underdevelopment and primary industries in the Atlantic region*. Fredericton, NB: Gorsebrook Research Institute. p.131

⁴⁷ Giroux, H.A. (2004). *The Terror of Neoliberalism: Authoritarianism and the Eclipse of Democracy*. Aurora, ON: Garamond Press

⁴⁸ Canel, E., Idemudia, U., & North, L. (2010). Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25.

⁴⁹ Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University

lands and resources for mining purposes.”⁵⁰ In its most established form, the free entry system “confers little to no government discretionary powers, and mining entrepreneurs can exercise these...rights without ‘fearing’ government or third-party intervention.”⁵¹ This mineral tenure system grants unlimited access to land based on the assumption that mining is the “highest and best” use of it.⁵² The free entry system is the principal means of granting mineral tenures in Canada today, allowing mining companies and prospectors to legally enter private land and stake claims without consulting or even notifying affected landowners.⁵³ Staking is the process of acquiring mineral rights by registering claims, after which free miners can maintain their mineral rights by doing “minimal assessment work annually.”⁵⁴

According to Bonnie Campbell, one of the foremost researchers on the extractive industry, the free entry principle also guided the worldwide liberalization process of mining regimes in the 1980s and 1990s, along with other liberalization measures adopted during the *Washington Consensus* in the 1990s. Campbell explains that the rights, principles and values that free mining embodies were adopted in various mining code reforms.⁵⁵ This is the period when the global extractive industry underwent an extensive process of deregulation, financialization, and privatization.⁵⁶ According to Warhust and Bridge, “over 90 countries have reformed their mining investment laws and mining codes in the past two decades.”⁵⁷ Moreover, rather than being an integral part of national development projects, these reforms were designed as “an isolated, sectorial approach favouring mining corporate interests.”⁵⁸

⁵⁰ Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University

⁵¹ *Ibid*

⁵² MiningWatch Canada. (2010). *Reforming Mining Laws and Policies* - <http://www.miningwatch.ca/reforming-mining-laws-and-policies>

⁵³ Campbell, K. (2004). *Undermining our Future: How Mining's Privileged Access to Land Harms People and the Environment (A Discussion Paper on the Need to Reform Mineral Tenure Law in Canada)*. Vancouver, BC: West Coast Environmental Law

⁵⁴ *Ibid*. p.6

⁵⁵ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

⁵⁶ Evans, G., Goodman, J., & Lansbury, N. (2002). *Politicising Finance*. In Evans, G., Goodman, J., & Lansbury, N (eds) *Moving Mountains: Communities Confront Mining and Globalisation*. London, U.K: Zed Books

⁵⁷ Warhust., A., & Bridge, G. (1997). “Economic liberalization, innovation and technology transfer: opportunities for cleaner production in the minerals industry”. *Natural Resources Forum* (21)1, 1-12.

⁵⁸ Canel, E., Idemudia, U., & North, L. (2010). *Rethinking Extractive Industry: Regulation, Dispossession, and*

All across Canada, both indigenous and non-indigenous communities are demanding an end to the privileged access to land that the extractive industry has under the “free entry” system. At the global level, communities are demanding the right to FPIC, and indigenous peoples in particular are increasingly demanding FPIC regarding projects that affect them.⁵⁹ In view of its leading role in the global extractive industry, Canada should establish legal norms domestically as recommended in the aforementioned 2005 SCFAIT report, in order to ensure that Canadian mining companies and residents can be held accountable when there is evidence of environmental and/or human rights violations associated with activities of Canadian mining companies abroad. Canada also needs to include the right to FPIC as a fundamental component of its mining laws, not only to establish a crucial benchmark for the global extractive industry, but also to constitutionally protect the rights of landowners in Canada.

Theoretical Framework and Methodology

This thesis draws upon David Harvey’s concept of “accumulation by dispossession” in order to critique current capitalist practices of primitive accumulation within the context of the global corporate extractive industry. Karl Marx conceptualized primitive accumulation as an evolutionary stage *having occurred* in the development of capitalism, which resulted in many Marxist scholars treating the concept of primitive accumulation more as a historical event than as a theoretical approach.⁶⁰ This treatment continued until Harvey resurrected primitive accumulation within the rubric of accumulation by dispossession for modern day social analysis. According to this framework, “the features of primitive accumulation that Marx mentions have remained powerfully present within capitalism’s historical geography.”⁶¹ That is, today’s peasant populations are displaced by many of the same unscrupulous means that disbanded them in Europe during the fifteenth to eighteenth centuries. Harvey applies the concept of accumulation by dispossession to the study of this ongoing phenomenon occurring when long standing indigenous modes of production, largely, based on traditional forms of reciprocity and exchange

Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25.

⁵⁹ MiningWatch Canada. (2010). *Reforming Mining Laws and Policies* - <http://www.miningwatch.ca/reforming-mining-laws-and-policies>

⁶⁰ Glassman, J. (2006). ‘Primitive accumulation, accumulation by dispossession, accumulation by “extra-economic” means’. *Progress in Human Geography* 30(5): 608-625.

⁶¹ Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press. p.145-146

are replaced by new capitalist modes.⁶²

The thesis also draws on an international political economy (IPE) approach, which dates back to 1971 when Susan Strange, then at the Royal Institute of International Affairs at Chatham House, founded the International Political Economy Group (IPEG).⁶³ The IPE approach is centred on the institutional arrangements and power structures that privilege certain actors and values. This allows for a critical assessment of these institutional arrangements and power structures, as well as their origins and history, both temporally and physically. It encourages an examination of the context under which they were established, the people involved in their formation, the underlying objectives and values, as well as an analysis of how the relationships between these institutions and actors have evolved over time.⁶⁴

“Decision-making structures are value-articulating institutions that determine the values that can be expressed, and, ultimately, the preferable choices...they establish procedures that frame the debate and that influence what will be negotiated, thereby skewing the outcome.”⁶⁵ In other words, the ability to shape institutions is largely dependent on the ability to promote ‘priority values’ within those institutions. The values favoured by certain powerful actors effectively serve to promote their interests and positions. Values are transmitted by institutions and actors, and any possibilities or outcomes of political action are largely determined by the hierarchy of these values.⁶⁶ For example, the World Bank has rejected a key recommendation from the 2003 Extractive Industries Review (EIR) that communities affected by mining be entitled to FPIC.⁶⁷ Instead the WBG advocates for free, prior and informed *consultation*, a 2005 amendment that

⁶² Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press

⁶³ Murphy, C.N., & Nelson, D.R. (2001). International political economy: a tale of two heterodoxies. *British Journal of Politics and International Relations* 3(3): 393-412.

⁶⁴ Strange, S. (1996). *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge, U.K: Cambridge University Press

⁶⁵ Walter, M., & Martinez-Alier, J. (2010). How to Be Heard When Nobody Wants to Listen: Community Action against Mining in Argentina. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 281-301.

⁶⁶ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

⁶⁷ Financial Times (2003), 3rd February. London, UK. Quoted in Moody, R. (2007). *Rocks and Hard Places: The Globalization of Mining*. Black Point, NS: Fernwood Publishing

removes the need for consent, thereby threatening the autonomy and human rights of people affected by extraction / ‘development’ projects.⁶⁸

According to Bonnie Campbell, mining regimes--regulatory frameworks are a central component of the power structures that influence relations among the actors involved. This conditions the nature of the negotiating space that is created, the results of the negotiation processes, and the ability of participants to advance alternative policies, thereby perpetuating “asymmetrical relations of power and influence.”⁶⁹ Revisiting the Canadian experience helps to highlight some of the values that shape and maintain the institutional and power dynamics related to mining.⁷⁰ Given its principal role in the global extractive industry, “what happens in Canada directly influences the expectations of Canadian-based corporations operating abroad regarding the legal regimes of host states and the rights of local communities.”⁷¹ The developmental choices of host communities are limited by the weakness of Canadian industrial laws and regulatory regimes wherever Canadian-based mining corporations operate.⁷²

In particular, the free entry system is a key structural issue that results in the preferential treatment enjoyed by the mining industry. Regimes based on free entry appear characterized by an asymmetrical power structure that constrains the negotiating space of impacted communities, thereby limiting their opportunity to choose a development strategy that is suitable to their needs.⁷³ These power asymmetries are perpetuated through the lack of appropriate resources, funding, and opportunities that facilitate meaningful participation. Meaningful participation is based on involvement that is “timely, inclusive, deliberative, transparent and empowering.”⁷⁴ Instead, project-affected people are rarely involved in conceptualizing or designing projects that

⁶⁸ World Bank. (2005). *Revised operational policy on indigenous peoples*, OP 4.10. In *The World Bank operational manual*. Washington, D.C.: The World Bank

⁶⁹ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

⁷⁰ *Ibid*

⁷¹ Canel, E., Idemudia, U., & North, L. (2010). Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25.

⁷² *Ibid*

⁷³ MiningWatch Canada. (2008). *The Boreal Below: Mining Issues and Activities in Canada’s Boreal Forest*. Ottawa, ON: MiningWatch Canada

⁷⁴ Sinclair, A.J., Diduck, A., & Fitzpatrick, P. (2007). Conceptualizing learning for sustainability through environmental assessment: Critical reflections on 15 years of research. *Environmental Impact Assessment Review* (28)2, 415-428.

affect them.⁷⁵

The methodology entails document analysis--of secondary material and primary sources that are directly relevant to the subject of the global extractive industry. In order to examine how accumulation by dispossession is facilitated by the free entry principle, this thesis focuses on Canada's dominant role in the global mining industry, and considers some examples of large-scale extraction projects that reveal the weaknesses of Canadian mining laws, particularly the lack of protection of landowners' rights under the free entry system. From the standpoint of international political economy (IPE), these cases also demonstrate the development of Canada's mining laws and the reforms of mining regimes in other countries – that is, the transnationalisation of norms in the global mining industry – so as to maintain “a stable, consistent and familiar operating environment” for Canadian mining companies.⁷⁶ In fact, the connection between the development of Canada's mining laws and the reform of mining regimes in other countries has been direct: as Canada provides finances and expertise for such reforms; and indirect, through the role that Canada plays in the IFIs that are responsible for the reforms.⁷⁷

Overview and contribution by the thesis

The first chapter of the thesis provides the theoretical framing of the analysis and explores the origins of primitive accumulation as a feature of capitalism, and as the means by which extractive TNCs dispossess and displace communities. The second chapter examines the basis of Canada's leading role in the global extractive industry, by examining the history of the Canadian extractive industry in order to highlight some of the values that shape and maintain the institutional and power dynamics related to the industry.⁷⁸ Canada's historical development as a

⁷⁵ Weitzner, V. (2010). Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons Can Canada and Others Share? Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 87-109.

⁷⁶ Arsenault, C. (2007). “Colombia: Foreign Firms Cashing in on Generous Mining Code,” Inter Press Service. <http://ipsnews.net/news.asp?idnews=39755>

⁷⁷ Campbell, B. (1999). *Les intérêts miniers canadiens et les droits de la personne en Afrique dans le cadre de la mondialisation*. Droits et Démocratie, Centre international des droits de la personne et du développement démocratique – <http://www.dd-rd.ca/site/> (Cited in the following reference)

⁷⁸ ----- (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

resource-based economy had a significant impact on the evolution of her mining laws and practices, particularly the free entry mining system. This mining regime facilitates accumulation by dispossession by the Canadian (and global) extractive industry, and is among the key challenges to adopting and implementing the right to FPIC, in order to curb accumulation by dispossession by the extractive industry. The third chapter explores the weakness of existing regulations while presenting some examples of resource extraction projects that demonstrate the need for FPIC, while the fourth chapter looks at challenges to the implementation of FPIC, including the free entry system. The thesis' conclusions are discussed in the fifth chapter.

The thesis contributes to important debates concerning human rights abuses in the global extractive industry, particularly regarding the leading role of Canadian extractive companies, the impact of the free entry system, and the subsequent need and challenges to implementing the right to FPIC. Given recent indications that Canada's development aid will be increasingly linked to mining and resource extraction by Canadian companies, this is perhaps more urgent than ever before.⁷⁹

⁷⁹ Canada's Minister of International Co-operation recently called for an increase in support through CIDA for projects directly tied to Canadian mining companies operating overseas [*Fantino's vision of CIDA supporting Canadian mining projects abroad confuses NGOs*. The Star, 30th November 2012 - <http://www.thestar.com/news/canada/article/1295569--fantino-s-vision-of-cida-supporting-canadian-mining-projects-abroad-confuses-ngos>]. Once a stand-alone agency, CIDA has now been absorbed into the Department of Foreign Affairs and International Trade (DFAIT) [Mackrael, K. (2013). *Agency's demise shifts control to PMO: Further aligning foreign aid with trade and commercial priorities concerns some development officials*. The Globe and Mail, 22nd March 2013. See also: Payne, E. (2013). *Canada's foreign-aid goals are unclear*. The Ottawa Citizen, 28th March 2013].

Chapter 1: Accumulation by Dispossession and the Global Extractive Industry

This chapter reviews the origins of primitive accumulation as a feature of capitalism, and as the means by which extractive companies dispossess and displace communities. I argue that today, centre-periphery accumulation by dispossession is facilitated by the *Washington Consensus*, which has encouraged a climate of investment liberalization, deregulation and privatization, and contributed to the phenomenal growth of extractive companies.⁸⁰ The thinking and strategizing that has taken place in the extractive sector over the last two decades, is based on the theory that investment in natural resource extraction drives economic growth, which in turn spurs development and reduces poverty.⁸¹ However, this has been challenged by studies which show that large-scale resource extraction projects often impoverish affected communities, even in industrialized countries like Canada.⁸²

Primitive Accumulation and Global Capitalism

Capitalism is a social order that is based on the endless pursuit of accumulation for accumulation's sake, without recognition of social or spatial boundaries.⁸³ In anticipation of capitalist globalization marked by wide social impacts, Karl Marx and Friedrich Engels famously declared in 1848: "the bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and with them the whole relations of society...The need of a constantly expanding market for its products chases the bourgeoisie over the whole surface of the globe. It must nestle everywhere, settle everywhere, establish connections everywhere."⁸⁴ In other words, due to its tendency towards accumulation for accumulation's sake and fuelled by

⁸⁰ Evans, G., Goodman, J., & Lansbury, N. (2002). *Politicising Finance*. In Evans, G., Goodman, J., & Lansbury, N (eds) *Moving Mountains: Communities Confront Mining and Globalisation*. London, U.K: Zed Books

⁸¹ Campbell, B. (2012). *The role of the private sector in achieving Canada's international development interests*. Presented to the Standing Committee on Foreign Affairs and International Development, April 4. Montreal, QC: University of Quebec

⁸² As noted in the introduction (pgs 10-11), this interesting paradox has been labelled the "resource curse"

⁸³ Rupert, M. (2000). *Ideologies of Globalization: Contending visions of a New World Order*. In association with the *Review of International Political Economy*. New York, NY: Routledge. See also: Harvey, D. (2006). *The Limits to Capital*. London, U.K: Verso

⁸⁴ Marx, K., & Engels, F. (1977). "*The Communist Manifesto*". In McLellan, D (ed) *Karl Marx: Selected Writings*. Oxford, U.K: Oxford University Press. p.224

the exploitation of labour power, “capitalism is highly dynamic and inevitably expansionary.”⁸⁵

Primitive accumulation provided a basis for early capitalist development, and is a key concept for understanding capitalism. Primitive accumulation refers to the process of alienating people from their sources of livelihood, while causing enormous hardship, so as to coerce them to sell their labour in order to survive.⁸⁶ It also entails strict measures to prevent people from using alternative survival strategies that are not within “the system of wage labour.”⁸⁷ It is through primitive accumulation, that the landless proletariat was formed out of peasant populations, in order to create labour power for early capitalist development.⁸⁸ By the 15th century, the trend from feudalism to capitalism was most visible in Western Europe, as agriculture was being transformed into an industrial operation and peasants were being driven off their land in order to look for work in factories or on ships heading to plunder the New World.⁸⁹

Marx depicted primitive accumulation as entailing an entire series of episodic and brutal struggles. The birth of capital was violent, and was written into the world’s history, as Marx wrote, “in letters of blood and fire.”⁹⁰ These struggles played out in Britain during the 17th century, as opposing factions clashed repeatedly over landownership, with resistance movements pointing towards radically different forms of social organization, as opposed to capitalism and privatization.⁹¹ After realizing that self-sufficient peasants could not be coerced into the labour force as long as they had recourse to the “natural economy,” the early proponents of primitive accumulation waged a vicious war against the traditional sector.⁹² In due course, “property became absolute property: all the tolerated ‘rights’ that the peasantry had acquired or preserved...were now rejected.”⁹³ The result was a complete transformation in industry, as well

⁸⁵ Harvey, D. (2006). *The Limits to Capital*. London, U.K: Verso. p.156

⁸⁶ Perelman, M. (2000). *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation*. Durham, U.K: Duke University Press

⁸⁷ *Ibid.* p.14

⁸⁸ Harvey, D. (2006).

⁸⁹ Rodney, W. (1972). *How Europe Underdeveloped Africa*. Dar es Salaam, Tanzania: Tanzania Publishing House. See also: Shutt, H. (2009). *The Trouble with Capitalism: An Enquiry into the Causes of Global Economic Failure*. New York, NY: Zed Books

⁹⁰ Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press. p.162

⁹¹ *Ibid*

⁹² Perelman, M. (2000).

⁹³ Foucault, M. (1979). *Discipline and punish: The birth of the prison*. New York, NY: Vintage. p.85

as economic and social organization.⁹⁴ In order to take advantage of this industrial revolution, English industrial magnates used the *Enclosure Acts* to legally expropriate common land.⁹⁵ This dispossession of the peasantry was considered perfectly legal, since they were only viewed as possessing “traditional rights” rather than “property rights.”⁹⁶

Thus, peasants could no longer rely on their feudal overlords to protect their rights to livelihood or social security. According to Harvey, this was a time of ‘disjuncture’ and change when traditional societies were being severed from the past, as the bourgeoisie rose into the ranks of power and authority through unscrupulous means of ‘accumulation, predation, fraud, and violence’, which set the stage for the beginnings of capitalism as we know it today.⁹⁷ The subsequent increase of European colonialism between the sixteenth and the twentieth centuries provides further examples of forced displacement of subjugated populations in order to facilitate the spread of capitalist production and market exchange, as farms, plantations, and ranches were staked out, mines excavated, forests felled, roads laid, and canals dug. For instance, the history of native-settler contact and interaction largely entailed both violent and nonviolent colonial land appropriation and resettlement schemes, and the ensuing responses of the Native Americans.⁹⁸

It is important to note that Marx conceptualized primitive accumulation as an evolutionary stage *having occurred* in the development of capitalism, which resulted in many Marxist scholars treating the concept of primitive accumulation more as a historical event than as a theoretical approach.⁹⁹ This treatment continued until Harvey resurrected primitive accumulation within the rubric of “accumulation by dispossession” for modern day social analysis. According to this framework, “the features of primitive accumulation that Marx mentions have remained

⁹⁴ Foucault, M. (1979). *Discipline and punish: The birth of the prison*. New York, NY: Vintage

⁹⁵ Shutt, H. (2009). *The Trouble with Capitalism: An Enquiry into the Causes of Global Economic Failure*. New York, NY: Zed Books

⁹⁶ Perelman, M. (2000). *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation*. Durham, U.K: Duke University Press. p.14

⁹⁷ Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press

⁹⁸ Fixico, D.L. (1990). *Termination and relocation: Federal Indian policy*. Albuquerque, AZ: University of New Mexico. See also: Levine, S., & Lurie, N.O (eds). (1968). *The American Indian today*. Baltimore, Md: Penguin Books

⁹⁹ Glassman, J. (2006). ‘Primitive accumulation, accumulation by dispossession, accumulation by “extra-economic” means’. *Progress in Human Geography* 30(5): 608–625.

powerfully present within capitalism's historical geography."¹⁰⁰ That is, contemporary peasant populations are being displaced by many of the same unscrupulous means that disbanded them in Europe during the fifteenth to eighteenth centuries. Harvey applies the concept of accumulation by dispossession to the study of this ongoing phenomenon occurring when long standing indigenous modes of production, largely, based on traditional forms of reciprocity and exchange are replaced by new capitalist modes.¹⁰¹

In *Capital*, Karl Marx argued that capitalism is inherently prone to crisis.¹⁰² Further explained :- since capitalism relies on the imperative of growth via market processes, this trajectory results in a 'crisis' – whereby crisis is defined as a state in which a system requires processes *external* to it, in order to rectify its problems, particularly when its normal reproductive processes are no longer functioning.¹⁰³ Consequently, the system resorts to more extreme forms of exploitation beyond pure market processes – what Harvey refers to as accumulation by dispossession.¹⁰⁴ The roots of capitalism's crisis are to be found in its excess productive capacity, also known as over-accumulation, which results in gluts of manufactured goods, commodities, and idle workers.¹⁰⁵ Harvey argues that global capitalism has experienced a persistent and enduring crisis of over-accumulation since the 1970s,¹⁰⁶ consequently being marked by the persistence of primitive accumulation as a strategy for overcoming this crisis.¹⁰⁷ That is, the crisis of over-accumulation is a constant factor in the process of capital accumulation, and accumulation by dispossession acts as a possible safety valve that may temporarily ease this crisis.¹⁰⁸

Harvey's concept of a 'spatio-temporal fix' is a useful "metaphor for a particular kind of solution

¹⁰⁰ Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press. p.145

¹⁰¹ *Ibid*

¹⁰² Marx, K. (1967). *Capital*. New York, NY: International Publishers

¹⁰³ Cox, R. (1987). *Power, production, and world order*. London, U.K: Macmillan

¹⁰⁴ Bond, P. (2008). *Accumulation by Dispossession in Africa: False Diagnoses and Dangerous Prescriptions*. In Mensah, J (ed) *Neoliberalism and Globalization in Africa: Contestations on the Embattled Continent*. New York, NY: Palgrave MacMillan

¹⁰⁵ ----- (2006). *Looting Africa: The Economics of Exploitation*. Scottsville, South Africa: University of KwaZulu-Natal Press. See also: Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press

¹⁰⁶ Harvey, D. (2003).

¹⁰⁷ Prempeh, E.O.K. (2006). *Against Global Capitalism: African Social Movements Confront Neoliberal Globalization*. Burlington, VT: Ashgate Publishing Company

¹⁰⁸ Harvey, D. (2003).

to capitalist crises through temporal deferral and geographical expansion.”¹⁰⁹ Over-accumulation means that surpluses cannot be disposed of without incurring losses. These surpluses can be potentially absorbed by “(a) temporal displacement through investment in long-term capital projects or social expenditures...that defer the re-entry of capital values into circulation into the future, (b) spatial displacements through opening up new markets, new production capacities, and new resource, social, and labour possibilities elsewhere, or (c) a combination of both (a) and (b).”¹¹⁰ Rosa Luxemburg wrote that capitalist society is characterized by a deep and fundamental antagonism between the capacity to consume and the capacity to produce, a conflict that leads to the accumulation of capital, which episodically “bursts out in crises and spurs capital on to a continual extension of the market.”¹¹¹ This can continue until all external options have been exploited or because other areas “resist being treated as mere convenient appendages.”¹¹² According to Luxemburg, primitive accumulation has become an enduring process of superexploitation on a global scale.¹¹³ Much of the industrialized world grew through primitive accumulation, beginning with the “appropriation of slave labour, antiquities, precious metals and raw materials.”¹¹⁴

Harvey argues that in keeping profitable opportunities open, “access to cheaper inputs is...just as important as access to widening markets.”¹¹⁵ This implies that non-capitalist regions should be forced open to trade, and also to “permit capital to invest in profitable ventures using cheaper labour power, raw materials, low-cost land, and the like. The general thrust of any capitalist logic of power is not that territories should be held back from capitalist development, but that they should be continuously opened up.”¹¹⁶

Features of primitive accumulation have therefore persisted throughout the history of capitalism, such as the “displacement of peasant populations and the formation of a landless proletariat”,

¹⁰⁹ Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press. p.115

¹¹⁰ *Ibid*. p.109

¹¹¹ Luxemburg, R. (1968). *The accumulation of capital*. New York, NY: Monthly Review Press. p.347

¹¹² Harvey, D. (2006). *The Limits to Capital*. London, U.K: Verso. p.427

¹¹³ Luxemburg, R. (1968).

¹¹⁴ Bond, P. (2006). *Looting Africa: The Economics of Exploitation*. Scottsville, South Africa: University of KwaZulu-Natal Press. p.158

¹¹⁵ Harvey, D. (2003). p.139

¹¹⁶ *Ibid*

often at the insistence of key international institutions such as the World Bank.¹¹⁷ The establishment of political and economic structures that are favourable to wealth accumulation is necessary, due to the profit imperative that is intrinsic to capitalism. Thus, capitalist elites will always seek to lower the wages of workers, while profits continually rise.¹¹⁸ As Marx stated, capitalism “establishes an accumulation of misery, corresponding with accumulation of capital. Accumulation of wealth at one pole is, therefore, at the same time accumulation of misery, agony of toil, slavery, ignorance, brutality, mental degradation, at the opposite pole.”¹¹⁹

Primitive Accumulation via the *Washington Consensus*

Today, primitive accumulation can be seen in the predominant mode of neoliberal economic globalization as articulated in the so-called *Washington Consensus*. Economic conditions began to deteriorate sharply in the 1970s, as the advanced capitalist countries entered a new phase marked by reduced growth.¹²⁰ Annual GDP growth rates worldwide fell to an average of 2.6 percent between 1973 and 1989, down from 4.9 percent between 1950 and 1973.¹²¹ Claire-Turenne Sjolander writes that the roots of economic globalization lie in the “acceleration and transformation of changes which came into play in the 1960s” heralding a major reorganization of the capitalist economy.¹²² Global economic competition intensified, as capitalism globally underwent a major structural change known as economic (neoliberal) globalization.¹²³ Economic globalization is here understood as “a system fuelled by the belief that a single global economy with universal rules set by corporations and financial markets is inevitable.”¹²⁴

¹¹⁷ Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press. p.145-146

¹¹⁸ Gibbs, T., & Leech, G. (2009). *The Failure of Global Capitalism: From Cape Breton to Colombia and Beyond*. Sydney, NS: Cape Breton University Press

¹¹⁹ Marx, K. (1967). *Capital*. New York, NY: International Publishers. p.645

¹²⁰ Leadbeater, D. (2008). *Sudbury's Crisis of Development and Democracy*. In Leadbeater, D (ed) *Mining Town Crisis: Globalization, Labour, and Resistance in Sudbury*. Black Point, NS: Fernwood Publishing

¹²¹ Maddison, A. (1991). *Dynamic Forces in Capitalist Development: A Long-Run Comparative View*. Oxford, U.K: Oxford University Press

¹²² Sjolander, C. (1996). The rhetoric of globalization: what's in a wor(l)d? *International Journal* (51)4, 603-616; See also: Colas, A., & Saull, R (eds). (2006). *The War on Terrorism and American 'Empire' after the Cold War*. New York, NY: Routledge; Kiss, A., Shelton, D., & Ishibashi, K (eds). (2003). *Economic Globalization and Compliance with International Agreements*. The Hague, Denmark: Kluwer Law International

¹²³ Leadbeater, D. (2008).

