

**RECOMMENDATIONS OF THE NATIONAL ROUNDTABLES
ON CORPORATE SOCIAL RESPONSIBILITY AND THE
CANADIAN EXTRACTIVE INDUSTRY IN DEVELOPING COUNTRIES**

CURRENT ACTIONS, STAKEHOLDER OPINIONS AND EMERGING ISSUES

**Report for the Mining Association of Canada's
International Social Responsibility Committee**

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EXECUTIVE SUMMARY

The following report provides information about current actions, stakeholder opinions and emerging trends related to the recommendations of the National Roundtables on Corporate Social Responsibility ("CSR") and the Canadian Extractive Industry in Developing Countries ("the Roundtables"). The Roundtables were a process of multi-stakeholder policy dialogue that brought together representatives of the extractive industry, the investment community, civil society, academia and government. The Advisory Group that oversaw the Roundtables process issued a report in March 2007 containing 27 recommendations related to different aspects of CSR. This report and its recommendations remain an important reference for on-going discussions about CSR and the extractive industry in Canada.

The Mining Association of Canada ("MAC")'s International Social Responsibility Committee has commissioned this research project in order to understand the actions taken by the government and other actors to implement the Roundtables' recommendations, as well as the current gaps in implementation of the recommendations. The feedback solicited from stakeholders, as well as the analysis of emerging trends related to CSR and the extractive industry, is meant to help understand the continuing value of the Roundtables' recommendations in guiding the future work of the committee.

Current actions related to the Roundtables recommendations

In response to the Roundtables' report, the Government of Canada released *Building the Canadian Advantage: A CSR Strategy for the Canadian International Extractive Sector* (the "CSR Strategy") in March 2009. The CSR Strategy contained 4 main pillars: (1) enhance capacity of developing countries to manage resource development; (2) promote international CSR guidelines, including *International Finance Corporation ("IFC") Performance Standards*, *Voluntary Principles on Security and Human Rights* and the *Global Reporting Initiative ("GRI")*; (3) create the Office of the Extractive Sector CSR Counsellor; and, (4) support the development of a CSR Centre for Excellence outside of government.

Since the CSR Strategy was announced, different government department and agencies (and other stakeholders) have undertaken actions and initiatives to implement the CSR Strategy, or which otherwise respond to the Roundtables recommendations.

- The Office of the Extractive Sector Corporate Social Responsibility Counsellor was established in Toronto in 2009 and has since developed a Review Process (which has recently received its first two Requests for Review) and undertaken initiatives to advise stakeholders on the implementation of CSR performance guidelines.
- An Interdepartmental Committee (Co-Chaired by the Department of Foreign Affairs and International Trade Canada ("DFAIT") and Natural Resources Canada ("NRCan") continues to serve as the Organization for Economic Cooperation and Development ("OECD") National Contact Point and has received "Specific



Instances" (i.e. complaints) related to the operations of Canadian extractive companies overseas.

- The Government of Canada has become a participant country in the *Voluntary Principles on Security and Human Rights* ("Voluntary Principles"). DFAIT coordinates the government's work on the Voluntary Principles, and also supports Canada's international anti-corruption efforts. DFAIT provides support to Canada's embassies and trade missions overseas to provide counselling services and organize events related to CSR.
- The Government of Canada has joined the *Extractive Industries Transparency Initiative* ("EITI"). NRCan has a representative on the EITI, and also provides advice to Host Governments, industry associations, companies and multilateral agencies. NRCan, in partnership with the MAC, the Prospectors and Developers Association of Canada ("PDAC"), the Canadian Aboriginal Minerals Association ("CAMA") and Indian and Northern Affairs Canada ("INAC"), has developed a *Mining Information Kit for Aboriginal Communities* and adapted it for use in different developing countries.
- One of the Canadian International Development Agency's ("CIDA's") priorities is to build capacity in Host Countries to manage natural resources and the environment in a sustainable and socially responsible manner. It has announced recent initiatives, including the Andean Regional Initiative for Promoting Effective Corporate Social Responsibility and a series of pilot projects for public-private partnerships for social development projects related to mining projects. CIDA serves as the secretariat for the Intergovernmental Forum on Mining, Minerals ("IGF"), Metals and Sustainable Development, and has a continuing project with ARPEL (Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean) to support CSR in the oil and gas sector in the region.
- Industry Canada is responsible for promoting the *Global Reporting Initiative* ("GRI") reporting framework with all Canadian industries, including the extractive sector. It is currently collaborating with the GRI to develop the next version of the reporting framework (G4), as well as sector supplement for the oil and gas industry.
- Export Development Canada ("EDC") is guided by the *OECD Guidelines for Multinational Enterprises* and the EITI; in 2007, EDC became a signatory to the *Equator Principles* and applies the *IFC Performance Standards* and *World Bank Environmental, Health and Safety Guidelines* in its lending practices. It has adopted the *OECD Common Approaches on Environment*; and has recently updated its policies on environmental and social risk management policy; disclosure; anti-corruption; and, human rights.
- The Royal Canadian Mounted Police ("RCMP") has established international anti-corruption units in Ottawa and Calgary and has launched investigations and prosecutions under Canada's *Corruption of Foreign Public Official Act*. Recently,