¹²⁴ Barlow, M., & Clarke, T. (2002). *Blue Gold: The Fight to Stop the Corporate Theft of the World's Water*. New York, NY: The New Press. p.81

After the *Washington Consensus* – a gathering of political and social elites who favoured market-based rather than state-managed development strategies – neoliberalism was adopted by the international financial institutions (IFIs) headquartered in Washington-DC.¹²⁵ In their application of neoliberal ideology, the IFIs, regional development banks (such as the African Development Bank and Asian Development Bank), and the international development agencies of the major donor countries insist that countries receiving their loans, credits, and development assistance must adopt policy reforms (including austerity measures) that make the private sector the primary engine of their development goals.¹²⁶ These reforms have essentially been used to open up national economies to transnational capital and to ‘integrate’ them into the global market.¹²⁷ According to Bonnie Campbell, some of these liberalization measures have resulted in an ongoing process of reduction in the autonomy of the state.¹²⁸

From the perspective of international political economy (IPE), the *Washington Consensus* illustrates how values that are favoured by certain powerful actors serve to promote their interests and positions within the global political economy. As Ray Bush writes, “it is not that markets are good or bad, but that *some countries or regions have the power to make the world market work to their advantage, while others do not, and have to bear the cost.*”¹²⁹ He cites the fact that the liberalization of African economies occurred three times faster than the reduction in tariffs in the member states of the Organization for Economic Cooperation and Development (OECD).¹³⁰

The hypothesis that investment in the extractive sector drives economic growth, which in turn spurs development and reduces poverty, underlies the thinking and strategizing that has taken

¹²⁵ Soederberg, S. (2006). *The war on terrorism and American empire: Emerging development agendas*. In Colas, A., & Saull, R (eds) *The War on Terrorism and the American 'Empire' after the Cold War*. London, U.K: Routledge. See also: Dowlah, C. (2004). *Backwaters of Global Prosperity: How Forces of Globalization and GATT / WTO Trade Regimes Contribute to the Marginalisation of the World's Poorest Nations*. Westport, CT: Praeger Publishers

¹²⁶ Bonnano, A., & Constance, D.H. (2008). *Stories of Globalization: Transnational Corporations, Resistance, and the State*. Pennsylvania, PA: Pennsylvania State University Press

¹²⁷ Harris, R.L (ed). (2005). *Globalization and Development in Latin America (Volume 6)*. Whitby, ON: de Sitter Publications

¹²⁸ Campbell, B. (2012). *The role of the private sector in achieving Canada's international development interests*. Presented to the Standing Committee on Foreign Affairs and International Development, April 4. Montreal, QC: University of Quebec

¹²⁹ Bush, R. (2007). *Poverty and Neoliberalism: Persistence and Reproduction in the Global South*. London, U.K: Pluto Press. p.42

¹³⁰ *Ibid.* p.43

place in the extractive sector over the last two decades. This hypothesis informed the World Bank studies on Africa and Latin America during the 1990s, and was translated into policy recommendations that ushered crucial reforms in the extractive sector.¹³¹ Pursuant to this, the argument that production for export creates prosperity – based on the theory of comparative advantage – is the most important principle of neoliberal economics.¹³² Particularly at the insistence of the IFIs, the overriding emphasis is for natural resources to be extracted by TNCs on an industrial scale and exported.¹³³

According to the IFIs, economic growth can only occur when subsistence lands are used for capital-intensive, large-scale, export-oriented commercial production, which take the form of huge commercial mines, plantation forest projects, and / or agricultural monocrop plantations, resulting in the displacement of millions of people.¹³⁴ “Progress” in the context of development projects translates to economic development, and is seen to be unidirectional, inevitable and led by market forces.¹³⁵ Thus, virtually all developing countries have adopted resource-led growth strategies,¹³⁶ while the IFIs maintain “a modernization view of development: the path to growth is unilinear and will be accomplished by ‘unlocking’ the...comparative advantage and potential” of countries through resource extraction.¹³⁷ These Western development models and the resulting projects that call for the displacement of thousands, even millions of people, have been heartily embraced by many post-colonial elites.¹³⁸

¹³¹ Madeley, J. (2000). *Hungry For Trade: How the Poor Pay for Free Trade*. Halifax, NS: Fernwood Publishing Ltd

¹³² Bond, P. (2006). *Looting Africa: The Economics of Exploitation*. Scottsville, South Africa: University of KwaZulu-Natal Press

¹³³ Campbell, B (ed). (2009). *Mining in Africa: Regulation and Development*. Ottawa, ON: International Development Research Council (IDRC)

¹³⁴ Tauli-Copuz, V. (2006). *World Bank and IMF Impacts on Indigenous Economies*. In Mander, J., & Tauli-Copuz, V (eds) *Paradigm Wars: Indigenous Peoples' Resistance to Globalization (A project of the International Forum on Globalization)*. San Francisco, CA: Sierra Club Books

¹³⁵ Bodley, J.H. (1983). *The World Bank Tribal Policy: Criticisms and Recommendations* (mss.) Testimony prepared for the House Committee on Banking, Finance & Urban affairs, Subcommittee on International Development, Institutions and Finance. Hearings on the World Bank, 29 June. Washington, DC

¹³⁶ Bond, P. (2003). *Against Global Apartheid: South Africa meets the World Bank, IMF and International Finance (Second Edition)*. Lansdowne, South Africa: University of Cape Town Press

¹³⁷ Bush, R. (2010). *Mining, Dispossession, and Transformation in Africa*. In Fraser, A., & Larmer, M (eds) *Zambia, Mining, and Neoliberalism: Boom and Bust on the Globalized Copperbelt*. New York, NY: Palgrave MacMillan. p.255

¹³⁸ Nandy, A. (1998). *Exiled at home*. Delhi, India: Oxford University Press

The advice of the IFIs is problematic on several grounds. For example, the theory of comparative advantage – export of raw materials for high-value addition elsewhere – has been discredited, because it only works if trade takes place between nations that are at roughly the same stages of economic development, rather than between wealthy nations selling value-added goods and much poorer nations selling primary products. This theory was applied throughout the twentieth century, but the terms of trade turned against developing countries, and they had to export more primary products so as to import the same amount of industrial goods.¹³⁹

In addition, with the advent of neoliberal globalization came a new factor – the concentration of market power in corporations that primarily seek to maximize profits by dominating global trade.¹⁴⁰ Proponents of free trade often cite the names and theories of Adam Smith and David Ricardo to justify destructive export-oriented policies.¹⁴¹ However, Smith preferred small, locally owned enterprises,¹⁴² whereas Ricardo’s theory of comparative advantage assumes that capital is static and confined within states¹⁴³ – unlike present market conditions. Moreover, export markets are variable, unreliable, and volatile. Recent food crises that resulted from falling commodity prices further attest to the failure of comparative advantage theories.¹⁴⁴ Harvey argues that “free trade” within the context of the present world system is a means of prolonging the relations of exploitation and dependence. Along with open capital markets, free trade has become the key means of favouring the monopoly powers that already dominate trade, finance, production, and services within the capitalist world. Hence, the primary means for accumulation by dispossession has been the liberalization of markets worldwide through institutional pressures exercised via international institutions such as the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO), backed by the power of the United States (and

¹³⁹ Madeley, J. (2000). *Hungry For Trade: How the Poor Pay for Free Trade*. Halifax, NS: Fernwood Publishing Ltd

¹⁴⁰ *Ibid*

¹⁴¹ Cavanagh, J., & Mander, J (eds). (2004). *Alternatives to Economic Globalization: A Better World Is Possible*. A Report of the International Forum on Globalization. San Francisco, CA: Berrett-Koehler Publishers, Inc.

¹⁴² *Ibid*

¹⁴³ Ugarteche, O. (2000). *The False Dilemma - Globalization: opportunity or threat?* London, U.K: Zed Books

¹⁴⁴ Cavanagh, J., & Mander, J (eds). (2004). In his famous testimony to the House of Representatives Special Committee on the US mortgage crisis in October 2008, former U.S. Federal Reserve Chairman Allan Greenspan admitted that he “had put too much faith in the self-correcting power of free markets” [Andrews, E.L. (2008). ‘Greenspan concedes error on regulation.’ New York Times, 23rd October]

to a lesser degree Europe).¹⁴⁵

According to Harvey, the neoliberal definition of development is that “well-being is best advanced...within an institutional framework that privileges...the free market, and minimum state intervention.”¹⁴⁶ Among the reforms, regulatory frameworks and institutions introduced over the last two decades to liberalize the extractive sector of mineral-rich countries, the stringent retrenchment of the state has been the most important: that is “the new delineation between public and private spheres of authority and the transfer of what were previously public responsibilities to private actors.”¹⁴⁷ To this effect, the World Bank calls for a “clearly articulated mining sector policy that emphasizes the role of the private sector as *owner* and *operator* and of the government as *regulator* and *promoter*.”¹⁴⁸ This process of redefining the state’s role in the mining sector and more generally, reconceptualising its sovereignty, echoes the observations made by Susan Strange with respect to the reduction in autonomy and authority of states, in addition to their reduced capacity to control the development of their own institutions.¹⁴⁹ At the same time, the distribution of structural power has been shifted in order to favour private actors and, especially, extractive companies.¹⁵⁰

Reigning economic policies and models – created and implemented by multilateral development agencies and hegemonic national governments through different forms of discipline, including

¹⁴⁵ Harvey, D. (2003). *The New Imperialism*. Oxford, U.K: Oxford University Press. Thomas Friedman, the *Pullitzer Prize* winning foreign affairs columnist for *The New York Times*, who is also a noted proponent of neoliberal globalization and a free market expert, blatantly wrote: “The fact that no two countries have gone to war since they both got McDonald’s is partly due to economic integration, but it is also due to the presence of American power and America’s willingness to use that power against those who would threaten the system of globalization – from Iraq to North Korea. The hidden hand of the market will never work without a hidden fist...And the hidden fist that keeps the world safe for Silicon Valley’s technologies to flourish is called the U.S. Army, Air Force, Navy and Marine Corps” [Friedman, T.L. (2000). *The Lexus and The Olive Tree*. New York, NY: Anchor Books]

¹⁴⁶ Harvey, D. (2007). *A Brief History of Neoliberalism*. Oxford, U.K: Oxford University Press. p.2

¹⁴⁷ Campbell, B. (2012). *The role of the private sector in achieving Canada’s international development interests*. Presented to the Standing Committee on Foreign Affairs and International Development, April 4th. Department of Political Science, Faculty of Political Science and Law. Montreal, QC: University of Quebec

¹⁴⁸ World Bank. (1992). *Strategy for African Mining*. World Bank Technical Paper, No. 181. Africa Technical Department Series, Mining Unit, Industry and Energy Division. Washington, DC: World Bank. p.53 (Emphasis added)

¹⁴⁹ Strange, S. (1996). *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge, U.K: Cambridge University Press

¹⁵⁰ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

loan conditionalities, austerity measures, etc – favour intensive efforts to enhance productive capacity. This hinges on the belief that general patterns of consumption and well-being are enhanced, when increased production and income filter through the system. Enhanced productive capacity is based on the principle of “efficient use” of resources to produce maximum value, defined primarily in terms of global market indicators, including earnings potential.¹⁵¹ According to another definition, efficient use generally means to maximize the generation of profit and the return on investment on a specified piece of property (whether a piece of land or a product), instead of directing the use of that property to the benefit of those most in need.¹⁵²

This principle of resource use efficiency generally provides the impetus for states to engage in projects that displace communities. States and private capital view natural resources as being underutilized by local communities, thereby prompting the initiation of projects to exploit the economic potential of these resources more efficiently. The roots of the efficiency argument are deeply embedded in Western imperialism, and were enshrined in John Locke’s principle of improvement as a precursor to property rights – “the natural right of property derived from its productive use.”¹⁵³

The Corporate Extractive Industry

The architecture of global capitalism that was in place at the start of the twenty-first century was comprised of the fundamentals of a global capitalist system: the power of capital over labour, investment, and goods; the receptivity of states to the needs of capital; and the existence of domestic and global institutions capable of reinforcing the discipline crucial to capitalist reproduction.¹⁵⁴ “New private-sector friendly” codes and legislation regarding the rights of foreign investors have subsequently been included in free trade agreements, thereby providing the legal basis for “suing governments that rescind permit for mining operations.”¹⁵⁵ Today,

¹⁵¹ Penz, G. (1992). Development refugees and distributive justice: Indigenous peoples, land and the developmentalist state. *Public Affairs Quarterly* 6(1), 105-131.

¹⁵² Andreasson, S. (2006). Stand and Deliver: Private Property and the Politics of Global Dispossession. *Political Studies* 54, 3-22.

¹⁵³ Wood, E.M. (2002). *The origins of capitalism: A longer view*. New York, NY: Verso. p.157-159

¹⁵⁴ Cammack, P. (2002). ‘Neoliberalism, the World Bank and the New Politics of Development’. In Kothari, U., & Minogue, M (eds) *Development Theory and Practice*. Basingstoke, U.K: Palgrave

¹⁵⁵ Canel, E., Idemudia, U., & North, L. (2010). Rethinking Extractive Industry: Regulation, Dispossession, and

extractive companies (or TNCs) have gained “unprecedented access to a larger proportion of the earth’s surface than ever before...shaped by a world marketplace where countries must compete for private sector investment.”¹⁵⁶ Thus, extractive TNCs are the principal agents of accumulation by dispossession, because they embody the emerging ideology of global capital accumulation by marking out new frontiers for global capitalism.¹⁵⁷ According to Ray Bush, TNCs are “conduits of commodification and dispossession.”¹⁵⁸

In fact, present struggles over oil and mineral wealth, involving the industrialized countries and TNCs, highlight processes characterized by violent accumulation by dispossession of natural resources.¹⁵⁹ Research shows that processes of centre-periphery accumulation by dispossession are at the core of resource extraction by extractive TNCs, which promote “a plunder of resources underpinned by limited formal employment and coercive labour regimes in areas close to mines.”¹⁶⁰ This mirrors the impact of European colonial merchants, as today’s companies operate modern technology and have vast resources at their disposal as compared to their host governments.

Corporations are presently “the dominant institutional force at the centre of human activity and the planet itself.”¹⁶¹ According to the Institute of Policy Studies, fifty-one of the top one hundred economic units in the world are corporations, not countries. The world’s top two-hundred corporations account for almost a quarter of the total measured economic activity (in terms of GDP) of the entire world.¹⁶² At the turn of the century, the largest 500 corporations accounted for about 80 per cent of foreign investment, 70 per cent of world trade and 30 per cent of world output. About a third of international trade was conducted by TNCs within their own

Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25.

¹⁵⁶ Otto, J. (1998). ‘Global changes in mining laws, agreements and tax systems’. *Resources Policy* (24)2. p.85

¹⁵⁷ Evans, G., Goodman, J., & Lansbury, N. (2002). *Globalisation: Threats and Opportunities*. In Evans, G., Goodman, J., & Lansbury, N (eds) *Moving Mountains: Communities Confront Mining and Globalisation*. London, U.K: Zed Books.

¹⁵⁸ Bush, R. (2010). *Mining, Dispossession, and Transformation in Africa*. In Fraser, A., & Larmer, M (eds) *Zambia, Mining, and Neoliberalism: Boom and Bust on the Globalized Copperbelt*. New York, NY: Palgrave MacMillan

¹⁵⁹ ----- (2007). *Poverty and Neoliberalism: Persistence and Reproduction in the Global South*. London, U.K: Pluto Press

¹⁶⁰ ----- (2010). p.251

¹⁶¹ Cavanagh, J., & Mander, J (eds). (2004). *Alternatives to Economic Globalization: A Better World Is Possible*. A Report of the International Forum on Globalization. San Francisco, CA: Berrett-Koehler Publishers, Inc. p.272

¹⁶² Anderson, S., & Cavanagh, J. (2002). *The rise of corporate global power*. Institute for Policy Studies. <http://www.ips-dc.org/reports/top200.html>

organizations – that is, a subsidiary in one country selling to and / or buying from a subsidiary in another, or trading with the head office.¹⁶³ Furthermore, most of the TNCs’ sales are conducted directly through the markets in which they are located, rather than through foreign trade.¹⁶⁴ Today, the world’s top ten energy companies account for a quarter of the global energy market, while the top ten chemical companies account for approximately 40 per cent of the market. The world’s top ten seed companies account for almost three-quarters of the global seed market, with just three controlling slightly more than half the market.¹⁶⁵ Hence, neoliberal globalization may be aptly called corporate globalization.

Corporate globalization has profoundly and adversely affected the conditions of economic development and democracy, particularly through the tremendous increase in the power of TNCs relative to that of communities and labour.¹⁶⁶ TNCs have become powerful entities that can wield significant influence with government and the general population.¹⁶⁷ However, such concentration of corporate power “distorts the functioning of markets and undermines democratic decision-making processes.”¹⁶⁸

One of the most notable features of corporate globalization is “the massive increase in the concentration and centralization of capital,” to the extent where a few TNCs control production and trade, both globally and domestically.¹⁶⁹ By 1990, the four largest mining TNCs controlled almost 15 percent of capitalization in the global mining sector, and by 2002, that amount had doubled.¹⁷⁰ This process of concentration and centralization has continued, mainly via corporate mergers. In addition, corporate globalization poses a serious threat to society, because mining

¹⁶³ Madeley, J. (2000). *Hungry For Trade: How the Poor Pay for Free Trade*. Halifax, NS: Fernwood Publishing Ltd.

¹⁶⁴ Morales, I. (2008). *Post-NAFTA North America: Reshaping the Economic and Political Governance of a Changing Region*. In Shaw, T.M (ed) *International Political Economy Series*. New York, NY: Palgrave MacMillan

¹⁶⁵ Vitali, S., Glattfelder, J.B., & Battiston, S. (2011). *The network of global corporate control*. Zurich, Switzerland: ETH [http://arxiv.org/PS_cache/arxiv/pdf/1107/1107.5728v2.pdf]

¹⁶⁶ Leadbeater, D. (2008). *Sudbury’s Crisis of Development and Democracy*. In Leadbeater, D (ed) *Mining Town Crisis: Globalization, Labour, and Resistance in Sudbury*. Black Point, NS: Fernwood Publishing

¹⁶⁷ Ali, S.H. (2003). *Mining, the Environment, and Indigenous Development Conflicts*. Tucson, Az: The University of Arizona Press

¹⁶⁸ Melber, H (ed). (2012). No future without justice: Report of the Civil Society Reflection Group on Global Development Perspectives. *development dialogue* No. 59, June 2012. p.12

¹⁶⁹ Dunning, J.H. (1997). *Alliance Capitalism and Global Business*. London, U.K: Routledge. p.16

¹⁷⁰ Humphreys, D. (2005). “*Corporate Strategies in the Global Mining Industry*.” In Bastida et al. (eds) *International and Comparative Mineral Law and Policy: Trends and Prospects*. The Hague, Netherlands: Kluwer Law International

TNCs are generally structured to remain free of any legal responsibility to operate in moral, humane, or any other ways that are beneficial to communities, workers, or the environment.¹⁷¹ This is primarily because the legal framework regulating TNCs operates in such a way that parent companies and their subsidiaries are considered to be distinct legal entities, generally rendering the former not liable for wrongs committed by the latter.¹⁷²

Since neoliberal capitalism is premised on the doctrine of economic growth and free trade, corporations must constantly produce and sell products, in order to achieve continual growth.¹⁷³ According to the International Forum on Globalization (IFG), TNCs are governed by three main principles: the absolute need to make profits; the need to grow continuously and expand territorially and functionally; and the need to remain as unrestricted as possible in their operations.¹⁷⁴ The hallmark of conservative economic theory is that firms should not be constrained in their pursuit of profit. The late Milton Friedman, a Nobel Laureate in economics and arguably the most influential conservative economist of the twentieth century, maintained that the sole responsibility of a corporation is to maximize profits.¹⁷⁵ Any action by the firm's directors that conflicts with this objective is "subversive to the interests of the corporation and society."¹⁷⁶ Legal scholar, Joel Bakan, argues that corporations exist solely to maximize returns to their shareholders.¹⁷⁷ In fact the corporation was not designed simply to create wealth, "but rather to extract and concentrate it."¹⁷⁸

Over the last thirty years, the phenomenal growth of TNCs has occurred in a climate of investment liberalization, deregulation and privatization. The globalization of investment finance has greatly enhanced the structural power of TNCs, thus significantly increasing their leverage

¹⁷¹ Cavanagh, J., & Mander, J (eds). (2004). *Alternatives to Economic Globalization: A Better World Is Possible*. A Report of the International Forum on Globalization. San Francisco, CA: Berrett-Koehler Publishers, Inc.

¹⁷² Ruggie, J.G. (2010). *Governing Transnational Corporations*. <http://www.internationalrelations.com/2012/09/30/ruggie-governing-transnational-corporation/>

¹⁷³ Gibbs, T., & Leech, G. (2009). *The Failure of Global Capitalism: From Cape Breton to Colombia and Beyond*. Sydney, NS: Cape Breton University Press

¹⁷⁴ Cavanagh, J., & Mander, J (eds). (2004).

¹⁷⁵ Chernomas, R., & Hudson, I. (2007). *Social Murder: And Other Shortcomings of Conservative Economics*. Winnepeg, MA: Arbeiter Ring Publishing

¹⁷⁶ *Ibid.* p.7

¹⁷⁷ Bakan, J. (2005). *The Corporation: The Pathological Pursuit of Profit and Power*. London, U.K: Constable & Robinson Ltd.

¹⁷⁸ Korten, D. (2002). *Predatory corporations*. In Evans, G., Goodman, J., & Lansbury, N (eds) *Moving Mountains: Communities Confront Mining and Globalisation*. London, U.K: Zed Books

over dependent economies and governments. Several examples of this process can be found in the extractive sector.¹⁷⁹ Multilateral institutions such as the World Trade Organization (WTO) and the IFIs impose market conditionalities in natural resource extraction and energy provision, compelling Southern states to seek private capital.¹⁸⁰ In tandem, TNCs have lobbied for less taxation, more security and increased access, thereby exploiting the increasing rivalry between liberalizing economies for foreign mining capital.¹⁸¹ Ferguson refers to this as “extractive neoliberalism.”¹⁸²

Economic Globalization and the Primacy of Natural Resources

In *Globalization and the Race for Resources*, globalization is defined as a process that “emerges as the intensification and expansion of material processes of production and exchange require greater volumes of a greater variety of materials, which may only be available by extending extraction and transport across ever-broader portions of global space.”¹⁸³ Economic globalization depends on the Earth’s resources for its very existence, thus opening up the natural resource market to satisfy increased volumes of world trade, transport and communication and the increasing affluence it creates.¹⁸⁴ Almost everything in modern society is derived from or depends on the use of natural resources. Without them, we would have no skyscrapers, no planes, no ships, no cars, no bridges, no weapons, no electronics, no consumer products, no central heating, no air-conditioning and none of the provisions of running water and sewage disposal that we take for granted.¹⁸⁵

A key factor in the emergence of dependent extractive economies in the global South was the

¹⁷⁹ Evans, G., Goodman, J., & Lansbury, N. (2002). *Politicising Finance*. In Evans, G., Goodman, J., & Lansbury, N (eds) *Moving Mountains: Communities Confront Mining and Globalisation*. London, U.K: Zed Books

¹⁸⁰ *Ibid*

¹⁸¹ Bridge, G. (1999). ‘Harnessing the bonanza: Economic liberalization and capacity building in the mineral sector’. *Natural Resources Forum* 23, 43-55.

¹⁸² Ferguson, J. (2008). *Global Shadows: Africa in the Neoliberal World Order*. Durham, U.K: Duke University Press. p.210

¹⁸³ Bunker, S.G, & Ciccantell, P.S. (2005). *Globalization and the Race for Resources*. Baltimore, MA: The Johns Hopkins University Press. p.6

¹⁸⁴ Blanco, E.M., & Razzaque, J. (2011). *Globalisation and Natural Resources Law: Challenges, Key Issues and Perspectives*. Cheltenham, U.K: Edward Elgar Publishing Limited

¹⁸⁵ Lanning, G., & Mueller, M. (1979). *Africa Undermined: Mining Companies and the Underdevelopment of Africa*. Harmondsworth, U.K: Penguin Books Ltd

globalization of production and trade in the late nineteenth century, in the aftermath of the industrial revolution in Western Europe.¹⁸⁶ Historically, extractive companies have played a major role, through partnerships with both colonial and post-colonial governments. Their main function has been to secure the flow of resources from the global South to the global North, while utilizing their leverage over weak governments eager for economic growth.¹⁸⁷ Today, guided by the *Washington Consensus*, the laws of developing countries have been “designed to attract foreign direct investment into the mining and petroleum sectors,” and has led “to the rewriting of what were considered antiquated mining codes in order to make them attractive to foreign investors and compatible with the dictates of...neo-liberal prescriptions.”¹⁸⁸ However, the main problem with foreign direct investment (FDI) is that there is poor integration of TNCs into the economies of host countries, as FDI is largely concentrated on resource extraction in small mining locales while contributing little to host economies.¹⁸⁹

One feature of resource extraction is that all reserves are inevitably depleted over time, as their output declines. Extractive companies must therefore continually discover or acquire new reserves in order to sustain a fairly stable output during the course of their operations.¹⁹⁰ As resource extraction intensifies, the total available supply of many key materials will also diminish, leading to a corresponding increase in prices and increased conflict over critical resources such as oil, uranium and certain rare earth metals.¹⁹¹ This argument in turn informs the penchant to dismiss those who mount such resistance as “terrorists”.¹⁹² Michael Watts argues that primitive accumulation and militarism have been coupled to the “war on terror,”¹⁹³ which

¹⁸⁶ Omeje, K. (2008). *Extractive Economies and Conflicts in the Global South: Re-Engaging Rentier Theory and Politics*. In Omeje, K (ed) *Extractive Economies and Conflicts in the Global South: Multi-Regional Perspectives on Rentier Politics*. Burlington, VT: Ashgate Publishing Company

¹⁸⁷ Evans, G., Goodman, J., & Lansbury, N. (2002). *Politicising Finance*. In Evans, G., Goodman, J., & Lansbury, N (eds) *Moving Mountains: Communities Confront Mining and Globalisation*. London, U.K: Zed Books

¹⁸⁸ *Ibid*

¹⁸⁹ Tandon, Y. (2010). *Jobs First*. Ransom, D., & Baird, V (eds) (2010) *People First Economics*. Oxford, U.K: New Internationalist Publication Ltd

¹⁹⁰ Ali, S.H. (2003). *Mining, the Environment, and Indigenous Development Conflicts*. Tucson, Az: The University of Arizona Press

¹⁹¹ Klare, M.T. (2002). *Resource Wars: The New Landscape of Global Conflict*. New York, NY: Henry Holt and Company, LLC

¹⁹² Obi, C.I. (2010). Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria’s Oil-Rich Niger Delta. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 219-236.

¹⁹³ Watts, M. (2006). “Empire of oil: Capitalist Dispossession and the scramble for Africa.” *Monthly Review*, September

has provided the context for labelling the Movement for the Emancipation of the Niger Delta (MEND) “a terrorist organization with possible links to other international terrorist organizations targeting Western...interests.”¹⁹⁴ This has also been the case with Niger’s indigenous Tuareg and the fabrication of a Sahara-Sahelian front in the U.S-led “war on terror.”¹⁹⁵

Conclusions

Accumulation by dispossession by the global extractive industry has been taking place within the context of corporate globalization. Primitive accumulation has continued under the rubric of accumulation by dispossession – by which the extractive industry dispossesses and displaces communities. The *Washington Consensus* has led to the exceptional growth of extractive TNCs and the extractive sector is driven by the hypothesis that investment in resource extraction is necessary for economic growth and poverty reduction.¹⁹⁶ However, large-scale extractive projects frequently impoverish local people even in industrialized countries like Canada. Before turning to the domestic situation, however, it is important to appreciate Canada’s history with respect to resource extraction.

¹⁹⁴ Pham, P. (2007). Next front? Evolving United States-African relations in the “War on Terror” and beyond. *Comparative Strategy* 26(1), 39-54. See also: Lubeck, P.M., Watts, M.J., & Lipschutz, R. (2007). *Convergent Interests: U.S. Energy Security and the “Securing” of Nigerian Democracy*. http://www.ciponline.org/NIGERIA_FINAL.pdf

¹⁹⁵ Keenan, J. (2010). *Africa unsecured? The role of the Global War On Terror (GWOT) in securing US imperial interests in Africa*. Routledge, *Critical Studies on Terrorism* (3)1, 27-47; See also: Keenan, J. (2008). Uranium Goes Critical in Niger: Tuareg Rebellions Threaten Sahelian Conflagration. *Review of African Political Economy* (35)117, 449-466; Keenan, J. (2009). *The Dark Sahara: America’s War on Terror in Africa*. New York, NY: Pluto Press

¹⁹⁶ Campbell, B. (2012). *The role of the private sector in achieving Canada's international development interests*. Presented to the Standing Committee on Foreign Affairs and International Development, April 4. Montreal, QC: University of Quebec

Chapter 2: The History of the Canadian Extractive Industry

Canada is historically considered as having had a ‘staple-based’ (export-led) economy that significantly impacted the evolution of its mining laws and practices.¹⁹⁷ Even today, Canada relies more on export-led growth than all the high income OECD countries, with about 11% of its Gross Domestic Product (GDP) linked to the sector.¹⁹⁸ The staples theory is especially valid in the case of Atlantic Canada, where the region’s economy was powered by the extractive sector. This chapter begins with a brief history of Canada’s staple economy. Drawing on international political economy (IPE), the chapter then shows how Canada’s mining regimes have been transnationalised in the global extractive industry. The link between the development of Canada’s mining regimes and the reform of mining regimes in other regions of the world has been both direct: as Canada provides finances and expertise for such reforms; and indirect, through the role that Canada plays in the IFIs that are responsible for the reforms.¹⁹⁹ Moreover, Canada’s leading role in the industry and as a country with vast mineral-rich deposits warrants considerable analysis of her historical development as a resource-led economy within the context of global capitalism.

A Staple Economy

Canada’s early economic history could be best understood in her search for “staple” products – raw or unprocessed bulk commodities sold on export markets²⁰⁰ – to meet the demands of more advanced economies.²⁰¹ Canada could not be considered “a self-contained economy using Ricardian assumptions of international trade, namely that capital and labour were relatively

¹⁹⁷ Wilkinson, B. (1985). *Canada’s resource industries*. In Whalley, J (ed) *Canada’s Resource Industries and Water Export Policy*. Toronto, ON: University of Toronto Press

¹⁹⁸ Boreal Leadership Council (BLC). (2012). *Free, Prior, and Informed Consent in Canada*. <http://www.borealcanada.ca/documents/FPICReport-English-web.pdf>

¹⁹⁹ Campbell, B. (1999). *Les intérêts miniers canadiens et les droits de la personne en Afrique dans le cadre de la mondialisation*. Droits et Démocratie, Centre international des droits de la personne et du développement démocratique – <http://www.dd-rd.ca/site/>. Quoted in: Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217. See also: Arsenault, C. (2007). “Colombia: Foreign Firms Cashing in on Generous Mining Code,” Inter Press Service. <http://ipsnews.net/news.asp?idnews=39755>

²⁰⁰ Howlett, M., & Brownsey, K (eds). (2008). *Canada’s Resource Economy in Transition: The Past, Present, and Future of Canadian Staples Industries*. Toronto, ON: Edmond Montgomery Publications Limited

²⁰¹ Mackintosh, W.A. (1967). ‘Economic Factors in Canadian History’. In Easterbrook, W.T., & Watkins, M.H (1967) *Approaches to Canadian Economic History*. Toronto, ON: McClelland and Stewart.

immobile.”²⁰² Since staple-exporting sectors were viewed in their global contexts, Canada was considered an ‘open economy,’²⁰³ with her economic policies being determined externally.²⁰⁴

Pioneered by Canada’s most celebrated economist, Harold A. Innis, and William Mackintosh in the 1920s, the “staple theory” is considered to be Canada’s most notable contribution to modern economics. This school of thought sought to explain export-oriented growth in new-settler societies, positing that “hinterland development was determined externally by the pattern of demand and the level of technology in the metropolitan countries and internally by God-given geographic and resource endowments.”²⁰⁵ Initiatives within staple economies generally came from the metropolitan countries in the form of economic demand, new techniques, especially in transport and communication, and changing cultural tastes. Resource availability was the main limit to development.²⁰⁶

The difference between Canada’s economic approach and those of the U.S. and the U.K. during the early part of the 20th century was that its industrial sector was not its economic foundation. The exploitation of Canada’s vast natural resources was the main factor in its economic activity, leading Innis to develop the staples theory – that natural resources were the staples of the Canadian economy. However, these resources were mainly exploited for export, thereby keeping Canada on the fringe of the global economy rather than at its industrial core.²⁰⁷ According to Innis, Canada has served as an instrument of both British and American imperialism. Canada strongly participated in the industrial growth of the United States, becoming her gateway to the markets of the British Empire. Over the years, she continued chiefly as a producer of raw materials for the industrial centers of the United States (and to a lesser degree) Great Britain, consequently making her own contribution to the Industrial Revolutions of North America and

²⁰² Nurkse, R. (1962). *Problems of Capital Formation in Underdeveloped Countries*. Oxford, U.K: Basil Blackwell. p.120

²⁰³ Laxer, G (ed). (1991). *Perspectives on Canadian Economic Development: Class, Staples, Gender and Elites*. Toronto, ON: Oxford University Press

²⁰⁴ Kuusisto, N., & Williams, R. (1974). “Nova Scotia versus big gypsum”. *Round One*, No.4. Kuusisto and Williams observe that Canadians have historically been producers of cheap primary products under conditions of external control, in the agriculture, forestry, fishing and mining industries in general.

²⁰⁵ Watkins, M.H. (1963). ‘A Staple Theory of Economic Growth’. *Canadian Journal of Economics and Political Science* 29(2), p.143.

²⁰⁶ Laxer, G (ed). (1991).

²⁰⁷ Gibbs, T., & Leech, G. (2009). *The Failure of Global Capitalism: From Cape Breton to Colombia and Beyond*. Sydney, NS: Cape Breton University Press

Europe.²⁰⁸

Innis argued that despite the factors favourable for rapid and sustained development being present, exogenous forces, or what economists call, externalities, set the agenda.²⁰⁹ Thus, the staple theory's most powerful argument is that although Canada joined the world system as a developed country, its transformation into a fully mature industrial economy was blocked by the weak backward, forward, and final demand linkages generated by export-led growth, as well as foreign ownership, import penetration, and the lack of an indigenous class of entrepreneurs.²¹⁰ The seminal message of the staple theory was that by exporting every rock and log as fast as it could, Canada had a raw deal – it needed to utilize its resources so as to build strong industries, expand its domestic economy, and generate new and improved employment opportunities.²¹¹

Still today, Canada is often criticized for depending too much on its comparative advantage in resource extraction,²¹² resulting in an economy that is dependent on supplying raw materials to other countries.²¹³ Any downturn in one of these industries,²¹⁴ as has happened in Canada's Atlantic region, can have a devastating impact on entire regions. This alone is a good argument for economic diversification rather than specialization.²¹⁵

Canada, the United States and Australia are often cited as examples of countries that have prospered from the extraction of natural resources. Although the initial phase of industrialization

²⁰⁸ Innis, H.A. (1989). *Great Britain, the United States and Canada*. In Wallace, C., & Williams, G (eds) *The New Canadian Political Economy*. Kingston, ON: McGill-Queen's University Press. The similarity between dependency theory and the staple approach derives "particularly from work within the Innisian tradition of staple theory" [Moore, W.P. (1978). "Staples and the Development of the Capitalist Mode of Production: A Study of Mining in Canada, 1845-1920." *Open Access Dissertations and Theses*. Paper 2833 - <http://digitalcommons.mcmaster.ca/opendissertations/2833/>]

²⁰⁹ Innis, H.A., & Drache, D (eds). (1995). *Staples, Markets, and Cultural Change: Selected Essays, By Innis A. H.* Kingston, ON: McGill-Queen's University Press

²¹⁰ Laxer, G (ed). (1991). *Perspectives on Canadian Economic Development: Class, Staples, Gender and Elites*. Toronto, ON: Oxford University Press).

²¹¹ Innis, H.A., & Drache, D (eds). (1995).

²¹² Urmetzer, P. (2003). *From Free Trade to Forced Trade: Canada in the Global Economy*. Toronto, ON: Penguin Books

²¹³ Denley, R. (2012). *Corporations have their own plans for their money*. The Ottawa Citizen, 31st August 2012.

²¹⁴ MacDonald, A., & Mukherji, B. (2012). *Potash prices come to earth as capacity overhang looms*. The Globe and Mail, 3rd January 2012.

²¹⁵ Laxer, J. (2009). *Beyond the Bubble: Imagining a New Canadian Economy*. Toronto, ON: Between the Lines. See also: Little, M. (2012). *Canada has touch of Dutch but productivity gap worries OECD: Household debt and hot housing market are risks, but lack of innovation is worse*. The Epoch Times (Ottawa Edition, June 15 – 21)

in all three countries was underpinned by their abundant mineral reserves, including coal, ferrous and non-ferrous metals, accessing this wealth was critically dependent upon what has been referred to as ‘internal colonization’ – violent wars in order to displace indigenous people living in areas endowed with vast natural resources.²¹⁶

The Plunder of Atlantic Canada

The staples theory is especially valid in the case of Atlantic Canada, where the region’s economy was powered by the resource sector. This case clearly illustrates accumulation by dispossession, within a centre-periphery framework. Since the mid-nineteenth century, provincial governments have concentrated on one basic policy: increasing government revenues by exporting minerals, fossil fuels, and energy in generally unprocessed form – either to the rest of Canada or to the United States. This has been the norm in conventional thinking about Atlantic Canada’s non-renewable fossil fuels and mineral resources for over a century. No provincial government has seriously interfered with this basic formula, based on extensive dependence upon foreign expertise, foreign capital, and foreign markets.²¹⁷

The pattern has been, and remains, remarkable consistent: from the base-metal mines of northern New Brunswick to hydro-electricity at Churchill Falls; from the gypsum quarries of Nova Scotia to the iron mines of Labrador; and from the Cape Breton coal deposits exploited since the seventeenth century to the tin mine established with great fanfare in the 1980s in Yarmouth County. Initially, the resource is discovered, perhaps by local residents. Eventually, foreign capital takes interest in the resource, while the state provides substantial assistance of various forms.²¹⁸

²¹⁶ Gedicks, A. (1993). *New Resource Wars: Native and Environmental Struggles*. Boston, MA: South End Press. According to the Grand Council of the Crees, Canada’s competitive advantage stems from the fact that Canada allows companies to extract resources while paying minimal extraction fees. In addition, fair compensation does not accrue to either the indigenous people who inhabit these resource-rich areas, nor the general Canadian population [Grand Council of Treaty #3. (2002). *Native Leaders Join Together to Pursue Softwood Lumber Issue*. Press Release, 10 June. Kenora, ON: Grand Council of Treaty #3]. See also: Roberts, J. (1981). *Massacres to Mining: The Colonisation of Aboriginal Australia*. Blackburn, Australia: Dove Communications

²¹⁷ Burill, G., & McKay, I (eds). (1987). *People, Resources, and Power: Critical perspectives on underdevelopment and primary industries in the Atlantic region*. Fredericton, NB: Gorsebrook Research Institute

²¹⁸ *Ibid*

J.D House confirms the same pattern of centre-periphery accumulation by dispossession: metropolitan-based corporations (or TNCs) exploit the natural resources of the hinterland region; the resources are exported in relatively unprocessed form, economic surplus is appropriated, while the control of operations remains firmly at the TNCs headquarters. Finally, the entire operation can be terminated at the whim of the TNC.²¹⁹ There are predictable implications to this style of dependent development: due to the low level of transformation carried out within the region and the few inter-industry purchases made by the extractive industry, the multiplier effects of resource extraction are low, and what had been promoted as a way out of chronic underdevelopment and poverty only leads to increased dependence on TNCs and unstable global markets.²²⁰

A crucial study by Kuusisto and Williams of the gypsum industry in Nova Scotia (and a critical source of gypsum for North America) provides a stark illustration of mining dependency. The study found that of the 21.5 million tons of raw gypsum consumed in the United States, about 7.7 million tons (36 percent) were imported – 75 percent from Nova Scotia and the remainder from Mexico and Jamaica. Nova Scotia also accounted for 75 percent of Canada’s gypsum production, and by the mid 1960s, three big multinationals (National Gypsum Co.; Canadian Gypsum, a subsidiary of American Gypsum; and Georgia-Pacific Corporation) controlled Canada’s gypsum deposits. Gypsum had been exported from Nova Scotia without any royalty or tax payments until 1953, at which time the Nova Scotia government imposed a 33.33 percent tax on the profits of mining operations in the province, in order to secure a portion of the substantial revenues being derived by the mining companies.²²¹

Kuusisto and Williams further demonstrate how Nova Scotia’s attempt to regulate the expropriation of capital surplus was systematically thwarted by the TNCs. Significant gains in productivity between 1950 and 1973 enabled TNCs to decrease the work force by almost half, increasing unemployment in the province. The TNCs were able to evade taxes by artificially lowering the price of gypsum, and consolidated their mining, shipping, manufacturing, and

²¹⁹ House, J.D. (1986). “Big Oil and small communities in coastal Labrador: the local dynamics of dependency.” *Canadian Review of Sociology and Anthropology* (18)4, 433-452.

²²⁰ Burill, G., & McKay, I (eds). (1987). *People, Resources, and Power: Critical perspectives on underdevelopment and primary industries in the Atlantic region*. Fredericton, NB: Gorsebrook Research Institute

²²¹ *Ibid*

marketing operations and facilities through vertical integration. They then sought to control other aspects of the construction materials industry, and subsequently, “were able to manipulate prices ‘vertically’ within the gypsum-production process, and ‘horizontally’ for other products.”²²²

These market manipulations had a drastic impact on Nova Scotians. Local mining operations could be operated for break-even returns or at a loss, because the TNCs sought to earn their profits in other locations or at different levels within their operations. If it was unprofitable to produce raw gypsum, more efforts were focused on the manufacturing or marketing operations so as to increase revenues. Using such ‘price-transfers,’ the TNCs could avoid local taxation on their profits and relocate their earning power in more ‘tax lenient’ locations. Also, by keeping their production costs in Canada to a minimum and supplying raw gypsum to their U.S. manufacturing operations at a break-even price, the TNCs transferred the profitability of mining operations out of Canada. “In effect, Nova Scotians were indirectly giving the American multinationals a multimillion dollar subsidy.”²²³

Nickel-Mining in the Sudbury Basin

Another example of centre-periphery accumulation by dispossession in Canada can be found in the case of nickel-mining in the Sudbury basin, which is the largest hard rock mining centre in North America and one of the largest in the world. The Sudbury basin contains one of the world’s richest nickel deposits and largest nickel-copper-platinum group elements mineral reserves. Two of the world’s leading nickel-mining corporations, Inco Ltd., formed in 1886 as the Canadian Copper Company, and Falconbridge Ltd., established in 1928, have their roots in the Sudbury deposits. From the early 1900s to the 1960s, mine workers at these two companies produced more than half the world’s nickel. Inco and Falconbridge eventually used their Sudbury-generated wealth to expand globally.²²⁴

To date, Sudbury has continued to mine and export its non-renewable mineral wealth. Despite

²²² Burill, G., & McKay, I (eds). (1987). *People, Resources, and Power: Critical perspectives on underdevelopment and primary industries in the Atlantic region*. Fredericton, NB: Gorsebrook Research Institute. p.131

²²³ *Ibid.* p.4-5

²²⁴ Leadbeater, D. (2008). *Sudbury’s Crisis of Development and Democracy*. In Leadbeater, D (ed) *Mining Town Crisis: Globalization, Labour, and Resistance in Sudbury*. Black Point, NS: Fernwood Publishing

Sudbury's stature as a "world-level centre of mining atop such enormous mineral wealth," the region does not exude substantial prosperity, such as well-provided educational, health, social welfare, and cultural institutions.²²⁵ Nor does it exhibit a well-maintained and attractive physical infrastructure. The Sudbury area *as a community* has little to show, despite doing a major share of the Canadian economy's heavy lifting for well over a century. This is not expected to change, as long as Sudbury's economic and political development continues to be directed and dominated by the forces that support corporate globalization.²²⁶

David Leadbeater, an Economics Professor at Sudbury's Laurentian University, writes "a crisis of economic development and democracy is confronting Sudbury and many other mining and resource towns in Canada's hinterlands."²²⁷ Leadbeater describes this crisis as a chronic one of social polarization and deteriorating living standards. It is characterized by deepening poverty, persisting high unemployment and economic dependency, deteriorating job quality and working conditions, declining opportunities, and the outflow of the younger generation. The crisis is mostly felt by the working class, the poor, women, and indigenous communities. It not only affects jobs and incomes, but also life conditions outside the workplace, including education, health, public space, and community services.²²⁸

A crisis of the political system, particularly democracy, is coupled to Sudbury's economic crisis. Government institutions have become less democratic, and the rights of the working class have been reduced. Neoliberal globalization is at the centre of this crisis, significantly impacting local economic development and democracy, particularly by increasing the power of TNCs such as Inco and Falconbridge, relative to that of communities. Although the inherent anti-labour and impoverishing tendencies of capitalism have existed long before globalization, the latter has increased and widened the impacts of these regressive tendencies on more and more people.²²⁹

Compared to other Canadian cities, Sudbury fares very poorly in terms of individual and

²²⁵ Leadbeater, D. (2008). *Sudbury's Crisis of Development and Democracy*. In Leadbeater, D (ed) *Mining Town Crisis: Globalization, Labour, and Resistance in Sudbury*. Black Point, NS: Fernwood Publishing. p.7

²²⁶ *Ibid*

²²⁷ *Ibid* p.11

²²⁸ *Ibid*

²²⁹ *Ibid*

community well-being. *Maclean's* 2003 health-care rankings listed Sudbury at 52nd out of 57 Canadian regions (compared to 16th place out of 16 regions in 1999),²³⁰ and a study conducted by *Statistics Canada* listed Sudbury in the bottom 15 percentile of Census Metropolitan Areas for the importance of its labour force.²³¹ In 2005, Sudbury was ranked in the bottom third in the *Canadian Family* rating of family-friendliness in 42 Canadian cities, “including very low marks for air quality, childcare, diversity, and culture.”²³² In 2007, the city was ranked among the very lowest (26th) of twenty-seven Census Metropolitan Areas, according to the prominent *Sperling and Sander* ranking of the best cities to live in Canada.²³³

Evidence shows that mining and resource towns generally develop as hinterlands to metropolitan centres. This metropolitan-hinterland structure facilitates the economic exploitation and political power that undergirds the pattern of regional inequality exhibited in Canada. Leadbeater writes “metropolitan centres are class centres of corporate power, financial control, and tribute, and a disproportionately large part of the profits and resource rents flow to them.”²³⁴ In the case of Sudbury, metropolitan power is concentrated in Toronto, New York, and partly in Montreal. The recent takeovers of Inco and Falconbridge by Brazilian and Swiss TNCs, illustrates a trend whereby metropolitan centres are even farther removed from resource towns.²³⁵

Hinterlands such as Northern Ontario possess a long history of colonialism based on the exploitation of natural resources.²³⁶ Colonizing or metropolitan capital sees the hinterland as a frontier for economic exploitation, whereas indigenous people consider it their homeland. As for the permanent settler population, it is a home region within a larger country. It is thus inevitable that local interests and foreign capital collide, regarding ownership, control, and the use of resources. In Northern Ontario, which has a population of about 800,000 people (almost 8

²³⁰ Cited in Leadbeater, D. (2008). *Sudbury's Crisis of Development and Democracy*. In Leadbeater, D (ed) *Mining Town Crisis: Globalization, Labour, and Resistance in Sudbury*. Black Point, NS: Fernwood Publishing

²³¹ Coish, D. (2004). *Census Metropolitan Areas as Culture Clusters*. Ottawa, ON: Statistics Canada. p.16

²³² Canadian Family. (2005). “Top 10 Family-Friendly Canadian Cities.” <http://www.canadianfamily.ca>

²³³ Sperling, B., & Sander, P. (2007). *Cities Ranked and Rated*, second edition. Hoboken, NJ: Wiley

²³⁴ Leadbeater, D. (2008). *Sudbury's Crisis of Development and Democracy*. In Leadbeater, D (ed) *Mining Town Crisis: Globalization, Labour, and Resistance in Sudbury*. Black Point, NS: Fernwood Publishing. p.16

²³⁵ *Ibid*

²³⁶ Nelles, H.V. (1974). *The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1849-1941*. Hamden, CT: Archon. See also: Coates, K., & Morrison, W. (1992). *The Forgotten North: A History of Canada's Provincial Norths*. Toronto, ON: Lorimer

percent of the provincial population) and over 80 percent of the province's land mass, neither the indigenous nor the settler population have any significant amount of ownership or control over the province's resource wealth directly "through their own democratic or sovereign institutions."²³⁷

As evidenced in Sudbury, economic development in mining towns is not only determined by resource dependency, but also by a history of monopolized control and extremely exploitative and aggressive relations with labour and the environment. Industrialization and diversification in Sudbury, and Canada in general, has been stifled by corporate mining priorities. In Sudbury, corporate loyalty has been to the flags of profit, ever since the early days of mining in the region.²³⁸

Inco opposed efforts to increase refining and value-addition in its domestic mining operations.²³⁹ The company initially threatened to relocate its mining operations from Sudbury to New Caledonia, if it was required to build a refinery in Canada.²⁴⁰ It was not until 1918, after governmental pressure and the scandalous wartime export of nickel to Germany, that Inco built a refinery at Port Colborne, in Canada. Even then, the company did not transfer its headquarters to Toronto, Canada, until 1972.²⁴¹ Decades later, Sudbury still lacks a diversified industrial base, "particularly in valued-added industries,"²⁴² a situation which mirrors the relationship of economic dependency that exists between the industrialized world and resource-producing countries in the developing world.

The cases of Sudbury and Atlantic Canada show that resource exploitation can have negative effects not only in the global south, but also in rich countries. The accumulating evidence is increasingly negative when it comes to assessing the social and regional outcomes of mining-

²³⁷ Leadbeater, D. (2008). *Sudbury's Crisis of Development and Democracy*. In Leadbeater, D (ed) *Mining Town Crisis: Globalization, Labour, and Resistance in Sudbury*. Black Point, NS: Fernwood Publishing. p.16

²³⁸ *Ibid*. See also: Gerard, L. (2010). *Vale Inco 'slashing and burning' labour relations* - www.northernlife.ca/news/local/News/2010/02/gerard110210.aspx

²³⁹ *Ibid*

²⁴⁰ Nelles, H.V. (1974). *The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1849-1941*. Hamden, CT: Archon

²⁴¹ Leadbeater, D. (2008).

²⁴² *Ibid*. p.22

dependent development even in the global North. Freudenburg and Wilson (2002) have conducted one of the most comprehensive reviews of quantitative studies in the United States, concerning the impact of mining on income, unemployment, and poverty.²⁴³ Their review concludes that “until or unless future studies produce dramatically different findings, there appears to be no scientific basis for accepting the widespread ‘obvious’ assumption that mining will lead to economic improvement.”²⁴⁴ Results from Canadian-based studies have supported American research. There is generally a very small disparity between mining regions and rural CSDs (census subdivisions), with no significant differences in poverty, unemployment, education, and migration.²⁴⁵ Previous studies show that mining regions are characterized by relatively lower levels of community employment, community earnings, income per worker, and hourly wage rates²⁴⁶ – all indicators of centre-periphery accumulation by dispossession.