one of the prosecutions resulted in the first fine of a Canadian company for corruption of a foreign public official.

- There have also been multi-stakeholder initiatives undertaken outside of government, including the development of the Centre for Excellence in CSR. Numerous other actions by industry, civil society and academic institutions address different aspects of the Roundtables recommendations. For example, industry associations have continued to develop tools and guidance to improve their members' CSR performance; civil society organizations have developed tools and guidance to assess potential human rights impacts and avoid conflicts associated with overseas extractive industry projects; and, there are many new programmes, courses and learning events related to CSR and the extractive industry offered by industry associations and academic institutions.

Summary of implementation of Roundtables recommendations

The following table presents a gap analysis of the implementation of the Roundtables' recommendations by the Government of Canada, industry and civil society. Contrary to the common perception that little has been done to implement the Roundtables, the following table demonstrates that various actions have been taken on the majority of recommendations by government and other actors (18 of 27 recommendations are either implemented or partially implemented). Additionally, many of the recommendations require on-going and progressive implementation; therefore, further efforts are still required to address the Roundtables recommendations and emerging trends in CSR.

IMPLEMENTATION OF ROUNDTABLES RECOMMENDATIONS

- 3 recommendations have been implemented;
- 15 recommendations have been partially implemented and/or require on-going implementation; and
- 9 recommendations have not been implemented.

Recommendation	Implemented	Partial / On-going Implementation	Not Implemented
2.1.2.1. The Canadian CSR Framework		X	
Comment: The Government's CSR Strategy addresses some, but not all, of the elements of the recommendation for a Canadian CSR Framework			
2.2.2.1. Canadian CSR Standards		X	
Comment: The Government's CSR Strategy adopts the <i>OECD Guidelines for Multinational Enterprises</i> , the <i>IFC Performance Standards</i> , the <i>Voluntary Principles on Security and Human Rights</i> and the <i>Global Reporting Initiative</i> . On the issue of international human rights standards, the Government has supported the work of United Nations (“UN”) Special Representative John Ruggie; however, it remains to be seen how the <i>UN Protect, Respect</i>			



<i>and Remedy Framework and Guiding Principles on Business and Human Rights</i> will be incorporated into Canadian CSR standards.			
2.3.2.2. Canada Investment Fund for Africa Reporting	X		
Comment: Implemented prior to/in conjunction with Roundtables process			
2.3.2.3. Export Development Canada Disclosure Requirements		X	
Comment: Export Development Canada ("EDC") continues to update its disclosure requirements in line with other export credit agencies that follow the OECD Common Approaches on the Environment, and discloses an increasing amount of project information; however, the current level of disclosure falls short of the Roundtables recommendation.			
2.4.2.1. Independent Ombudsman and Tripartite Compliance Review Committee		X	
Comment: The Government's CSR Strategy announced the creation of the Office of the Extractive Sector Corporate Social Responsibility Counsellor ("CSR Counsellor"). The first CSR Counsellor was appointed by Order-in-Council, the Office was opened in Toronto and has launched a Review Process and undertakes various activities to promote dialogue and dispute resolution regarding CSR standards and best practices. The CSR Counsellor's mandate and powers currently fall short of the Roundtables recommendation for an Ombudsman and Compliance Review Committee.			
3.1.2.1. Government CSR Centre for Excellence		X	
Comment: The CSR Strategy announced the creation of a CSR Centre for Excellence housed at the Canadian Institute of Mining, Metallurgy and Petroleum ("CIM"). While the CSR Centre for Excellence aims to fulfil many of the functions recommended by the Roundtables, the initial recommendation was for the Centre to be housed <i>within</i> government and not <i>outside</i> of government.			
3.1.2.2. Industry Association Tools		X	
Comment: Industry associations continue to develop and refine tools to assist their members to understand and implement CSR standards. The Prospector and Developer Association of Canada's <i>e3 Plus: A Framework for Responsible Exploration</i> , the Mining Association of Canada's <i>Towards Sustainable Mining</i> and the Canadian Association of Petroleum Producers' <i>Stewardship Initiative / Responsible Canadian Energy</i> are all examples of industry tools which have been developed; however, the adoption and use of these tools and frameworks is currently unknown.			
3.1.2.3. Tools to Support Small-Scale Mining			X
Comment: The CSR Strategy does not specifically address tools to support small-scale mining. From the interviews and research undertaken, there have been no new tools developed to support small-scale mining in the Canadian context since the Roundtables report.			