Primitive Accumulation via the “Free Entry” System

The “free entry” system – also called the free miner or location system – constitutes the basis of Canadian mining laws.²⁴⁷ The principle of free entry originated in the feudal British land system, which was based on the notion that the Crown has underlying title to all land, although other parties may have interests, tenures, or estates in it.²⁴⁸ Since the Crown also retained subsurface rights when it initially sold property, those rights remained intact as title was transferred from one property owner to another.²⁴⁹ The free entry system in North America dates back to the ‘gold rush’ days in the mid-1800s, and it was based on the belief that mining was a way to create wealth and encourage settlement of the land. Much of the settlement in North America was

²⁴³ Leadbeater, D. (2008). *Sudbury’s Crisis of Development and Democracy*. In Leadbeater, D (ed) *Mining Town Crisis: Globalization, Labour, and Resistance in Sudbury*. Black Point, NS: Fernwood Publishing

²⁴⁴ Freudenburg, W.R. & Wilson, L.J. (2002). Mining the Data: Analyzing the Economic Implications of Mining for Non-metropolitan Regions. *Sociological Inquiry* (72)4, 549-575.

²⁴⁵ Stedman, R.C. et al. (2004). “Resource Dependence and Community Well-Being in Rural Canada.” *Rural Sociology* (69)2, 213-214.

²⁴⁶ Bollman, R.D. (1999). “Factors Associated with Local Economic Growth.” *Rural and Small Town Canada Analysis Bulletin* (1)6, 1-10.

²⁴⁷ Campbell, K. (2004). *Undermining our Future: How Mining’s Privileged Access to Land Harms People and the Environment* (A Discussion Paper on the Need to Reform Mineral Tenure Law in Canada). Vancouver, BC: West Coast Environmental Law

²⁴⁸ Blackstone, W. (1762-69). *Commentaries on the Laws of England*, vol. 2. Oxford, U.K: Clarendon Press

²⁴⁹ Paulsen, M. (2005). *Company Grabs Mining Rights to Premier’s Land: Campbell’s waterfront home swept up in rush to exploit the Libs’ loosened mining laws*. www.TheTyee.ca

influenced by this so-called frontier mentality.²⁵⁰

It was the ‘doctrinally foundational’ judgements made by Chief Justice John Marshall of the Supreme Court of America regarding indigenous (Indian) status, that established the basis of legislation in the prescribed manner of the British Crown, which in turn, had been adopted after affirmation by the American states and union. Marshall applied the principle of ‘discovery’, which he stated had been developed from the laws of civilized nations, as a means of ordering the settlement of the New World.²⁵¹ According to this principle, “discovery gave title to the government by whose subjects or by whose authority, it was made...”²⁵² Marshall further argued that “all Nations of Europe, who have acquired territory on this continent, have asserted in themselves, and have recognized in others, the exclusive right of the discoverer to appropriate the lands occupied by Indians.”²⁵³

A number of authors have written about the history of mining laws and policies in North America, and their work usually refers to the free entry mining system.²⁵⁴ However, Barry Barton is probably the only author who has written *specifically* on the origins and evolution of the free entry system in Canada. The most comprehensive work on the history and evolution of mining laws and policies in Canada is his book *Canadian Law of Mining*, published in 1993 by the Canadian Institute of Resources Law, and based on a thorough review of legislations, case

²⁵⁰ Campbell, K. (2004). *Undermining our Future: How Mining’s Privileged Access to Land Harms People and the Environment* (A Discussion Paper on the Need to Reform Mineral Tenure Law in Canada). Vancouver, BC: West Coast Environmental Law

²⁵¹ McHugh, P.G. (2004). *Aboriginal Societies and the Common Law: A History in Sovereignty, Status, and Self-Determination*. New York, NY: Oxford University Press

²⁵² White, G.E. (2000). ‘Recovering the World of the Marshall Court.’ *33 John Marshall Law Review* 781. p.574

²⁵³ *Ibid.* The most striking feature of Canadian legislation concerning First Nations is that the government policy it promotes – that of ‘civilizing the Indians’ – has shown little variation since the federal government assumed responsibility for the indigenous population. The *Indian Act*, which rejects any claim to sovereignty and self-government, is the governing legislation with respect to indigenous people in Canada [Re: Ponting, R.J. (1997). *First Nations in Canada. Perspectives on Opportunity, Empowerment, and Self-Determination*. Toronto, ON: McGraw-Hill Ryerson Limited]

²⁵⁴ For example: Lacasse, J.P. (1976). *Le claim en droit québécois*. Ottawa, ON: Université d’Ottawa; Paquette, P. 1982. *L’extraction de matières premières et la politique minière de l’État: une analyse de leur évolution et de leur contribution au développement économique du Québec, 1867-1975*. Doctoral Thesis, Department of Economic Sciences. Montreal, Québec: McGill University; Leshy, J.H. (1987). *The Mining Law: A Study in Perpetual Motion*. Washington, D.C: Resources for the Future; Eggert, R.G. (1994). “Reforming the Rules for Mining on Federal Lands.” *Resources*, Vol.6; and Lapointe, U. (2008). “*De la ruée vers l’or californienne au Québec minier contemporain: Le système du free mining et le pouvoir des communautés locales.*” International Symposium of the Commission on the Cultural Approach in Geography. Session “Geographies of Violence”: Political Economies of Canadian Mining (May 21, 2008). Université Laval, Québec

law, and a substantial literature review.²⁵⁵

Free entry was established at a time when little to no authority was exercised in the remote frontier mining areas, a prime example being California during the ‘gold rush’.²⁵⁶ The notion that mines lured settlers, railroads and investment to the frontier came from the same era. Since prospectors lured mines, they were induced to scour the colony of British Columbia (B.C.) in Canada, when “the Crown granted *free miners* the right to dig wherever they chose – regardless of who held the surface rights – and promised to convey subsurface rights to whoever staked a legal claim.”²⁵⁷ Initially written into the *Goldfields Act of BC* in 1859, this free entry system now constitutes the basis of Canadian mining laws.²⁵⁸

Barton has noted that “the risks of overstating the impact of the frontier in North American history are well known, but the effect of the gold rush legislation is still unmistakable.”²⁵⁹ The world has dramatically changed since the mid-1800s, and although incremental changes have modernized the law of free entry, its underlying philosophy still holds sway,²⁶⁰ and can be defined as the “right of any person to freely access lands and resources for mining purposes.”²⁶¹

Barton writes that free mining has continued until the present, and is at the source of contemporary conflicts. He emphasizes the impact of the free entry system in Canada’s present regulatory context, and how it can constrain or clash with other values, principles and rights that are entrenched in Canadian legislation.²⁶² Barton writes that the free entry system imposes

²⁵⁵ According to Barton, there has been no general study on Canadian mining laws since the following; McPherson, W.D., & Clark, J.M. (1898). *The Law of Mines in Canada*. Toronto, ON: Carswell; Morine, A.B. (1909). *The Mining Law of Canada*. Toronto, ON: Canada Law Book Company Ltd.

²⁵⁶ Canel, E., Idemudia, U., & North, L. (2010). Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25.

²⁵⁷ Paulsen, M. (2005). *Company Grabs Mining Rights to Premier’s Land: Campbell’s waterfront home swept up in rush to exploit the Libs’ loosened mining laws*. www.TheTyee.ca (Emphasis added)

²⁵⁸ Campbell, K. (2004). *Undermining our Future: How Mining’s Privileged Access to Land Harms People and the Environment (A Discussion Paper on the Need to Reform Mineral Tenure Law in Canada)*. Vancouver, BC: West Coast Environmental Law

²⁵⁹ Barton, B.J. (1993). *Canadian Law of Mining*. Calgary, AB: Canadian Institute of Resources Law. p.117

²⁶⁰ *Ibid*

²⁶¹ Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University

²⁶² *Ibid*

limitations on the rights of landowners, who generally have little to no say concerning who/when/how miners can access the resources beneath their lands.²⁶³ In highlighting how free mining's rights of access to lands and resources are often prioritized over competing rights and interests, Barton also demonstrates how free entry can limit the implementation of other land use policies.

The free entry system is the principal means of granting mineral tenures in Canada today, allowing mining companies and prospectors to legally enter private land and stake claims without consulting or even notifying affected landowners.²⁶⁴ This mineral tenure system also permits mining companies and prospectors to legally cut down trees, dig trenches, drill holes, and even use heavy machinery, to take away thousands of tonnes of rock samples all without obtaining permission from affected landowners.²⁶⁵ In January 2005, the province of British Columbia introduced its Mineral Titles Online (MTO) map-staking system in order to streamline the staking process. Under this system, prospectors only need to have a valid free miner certificate, an internet connection, and a credit card to stake a mineral claim.²⁶⁶ Free miners can now stake claims in B.C. online, "with the click of a mouse, from anywhere in the world."²⁶⁷ During its first week of operation, the MTO garnered 2.56 million visits to its website and 3,110 claims were acquired.²⁶⁸ Within a period of nine months, 13,800 online claims had been acquired, an increase of 160% over the previous year.²⁶⁹

Owing to differing land use pressures and changing social values, this outdated mineral tenure system leads to an increasing number of conflicts, which in most cases, arise when free entry

²⁶³ Barton, B.J. (1993). *Canadian Law of Mining*. Calgary, AB: Canadian Institute of Resources Law. Chapter 8

²⁶⁴ Campbell, K. (2004). *Undermining our Future: How Mining's Privileged Access to Land Harms People and the Environment (A Discussion Paper on the Need to Reform Mineral Tenure Law in Canada)*. Vancouver, BC: West Coast Environmental Law

²⁶⁵ *Ibid*

²⁶⁶ British Columbia Ministry of Energy, Mines and Petroleum Resources. (2005). *News Release: Online E-Commerce Claim Acquisition System Wins Awards*. October 27, 2005. Available online at www2.news.gov.bc.ca/news_releases_2005-2009/2005_EMPR0047-000959.htm

²⁶⁷ Kuyek, J. (2008). Fighting Free Entry: Ending mining's privileged access to land. "State of Mine: An investigation of Canada's extractive industries". *The Dominion*, Issue No. 55. See also: *Hot Summer Where Prospector and Landowners Square Off Minister reportedly sees 'holes' in mining laws*. www.TheTyee.ca

²⁶⁸ British Columbia Ministry of Energy and Mines. (2005). *News Release: New Mineral Claims Process Expected to Boost Investment*. January 20, 2005. Available online at www2.news.gov.bc.ca/archive/2001-2005/2005_EM0001-000033.htm.

²⁶⁹ British Columbia Ministry of Energy, Mines and Petroleum Resources. (2005).

mineral tenures are granted without obtaining consent from affected landowners. Unless expressly excluded, land is considered “open to staking” and governments can do little to regulate access to it in a more orderly manner. Since mining companies acquire mineral rights automatically “under free entry, governments cannot exercise discretion or refuse to register a properly filed claim.”²⁷⁰ This mining regime “confers little to no government discretionary powers, and mining entrepreneurs can exercise these...rights without ‘fearing’ government or third-party intervention.”²⁷¹

Furthermore, since there is no requirement under the free entry system for extractive companies to notify the authorities about their prospecting activities, the government is often unaware of these activities and mining claims before they are officially registered. Consequently, it is not able to engage in any kind of process with indigenous peoples (or other project-affected communities) during the initial stage of the mining cycle.²⁷²

Thus, the free entry system fails to address concerns for inclusive, transparent, and equitable development approaches.²⁷³ As was the case in southeastern Ontario over the last few years (and detailed in Chapter 4), a growing number of municipalities and regions in Quebec do not want uranium exploration / exploitation taking place in the vicinity of their communities. Elected officials representing more than 75,000 people from nearly 15 municipalities, as well as two of the three key provincial opposition parties have endorsed a moratorium on uranium exploration and mining. Despite this, local and regional governments have little to no legal means to stop uranium exploration near these communities, owing to the rights provided to companies by the free entry system.²⁷⁴

²⁷⁰ International Boreal Conservation Campaign (IBCC). (2008). *Mineral Exploration Conflicts in Canada's Boreal Forest* - www.borealcanada.ca/pr/documents/MiningExplorationConflicts-May2008-web.pdf p.4

²⁷¹ Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University. See also: Kola, E. (2007). *Tiomin contract is manipulative, argues Reform Group*, Sep 11, 2007, Kenya Broadcasting Corporation (KBC) - <http://www.kbc.co.ke/story.asp?ID=44907> (accessed on Sep 11, 2007) or www.madaraka.net

²⁷² Carter-Whitney, M., & Duncan, J. (2008). *Balancing Needs / Minimizing Conflict: A Proposal for a Mining Modernization Act*. Toronto, ON: Canadian Institute for Environmental Law and Policy (CIELAP) and Ecojustice

²⁷³ Lapointe, U. (2009).

²⁷⁴ *Ibid*

This mining regime also creates distinct difficulties in terms of public policy: it leads to potential conflicts with regard to indigenous rights and title to lands, particularly where there were no treaties or where land claims have not been settled,²⁷⁵ and it constrains the “authority and discretionary powers of governments,” hence their ability to perform their duties.²⁷⁶ For example, under free entry, governments / states (a) cannot decide when, where, and how mining will be done; (b) cannot refuse mining entrepreneurs the right to mine their discoveries as long as basic preconditions are met; and (c) cannot impose additional conditions that are contrary to legislation.²⁷⁷ As noted earlier, governments / states are therefore put in a “vulnerable position,” which prompts Barton’s observation that one of the key difficulties that free entry presents in terms of public policy is the expectation that as long as one has complied with existing mining laws, mineral activity will be permitted.²⁷⁸ He writes “it is sometimes assumed that restrictions will only affect the” process “and will not actually bring a project to a stop...To some extent, regulators acquiesce in expectations that they will not actually prevent mining.”²⁷⁹

Moreover, the free entry system prioritizes mining claims, which makes it difficult to plan for other land use values, including conservation areas. This mineral tenure system grants unlimited access to land based on the assumption that mining is the “highest and best” use of it.²⁸⁰ Under the free entry system, “mineral rights on lands ‘open to staking’ are acquired automatically without consideration of surface interests or other land-use priorities.”²⁸¹ Canada’s Boreal Forest is the Earth’s largest remaining unspoiled forest and wetland ecosystem, representing a quarter of the planet’s remaining intact forests. It is one of the last places left on earth capable of sustaining such abundance, owing to a fully functioning ecosystem – which accounts for 10% of the earth’s ecosystem. Yet, as of September 2007, 583,000 square kilometres of mineral claims had been

²⁷⁵ Bankes, N., & Sharvit, C. (1998). *Aboriginal title and free entry mining regimes in Northern Canada*. Calgary, AB: Canadian Arctic Resources Committee

²⁷⁶ Barton, B.J. (1993). *Canadian Law of Mining*. Calgary, AB: Canadian Institute of Resources Law

²⁷⁷ *Ibid*

²⁷⁸ *Ibid*. p.7. See also: *Tiomin contract is manipulative, argues Reform Group*, Sep 11, 2007, Kenya Broadcasting Corporation (KBC) - <http://www.kbc.co.ke/story.asp?ID=44907> (accessed on Sep 11, 2007) or www.madaraka.net. For more information on citizen organisations against uranium exploration in Quebec, see for examples: COQUEU (www.no-uranium.blogspot.com), APEHL (www.apehl.ca/uranium.htm), RADON (www.radon-uranium.ca/) and Parole citoyenne (www.citoyen.onf.ca/blogs/category/mon-coeur-est-dor-mais-ma-cote-est-dacier/).

²⁷⁹ *Ibid*. p.45-46

²⁸⁰ MiningWatch Canada. (2010). *Reforming Mining Laws and Policies* - <http://www.miningwatch.ca/reforming-mining-laws-and-policies>

²⁸¹ International Boreal Conservation Campaign (IBCC). (2008). *Mineral Exploration Conflicts in Canada’s Boreal Forest* - www.borealcanada.ca/pr/documents/MiningExplorationConflicts-May2008-web.pdf p.4

staked across this pristine forest under a mineral tenure system that was established 150 years ago.²⁸²

As a result of the above, the Environmental Commissioner of Ontario (ECO) expressed the following concerns in 2007:

“The existing regulatory structure [in Ontario] treats public land as freely open to mineral exploration. The consideration of other interests, such as the protection of ecological values, is reactionary, and the question of whether mineral development may be inappropriate is not answered upfront. Instead, it is assumed that mineral development is appropriate almost everywhere and that it is the ‘best’ use of Crown land in almost all circumstances.”²⁸³

Canadian Government Assistance and Regulations in the Extractive Sector

In *Canada’s Global Position in Mining*, Lemieux and Brewer list three main factors which they suggest help contribute to Canada’s dominant position in the global extractive industry, including: Canadian regulations; diversity of experience and skills; and knowledge of foreign mineral potential.²⁸⁴ In addition, Canadian government assistance of the extractive sector is often cited as an important factor in attracting companies interested in global exploration and mining ventures. For the purpose of this argument, there are three aspects to Canadian regulations: first, Canada’s legal system has developed checks and balances that favour mine financing. Central to the Canadian system is the ability of companies and individuals to obtain title to mineral rights, and to be able to benefit from the value represented by such rights; second, the ability to buy and sell mineral assets, thereby transferring value, ensures the liquidity that is crucial to risk taking; third, securities regulations that protect investors and facilitate the establishment of mining

²⁸² International Boreal Conservation Campaign (IBCC). (2008). *Mineral Exploration Conflicts in Canada’s Boreal Forest* - www.borealcanada.ca/pr/documents/MiningExplorationConflicts-May2008-web.pdf

²⁸³ Environmental Commissioner of Ontario (ECO). (2007). *Reconciling Our Priorities: Annual Report 2006-2007*. Toronto, ON: Environmental Commissioner of Ontario (ECO). Available online at: http://www.eco.on.ca/english/newsrel/2007/Annual_report-0607-FINAL-EN.pdf

²⁸⁴ Lemieux, A., & Brewer, K. (1997). *Canada’s Global Position in Mining*. Ottawa, ON: Natural Resources Canada

companies.²⁸⁵

Canadian investment abroad is also facilitated by a number of tax rules. These rules permit investors to deduct the interest incurred through borrowing, whether in Canada or abroad, for investing in foreign subsidiaries, while inter-corporate dividends are exempted from taxation. Subsidiaries operating in a country with which Canada has a tax treaty can repatriate profits generated, free from taxation in Canada, and under certain conditions, Canadian companies can deduct up to 100% of their investment expenses when they invest directly in foreign mining projects and incur exploration and development expenses. Also, rather than requiring country-by-country or property-by-property accounting, Canadian regulations permit the pooling of exploration and development expenses. Finally, profits from the sale of foreign assets can be shielded from Canadian taxation by unclaimed foreign exploration and development expenses.²⁸⁶

The work done by the Export Development Corporation (EDC), the Department of Foreign Affairs and International Trade (DFAIT), and the Canadian International Development Agency (CIDA), further demonstrates the government's role in promoting and facilitating the expansion of Canadian extractive companies overseas.²⁸⁷ Over the years, CIDA has actively promoted the Whitehorse Mining Initiative (WMI) model in developing countries,²⁸⁸ while EDC has been implicated in major industry scandals.²⁸⁹ The WMI was a precedent-setting national dialogue to seek consensus on the best way to make the Canadian extractive industry contribute to sustainable development. The outcomes of this 18-month process have been "hailed as extremely far-reaching both for its recognition of the *legitimacy of community consultation in national mining policy and decisions* and for providing *persuasive justification for recognizing the right*

²⁸⁵ Campbell, B. (2001). *The Role of Multilateral and Bilateral Actors in Shaping Mining Activities in Africa*. In Third World Network-Africa (TWN-Af) (2001) *Mining, Development and Social Conflicts in Africa*. Accra, Ghana: Third World Network-Africa (Af)

²⁸⁶ *Ibid*

²⁸⁷ Arsenault, C. (2007). "Colombia: Foreign Firms Cashing in on Generous Mining Code," Inter Press Service. <http://ipsnews.net/news.asp?idnews=39755>

²⁸⁸ Weitzner, V. (2010). Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons Can Canada and Others Share? Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 87-109.

²⁸⁹ NGO Working Group on EDC. (2003). *Seven Deadly Secrets: What Export Development Canada does not want you to know*. Ottawa, ON: Halifax Initiative

to prior informed consent.”²⁹⁰ However, although the WMI can be credited for initiating multipartite dialogue processes in the mining sector, it still does not provide for effective community participation. Furthermore, the WMI does not address the underlying systemic problems, such as the free entry system.²⁹¹

The Rise of Canadian “Juniors”

One of the most important developments in the extractive industry in the last fifty years has been the dramatic increase in the number of junior companies.²⁹² In a report entitled *International Dimensions for the New Minerals and Metals Policy of the Government of Canada*, Torsten Strom of Natural Resources Canada notes that, “Canada’s major mining companies have been actively involved in overseas mining for the better part of the twentieth century. It is only in the last decade, however, that other segments of the industry including junior exploration companies have embraced the opportunities presented by the geological potential of countries beyond North America.”²⁹³

It is important to recognize the role played by corporate financing through Canadian securities markets, in order to understand how the dramatic rise of juniors has taken place. The amount raised to finance domestic and foreign projects of Canadian mining companies in 1996 was \$7 billion – an all-time record. Of this total, \$1.3 billion was in the form of debt and \$5.5 billion was in the form of equity. Almost one quarter of all Canadian-dollar equity raised in Canada in 1996, was through equity financing. More Canadian-dollar and foreign-currency equity financing was raised for the extractive industry in the same year, than for any other industry. In fact more equity capital for the extractive industry appears to have been raised by the Canadian financial

²⁹⁰ Environmental Law Institute (ELI). (2004). *Prior informed consent and mining: Promoting the sustainable development of local communities*. Washington, DC: Environmental Law Institute (My emphasis)

²⁹¹ Weitzner, V. (2010). Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons Can Canada and Others Share? Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 87-109.

²⁹² Campbell, B. (2001). *The Role of Multilateral and Bilateral Actors in Shaping Mining Activities in Africa*. In Third World Network-Africa (TWN-Af) (2001) *Mining, Development and Social Conflicts in Africa*. Accra, Ghana: Third World Network-Africa (Af)

²⁹³ Strom, T. (1997). “International Dimensions of the New Minerals and Metals Policy of the Government of Canada: Partnerships for Sustainable Development”. In *Minerals Industry Review*. Ottawa, ON: Natural Resources Canada. p.33

services sector, than in the United States, Australia and South Africa, combined.²⁹⁴ This is one of the key reasons behind Canada's dominance of the global extractive industry.

Two further points can be made regarding corporate financing in the Canadian securities market: First, there has been a notable increase in the number of new companies on all Canadian stock exchanges since 1992, with over 100 mining companies being newly listed during 1996 alone. Secondly, the number of foreign-based mining companies listed on the Canadian stock market has increased, with at least eight mining companies having headquarters outside Canada being listed on the TSE in 1996. The increase in foreign listings is partly due to the visibility brought to extractive TNCs by Canadian mining analysts, to the large pool of capital readily available in Canada, and to the liquidity available to investors via Canadian stock exchanges.²⁹⁵

Junior mining companies have been active in undertaking preliminary exploration due to the willingness of capital markets to invest in resource extraction. If their prospects are promising, they can raise more capital on their home exchanges in order to fund additional exploration. The more cost-prohibitive stages of exploration and mine-development are normally conducted as joint ventures with major mining companies possessing large capital resources and appropriate experience. This expansion has enabled Canadian companies to become leaders in global mining exploration. Industry analysts have further accredited this rise to Canada's vast wealth on mining expertise, developments within Canadian financial markets, various trade agreements, and to favourable tax and other government legislation that favour the extractive sector.²⁹⁶

Conclusions

This chapter has revisited the Canadian experience in order to highlight some of the values that shape and maintain the institutional and power dynamics related to mining. Canada's historical development as a resource-based economy had a significant impact on the evolution of her mining laws and practices, particularly the free entry mining system. Given Canada's principal

²⁹⁴ Lemieux, A., & Brewer, K. (1997). *Canada's Global Position in Mining*. Ottawa, ON: Natural Resources Canada

²⁹⁵ *Ibid*

²⁹⁶ Campbell, B. (2001). *The Role of Multilateral and Bilateral Actors in Shaping Mining Activities in Africa*. In Third World Network-Africa (TWN-Af) (2001) *Mining, Development and Social Conflicts in Africa*. Accra, Ghana: Third World Network-Africa (Af)

role in the global extractive industry, supported by Canadian government assistance and regulations in the mining sector, this country's mining laws and practices have a direct influence on the expectations of Canadian-based mining companies operating abroad, pertaining to the mining regimes of host countries and the rights of impacted communities.²⁹⁷

²⁹⁷ Canel, E., Idemudia, U., & North, L. (2010). Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25.

Chapter 3: The Weakness of Current Regulations and the Need for FPIC

In the context of economic globalization, political regulation must accompany economic deregulation because the first victim of deregulated trade in primary commodities is political accountability, resulting in dire socioeconomic consequences for the populace of producing nations.²⁹⁸ Efforts to prohibit or limit private-sector conduct that is harmful to human rights are as old as those that have been made to protect human rights through national and international law.²⁹⁹ Moreover, the globalization process, of which TNCs are important vectors, is not only an economic process, but also a political one, as it entails actors and relations of power and influence at different levels which are created and subsequently institutionalised.³⁰⁰ Despite the vast increase in regulatory measures such as corporate social responsibility (CSR) and Impact and Benefits Agreements (IBAs), the free-entry mining system has remained largely intact and accumulation by dispossession of natural resources continues to occur. Consequently, many non-industry stakeholders, including private landowners, non-governmental organizations (NGOs), and activists, believe that there needs to be a complete overhaul of the free-entry system.³⁰¹ This chapter also considers some examples of extraction projects in Canada that demonstrate the negative impacts of the free entry mining regime on the rights of project-affected communities, and the subsequent need for “free, prior and informed consent” (FPIC). FPIC offers a potential solution to this problem, even though it may not be easy to implement and to ensure equality of input among individuals and groups within affected communities.

The Limitations of Corporate Social Responsibility (CSR)

During the 1960s and 1970s, when developing countries began demanding changes to the global trade regime that would make the market ‘fairer’ to them, they organized themselves in the

²⁹⁸ Le Billon, P. (2003). The Political Ecology of War and Resource Exploitation. *Studies in Political Economy* (70), 59-95.

²⁹⁹ Hannum, H., Anaya, J.S., & Shelton, D.L. (2011). *International Human Rights: Problems of Law, Policy, and Practice (Fifth Edition)*. New York, NY: Aspen Publishers

³⁰⁰ Campbell, B. (2001). *The Role of Multilateral and Bilateral Actors in Shaping Mining Activities in Africa*. In Third World Network-Africa (TWN-Af) (2001) *Mining, Development and Social Conflicts in Africa*. Accra, Ghana: Third World Network-Africa (Af)

³⁰¹ Hoogeveen, D. (2008). *What is at stake? Diamonds, mineral regulation, and the law of free-entry in the Northwest-Territories*. Master thesis, Simon Fraser University

United Nations General Assembly and the Group of 77 (G-77). The demands of the G-77 included regulations on the activities of TNCs and were inspired by nationalist and mercantile ideas. The locus of this effort was the UN Commission and Centre on Transnational Corporations (UNCTC), which was established by the Economic and Social Council (ECOSOC) in November 1974.³⁰² The following year, the UNCTC began working on a *Code of Conduct for Transnational Corporations*, conducting numerous studies in the process.³⁰³ This document was regarded by a large number of South-based states as a key tool in reclaiming their trading rights and conserving their resource endowment, but by the time it had neared completion, many of these states had succumbed to neoliberal market reforms / globalization.³⁰⁴

According to some observers of the first United Nations World Summit on Sustainable Development (WSSD), held in Rio de Janeiro in 1992, the formation of the Business (later, World Business) Council for Sustainable Development (WBCSD) was strategically meant to displace the UNCTC which had proposed to establish enforceable rules governing the operations of TNCs.³⁰⁵ The Business Council for Sustainable Development (BCSD) together with the International Chamber of Commerce (ICC) circumvented the UNCTC's proposal at the Summit, proposing voluntary corporate self-regulation (CSR) instead. This proposal was given an official seal of approval, and the UNCTC was disbanded the following year.³⁰⁶

Despite being discarded, the importance of the draft code was the counter-offensive it provoked from rich countries – to protect the rights of foreign investors in the developing world. This counter-offensive was executed in the following ways: “(1) a campaign was launched to sign bilateral investment protection agreements with developing countries; (2) investment issues were

³⁰² Haslam, P.A. (2009). *Multinational Corporations*. In Haslam, P.A., Schaffer, J., & Beaudet, P (eds) (2009) *Introduction to International Development: Approaches, Actors and Issues*. Don Mills, U.K: Oxford University Press

³⁰³ Hannum, H., Anaya, J.S., & Shelton, D.L. (2011). *International Human Rights: Problems of Law, Policy, and Practice (Fifth Edition)*. New York, NY: Aspen Publishers

³⁰⁴ Abrahams, D. (2005). *Regulations for Corporations: An Historical Account of TNC Regulations*. Geneva, Switzerland: United Nations Research Institute for Social Development (UNRISD)

³⁰⁵ Moody, R. (2007). *Rocks and Hard Places: The Globalization of Mining*. Black Point, NS: Fernwood Publishing. See also: Bexell, M., & Morth, U (eds). (2010). *Democracy and Public-Private Partnerships in Global Governance*. New York, NY: Palgrave MacMillan

³⁰⁶ *Ibid*

included in the GATT negotiations; and (3) CSR was promoted as a way to improve corporate behaviour in lieu of state regulation.”³⁰⁷

A second attempt to define a suitable relationship between business and human rights produced the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, which was adopted in 2003 by the Sub-Commission on the Promotion and Protection of Human Rights [Re: UN Doc. E/CN.4/Sub.2/2003, 12/Rev.2 (2003)]. The binding nature of this document was due to the fact “that it applied human rights law under ratified conventions to the activities of transnational corporations and other business enterprises. Moreover, the language of the document emphasized binding responsibilities through the use of the term ‘shall’ rather than ‘should’, and the draft norms included measures for implementation.”³⁰⁸ However, the response to the Sub-Commission’s work by the Commission on Human Rights was less than upbeat. The Commission explicitly stated that it had not requested the Sub-Commission to prepare the Norms in the first place, and even pointed out that the latter’s draft proposal did not have any legal standing. The Commission further instructed the Sub-Commission to cease performing any monitoring function with respect to the Norms.³⁰⁹

CSR refers to the idea that a company has responsibilities to a broader set of stakeholders, including any group that is impacted by the company’s activities, such as local communities, employees, and other companies sharing the same resources. Several sources have assessed and compared existing CSR standards and codes,³¹⁰ providing an outline of common CSR tools and

³⁰⁷ Haslam, P.A. (2009). *Multinational Corporations*. In Haslam, P.A., Schaffer, J., & Beaudet, P (eds) (2009) *Introduction to International Development: Approaches, Actors and Issues*. Don Mills, U.K: Oxford University Press. p.201

³⁰⁸ UN Doc. E/CN.4/Sub.2/2002/13(2002), at 6. Cited in Hannum, H., Anaya, J.S., & Shelton, D.L. (2011). *International Human Rights: Problems of Law, Policy, and Practice (Fifth Edition)*. New York, NY: Aspen Publishers

³⁰⁹ Comm’n H.R., Dec. 2004/116, para. C (2004). Cited in Hannum, H., Anaya, J.S., & Shelton, D.L. (2011). See also: Sawyer S., & Gomez, E.T. (2012). *Attending to the Paradox: Public Governance and Inclusive International Platforms*. In Sawyer S., & Gomez, E.T (eds) *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State*. New York, NY: United Nations Research Institute for Social Development (UNRISD)

³¹⁰ Cragg, W. (2002). Business ethics and stakeholder theory. *Business Ethics Quarterly* (12)2, 113-143. See also: Abrahams, D. (2004). *Regulating Corporations: A resource guide*. Geneva, Switzerland: United Nations Institute Research for Social Development; Goel, R. (2005). *Guide to instruments of corporate responsibility: An overview of 16 tools for labour fund trustees*. Toronto, ON: Schulich School of Business and York University; Bourdeur, C., &

their provisions. A review of these sources points to the following conclusions with respect to the issues of human rights, agency and impunity: few of the codes contain grievance mechanisms, which are in turn limited to complaints regarding implementation and compliance with code provisions. For instance, the International Finance Corporation (IFC) has a complaints mechanism via a compliance advisor ombudsperson, which assesses complaints made against corporations for their failure to comply with IFC standards.³¹¹

The *OECD Guidelines for Multinational Enterprises*, proposed by the Organization for Economic Cooperation and Development (OECD) in 1976, and updated and revised over time, constitute the most significant CSR initiative to date.³¹² These Guidelines require countries to create a National Contact Point (NCP), which is a government office “responsible for encouraging observance of the Guidelines” and “resolving” issues that may arise “concerning implementation of the Guidelines in relation to specific instances of business conduct.”³¹³

CSR standards, codes, and accountability mechanisms in regard to mining originate with individual companies, governments, industry associations (like the International Council on Mining and Metals or the Mining Association of Canada), financial institutions (including the International Financial Corporation’s Performance Standards and the Equator Principles), non-governmental organizations (such as the Initiative for Responsible Mining Assurance), and with the United Nations (such as the Kimberley Process, the United Nations Global Compact, and the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights [U.N Norms]).³¹⁴

The preference for CSR is primarily because CSR codes are voluntary rather than mandatory.

Herman, T. (2006). *Summary critique of standards relevant to extractive industries*. Prepared for the Canadian Network on Corporate Accountability. Halifax Initiative – www.halifaxinitiative.info/updir/Compendium_summariesfinal.pdf

³¹¹ Coumans, C. (2010). Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 27-48.

³¹² Hannum, H., Anaya, J.S., & Shelton, D.L. (2011). *International Human Rights: Problems of Law, Policy, and Practice (Fifth Edition)*. New York, NY: Aspen Publishers

³¹³ OECD Guidelines. Cited in Coumans, C. (2010). Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 27-48.

³¹⁴ Coumans, C. (2010).

According to the NGO CorpWatch: “corporate responsibility refers to any attempt to get corporations to behave responsibly on a voluntary basis, out of either ethical or bottom-line considerations.”³¹⁵ The term “responsibility” (as opposed to “duty”) implies that respecting rights is not a requirement that present international human rights law normally imposes directly on corporations.³¹⁶ Moreover, corporations are the key decision makers with respect to CSR, and they decide whether or not it is in their interests to adopt and implement CSR standards.³¹⁷ Hence, there are no codes with provisions that could compel reparations for any harm that may have been done by a corporation, due to non-compliance with these codes. In essence, CSR codes do not provide the accountability mechanism needed to fill the aforementioned “governance gap” (also referred to as the enforcement vacuum or regulatory gap) left by the absence of global regulatory mechanisms.³¹⁸

No Consensus in Canada

There have been some attempts to address accumulation by dispossession by the extractive industry, but they have not been successful so far. The Government of Canada’s groundbreaking 2005 Standing Committee on Foreign Affairs and International Trade (SCFAIT) report “recognized the root problem as the effective impunity of Canadian mining companies operating overseas in weak-governance zones, and understood the need for recourse in Canada.”³¹⁹ The report duly called on the Government of Canada to “establish clear legal norms in Canada to ensure that Canadian mining companies and residents are held accountable when there is

³¹⁵ Clapham, A. (2010). *Non-State Actors*. In Moeckli, D., Shah, S., & Sivakumaran, S (eds) *International Human Rights Law*. New York, NY: Oxford University Press. p.572-573

³¹⁶ Hannum, H., Anaya, J.S., & Shelton, D.L. (2011). *International Human Rights: Problems of Law, Policy, and Practice (Fifth Edition)*. New York, NY: Aspen Publishers. p.429

³¹⁷ Coumans, C. (2010). Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 27-48.

³¹⁸ *Ibid*. See also Idemudia, U. (2010). Corporate Social Responsibility and the Rentier Nigerian State: Rethinking the Role of Government and the Possibility of Corporate Social Development in the Niger Delta. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 131-151; and Lo, M.S. (2010). Revisiting the Chad-Cameroon Pipeline Compensation Modality, Local Communities’ Discontent, and Accountability Mechanisms. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 153-174.

³¹⁹ *Ibid*

evidence of environmental and/or human rights violations associated with activities of Canadian mining companies.”³²⁰

In response, the Canadian government implemented a series of roundtables called the *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries*. Four national CSR roundtable sessions were held in Vancouver, Toronto, Calgary and Montreal, between June and November of 2006. The themes and sub-themes for the roundtables were based on the recommendations of the SCFAIT report. “These included standards, reporting and compliance, tools and incentives (which included a discussion about legal incentives), and resource governance (which included a discussion about corporate access to government financial and political services).”³²¹

A number of key fault lines became apparent during the roundtable process. The Canadian Network on Corporate Accountability (CNCA) – a network of 22 member organizations involved in developmental, labour, human rights, environmental, and faith-based work in Canada and abroad – was formed in order to advocate for a strong government response to the SCFAIT report. Whereas civil society members of the advisory group had a strong mandate from the CNCA to demand mandatory standards and accountability measures, industry members and government steering committee members of the advisory group were “adamant that only non-regulatory outcomes would be acceptable...Civil society participants forcefully argued that civil society members of the process would not support a roundtable result that did not go beyond advising companies to employ voluntary CSR measures and did not contain a credible accountability mechanism.”³²²

Civil society further argued that CSR codes have existed and have been available to mining companies to employ for over a decade, but have failed to resolve the human rights and

³²⁰ Standing Committee on Foreign Affairs and International Trade (SCFAIT). (2005). *Mining in Developing Countries: Corporate Social Responsibility*, 38th Parliament, 1st Session, Fourteenth Report: June. House of Commons - <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1961949&Mode=1&Parl=38&Ses=1&Language=E>

³²¹ Coumans, C. (2010). Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 27-48.

³²² *Ibid*

environmental abuses that had necessitated the CSR roundtable process to begin with. More importantly, civil society members reiterated the recommendations of the SCFAIT report: that legal reforms in Canada are necessary, in order to be able to hold Canadian extractive companies accountable under Canadian law, if they violate human rights and environmental standards in their overseas operations. The CNCA eventually wrote directly to the Prime Minister of the Government of Canada, Stephen Harper, urging him to implement the recommendations from the roundtable process, and establish “a legal mandate...through binding legislation, to incorporate Free, Prior and Informed Consent for indigenous peoples and to protect the human rights of individuals and communities in developing countries that are affected by Canadian extractive activities.”³²³

Instead, the Government of Canada’s response of March 2009, titled *Building the Canadian Advantage: A corporate social responsibility (CSR) strategy for the Canadian international extractive sector*, proposed voluntary CSR “guidelines” for Canadian extractive companies operating abroad. However, these guidelines still “do not reflect or assure respect for all international human rights norms and practices that may be affected by Canadian extractive companies operating abroad.”³²⁴

Bill C-300, a private member’s Bill that was proposed to the Canadian Parliament on the 9th of February 2009, was meant to provide a basis for legislative controls on Canadian mining companies operating abroad. However, during the voting session that would have determined whether the Bill would pass or not, Members of Parliament from the ruling Conservative Party voted *en masse* to defeat the Bill, while those from the Opposition [i.e. the Liberal Party and National Democratic Party (NDP)] simply did not turn up to vote. The leader of the Liberal Opposition voted against the Bill, even after publicly declaring that he supported its principles.³²⁵

It is important to note that Bill C-300 still falls short, even as a ‘preventive’ measure, as it does

³²³ Canadian Network on Corporate Accountability (CNCA). (2007). *Letter to Prime Minister Harper*. Ottawa, ON: Halifax Initiative

³²⁴ Coumans, C. (2010). Alternative Accountability Mechanisms and Mining: The Problems of Effective Impunity, Human Rights, and Agency. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 27-48.

³²⁵ Robert Lovelace Address to Amnesty International. 1st November, 2011. Toronto, ON

not address the fundamental problem of the free entry system. Nonetheless, in voting against the Bill, the Conservative government appeared to put its faith in the CSR Counsellor, a position it created in 2009, in response to the SCFAIT report and the 2006 National Roundtables on CSR, to mediate disputes involving Canadian mining companies. However, this goal has not been accomplished with respect to any of the complaints that the office has investigated so far. One drawback is that the CSR's office can only investigate conflicts involving companies that have agreed to co-operate, something that critics say effectively renders it toothless.³²⁶ For instance, while commenting on the CSR counsellor's role in mediating a dispute involving Toronto-based Excellon's mining operations in Mexico, the company's executive vice-president stated: "I'm not sure why we'd bring in a Canadian CSR counsellor to deal with Mexican issues...I don't think there's any value in it whatsoever."³²⁷ The company subsequently withdrew from the mediation process.

The failure to hold Canadian mining companies operating abroad accountable to more than their own voluntary CSR policies, demonstrates the governance gap left by existing regulatory frameworks.³²⁸ Current Canadian mining regulations have failed to meet adequate social and environmental rights and standards, including those promoted in international law and by a number of voluntary norms and initiatives,³²⁹ or even by the 'sustainability' principles found in domestic laws and policies.³³⁰ Mining projects are generally not subjected to public scrutiny and there are no clearly defined or functional consultation processes for affected communities or private property owners.³³¹

³²⁶ Munson, J. (2012). *Mining mediator to close third case after miner pulls out* - www.ipolitics.ca/2012/10/02/mining-mediator-to-close-third-case-after-miner-pulls-out/

³²⁷ Mendleson, R. (2012). *Excellon Blockade: Mexico Conflict Highlights Shortcomings of Canadian Mining Oversight*. 8th August - www.huffingtonpost.ca/2012/08/28/excellon-blockade-protest-mexico_n_1828923.html

³²⁸ *Ibid*

³²⁹ For example; the Brundtland Commission Report (1987), the Rio Declaration (1992), the Global Reporting Initiative (1997), the Kyoto Protocol on Climate Change (1998), the International Labour Organization's Convention 169 (1999), the Global Compact (2000), the OECD Guidelines (2000), the ICMM Sustainable Development Framework (2001), the Johannesburg Summit (2002), the Mining Association of Canada's initiative Toward Sustainable Development (2004), the Global Reporting Initiative for the mining sector (2005), the Framework for Sustainable Mining (2005), the Mine Certification Evaluation Project (2006), and the U.N. Declaration on the Rights of Indigenous Peoples (2007; still not ratified by Canada), etc.

³³⁰ Examples include: the Federal Sustainable Development Act (S.C. 2008, c. 33), the Manitoba Sustainable Development Act (C.C.S.M. c. S270), the Quebec Sustainable Development Act (R.S.Q. c. D-8.1.1), the Nova Scotia Environmental Goals and Sustainable Prosperity Act (S.N.S. 2007, c. 7), and the Newfoundland Sustainable Development Act (S.N.L. 2007, c. S-34).

³³¹ Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented

The World Bank's Extractive Industries Review (EIR)

The weakness of current regulations and the need for FPIC is further demonstrated in the operations of the World Bank Group (WBG), the world's largest development lender. Whereas mining TNCs are the vanguards of primitive accumulation, the context of global capitalism within which this has been occurring is ordered and policed by the WBG.³³² In a speech delivered at the London School of Economics, the WBG's Chief Economist stated that the principle of equality underlies poverty reduction.³³³ However, in spite of its mandate to alleviate poverty, the operations of the WBG in the extractive sector are underpinned by the free entry philosophy.³³⁴

The curtailment of the state from productive activities and its subsequent confinement to the role of facilitating private investment, the need for little ministerial oversight, land surface relinquishment requirements, and the availability of long-term security of tenure, all make the WBG approach to the mining sector similar to “former approaches founded upon the principle of free mining.”³³⁵ This was demonstrated when the Bank commissioned a survey involving 80 mining companies; in order to better understand the concerns of mining TNCs that invest in developing countries. Considering the leading role accredited to the extractive sector in fostering local development, it is worth noting that the WBG did not conduct similar consultations with local stakeholders at this stage of the reform process, whether community representatives or other decision makers. “The nature of the process of consultation recalls, in this way, the privileged place attributed mining interests in North America under the principle of free mining.”³³⁶ Moreover, the standardization of norms has been a gradual process, beginning in the mid-1980s when the IFIs assumed a leadership role in proposing the course and level of reforms

at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University

³³² Bush, R. (2010). *Mining, Dispossession, and Transformation in Africa*. In Fraser, A., & Larmer, M (eds) *Zambia, Mining, and Neoliberalism: Boom and Bust on the Globalized Copperbelt*. New York, NY: Palgrave MacMillan

³³³ Stern, N. (2003). *Development and Human Rights*, Speech delivered to the London School of Economics. London, U.K

³³⁴ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

³³⁵ *Ibid*

³³⁶ *Ibid*

that countries had to implement. In the era of global economic liberalisation, these rules have decreasingly emanated from the national arena, and increasingly from IFIs and global institutional frameworks.³³⁷

In 2001, the WBG appointed Dr Emil Salim – a former Indonesian minister for the environment and chair of all four preparatory committees of the 2002 Johannesburg World Summit for Sustainable Development (WSSD) – to oversee its Extractive Industries Review (EIR). The purpose of the EIR was to determine if investments in extractive projects were consistent with “the bank’s cardinal objective to abolish...global poverty.”³³⁸ The EIR concluded that they were not, but soon after it was published in 2003, the WBG rejected most of its recommendations. The WBG simply rejected the expert opinions of numerous analysts (including its own), as well as the input of hundreds of non-governmental and community organizations.³³⁹

Notably, Dr. Salim had originally backed the WBGs funding of extractive industries and was sceptical about reducing it. Hence, most mining critics feared that he would pay little attention to their views and some even refused to take part in the EIR. However, by the time Dr. Salim had considered evidence from civil society groups in Africa, the Asia-Pacific region, central and Eastern Europe, as well as vital testimony from some indigenous communities, he had totally reversed his opinion.³⁴⁰ Presented in its draft form in 2003, the EIR recommended that the WBG must “address the injustices, inequalities and liabilities typified by...mining and redirect its resources to making good the damage its investments had already caused.”³⁴¹ The WBG should support projects “only if they benefited local communities – especially vulnerable ethnic minorities, women and the poorest – assuring them ‘a[n] equitable share of the revenues’. Core International Labour Organization (ILO) standards must be followed and practical support must be given to workers laid off after mine closures. Ecologically critical habitats should be classified as ‘no go areas’, and urgent priority be given to supporting sources of renewable

³³⁷ Campbell, B. (2000). ‘New Rules of the Game: The World Bank’s Role in the Construction of New Normative Frameworks for States, Markets and Social Exclusion’. *Canadian Journal of Development Studies* (21)1, 7-30.

³³⁸ Moody, R. (2007). *Rocks and Hard Places: The Globalization of Mining*. Black Point, NS: Fernwood Publishing. p.16

³³⁹ *Ibid*

³⁴⁰ *Ibid*

³⁴¹ Salim, E. (2003). *The Extractive Industries Review: Final Report*. Presented to the World Bank in November 2003. Washington, DC

energy.”³⁴²

Most importantly, however, was the EIR’s recommendation that indigenous communities be given the right to ‘fully informed prior consent’ (FIPC or FPIC) before any project is allowed to proceed.³⁴³ According to the EIR, the resettlement of indigenous peoples “should only be allowed if the community has given free prior and informed consent, as a result of a consent process, to a proposed project and its expected benefits for them.”³⁴⁴ It further stated that the WBG “should not support extractive industry projects that affect indigenous peoples without prior recognition of and effective guarantees for their rights to own, control and manage their lands, territories and resources.”³⁴⁵

However, the WBG responded by declaring that adopting the recommendations of the EIR would be inconsistent with its “mission of helping to fight poverty and improve the living standards of the people in the developing world.”³⁴⁶ Despite acknowledging the legitimacy of benefit-sharing, the WBG refused to promote the redistribution of corporate profits, and merely promised to “help ensure affected groups are not harmed by developments and, where possible, are better off.”³⁴⁷ In particular, the WBG rejected the EIR’s key insistence that communities affected by mining be entitled to FPIC (or FIPC).³⁴⁸ Roger Moody cites the response of *Cooperacion*, a leading Peruvian NGO working with miners and indigenous peoples: “t[he] resettlement of communities to make way for extractive industry projects is intimately linked to the issue of consent...The Bank’s failure to unequivocally ban involuntary resettlement, a practice that *de facto* violates the economic, social and cultural rights of communities, reveals its unwillingness to make substantive change in the governance of extractive industry projects.”³⁴⁹

³⁴² Salim, E. (2003). *The Extractive Industries Review: Final Report*. Presented to the World Bank in November 2003. Washington, DC

³⁴³ *Ibid*

³⁴⁴ *Ibid*

³⁴⁵ *Ibid*

³⁴⁶ Financial Times (2003), 3rd February. London, UK. Quoted in Moody, R. (2007). *Rocks and Hard Places: The Globalization of Mining*. Black Point, NS: Fernwood Publishing

³⁴⁷ *Ibid*

³⁴⁸ *Ibid*

³⁴⁹ Moody, R. (2007). *Rocks and Hard Places: The Globalization of Mining*. Black Point, NS: Fernwood Publishing. p.18

The Need for “Free, Prior and Informed Consent” (FPIC)

The need for FPIC is demonstrated by the failure of current regulations to effectively address accumulation by dispossession by the global extractive industry. Research shows that in order for sustainable and equitable development to occur, negotiations concerning land and natural resources must be conducted with a sense of respect for the territorial rights and values of potentially-affected communities. The principle of *free, prior and informed consent* (FPIC) is based on this reasoning.³⁵⁰ According to this principle, “communities have a right to either give or withhold their consent to proposed projects and actions by governments and corporations, that may affect their livelihood and the lands they customarily own, occupy or otherwise use.”³⁵¹ David Szablowski defines FPIC as decision-making or engagement in which the free and informed consent of those affected by development projects is obtained before-hand.³⁵²

Calls for FPIC have steadily mounted since the early 1980s, when there was the first global recognition of the notion that displacement of potentially affected people should not proceed if they decided that a proposed project was unacceptable to them.³⁵³ One of the earliest formal codifications of FPIC was in the Nuremberg Code of 1947 concerning the conditions under which research and experimentation could be carried out on human beings. The OECD and United Nations systems have increasingly relied on consent. In addition, the International Bill of Rights, International Covenant on Economic, Social and Cultural Rights, and International Covenant on Political and Civil Rights all clearly provide for self-determination and free pursuit of people’s own development. The UN International Labor Organization’s (“ILO”) Convention 169 provides for free prior informed consent in cases of displacement.³⁵⁴

³⁵⁰ Ascher, W., & Krupp, C (eds). (2010). *Physical Infrastructure Development: Balancing the Growth, Equity, and Environmental Imperatives*. Prepared under the auspices of the Pacific Basin Research Center. New York, NY: Palgrave MacMillan

³⁵¹ Melber, H (ed). (2012). No future without justice: Report of the Civil Society Reflection Group on Global Development Perspectives. *development dialogue* No. 59, June 2012. p.2

³⁵² Szablowski, D. (2010). Operationalizing Free, Prior, and Informed Consent in the Extractive Industry Sector? Examining the Challenges of a Negotiated Model of Justice. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 111-130.

³⁵³ Goodland, R. (2004). Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law and Policy* (4)2, 66-74.

³⁵⁴ *Ibid*

National--international law and jurisprudence have established that in order to guarantee their territorial rights, “activities affecting indigenous peoples’ land and resources must only proceed with their free, prior and informed consent”³⁵⁵ Intervention measures are most effective if implemented at the point of resource extraction, since this is the first point of contact between extractive TNCs and affected communities. It is at this stage of the extractive process that the free entry principle is applied in order to facilitate accumulation by dispossession by extractive TNCs. FPIC therefore gives affected parties the right to oppose accumulation by dispossession, by providing an effective antidote to the undemocratic free entry system. To date, however, mining companies have “almost universally failed to recognize this right.”³⁵⁶

Robert Goodland was the chief environmental advisor to the WBG for twenty-five years, during which time he drafted and persuaded the Bank to adopt most of its environmental and social safeguard policies. In 2007, he resigned in protest over the policies established in recent years by bank presidents that favour resource extraction in developing nations by large TNCs, with scant attention being given to environmental and social harms.³⁵⁷ Goodland argues that the concept of FPIC is much better than applying force in development or imposing involuntary conditions on people impacted by projects. The FPIC process is the primary means of ensuring that all the necessary information is made available to project-affected communities, so that they are able to negotiate with project proponents on equal terms. Fair negotiation demands instruction of stakeholders (affected communities, governments, and project proponents) on their rights and responsibilities. Advocates, facilitators, and technical assistance are also required at negotiations between these asymmetrical parties.³⁵⁸ The FPIC process is a more participatory approach to resource allocation, since it democratizes natural resource-led development.³⁵⁹

³⁵⁵ Colchester, M. (2010). *Free, Prior and Informed Consent. Making FPIC work for forests and peoples*. Moreton-on-Marsh: Forest Peoples Programme

³⁵⁶ Moody, R. (2007). *Rocks and Hard Places: The Globalization of Mining*. Black Point, NS: Fernwood Publishing. p.11

³⁵⁷ Oliver-Smith, A. (2010). *Defying Displacement: Grassroots Resistance and the Critique of Development*. Austin, Texas: University of Texas Press

³⁵⁸ Goodland, R. (2004). Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law and Policy* (4)2, 66-74.

³⁵⁹ Slack, K. (2006). Sharing the Riches of the Earth: Democratizing Natural Resource-Led Development. *Ethics and International Affairs* (18)1, 47-62.

The essence of FPIC is that potentially affected people are able to comprehend the proposed benefits of the project, and whether these benefits will far outweigh any “worst-case scenario” of unexpected outcomes. Project-affected people must be convinced that the practical means to guarantee their benefits are in place, that compensation will be fair, and that they will ultimately be better off with the project. In addition, they must be assured that they will be fully involved in ensuring compliance with whatever they are consenting to, through legally enforceable monitoring. According to Goodland, the process of consultation and participation is meaningless if potentially affected communities do not have the option of saying *no*.³⁶⁰ Democracy and freedoms will have been undermined, if a fully-informed, potentially-affected community rejects a project, yet it proceeds over their objections. Evicting and forcibly displacing the community cannot be construed as “a social license to operate,”³⁶¹ whereby project proponents proceed under the notion that the affected community has consented.

In January 2005, an inter-agency workshop of UN bodies meeting to examine policies and practices concerning FPIC, described it as follows: for consent to be “free,” it must be given without coercion, duress, fraud, bribery, or any threat or external manipulation; for consent to be “prior,” it must be given before any significant planning for the proposed activity has been completed, and before each decision-making stage in the proposed activity’s planning and implementation at which additional relevant information is available or revised plans are proposed; and for consent to be “informed,” it must be given only after those affected are provided with all relevant information related to proposed activities in appropriate languages and formats, the possible consequences of the proposed activities, and possible alternatives. Finally, all information must be provided with sufficient time for review and decision-making in accordance with the laws and customs of the affected community.³⁶²

FPIC can be used to balance community rights with the national interest. In cases where consent has been properly obtained from almost all potentially impacted stakeholders, the concept of “eminent domain” can be used to circumvent one or two holdouts against the consent of the

³⁶⁰ Goodland, R. (2004). Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law and Policy* (4)2, 66-74.

³⁶¹ *Ibid*

³⁶² *Ibid*

general community.³⁶³ Eminent domain refers to the state's ability to expropriate land for a purpose considered to be in the public interest,³⁶⁴ and is based on "the understanding that production stimulated through market demand will improve levels of well-being for more people."³⁶⁵ The state is required to compensate those affected at fair market value, which is presumably sufficient compensation, so as to be able to replace the expropriated land with land of the same market value.³⁶⁶ Even so, the rights of states and private capital to use eminent domain are being increasingly scrutinized. In the United States, for instance, there have been cases where local / municipal governments have re-sold previously condemned houses and neighbourhoods to private developers.³⁶⁷

Cases Illustrating the Need for FPIC

The following brief cases demonstrate the negative impacts of the free entry mining regime on the rights of impacted communities, and the subsequent need for FPIC. Although these cases focus on indigenous communities, it is important to note that the free entry system also infringes on the rights of non-indigenous landowners, as a number of reported cases have shown.³⁶⁸

From an international political economy (IPE) standpoint, these cases illustrate how the free entry mining regime results in the preferential treatment enjoyed by the extractive industry, and perpetuates "asymmetrical relations of power and influence."³⁶⁹ Regimes based on free entry

³⁶³ Goodland, R. (2004). Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law and Policy* (4)2, 66-74.

³⁶⁴ Oliver-Smith, A. (2010). *Defying Displacement: Grassroots Resistance and the Critique of Development*. Austin, Texas: University of Texas Press

³⁶⁵ *Ibid.* p.17

³⁶⁶ Rose, C.M. (1994). *Property and persuasion*. Boulder, CO: Westview Press. See also: Szablowski, D. (2002). Mining, displacement and the World Bank: A case analysis of Compania Minera Antamina's operations in Peru. *Journal of Business Ethics* 39, 247-273.

³⁶⁷ Carpenter, D.M., & Ross, J.K. (2007). *Victimizing the vulnerable: The demographics of eminent domain abuse*. Arlington, VA: Institute for Justice

³⁶⁸ The B.C. Landowners Rights Group (BCLOR) is comprised of several B.C. landowners whose rights to FPIC have been threatened or obliterated in recent years [MiningWatch Canada. (2008). *The Boreal Below: Mining Issues and Activities in Canada's Boreal Forest*. Ottawa, ON: MiningWatch Canada]. See also: Salcito, K. (2006). 'War Brewing' over Mining Rights in Rural BC: Infuriated landowners rally to regain control of their property. www.TheTyee.ca; Salcito, K. (2006). *Hot Summer Where Prospector and Landowners Square Off. Minister reportedly sees 'holes' in mining laws.* www.TheTyee.ca; Paulsen, M. (2005). *Company Grabs Mining Rights to Premier's Land: Campbell's waterfront home swept up in rush to exploit the Libs' loosened mining laws.* www.TheTyee.ca.

³⁶⁹ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies*

appear characterized by an asymmetrical power structure that constrains the negotiating space of mining-impacted communities, thereby limiting their opportunity to choose a development strategy that is suitable to their needs.³⁷⁰ More specifically, the free entry mining regime facilitates accumulation by dispossession by the extractive industry.

1) Imprisoning Indigenous Leaders

Ontario is the largest jurisdiction for mineral production in Canada.³⁷¹ However, conflicts that directly result from the free entry system have become so severe in the province that First Nations leaders have been jailed for peacefully protesting mineral exploration on their lands. There is an increasing need for indigenous (and other landowner's) rights and conservation values to be put on par with mining.³⁷² The Fraser Institute has affirmed this by stating that "Ontario better get its act together in regard to aboriginal and permitting issues or it will seriously fall from grace."³⁷³

In a controversial 2008 Ontario court ruling, seven indigenous leaders were imprisoned for leading their communities in peaceful resistance against mining corporations that had operated in their territories without obtaining FPIC. One of these leaders included retired chief and spokesperson for Ardoch-Algonquin First Nation, Robert Lovelace. Professor Lovelace, who also teaches development studies at Queen's University in Ontario, spoke very candidly in a 2008 interview.³⁷⁴ A few weeks later, he was sentenced to six months detention and fined \$25,000 -- for opposing uranium exploration in Ardoch-Algonquin territory, subject to a longstanding, unresolved land claim in Eastern Ontario. In addition, the community was fined

(30)1-2, 197-217.

³⁷⁰ MiningWatch Canada. (2008). *The Boreal Below: Mining Issues and Activities in Canada's Boreal Forest*. Ottawa, ON: MiningWatch Canada

³⁷¹ Natural Resources Canada. (2007). *Important Facts on Minerals and Metals as of April 2007*. Ottawa, ON: Natural Resources Canada

³⁷² International Boreal Conservation Campaign (IBCC). (2008). *Mineral Exploration Conflicts in Canada's Boreal Forest* - www.borealcanada.ca/pr/documents/MiningExplorationConflicts-May2008-web.pdf

³⁷³ McMahon, F., & Melhem, A. (2008). Fraser Institute Annual Survey of Mining Companies 2007/2008. Available online at www.fraserinstitute.org/Commerce.Web/product_files/SurveyofMining_Companies_20072008.pdf

³⁷⁴ Kinuthia, W. (2008). *Part 2 - A Case Of Corporate-Driven Globalization* - www.youtube.com/watch?v=TDZK_QCr13A or www.madaraka.net

\$10,000 while the acting Chief, Paula Sherman, was fined \$15,000.³⁷⁵ Shortly after, six members of the Kitchenuhmaykoosib Inninuwug (KI) First Nation in northern Ontario were sentenced for similar contempt charges relating to their peaceful opposition to platinum mining on their traditional lands in the Boreal Forest.³⁷⁶

Following a massive uproar, the Supreme Court of Canada ordered for release of these indigenous leaders, ruling that they had been wrongfully imprisoned, and that their communities had not been duly consulted, prior to licenses being issued to the mining companies.³⁷⁷ More importantly, it was also acknowledged that the Province of Ontario (and by extension, Canada) needs to significantly overhaul its mining legislation, by reforming the free entry mining system and incorporating the right to “free, prior, and informed consent” (FPIC).³⁷⁸

³⁷⁵ MiningWatch Canada. (2008). *Groups call for comprehensive reform of Ontario’s outdated mining laws: Courts being used to punish people who peacefully oppose mining projects*. www.miningwatch.ca/en/groups-call-comprehensive-reform-ontario-s-outdated-mining-laws-courts-being-used-punish-people-who-. See also:

MiningWatch Canada. (2008). *End Mining’s Privileged Access to Land! Communities Across Canada Outraged by Free Entry System* - www.miningwatch.ca/en/end-mining-s-privileged-access-land-communities-across-canada-outraged-free-entry-system; MiningWatch Canada. (2009). *What’s Missing in Mining Act Changes? The Right to Say NO. Proposed Amendments Do Little To Prevent Conflicts* - www.miningwatch.ca/en/what-s-missing-mining-act-changes-right-say-no-proposed-amendments-do-little-prevent-conflicts; Canadian Boreal Initiative. (2008). *Maps offer first time, nationwide overview of impacts of outdated mining law: Report details free entry mining conflicts with First Nations, conservation and wildlife*. Press Release, May 14, 2008 - www.borealcanada.ca/pr/05-14-2008-e.php; International Boreal Conservation Campaign (IBCC). (2008). *Mineral Exploration Conflicts in Canada’s Boreal Forest* - www.borealcanada.ca/pr/documents/MiningExplorationConflicts-May2008-web.pdf

³⁷⁶ For more information, see www.miningwatch.ca/search.php?query=platinex. See also: Ontario Superior Court decision on July 28th 2006: *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, 2006 (CanLII 26171 (ON S.C.)); Thompson, J. (2008). *The Land Provides What Mining Can’t: KI leaders take their case to the United Nations*. *The Dominion*, Issue No. 55; MiningWatch Canada. (2008). *Groups call for comprehensive reform of Ontario’s outdated mining laws: Courts being used to punish people who peacefully oppose mining projects*. www.miningwatch.ca/en/groups-call-comprehensive-reform-ontario-s-outdated-mining-laws-courts-being-used-punish-people-who-; MiningWatch Canada. (2008). *End Mining’s Privileged Access to Land! Communities Across Canada Outraged by Free Entry System* - www.miningwatch.ca/en/end-mining-s-privileged-access-land-communities-across-canada-outraged-free-entry-system; MiningWatch Canada. (2009). *What’s Missing in Mining Act Changes? The Right to Say NO. Proposed Amendments Do Little To Prevent Conflicts* - www.miningwatch.ca/en/what-s-missing-mining-act-changes-right-say-no-proposed-amendments-do-little-prevent-conflicts; Canadian Boreal Initiative. (2008). *Maps offer first time, nationwide overview of impacts of outdated mining law: Report details free entry mining conflicts with First Nations, conservation and wildlife*. Press Release, May 14, 2008 - www.borealcanada.ca/pr/05-14-2008-e.php.

³⁷⁷ Supporting the need for consultation is *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, [2007] O.J. No. 1841 (Ont.S.C.) where the Court stated that consultation was a legal pre-condition to the mining activities and the subsequent companion decisions of the Ontario Court of Appeal in *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, 2008 ONCA 533 and *Frontenac Ventures Corporation v. Ardoch Algonquin First Nation*, 2008 ONCA 534.

³⁷⁸ Office of the Premier. (2008). *“Protecting a Northern Boreal Region One-and-a-Half Times the Size of the Maritimes.”* Government of Ontario. At <news.ontario.ca/opo/en/2008/07/protecting-a-northern-boreal-region-one-and-a-half-times-the-size-of-the-maritimes.html>. See also: MiningWatch Canada. (2008). *Fulfilling the Premier’s Vision to Modernize and Reform the Ontario Mining Act* - www.miningwatch.ca/en/fulfilling-premier-s-vision-

2) The ‘Ring of Fire’

The Ring of Fire is an area that is located in the First Nation (indigenous) territories that surround McFaulds Lake in Northern Ontario. It is presently marked for a number of resource development projects that can potentially drive the provincial as well as the Canadian economy for decades. However, First Nation communities have issued eviction notices to all mining companies with development projects within the Ring of Fire, in addition to calling for a moratorium on all mining activities in the area.³⁷⁹

Indigenous communities have expressed concerns that they will be negatively impacted by these projects or by the related infrastructure “as fully acknowledged in the May 8, 2012 letter from Ontario Premier Dalton McGuinty to Prime Minister Stephen Harper.”³⁸⁰ Several communities that already lack sufficient housing, health care and education, are concerned about the potential destruction of their lands and river systems, significantly altering their ways of life with no tangible benefits to them.³⁸¹ First Nations (indigenous) communities have clearly stated that they are not necessarily opposed to development, but rather seek to ensure that it is responsible and sustainable, and undergoes proper environmental impact assessment which incorporates their meaningful participation.³⁸² They have received support from several Canadian organizations, including MiningWatch Canada, which has specifically asked the Ontario government to uphold the right of “free prior informed consent of affected First Nations.”³⁸³

3) The Northern Gateway

Indigenous leaders have warned the Government of Canada that it is headed for a legal confrontation with British Columbia First Nations if it insists on proceeding with the Northern

[modernize-and-reform-ontario-mining-act](#); *Letter to Premier Dalton McGuinty*; *Modernizing and Reforming the Ontario Mining Act*

³⁷⁹ Assembly of First Nations (AFN). (2012). *Assembly of First Nations National Chief Supports Matawa First Nations*. June 29, 2012. Ottawa, ON: Assembly of First Nations (AFN) – www.afn.ca/index.php/en/news-media/latest-news/assembly-of-first-nations-national-chief-supports-matawa-first-nations

³⁸⁰ *Ibid*

³⁸¹ *Ibid*

³⁸² *Ibid*

³⁸³ MiningWatch Canada. (2012). *Ontario Could Get Burned by Flawed Ring of Fire Process*. Wednesday, 9th May 2012 – www.miningwatch.ca/news/ontario-could-get-burned-flawed-ring-fire-process

Gateway pipeline development project.³⁸⁴ The government has prioritized the diversification of oil and natural gas exports away from the traditional U.S. market as it seeks to take advantage of emerging Asian markets.³⁸⁵ Indigenous communities are strongly opposed to a plan by Enbridge Inc. to construct a pipeline linking the Alberta oil-sands with the west coast of British Columbia by cutting a path through their territories.³⁸⁶

First Nations “Chiefs have sent a clear message that the federal government must respect international law, and that it can’t approve the Enbridge project without obtaining the free, prior and informed consent of First Nations.”³⁸⁷ The Assembly of First Nations (AFN) has issued a strong statement of support, reiterating that indigenous “communities have a right to *free, prior and informed consent*, and must be treated as equal partners in any decision.”³⁸⁸ The AFN has strongly emphasized that indigenous peoples be included as key players in decision-making processes regarding the use of their lands and natural resources, as well as revenue-sharing.³⁸⁹ AFN National Chief, Shawn Atleo, stated that “true partners would design a way forward together and would form a shared vision of how resources development occur in this country.”³⁹⁰

Moreover, Josh Paterson of West Coast Environmental Law has pointed out that indigenous communities have the constitutional right to self-determination under Canadian law (Section

³⁸⁴ McCarthy, S. (2012). *Decrying federal 'bully tactics,' B.C. natives vow to block pipeline*. The Globe and Mail, Tuesday, 13th March 2012 – www.theglobeandmail.com/news/politics/decrying-federal-bully-tactics-bc-natives-vow-to-block-pipeline/article2367739/. See also Crowley, B.L., & Coates, K. (2013). *First Nations Key to Future of Northern Gateway Pipeline: Without their support the project will not proceed*. <http://www.theepochtimes.com/n3/97211-first-nations-key-to-future-of-northern-gateway-pipeline/>

³⁸⁵ *Ibid*

³⁸⁶ West Coast Environmental Law (WCEL). (2010). FOR IMMEDIATE RELEASE, October 4, 2010. *FIRST NATIONS CHIEFS SEND STRONG MESSAGE TO OTTAWA: ENBRIDGE PIPELINES AND TANKERS MUST NOT PROCEED WITHOUT THEIR CONSENT* – <http://wcel.org/resources/new-at-westcoast/first-nations-chiefs-send-strong-message-ottawa-enbridge-pipelines-and-ta>. See also: Six Nations Press Release. (2012). *Native protesters shut down Enbridge hearing in Ontario*. Wednesday, 23rd May 2012 – <http://bsnorrell.blogspot.com/2012/05/native-protesters-shut-down-enbridge.html>

³⁸⁷ *Ibid*. See also: Crowley, B.L. (2013). *Respect is key to aboriginal approval of Northern Gateway pipeline*. The Globe and Mail, 16th May 2013. <http://www.theglobeandmail.com/report-on-business/economy/economy-lab/respect-is-key-to-aboriginal-approval-of-northern-gateway-pipeline/article11952282/>

³⁸⁸ De Souza, M. (2012). *Aboriginals must be equal partners in resource projects: Atleo*. Postmedia News, 3rd April 2012 – www.canada.com/life/Aboriginals+must+equal+partners+resource+projects+Atleo/6050697/story.html (Emphasis added)

³⁸⁹ Hagget, S. (2012). *Canada's national chief says developments need native approval* - <http://ca.reuters.com/article/domesticNews/idCABRE86N1LX20120724>

³⁹⁰ De Souza, M. (2012).

35).³⁹¹ Paterson has argued that “a decision by the federal government to approve the Enbridge Northern Gateway Pipeline project and related oil tanker traffic, in the absence of First Nations consent, would violate Canada’s international legal obligations, and make Canada vulnerable to an international human rights challenge.”³⁹²

The First Nations Summit has previously requested the Canadian government to negotiate a shared decision-making process regarding the Enbridge project on two separate occasions, but did not get a response from the government.³⁹³ In fact, the government has clearly failed in its duty to consult the affected communities, having decided that the pipeline should proceed before the public hearings had even begun.³⁹⁴ Consequently, indigenous communities have threatened to legally challenge any decision to approve the project over their objections.³⁹⁵ This resistance has been bolstered by scallop farmers along the B.C coast, who also present a significant challenge to the project.³⁹⁶

Conclusions

The above examples demonstrate the negative impacts of the free entry system on the rights of impacted communities, and the subsequent need for FPIC. FPIC is the global standard governing consultation with indigenous peoples and other project-affected communities on matters concerning their lands and natural resources, and it is also an effective means of protecting the vulnerable from the impacts of the global extractive industry. The AFN has urged both the

³⁹¹ West Coast Environmental Law (WCEL). (2010). FOR IMMEDIATE RELEASE, October 4, 2010. *FIRST NATIONS CHIEFS SEND STRONG MESSAGE TO OTTAWA: ENBRIDGE PIPELINES AND TANKERS MUST NOT PROCEED WITHOUT THEIR CONSENT* – <http://wcel.org/resources/new-at-westcoast/first-nations-chiefs-send-strong-message-ottawa-enbridge-pipelines-and-ta>

³⁹² *Ibid.* See also: MiningWatch Canada. (2012). *Indigenous Rights and Mining: Submissions to the UN Committee on Elimination of Racial Discrimination*, Thursday, 23rd February 2012 – <http://www.miningwatch.ca/article/indigenous-rights-and-mining-submissions-un-committee-elimination-racial-discrimination>

³⁹³ *Ibid*

³⁹⁴ *The Crown’s approach to First Nations consultation on the Enbridge Gateway Pipeline* - http://www.ceaa-acee.gc.ca/050/documents_staticpost/cearef_21799/86129/Legal_Backgrounder.pdf

³⁹⁵ McCarthy, S. (2012). *Decrying federal 'bully tactics,' B.C. natives vow to block pipeline*. The Globe and Mail, Tuesday, 13th March 2012 – www.theglobeandmail.com/news/politics/decryng-federal-bully-tactics-bc-natives-vow-to-block-pipeline/article2367739/

³⁹⁶ van Loon, J. (2012). *Enbridge’s Northern Gateway pipeline faces fight from scallop farmers*. Bloomberg News, 12th December 2012.

provincial and federal governments to fulfill their constitutional obligation to fully engage and consult with First Nations prior to any projects taking place in their territories.³⁹⁷

In a few previous cases, the Canadian Supreme Court has ruled in favour of the constitutional right of indigenous peoples to give or withhold their free, prior and informed consent regarding projects on their land. After providing evidence based on case law focusing primarily on the landmark *Delgamuukw* case, Bankes and Sharvitt argued that “[free-entry] regimes constitute a *prima facie* infringement simply because they allow third parties to gain access to aboriginal title lands and assert a property interest that is inconsistent with the aboriginal title interest.”³⁹⁸ This interpretation seems to hold even stronger today with recent Supreme Court decisions (e.g. *Haida* and *Taku* in 2004), which oblige governments to properly consult and, where necessary, accommodate First Nations prior to development on lands with outstanding Aboriginal rights and/or title.³⁹⁹ The ruling in the *Tsilhqoti’n* case (2007) in the B.C. Supreme Court has also cautioned that provincial laws, including “resource tenures that fail to meet consultation requirements, risk being struck down as unconstitutional.”⁴⁰⁰ In applying these principles, the judiciary has demonstrated that Ontario’s implementation of the present *Mining Act* undermines the Crown’s duty to consult and accommodate indigenous peoples, and that consultations must begin from the early prospecting stage of the mining project.

Since there is no requirement under the free entry system for extractive companies to notify the authorities about their prospecting activities, the government is often unaware of these activities and mining claims before they are officially registered. Consequently, it is not able to engage in

³⁹⁷ Assembly of First Nations (AFN). (2012). *Assembly of First Nations National Chief Supports Matawa First Nations*. 29th June 2012. Ottawa, ON: Assembly of First Nations (AFN) – www.afn.ca/index.php/en/news-media/latest-news/assembly-of-first-nations-national-chief-supports-matawa-first-nations. See also: Greenberg, L. (2010). *Get ready for fight over north, natives tell province*. The Ottawa Citizen, 17th September 2010 – <http://fnbc.info/node/3762>

³⁹⁸ Bankes, N., & Sharvit, C. (1998). *Aboriginal title and free entry mining regimes in Northern Canada*. Calgary, AB: Canadian Arctic Resources Committee (CARC). p.91. See also: *Delgamuukw v. British Columbia* (1997) 3 C.S.R. 1010.

³⁹⁹ For example: *Haida Nation v. British Columbia (Minister of Forests)* [2004] SCC 73; and *Taku River Tlingit First Nation v. British Columbia (Evaluation Project Manager)* [2004] SCC 74.

⁴⁰⁰ *Tsilhqoti’n Nation v. British Columbia*, 2007 BC SC 1700 - www.courts.gov.bc.ca/jdb-txt/sc/07/17/2007bcsc1700.pdf. For additional case studies showing how FPIC has been approached in the case of mining, see: Bass, S., Parikh, P.S., Czebiniak, R., & Filbey, M. (2004). *Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities*. Environmental Law Institute. Available at www.elistore.org/reports_detail.asp?ID=10965

any kind of process with indigenous peoples (or other project-affected communities) during the initial stage of the mining cycle.⁴⁰¹

Owing to the above, the 2006-2007 annual report of the Environmental Commissioner of Ontario (ECO) called for reforms to Ontario's *Mining Act* and its related legal mechanisms. The report stated that the *Mining Act* hinders land use planning and that present regulatory structures do not effectively measure the collective effects of development.⁴⁰² The ECO recommended amendments to the Act to include specific criteria that reflect the constitutional duty of the Ministry for Northern Development and Mines (MNDM) to consult with indigenous people before issuing mining claims and leases that may impact on their rights.⁴⁰³ The ECO also highlighted the added benefit that "appropriate consultation policies or regulations in relation to resource decisions...would not only ensure that proper consultation occurs, but would also alleviate the uncertainty that developers face in satisfying themselves that the government has fulfilled its constitutional duty to consult...when granting mining rights."⁴⁰⁴

⁴⁰¹ Carter-Whitney, M., & Duncan, J. (2008). *Balancing Needs / Minimizing Conflict: A Proposal for a Mining Modernization Act*. Toronto, ON: Canadian Institute for Environmental Law and Policy (CIELAP) and Ecojustice

⁴⁰² International Boreal Conservation Campaign (IBCC). (2008). *Mineral Exploration Conflicts in Canada's Boreal Forest* - www.borealcanada.ca/pr/documents/MiningExplorationConflicts-May2008-web.pdf

⁴⁰³ Environmental Commissioner of Ontario (ECO). (2007). *Reconciling Our Priorities: Annual Report 2006-2007*. Toronto, ON: Environmental Commissioner of Ontario (ECO). Available online at: http://www.eco.on.ca/english/newsrel/2007/Annual_report-0607-FINAL-EN.pdf

⁴⁰⁴ *Ibid*

Chapter 4: Challenges to Implementing FPIC

While FPIC seems a necessary reform of the global mining regime, it is by no means an easy and straight forward solution. Instead, there are a few challenges. The free entry system, as deeply engrained in the global political economy, represents a major structural obstacle. There are also different interpretations of FPIC, and in recent years major ‘consent’ has increasingly come to be interpreted as ‘consultation’ by key players in the extractive industry, thus significantly weakening the potential entailed within the principle. Finally, as a practice FPIC is vulnerable to the manipulation of local elites, who may claim to represent their community while instead acting to preserve their own power, status and interests. This chapter discusses these three challenges in turn.

The Free Entry System

As previously noted, since there is no requirement under the free entry system for extractive companies to notify the authorities about their prospecting activities, the government is often unaware of these activities and mining claims before they are officially registered. Consequently, it is not able to engage in any kind of process with indigenous peoples (or other project-affected communities) during the initial stage of the mining cycle.⁴⁰⁵

Thus, the free entry system is a key structural issue that contributes to the preferential treatment enjoyed by mining companies. Regimes based on free entry appear characterized by an asymmetrical power structure that constrains the negotiating space of local actors, thereby limiting their ability to choose development strategies that are suitable to their territory.⁴⁰⁶ These power asymmetries are perpetuated through the lack of appropriate resources, funding, and opportunities that facilitate “meaningful participation” – which is based on involvement that is

⁴⁰⁵ Carter-Whitney, M., & Duncan, J. (2008). *Balancing Needs / Minimizing Conflict: A Proposal for a Mining Modernization Act*. Toronto, ON: Canadian Institute for Environmental Law and Policy (CIELAP) and Ecojustice

⁴⁰⁶ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217. See also: MiningWatch Canada. (2008). *The Boreal Below: Mining Issues and Activities in Canada's Boreal Forest*. Ottawa, ON: MiningWatch Canada

“early, inclusive, deliberative, transparent and empowering.”⁴⁰⁷ In the context of meaningful participation, there are two major negative effects that result from the imbalance of power between corporate actors and communities: first, it produces unbalanced negotiations that tend to be dominated by the already powerful extractive TNCs; second, it generates a situation that allows these TNCs to manipulate the rules under which FPIC is implemented.⁴⁰⁸

Due to these power imbalances, communities are often unable to secure decent agreements that address their long-term needs. The negotiation process often leaves disenfranchised communities with little choice, but to focus on short-term benefits as opposed to alternative development strategies that can effectively address their plight.⁴⁰⁹ Often, local people are rarely involved in conceptualizing or designing projects that affect them,⁴¹⁰ much less given “the right to say no to that on which they disagree.”⁴¹¹ In fact, the option of refusing to give consent to mining companies and of gaining support for alternatives to proposed extraction projects is minimal when great power imbalances exist between corporations and national governments on one hand, and local communities on the other.⁴¹² Moreover, extractive TNCs are some of the biggest players in the global economy, and the decisions that they make are based on global strategy as opposed to local needs.⁴¹³

According to Hoogeveen, “the origins of free-entry and its importance to the current resource regime” need to be given more attention.⁴¹⁴ Although there has been an increase in the number of

⁴⁰⁷ Sinclair, A.J., Diduck, A., & Fitzpatrick, P. (2007). Conceptualizing learning for sustainability through environmental assessment: Critical reflections on 15 years of research. *Environmental Impact Assessment Review* (28)2, 415-428.

⁴⁰⁸ Szablowski, D. (2007). *Transnational law and local struggles: Mining, communities and the World Bank*. Oxford, U.K: Hart

⁴⁰⁹ Lo, M.S. (2010). Revisiting the Chad-Cameroon Pipeline Compensation Modality, Local Communities’ Discontent, and Accountability Mechanisms. Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 153-174.

⁴¹⁰ Weitzner, V. (2010). Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons Can Canada and Others Share? Special Issue - Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 87-109.

⁴¹¹ Lo, M.S. (2010).

⁴¹² Canel, E., Idemudia, U., & North, L. (2010). Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25.

⁴¹³ Lanning, G., & Mueller, M. (1979). *Africa Undermined: Mining Companies and the Underdevelopment of Africa*. Harmondsworth, U.K: Penguin Books Ltd.

⁴¹⁴ Hoogeveen, D. (2008). *What is at stake? Diamonds, mineral regulation, and the law of free-entry in the Northwest-Territories*. Master thesis, Simon Fraser University

negotiated mining agreements since the mid-1990s, primarily between Canada's First Nations (indigenous communities) and mining companies (e.g. Impact and Benefits Agreements – IBAs), little progress has been made towards ensuring meaningful participation in the negotiation process. Instead, the negotiation processes that lead to the conclusion of such agreements are still unregulated, and “subject to regulatory regimes and their historic antecedents that continue to shape power relations,”⁴¹⁵ particularly the free entry mining system.

Stretching from the Whitehorse Mining Initiative (WMI) (1992-94) to the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries (2006-07), Viviane Weitzner assesses 14 negotiated mining agreements (eight in Canada, three in Peru, two in Brazil, and one in South Africa), in order to identify “key lessons” for indigenous multi-party dialogues among indigenous communities, governments, corporations and other stakeholders.⁴¹⁶ Among other things, Weitzner concluded: these multi-party dialogues hardly ever address power asymmetries that result from systemic problems such as the free entry system; that governments have failed to implement their recommendations (as in the case of the 2006 National Roundtables on CSR); and that mining affected communities often lack the resources necessary to effectively participate in these costly processes.⁴¹⁷ Furthermore, these enduring power asymmetries between indigenous participants and other interests in tripartite dialogue regarding mining are perpetuated through the shortage of resources, insufficient funding, and a lack of opportunities that support meaningful participation.⁴¹⁸

Although indigenous people in Canada might be better placed – including access to information, a democratic political system, and legal rights – to ensure that their views are taken into consideration, as compared to indigenous populations in many other parts of the world, IBAs in

⁴¹⁵ Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University

⁴¹⁶ Canel, E., Idemudia, U., & North, L. (2010). Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25.

⁴¹⁷ *Ibid*

⁴¹⁸ Weitzner, V. (2010). Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons Can Canada and Others Share? Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 87-109.

Canada have provided few benefits, if any.⁴¹⁹ Past examples of dialogues in Canada and elsewhere do not hold much promise, primarily because indigenous aspirations concerning development often conflict with those of the neoliberal state and mining companies.⁴²⁰ Entering into agreements with corporate interests has broader and more important implications that need to be carefully considered, when assessing whether contractual relationships represent the best way of pursuing indigenous interests with respect to resource development.⁴²¹ Despite the fact that some communities in Canada have derived benefits from IBAs, once signed, these agreements restrict the means by which communities can access important government and judicial services. IBAs can significantly limit the capacity of communities to seek effective means of addressing problems that may be encountered after signing the agreement, as well as restrict relations with advocacy groups.⁴²²

“Consultation” versus “Consent”

Another challenge to the successful implementation of FPIC concerns the interpretation of the principle itself, and more specifically how to define and operationalise ‘consent’. In both Canada and in the global extractive sector, consent has increasingly come to be defined as ‘consultation’, thus significantly diminishing the principle’s potential for change.

In Canada, this development can be traced to the Crown’s duty to consult,⁴²³ which is based on the assumption that its general approach to and perception of the land is automatically acceptable to indigenous people, and that consultation simply promotes participation by indigenous people in the Crown’s overall approach and plans regarding land use. As framed by the Supreme Court,

⁴¹⁹ Laforce, M. (2010). L’evolution des regimes miniers au Canada: l’emergence de nouvelles formes de regulation et ses implications. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 49-68

⁴²⁰ Altman, J. (2012). *Indigenous Rights, Mining Corporations, and the Australian State*. In Sawyer S., & Gomez, E.T (eds) *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State*. New York, NY: United Nations Research Institute for Social Development (UNRISD). See also Standlee, D.M. (2006). *Oil, Globalization, and the War for the Arctic Refuge*. Albany: State University of New York Press

⁴²¹ O’Faircheallaigh, C. (2010). Aboriginal-Mining Company Contractual Agreements in Australia and Canada: Implications for Political Autonomy and Community Development. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 69-86.

⁴²² *Ibid*

⁴²³ Under Section 35 of the Constitution Act, 1982, the Crown has a ‘duty to consult and accommodate’ the interests of Aboriginal groups and this obligation cannot be delegated [<http://www.aadnc-aandc.gc.ca/eng/1309374807748>]

the duty to consult has been called *assimilative pressure*:

“The duty to consult does not operate to merge or reconcile self-understood Aboriginal versions of land use in contrast with Crown visions. Rather, the Crown is imagined as working within and through nothing but its vision, with the duty to consult operating to potentially modify the activities that fall under this vision...the accommodation of Aboriginal interests must be understood within this larger context, as the modification of activities that all flow from the fundamental Crown vision of land use.”⁴²⁴

According to this definition, community consultation does not amount to effective participation. The Crown’s duty to consult ignores the desires and abilities of indigenous communities’ to plan possible futures that may exclude present forms of natural resource extraction.⁴²⁵ A recent report from the Boreal Leadership Council (BLC) confirmed that “there are differences of opinion between the Crown and First Nations as to the nature, extent, and scope of Aboriginal rights and interests in decisions about the use of lands and resources.”⁴²⁶ There are also competing interests between indigenous rights and mining companies.⁴²⁷ Alternative indigenous views represent an intolerable challenge to the dominant neoliberal paradigm, “that seeks to bring all human action into the domain of the market.”⁴²⁸ On a different level, such views “challenge the foundational principle of settler-colonialism whose logic is predicated on land expropriation.”⁴²⁹

A similar shift from consent to consultation is evident in global mining norms, most notably as promoted by the World Bank Group (WBG). The different perceptions of the WBG, on the one hand, and of indigenous peoples on the other, regarding the latter’s participation in development projects, is expressed in the recent controversy over the issue of ‘free, prior, and informed

⁴²⁴ Christie, G. (2002). “Judicial Justification of Recent Developments in Aboriginal Law.” *Canadian Journal of Law and Society* 17(2), 41-71. (Emphasis added)

⁴²⁵ *Ibid.* See also: *The Crown’s approach to First Nations consultation on the Enbridge Gateway Pipeline* – http://www.ceaa-acee.gc.ca/050/documents_staticpost/cearef_21799/86129/Legal_Backgrounder.pdf

⁴²⁶ Boreal Leadership Council (BLC). (2012). *Free, Prior, and Informed Consent in Canada* - <http://www.borealcanada.ca/documents/FPICReport-English-web.pdf>

⁴²⁷ *Ibid*

⁴²⁸ Harvey, D. (2007). *A Brief History of Neoliberalism*. Oxford, U.K: Oxford University Press. p.3

⁴²⁹ Altman, J. (2012). *Indigenous Rights, Mining Corporations, and the Australian State*. In Sawyer S., & Gomez, E.T (eds) *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State*. New York, NY: United Nations Research Institute for Social Development (UNRISD). p.67

consent’ versus ‘free, prior, and informed consultation’.⁴³⁰ As previously noted, the WBG rejected the EIR’s key insistence that communities affected by mining be entitled to FPIC,⁴³¹ and has instead advocated for free, prior and informed *consultation*, a 2005 amendment that removes the need for consent, thereby threatening the autonomy and human rights of affected parties.⁴³²

An earlier proposal that FPIC be applied to indigenous peoples affected by WBG projects was made in 2000, but was rejected by the Bank.⁴³³ The WBG also rejected a second call for FPIC for non-indigenous peoples to be included in the 2001 revision of its involuntary resettlement (IR) policy.⁴³⁴ According to the design of the IR policy, the nature of the involvement of ‘project affected people’ (PAPs) is determined by the contracted company and their participation is overseen by the WBG via the company’s reports. Since PAPs “are not parties to the private contractual relationship that exists between the WBG agency and its client,” they are denied rights of access to information and decision-making that affects their resettlement.⁴³⁵

The weakening of the Bank’s IR guidelines creates considerable concern, with the latest version changing them from binding operational directives “to Operational Policies (OPs), Bank Procedures (BPs), and Good Practices (GPs).”⁴³⁶ The changes that concern critics most are those that reduce the safeguards available to vulnerable communities, while simultaneously facilitating the procedures and processes by which development planners can more easily and efficiently displace people.⁴³⁷

⁴³⁰ Oliver-Smith, A. (2010). *Defying Displacement: Grassroots Resistance and the Critique of Development*. Austin, Texas: University of Texas Press

⁴³¹ Financial Times (2003), 3rd February. London, UK. Quoted in Moody, R. (2007). *Rocks and Hard Places: The Globalization of Mining*. Black Point, NS: Fernwood Publishing

⁴³² World Bank. (2005). *Revised operational policy on indigenous peoples*, OP 4.10. In *The World Bank operational manual*. Washington, D.C.: The World Bank

⁴³³ World Commission on Dams (WCD). (2000). *Dams and Development: A new framework for decision-making*. Available at <http://www.dams.org/report/contents.htm>

⁴³⁴ Goodland, R. (2004). Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law and Policy* (4)2, 66-74.

⁴³⁵ Campbell, B. (2008). Regulation & Legitimacy in the Mining Industry in Africa: Where does Canada Stand? *Review of African Political Economy* (35)117, 367-385.

⁴³⁶ Clark, D. (2009). *An overview of revisions in the World Bank resettlement policy*. In Mehta, L (ed) *Displaced by development: Confronting marginalization and gender injustice*. Delhi, India: Sage. p.249

⁴³⁷ Oliver-Smith, A. (2010). This IR policy also applies to non-extractive WBG projects. A case in point is the *Kenya Water and Sanitation Service Improvement Project* (Project I.D: P096367), whereby FPIC was not obtained from members of the affected community prior to the project’s commencement. In fact, the Kenyan government parastatal under contract with the WBG, the Athi Water Services Board (AWSB), used fraudulent consent forms in order to enter private lands. As a result, the project was legally challenged in court and an injunction against further

Ibrahim Shihata, the WBG General Counsel, has interpreted ‘meaningful participation’ to mean communities can reject being evicted.⁴³⁸ Shihata ruled that obligations under the UN Charter (Article 103) supersede the WBG’s Articles of Agreement. In 1993, he wrote “balanced development can only be achieved if the basic human rights are secured for persons affected by development.”⁴³⁹ This is also known as “Shihata’s Threshold”. In 1995, Shihata further ruled that the effective participation of project affected people requires the two human rights of *free expression* and of *assembly*.⁴⁴⁰ The WBG interprets “meaningful consultation” as including the right to refuse to agree to a proposal. Under its own rules, therefore, the WBG should include FPIC in its policies, in order to address this inconsistency.⁴⁴¹

Indigenous peoples have rejected the idea of free, prior, and informed consultation, which the WBG has defined as “a culturally appropriate and collective decision-making process subsequent to meaningful good faith consultation and informed participation regarding the implementation of the project.”⁴⁴² Under these conditions, indigenous peoples feel that free, prior, and informed consultation is essentially a negotiating process, which leaves them with only the option of being able “to work to improve the conditions of a project involving their land and resources, a project that they have no power to stop.”⁴⁴³

The World Bank’s promotion of consultation as opposed to consent thus points to a significant challenge to the implementation of FPIC as a means to achieving greater community empowerment. In this regard, recent developments in the mining sector seem to mirror World Bank policies and practices with so-called Poverty Reduction Strategy Papers (PRSPs). PRSPs

operations was issued, pending a hearing in the High Court of Kenya. However, the AWSB violated the court injunction and proceeded with the project. Members of the affected community are still seeking legal redress (Re: ELC No.52 OF 2010 in the High Court of Kenya) [Kinuthia, W. (2010). *How the World Bank Denies Communities the Right to “Free, Prior, Informed Consent”* - <http://www.youtube.com/watch?v=AM4Gykh WN4Q> or www.madaraka.net]

⁴³⁸ Goodland, R. (2004). Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law and Policy* (4)2, 66-74.

⁴³⁹ Shihata, I. (2000). *The World Bank Legal Papers*. The Hague, Netherlands: Dordrecht Kluwer Law (Cited in Goodland)

⁴⁴⁰ *Ibid*

⁴⁴¹ Goodland, R. (2004).

⁴⁴² World Bank. (2005). *Revised operational policy on indigenous peoples*, OP 4.10. In *The World Bank operational manual*. Washington, D.C.: The World Bank

⁴⁴³ Oliver-Smith, A. (2010). *Defying Displacement: Grassroots Resistance and the Critique of Development*. Austin, Texas: University of Texas Press. p.250

emphasize country ownership and mandate that civil society and poor people must participate in the design of development plans for the reduction of poverty, including in the design of mining policies.⁴⁴⁴

However, as Jeremy Gould argues the requirement of participation amounts to little more than a “consultative imperative” and does not actually require that contributions made in the consultative process are actually taken into account in policy-making.⁴⁴⁵ Instead, according to Gould, PRSPs empower “a mode of development professionalism which can translate the outcomes of grassroots consultations into the established rhetoric of the policy community.”⁴⁴⁶ The PRSP process often excludes the poor from policy formulation, despite its claims to the contrary.⁴⁴⁷ The above analysis suggests that similar concerns apply to the consultative process in the mining sector, and that the principle of “free, prior and informed consent” is in danger of being diluted. While this might accord some influence to local communities, it is a far cry from the original intent of the principle.

Local Interests and the FPIC process

A final challenge to the implementation of FPIC can be found within the communities themselves. The very notion of a ‘community’ that ‘consents’ to something is based on the assumption that a cohesive community exists in the first place. References to community, particularly when the prefix traditional or indigenous is added, frequently incorporate a degree of romanticism, a vision of equal and harmonious coexistence. This is of course not the case, as all societies at all times are defined and permeated by power relations. A political economy perspective cautions that negotiation processes are often influenced by the interests and values of local elites, seeking to maintain and promote their positions. Consequently, any possibilities or

⁴⁴⁴ Similarly, the World Bank Operational Directive and its successor documents impose an obligation on projects to ensure that local people participate in planning and decision-making [Szabloski, D. (2002). Mining, displacement and the World Bank: A case analysis of Compania Minera Antamina’s operations in Peru. *Journal of Business Ethics* 39, 247-273.]

⁴⁴⁵ Gould, J (ed). (2005). *The New Conditionality: The Politics of Poverty Reduction Strategies*. New York, NY: Zed Books (Emphasis added). p.25

⁴⁴⁶ *Ibid.* p.37

⁴⁴⁷ *Ibid*

outcomes of political action are largely determined by the hierarchy of these values.⁴⁴⁸ It is thus important to keep in mind that FPIC can provide the means for local leaders to strengthen their hold on power, while claiming that they act in the common good or on behalf of the community.

Goodland cautions that although most societies have appointed leaders, competing power factions still exist. The appointed representatives may possess varying abilities in expressing the views of the community. In such situations, it is crucial that “truly legitimate representatives be sought and involved in FPIC,” as opposed to the usual, well-known local elites.⁴⁴⁹ The local representatives discuss the subject of the negotiations in greater detail with the larger group so as to seek their concomitant approval or rejection. Since it has been a frequent tendency for project proponents to favour a particular representative throughout the entire negotiation process, great caution must be taken “that the representatives retain broad legitimacy throughout the process.”⁴⁵⁰

Conclusions

The obstacles to FPIC are internal as well as external. The free entry system is a major systemic obstacle to the implementation of FPIC. In addition, project affected people are generally expected to accept the wisdom and decisions of planners even when their rights have been taken into account and participation is considered to be part of a project.⁴⁵¹ Participation has therefore become a bureaucratic function, exercised in suitable ways in order to ensure the success of a project, and consultation is advocated instead of consent. The FPIC process is also vulnerable to

⁴⁴⁸ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

⁴⁴⁹ Goodland, R. (2004). Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law and Policy* (4)2, 66-74.

⁴⁵⁰ *Ibid.* For example, the founders of the “Idle No More Movement” have stated that the movement is, at its core, a grassroots campaign, and have expressed concerns that it could be co-opted by politicians and Aboriginal chiefs who are perceived to have a different vision from that of the movement [Curtis, C. (2012). *Idle No More a growing force: Natives vow to keep pressure going for budget changes*. The Ottawa Citizen, 22nd December 2012]. Underlying this rift is the fact that the leadership of the Assembly of First Nations (AFN) is subject to the parameters of the controversial *Indian Act*, and is elected by sitting chiefs as opposed to First Nations people [Kirkup, K. (2013). *AFN Slammed by Idle No More advocates*. 5th March 2013. Ottawa, ON: Parliamentary Bureau. See also: Curry, B. (2013). *First nations losing appetite for small-step changes that tinker with Indian Act*. The Globe and Mail, 12th January 2013]

⁴⁵¹ Oliver-Smith, A. (2010). *Defying Displacement: Grassroots Resistance and the Critique of Development*. Austin, Texas: University of Texas Press. p.97-98

the manipulation of local elites, who may seek to promote their own interests during negotiations. This suggests that the road to the adoption and implementation of FPIC will be far from easy.

Chapter 5: Conclusions

Although the extractive industry has been the subject of conflict and controversy since the early years of the twentieth century, the industry's latest growth phase, marked by unprecedented and unregulated geographical expansion and intensification of extractive exploitation, raises new issues.⁴⁵² The forced displacement of communities that was rife during the post-independence era as a consequence of development projects, has been intensified by the neoliberal reforms of the 1990s, as private capital (including extractive companies) has gained access to more remote areas. States have also been extending and offering various concessions, in order to attract and facilitate capital investment. However, many local communities have rejected these development projects, on the grounds that they are not allowed to effectively participate in them.⁴⁵³

The relationship between economic and political elites has always been a close one, but current neoliberal ideology equates the interests of private capital with those of the nation. Therefore, “the role of the state is simply to guarantee a favourable institutional environment for capital to pursue its reproduction and expansion.”⁴⁵⁴ The degree of interconnection between the policies of multi- and bilateral institutions, notably in the area of promoting liberalisation, deregulation and privatisation, is very clear.⁴⁵⁵ For example, the World Bank calls for a “clearly articulated mining sector policy that emphasizes the role of the private sector as *owner* and *operator* and of the government as *regulator* and *promoter*.”⁴⁵⁶ This process of redefining the state's role in the mining sector and more generally, reconceptualising its sovereignty, echoes the observations made by Susan Strange with respect to the reduction in autonomy and authority of states, in

⁴⁵² Canel, E., Idemudia, U., & North, L. (2010). Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 5-25.

⁴⁵³ Xaxa, V. (2012). *Identity, Power, and Development: The Kondhs in Orissa India*. In Sawyer S., & Gomez, E.T (eds) *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State*. New York, NY: United Nations Research Institute for Social Development (UNRISD). p.200

⁴⁵⁴ Rebbapragada, R., & Kalluri, B. (2009). *The Samatha judgement: Upholding the rights of Adivasi women*. In Mehta, L (ed) *Displaced by development: Confronting marginalization and gender injustice*. New Delhi, India: Sage

⁴⁵⁵ Campbell, B. (2001). *The Role of Multilateral and Bilateral Actors in Shaping Mining Activities in Africa*. In Third World Network-Africa (TWN-Af) (2001) *Mining, Development and Social Conflicts in Africa*. Accra, Ghana: Third World Network-Africa (Af)

⁴⁵⁶ World Bank. (1992). *Strategy for African Mining*. World Bank Technical Paper, No. 181. Africa Technical Department Series, Mining Unit, Industry and Energy Division. Washington, DC: World Bank. p.53 (Emphasis added)

addition to their reduced capacity to control the development of their own institutions.⁴⁵⁷ At the same time, the distribution of structural power has been shifted in order to favour private actors and, especially, extractive TNCs.⁴⁵⁸

In the case of the Canadian extractive industry, it is primarily “because of public institutional and governmental assistance to private Canadian economic and commercial interests, notably in the mining sector, that Canadian mining companies are at the forefront of financing and exploration activities” worldwide.⁴⁵⁹ Canada’s Department of Foreign Affairs and International Trade (DFAIT), Export Development Corporation (EDC), and the Canadian International Development Agency (CIDA), provide good examples of this institutional assistance.⁴⁶⁰ Furthermore, the connection between the development of Canada’s mining laws and the reform of mining regimes in other countries – that is, the transnationalisation of norms in the global extractive industry, so as to maintain “a stable, consistent and familiar operating environment” for Canadian mining companies⁴⁶¹ – has been both direct and indirect. Direct, as Canada provides finances and expertise for such reforms; and indirect, through the role that Canada plays in the IFIs that are responsible for the reforms. The manner through which Canada’s trade and investment policies support the strategies of IFIs, encouraging further liberalisation and deregulation, is “actively contributing to the economic marginalisation of certain regions, by denying them access to and control over the development of their own resources.”⁴⁶²

The privatization of large-scale projects has serious consequences for communities, largely due

⁴⁵⁷ Strange, S. (1996). *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge, U.K.: Cambridge University Press

⁴⁵⁸ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

⁴⁵⁹ ----- (2001). *The Role of Multilateral and Bilateral Actors in Shaping Mining Activities in Africa*. In Third World Network-Africa (TWN-Af) (2001) *Mining, Development and Social Conflicts in Africa*. Accra, Ghana: Third World Network-Africa (Af)

⁴⁶⁰ *Ibid*

⁴⁶¹ Arsenaault, C. (2007). “Colombia: Foreign Firms Cashing in on Generous Mining Code,” Inter Press Service. <http://ipsnews.net/news.asp?idnews=39755>

⁴⁶² Campbell, B. (1999). *Les intérêts miniers canadiens et les droits de la personne en Afrique dans le cadre de la mondialisation*. Droits et Démocratie, Centre international des droits de la personne et du développement démocratique – <http://www.dd-rd.ca/site/>. Quoted in: Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

to “the lack of constraints and accountability that current political economic models favour.”⁴⁶³ Large-scale projects that are unconstrained by human rights accords or international displacement and resettlement guidelines, generally subordinate the “rights of...indigenous and other minority groups to the agendas of corporate interests and the logic of the market.”⁴⁶⁴ Mining companies often pay lip service to the guidelines contained in legislation, while many governments are either unable to ensure that these companies comply with regulations or wilfully turn a blind eye to infractions, thereby “leaving affected communities with no recourse or access to justice.”⁴⁶⁵

Furthermore, the inability of multipartite dialogue to resolve highly controversial or systemic issues has been demonstrated in the wake of Canadian initiatives, particularly “the lack of political will to implement the voluntary agreements that result.”⁴⁶⁶ For instance, the failure of the National Round Table on the Environment and the Economy in achieving consensus on the controversial free entry system, highlights the fact that “consensus might be...more appropriately resolved through legal interventions.”⁴⁶⁷ This lack of political will in implementing existing voluntary agreements has caused many to regard multipartite processes merely as a ploy by which the government “pretends to resolve issues through dialogue, when essentially these processes help maintain business as usual.”⁴⁶⁸ The multipartite 2006 National Round Tables on CSR is another case in point, whereby the official government response to the advisory group’s consensus report failed to address the report’s key recommendations, “leading to the conclusion that very little will change and that business will continue as usual with Canadian companies operating overseas.”⁴⁶⁹ In this regard, government officials have indicated that Canada’s CSR strategy abroad will continue to be informed by multipartite processes.⁴⁷⁰ Moreover, the global

⁴⁶³ Oliver-Smith, A. (2010). *Defying Displacement: Grassroots Resistance and the Critique of Development*. Austin, Texas: University of Texas Press

⁴⁶⁴ *Ibid*

⁴⁶⁵ Rebbapragada, R., & Kalluri, B. (2009). *The Samatha judgement: Upholding the rights of Adivasi women*. In Mehta, L (ed) *Displaced by development: Confronting marginalization and gender injustice*. New Delhi, India: Sage

⁴⁶⁶ Weitzner, V. (2010). Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons Can Canada and Others Share? Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 87-109.

⁴⁶⁷ *Ibid*

⁴⁶⁸ Gibson, G. (2002). *Applying lessons learned from Canadian multi-stakeholders processes to the current Peruvian situation*. Vancouver, BC: CoDevelopment Canada

⁴⁶⁹ *Ibid*

⁴⁷⁰ Weitzner, V. (2010).

economic crisis and pressure from industry to stay the course will likely exacerbate this state of affairs.⁴⁷¹

Large-scale development projects that are unconstrained by human rights accords or international displacement and resettlement guidelines, render the human and environmental rights of indigenous peoples and other minority groups secondary to market logic and the agendas of corporate interests.⁴⁷² The principle of ‘inevitability’ has been used by free market proponents as a rhetorical device, in order to argue that “there is no alternative to corporate globalization.”⁴⁷³ This is a political construct that conceals the political and institutional forces that govern them, and serves as a means of controlling social agency.⁴⁷⁴ The inevitability argument is often “naturalized”, reinforcing existing power structures.⁴⁷⁵ It “obscures the causes of change and veils the people (or institutions) who bring about those changes; and once this assumption of inevitability is institutionalized, it becomes self-fulfilling and might weaken or erode...autonomy.”⁴⁷⁶

Laura Nader, who is a leading authority on alternative dispute resolutions, considers it virtually impossible to overcome these power structures. She therefore counsels weak parties to seek recourse in legal institutions as opposed to mere negotiation exercises, in order to realize fair results.⁴⁷⁷ Previous studies have demonstrated the general failure of both compensation⁴⁷⁸ and restoration policies.⁴⁷⁹ Establishing fair and equitable interactions and outcomes during

⁴⁷¹ Feiler, J. (2002). Mining after Johannesburg: An assessment of post-WSSD political options. Mineral Policy Center Discussion Paper. <http://www.earthworksaction.org/publications.cfm?pubID=67>. See also: Gibson, G. (2002). *Applying lessons learned from Canadian multi-stakeholders processes to the current Peruvian situation*. Vancouver, BC: CoDevelopment Canada

⁴⁷² Oliver-Smith, A. (2010). *Defying Displacement: Grassroots Resistance and the Critique of Development*. Austin, Texas: University of Texas Press

⁴⁷³ Shorett, P. (2005). ‘Dogmas of inevitability: Tracking symbolic power in the global marketplace’. In Nader, L (ed) *Controlling Processes. Selected Essays 1994-2005*. Kroeber Anthropological Society Papers, Nos. 92/93. p.335

⁴⁷⁴ *Ibid*

⁴⁷⁵ Nader, L. (1997). Controlling processes. *Current Anthropology* 38(5), 711-737.

⁴⁷⁶ Urteaga-Crovetto, P. (2012). ‘The Broker State and the Inevitability of Progress’. In Sawyer S., & Gomez, E.T (eds) *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State*. New York, NY: United Nations Research Institute for Social Development (UNRISD). p.107

⁴⁷⁷ Nader, L. (1994). *Coercive harmony: The political economy of legal models*. Unpublished manuscript

⁴⁷⁸ Cernea, M.M. (2009). *Financing for development: Benefit sharing mechanisms in population resettlement*. In Oliver-Smith, A (ed) *Development and dispossession: The crisis of forced displaced and resettlement*. Santa Fe, CA: SAR Press

⁴⁷⁹ Scudder, T. (2005). *The future of large dams: Dealing with social, environmental, institutional and political costs*. London, U.K: Earthscan

negotiations is significantly dependent upon crucial variables, including power dynamics and the participants' relative power status.⁴⁸⁰

These variables are directly affected by the free entry mining system. Mandated by the *Mining Act* of 1873, the free entry mining system gives prospectors and mining companies' free access to lands in search of minerals in spite of who owns the surface rights. The Act does not recognize the Treaty rights of indigenous people and violates their recognized constitutional right to be consulted and accommodated prior to all government decisions being made regarding their interests. Thus, accumulation by dispossession is facilitated via the free entry system, since free entry "does not provide for the exercise of free, prior and informed consent...at the critical point when mineral rights are acquired" during the staking process.⁴⁸¹

This right of free access to lands and resources is at the root of numerous conflicts worldwide, involving landowners, governments, and mining companies.⁴⁸² These conflicts are often settled in favour of the extractive industry.⁴⁸³ Disputes between private property owners and prospectors can also be brought before a commissioner who can grant reparation for damages incurred by the surface owners as a result of exploration and mining-related activities.⁴⁸⁴ However, the law clearly prioritizes mineral development as the highest and best use of land. Other regulations, policies and laws specifically designed to protect ecological values such as the *Environmental Protection Act*, the *Planning Act*, the *Ontario Water Resources Act* and the *Provincial Parks and Conservation Reserves Act* are all superseded by the *Mining Act*.⁴⁸⁵

In addition, since there is no requirement under the free entry system for extractive companies to notify the authorities about their prospecting activities, the government is often unaware of these

⁴⁸⁰ Bercovitch, J., & Houston, A. (1996). *Resolving international conflicts*. Boulder, CO: Lynne Rienner Press

⁴⁸¹ International Boreal Conservation Campaign (IBCC). (2008). *Mineral Exploration Conflicts in Canada's Boreal Forest* - www.borealcanada.ca/pr/documents/MiningExplorationConflicts-May2008-web.pdf

⁴⁸² Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University

⁴⁸³ International Boreal Conservation Campaign (IBCC). (2008).

⁴⁸⁴ See *Bepple v. Western Industrial Clay Products Ltd.*, 2004 BCC A 497 (Can LII). Where a property owner loses full use and enjoyment because of mineral activity, they can only claim market value, and not replacement cost, for the property

⁴⁸⁵ International Boreal Conservation Campaign (IBCC). (2008).

activities and mining claims before they are officially registered. Consequently, it is unable to engage in any kind of process with project-affected communities during the initial stage of the mining cycle.⁴⁸⁶ Since the duty of consultation and accommodation cannot be delegated to a third party such as a prospector,⁴⁸⁷ the Government of Canada needs to enact amendments to the *Mining Act*, whereby prospectors and miners will be required to inform the authorities as soon as possible regarding their planned activities.⁴⁸⁸

Furthermore, owing to Canada's distinctive constitutional relationship with indigenous people and the importance of reconciling their rights with existing laws in any resource development projects, "there is an urgent need to define and support responsible development that" involves FPIC.⁴⁸⁹ Governments need to ensure that project planning is undertaken with all interests at the table before allocating development rights that prejudice balanced outcomes, so as to ultimately improve land use for everyone.⁴⁹⁰ Reforming Canadian mining laws in order to incorporate the right to FPIC therefore seems appropriate and beneficial for both the industry and potentially-affected landowners.⁴⁹¹ Various stakeholders are increasingly recognizing the need for such reforms, including the Boreal Leadership Council (BLC) – comprised of leading conservation groups, indigenous groups, industry representatives, and financial institutions – which recently issued a report stating that "responsible development of natural resources...needs to integrate the right to free, prior, and informed consent (FPIC)" of affected communities.⁴⁹²

According to Hans Opschoor, Rector of the Institute of Social Studies in The Hague, the mechanisms and institutions that are needed to curb corporate globalization, "would entail a trajectory with less spectacular overall growth figures but with a more human and sustainable

⁴⁸⁶ Carter-Whitney, M., & Duncan, J. (2008). *Balancing Needs / Minimizing Conflict: A Proposal for a Mining Modernization Act*. Toronto, ON: Canadian Institute for Environmental Law and Policy (CIELAP) and Ecojustice

⁴⁸⁷ In *Haida Nation v. British Columbia (Minister of Forests)* [2004] SCC 73, at paragraphs 52-56, where the Court indicated that a third party could not carry out the Crown's duty to consult and accommodate

⁴⁸⁸ Carter-Whitney, M., & Duncan, J. (2008).

⁴⁸⁹ Boreal Leadership Council (BLC). (2012). *Free, Prior, and Informed Consent in Canada*. <http://www.borealcanada.ca/documents/FPICReport-English-web.pdf>

⁴⁹⁰ International Boreal Conservation Campaign (IBCC). (2008). *Mineral Exploration Conflicts in Canada's Boreal Forest* - www.borealcanada.ca/pr/documents/MiningExplorationConflicts-May2008-web.pdf

⁴⁹¹ Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University

⁴⁹² Boreal Leadership Council (BLC). (2012).

pattern of development.”⁴⁹³ A real choice must be made between escalating conflicts around mineral exploration, and the opportunity for governments, industry, indigenous peoples and other stakeholders to move to a new regime that addresses the rights and interests of all stakeholders. Despite the vast increase in regulatory measures such as Environmental Impact Assessment (EIA) procedures and Impact and Benefits Agreements (IBAs), the law of free-entry has remained largely intact and conflicts over land and property rights continue to occur.⁴⁹⁴ Thus, many non-industry stakeholders believe that there needs to be a complete overhaul of the free-entry system.⁴⁹⁵ The ensuing power relationships between project-affected communities, extractive companies and governments in both EIA and IBA processes will be significantly impacted by reforming this mineral tenure system.⁴⁹⁶

Moreover, Karen Campbell, a legal expert at West Coast Environmental Law, argues that Canada’s mining laws were passed at a time when mining was done with picks and shovels.⁴⁹⁷ Although free entry mining laws may have existed in the past, when land had relatively few other uses, when mining was (often) done in remote areas, and when it was not done using the large scale industrial methods with which it is now conducted,⁴⁹⁸ it is fundamentally at odds with modern values and principles that call for more inclusive, equitable and participatory approaches to the development of lands and resources, as well as greater environmental protection.⁴⁹⁹

Following the recent conflicts in Ontario, the provincial government acknowledged that there is “a problem with the mining act” and that it falls short of the values and expectations of society at

⁴⁹³ Opschoor, H. (1999). ‘Sustainable Human Development in the Context of Globalisation’. Presented at the Closing Session, 9th General Conference of the European Association of Development Research and Training Institute (EADI), September 22 – 25, 1999, Paris, France

⁴⁹⁴ Lapointe, U. (2009). *Origins of Mining Regimes in Canada & The Legacy of the Free Mining System*. Presented at the *Conference on Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims*. March 5-7, 2009. The Centre for Research on Latin America and the Caribbean (CERLAC) and the Extractive Industries Research Group (EIRG). Toronto, ON: York University

⁴⁹⁵ Hoogeveen, D. (2008). *What is at stake? Diamonds, mineral regulation, and the law of free-entry in the Northwest-Territories*. Master thesis. Vancouver, BC: Simon Fraser University

⁴⁹⁶ Lapointe, U. (2009).

⁴⁹⁷ Campbell, K. (2004). *Undermining our Future: How Mining’s Privileged Access to Land Harms People and the Environment (A Discussion Paper on the Need to Reform Mineral Tenure Law in Canada)*. Vancouver, BC: West Coast Environmental Law

⁴⁹⁸ *Ibid*

⁴⁹⁹ Lapointe, U. (2009).

the dawn of the 21st century.⁵⁰⁰ On July 14, 2008, former Ontario Premier Dalton McGuinty committed his government to reforming the *Mining Act*, specifically highlighting the “need to modernize the way mining companies stake and explore their claims to be more respectful of private land owners and Aboriginal communities.”⁵⁰¹

Unfortunately, these reforms failed to address the “structural cause of the original dispute; the retention of the free entry rules.”⁵⁰² Like its predecessor, the new *Mining Act* neither requires indigenous peoples’ consent nor recognizes their right to say ‘no’. Consequently, a number of individual First Nations and regional First Nations organizations have rejected the reforms, stating that “a vague requirement for *consultation* is not adequate and that the province needs to institutionalize Free, Prior, and Informed Consent for affected First Nations.”⁵⁰³ In other words, consultation can only be considered meaningful when communities have the right to say ‘no’ to projects that they decide are not in their best interest. A further cause of concern is the fact that the *Mining Act* still absolves governments of their legal duty to engage in consultation, and instead passes the responsibility for consultation on to extractive companies.⁵⁰⁴

In 2012, the Canadian government proposed a highly controversial budget bill officially titled the *Jobs, Growth and Long-term Prosperity Act*, also known as the ‘Omnibus Bill’. However, according to the Assembly of First Nations (AFN), this bill creates a lot of concerns for Canada’s indigenous communities as it contains important amendments (Bill C-38 and Bill C-45) to Canada’s environmental legislation protecting fisheries, lands and resources, including the *Navigable Waters Protection Act* and the *Fisheries Act*. Amendments to the former will remove

⁵⁰⁰ The Globe and Mail. (2008). “*Time to update Ontario’s Mining Act*”, 24 April 2008. Ottawa, ON

⁵⁰¹ Office of the Premier. (2008). “*Protecting a Northern Boreal Region One-and-a-Half Times the Size of the Maritimes.*” Government of Ontario. At <news.ontario.ca/opo/en/2008/07/protecting-a-northern-boreal-region-one-and-a-half-times-the-size-of-the-maritimes.html>. See also: MiningWatch Canada. (2008). *Fulfilling the Premier’s Vision to Modernize and Reform the Ontario Mining Act* - www.miningwatch.ca/en/fulfilling-premier-s-vision-modernize-and-reform-ontario-mining-act; *Letter to Premier Dalton McGuinty; Modernizing and Reforming the Ontario Mining Act*

⁵⁰² Ariss, R. (2012). *Keeping The Land. Kitchenuhmaykoosib Inninuwug, Reconciliation and Canadian Law*. Halifax, NS: Fernwood Publishing. p.150

⁵⁰³ MiningWatch Canada. (2010). *Ontario’s New Mining Act Leaves Gaping Holes* - www.miningwatch.ca/en/ontario-s-new-mining-act-leaves-gaping-holes; See also: MiningWatch Canada. (2010). *What’s Missing in Mining Act Changes? The Right to Say NO. Proposed Amendments Do Little To Prevent Conflicts* - www.miningwatch.ca/en/what-s-missing-mining-act-changes-right-say-no-proposed-amendments-do-little-prevent-conflicts

⁵⁰⁴ *Ibid.* See also: *Haida Nation v. British Columbia (Minister of Forests)* [2004] SCC 73, at paragraphs 52-56, where the Court indicated that a third party could not carry out the Crown’s duty to consult and accommodate.

federal oversight from most water bodies in Canada,⁵⁰⁵ including rivers that may be affected by the proposed Northern Gateway pipeline project by Enbridge Inc. The Minister of Transport will have the authority to approve projects that may affect the navigability of the 167 listed oceans, lakes, and rivers, without taking indigenous title, rights, interests or perspectives into consideration. Other amendments to the *Navigable Waters Protection Act* will probably lead to complex and costly litigation related to project approvals as indigenous rights and title are overlooked.⁵⁰⁶

Canada has an obligation to honour international law requirements that consider the FPIC of potentially-affected communities as a prerequisite to allowing development projects.⁵⁰⁷ FPIC has been enshrined in a number of United Nations declarations, including the U.N Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the U.N General Assembly in September 2007 and endorsed by the Canadian Parliament on 8th April, 2008. However, Canada's endorsement of the declaration turned out to be a qualified one, as it considers the declaration to be a “non-legally-binding aspirational document”⁵⁰⁸ which does not reflect customary international law *nor change Canadian laws.*⁵⁰⁹

The AFN has stated that development projects must not infringe upon First Nation's rights, and must be “in accordance with the standard of free, prior and informed consent, as articulated in

⁵⁰⁵ A loophole created in the *Fisheries Act* permits mining companies to permanently destroy pristine fish-bearing lakes by legally turning them into waste dumps. Healthy wild lakes are being reclassified as “tailings impoundment areas” under the little known Schedule 2 of *The Metal-Mining Effluent Regulations*. The mining industry stands to gain enormous cost savings via Schedule 2 “exceptions”, because they will be able to avoid the costs of building expensive tailings containment facilities [Casey, A. (2012). *Lake killing made easy: How healthy wild lakes are being reclassified as 'tailings impoundment areas'*. The Epoch Times (Ottawa Edition, April 6 – 12)]

⁵⁰⁶ Assembly of First Nations (AFN). (2012). *Assembly of First Nations States Concerns on Bill C 45 to Senate Standing Committee*, 27th November – <http://www.afn.ca/index.php/en/news-media/latest-news/assembly-of-first-nations-states-concerns-on-bill-c-45-to-senate-stand>. See also: Curtis, C. (2012). *Idle No More a growing force: Natives vow to keep pressure going for budget changes*. The Ottawa Citizen, 22nd December 2012.

⁵⁰⁷ West Coast Environmental Law (WCEL). (2010). FOR IMMEDIATE RELEASE, 4th October 2010. *FIRST NATIONS CHIEFS SEND STRONG MESSAGE TO OTTAWA: ENBRIDGE PIPELINES AND TANKERS MUST NOT PROCEED WITHOUT THEIR CONSENT* – <http://wcel.org/resources/new-at-westcoast/first-nations-chiefs-send-strong-message-ottawa-enbridge-pipelines-and-ta>

⁵⁰⁸ Minister of the Department of Indian Affairs and Northern Development (AANDC) – <http://www.aadnc-aandc.gc.ca/eng/1309374807748>

⁵⁰⁹ Steel, D. (2010). *Luke warm endorsement receives tepid response*. *Windspeaker* (28)9 - <http://ammsa.com/publications/windspeaker/luke-warm-endorsement-receives-tepid-response> (Emphasis added). See also: Lightfoot, S.R. (2012). Selective endorsement without intent to implement: indigenous rights and the Anglosphere. *The International Journal of Human Rights* (16)1, 100-122. URL: <http://dx.doi.org/10.1080/13642987.2012.622139>

the United Nations Declaration on the Rights of Indigenous Peoples.”⁵¹⁰ Indigenous peoples must be fully involved in any development projects that directly affect them, so that they can drive the solutions that will truly serve their long-term needs and best interests. Genuine partnership is based on developing a consensus on the best way to proceed. The AFN maintains that “governments and industry must engage early and engage often, urging both the provincial and federal governments to act now.”⁵¹¹ However, engagement does not guarantee approval. Consultation “must be meaningful and it must respect community values and long-term interests both for their lands and their peoples.”⁵¹² According to the AFN’s National Chief, Shawn Atleo, Canada’s indigenous people are “part of a movement, not only in...Canada, but indigenous peoples around the world” and that justice pertaining to their lands “means achieving an approach based on recognition and affirmation of...rights – not denial and extinguishment.”⁵¹³

In view of this country’s leading role in the global extractive industry, it is important that Canada includes the right to FPIC as a fundamental component of its mining laws as called upon by the CNCA,⁵¹⁴ not only to establish a crucial benchmark for the global extractive industry, but also to constitutionally protect the rights of communities affected by extractive projects. The present situation demonstrates the urgent need for the countries where extractive companies originate, “to assume responsibility for ensuring that mining companies respect international standards, that essential monitoring and reporting procedures are in place, and that measures of redress are taken when necessary, particularly in the context of weakened institutional and political capacity inherited from past reforms.”⁵¹⁵ More specifically, Canada needs to reform its mining laws, so as to address structural problems like the free entry mining system,⁵¹⁶ and implement best practices at home as well as abroad, in order to be truly recognized as a leader in the global extractive

⁵¹⁰ Assembly of First Nations (AFN). (2012). *Assembly of First Nations National Chief Supports Matawa First Nations*. 29th June 2012. Ottawa, ON: Assembly of First Nations (AFN) – www.afn.ca/index.php/en/news-media/latest-news/assembly-of-first-nations-national-chief-supports-matawa-first-nations

⁵¹¹ *Ibid*

⁵¹² The Globe and Mail. (2010). *First Nations must be partners, not an afterthought*, 22nd August 2012 - <http://www.theglobeandmail.com/commentary/first-nations-must-be-partners-not-an-afterthought/article4492344/>

⁵¹³ Smith, T. (2012). *Atleo will continue to lead fight for native rights*. The Ottawa Citizen, 19th July 2012.

⁵¹⁴ Canadian Network on Corporate Accountability (CNCA). (2007). *Letter to Prime Minister Harper*. Ottawa, ON: Halifax Initiative

⁵¹⁵ Campbell, B. (2010). Revisiting the Reform Process of African Mining Regimes. Special Issue – Rethinking Extractive Industry: Regulation, Dispossession, and Emerging Claims. *Canadian Journal of Development Studies* (30)1-2, 197-217.

⁵¹⁶ Ariss, R. (2012). *Keeping The Land. Kitchenuhmaykoosib Inninuwug, Reconciliation and Canadian Law*. Halifax, NS: Fernwood Publishing. p.150

industry.⁵¹⁷ As the old English proverb goes, “charity begins at home.”

An Oxford University study of “obstacles to justice and redress for victims of corporate human rights abuse” concluded a review of Canadian law by stating that: “The law of Canada regarding corporate social responsibility for acts committed by Canadian corporations extraterritorially is currently insufficient...The parliamentary Standing Committee on Foreign Affairs and International Trade of the House of Commons was correct in its conclusions that more needs to be done to allow non-nationals to sue in Canada for acts committed by Canadian corporations abroad.”⁵¹⁸ The SCFAIT report called on the Government of Canada to “establish clear legal norms in Canada to ensure that Canadian mining companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with activities of Canadian mining companies.”⁵¹⁹ According to Cory Wanless, a Toronto-based lawyer who is legally representing a group of Guatemalans in a landmark case against a Canadian mining company,⁵²⁰ “at the moment, [Canadian mining firms] don’t even have to answer to any of these allegations...They’re not held to account anywhere.”⁵²¹

Pursuant to the above, the Economics Department of the Organization for Economic Cooperation and Development (OECD) has attributed Canada’s falling productivity and lack of innovation to the move from investment in value-added sectors like manufacturing, towards natural resource extraction. Since this is largely depleting resources, the expansion of this sector means digging deeper and further, requiring more labour and capital to get the resources out of the ground.

⁵¹⁷ Innes, L. (2007). *Corporate Social Responsibility Begins at Home*. April 18, Embassy Magazine. Ottawa, ON

⁵¹⁸ Oxford. (2008). *Obstacles to justice and redress for corporate human rights abuse*. Oxford Pro Bono Publico, <http://www.law.ox.ac.uk/ophp>

⁵¹⁹ Standing Committee on Foreign Affairs and International Trade (SCFAIT). (2005). *Mining in Developing Countries: Corporate Social Responsibility*, 38th Parliament, 1st Session, Fourteenth Report: June. House of Commons - <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1961949&Mode=1&Parl=38&Ses=1&Language=E>. See also: MiningWatch Canada. (2012). *Indigenous Rights and Mining: Submissions to the UN Committee on Elimination of Racial Discrimination*, Thursday, 23rd February 23, 2012 – <http://www.miningwatch.ca/article/indigenous-rights-and-mining-submissions-un-committee-elimination-racial-discrimination>.

⁵²⁰ Marotte, B. (2013). *Guatemalan mine claims against HudBay can be tried in Canada, judge says*. The Globe and Mail, 23rd July 2013 - <http://m.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/guatemalan-mine-claims-can-be-tried-in-canada-judge-says/article13360800/?service=mobile>. See also: Collette, P. (2013). *After HudBay ruling, Canadian firms on notice over human rights*. The Globe and Mail, 24th July 2013 – <http://m.theglobeandmail.com/commentary/after-hudbay-ruling-canadian-firms-on-notice-over-human-rights/article13386168/?service=mobile>

⁵²¹ Mendleson, R. (2012). *Excellon Blockade: Mexico Conflict Highlights Shortcomings of Canadian Mining Oversight*. 8th August - www.huffingtonpost.ca/2012/08/28/excellon-blockade-protest-mexico_n_1828923.html

According to the OECD, this eventually leads to a decline in productivity,⁵²² which has Canadian economists worried about the long-term economic impacts. Although resources are presently doing well, it is a volatile sector, and the government must anticipate future downturns by adopting a long-term view, including investments to spur research and development.⁵²³

Thus, a key theme regarding Canada's economic policy that has been reiterated over the years is that the country should pursue a "coherent industrial strategy to create jobs rather than putting its faith in resource exports or free trade."⁵²⁴ These recommendations mirror those recently made to the parliamentary Standing Committee on Foreign Affairs and International Development, regarding Canada's role in Africa's natural resource sector: "in order to contribute to development objectives in the mining sector, it is essential" to "embrace the shift of paradigm which has been called for by African governments and ensure that...policies support the call for transformative measures which will contribute to industrialising African economies and in this way contribute to democratization and more equitable and sustainable social and economic development."⁵²⁵

⁵²² Little, M. (2012). *Canada has touch of Dutch but productivity gap worries OECD: Household debt and hot housing market are risks, but lack of innovation is worse*. The Epoch Times (Ottawa Edition, June 15 – 21)

⁵²³ *Ibid*

⁵²⁴ Drache, D., & Cameron, D. (1985). *The Other MacDonald Report: The Consensus on Canada's Future That The MacDonald Commission Left Out*. Toronto, ON: James Lorimer & Company, Publishers

⁵²⁵ Campbell, B. (2012). *The role of the private sector in achieving Canada's international development interests*. Presented to the Standing Committee on Foreign Affairs and International Development, April 4. Montreal, QC: University of Quebec. See also: Reuters. (2010). *Rethink foreign deals, African nations advised*. The Daily Nation (Kenya), 25th May 2010. Canada's Minister of International Co-operation recently called for an increase in support through CIDA for projects directly tied to Canadian mining companies operating overseas [*Fantino's vision of CIDA supporting Canadian mining projects abroad confuses NGOs*]. The Star, 30th November 2012 - <http://www.thestar.com/news/canada/article/1295569--fantino-s-vision-of-cida-supporting-canadian-mining-projects-abroad-confuses-ngos>]. Once a stand-alone agency, CIDA has now been absorbed into the Department of Foreign Affairs and International Trade (DFAIT) [Mackrael, K. (2013). *Agency's demise shifts control to PMO: Further aligning foreign aid with trade and commercial priorities concerns some development officials*. The Globe and Mail, 22nd March 2013. See also: Payne, E. (2013). *Canada's foreign-aid goals are unclear*. The Ottawa Citizen, 28th March 2013].