3.1.2.4. Tools and Capacity Building to Support Civil Society		X	
Comment: The CSR Strategy does not specifically address the issue of tools and capacity building to support civil society. Some organizations have developed tools that can be used to build capacity for project-affected communities, including Rights & Democracy's <i>Human Rights Impact Assessment Guide v. 3.0</i> and <i>Understanding Conflict Tool for Exploration</i> developed by World Vision, PDAC and CDA Collaborative Learning Projects.			
3.1.2.5. Civil Society Transparency and Accountability		X	
Comment: The Canadian Council on International Cooperation ("CCIC") has developed a <i>Code of Ethics and Operational Standards</i> for civil society organizations, to which many Canadian civil society organizations adhere. There is still a perceived gap relating to the advocacy and media strategies of some civil society organizations.			
3.2.2.1. Institutional Investor Disclosure			X
Comment: The CSR Strategy states this is a matter of provincial / territorial jurisdiction and therefore no specific changes have been made in respect of institutional investor disclosure regarding CSR activities since the time of the Roundtables.			
3.2.2.2. Canada Pension Plan		X	
Comment: The Canadian Pension Plan Investment Board ("CPPIB") developed a Policy on Responsible Investing, contributed to the development of the <i>UN Principles for Responsible Investing</i> and the <i>Extractive Industries Transparency Initiative</i> , and became a signatory to these. The CPPIB is also involved in the Carbon Disclosure Project and the Enhanced Analytics Initiative, which is designed to encourage better investment research on environmental, social and governance issues. As part of its commitment to disclosure and transparency, the CPPIB states that it is increasing reporting on responsible investing activities to be on at least an annual basis. These initiatives still fall short of the Roundtables recommendation.			
3.2.2.3. Definition of Materiality			X
Comment: The CSR Strategy does not specifically address the definition of materiality, partly because securities regulation is a matter of provincial jurisdiction. Nothing coordinated has been done with this recommendation since the Roundtables Process.			
3.2.2.4. Investor Engagement			X
Comment: The CPPIB and its Policy on Responsible Investing underscore the importance of socially responsible investing (SRI) to its investment decision-making; however, the research process has not uncovered any specific initiatives or new developments with this recommendation since the Roundtables process			
3.3.2.1. Extraterritorial Criminal Law			X
Comment: The CSR Strategy emphasizes voluntary measures and does not put forth			



measures to extend extraterritorial criminal law, with the exception of greater enforcement of the <i>Corruption of Foreign Public Officials Act</i> (discussed below). Over time, Canadian courts may be increasingly willing to accept jurisdiction over alleged corporate misconduct abroad, but cases dealing with these issues are currently on appeal.			
3.3.2.2. Corruption of Foreign Public Officials Act		X	
Comment: In compliance with its obligations under international anti-corruption treaties, the Royal Canadian Mounted Police ("RCMP") has created special units to investigate and prosecute corruption of foreign public officials. Currently, there are over 20 cases under investigation and a recent high-profile case has resulted in a significant fine to a company involved in corruption in Bangladesh.			
3.3.2.3. Income Tax Act			X
Comment: The CSR Strategy does not specifically mention any new measures under the <i>Income Tax Act</i> , nor were any uncovered in the course of the research.			
3.4.2.1. Financial and Insurance Support		X	
Comment: EDC states that it is committed to working with the Government of Canada and other stakeholders to identify emerging best practices, and to incorporate into its due diligence those practices that are relevant to the mandate of a financial institution. As a signatory to the <i>Equator Principles</i> , EDC applies the <i>IFC Performance Standards</i> to its financial and insurance clients. That being said, there have been no other specific commitments or actions related to conditioning financial, insurance or other government support on compliance with CSR performance standards.			
3.4.2.2. Conditioning of Government Support			X
Comment: The CSR Strategy emphasizes voluntary measures and has not implemented any measures that make government support conditional on compliance with CSR performance standards.			
4.1.2.1. Contributions of the Extractive Sector to Host Government Development Priorities		X	
Comment: Host-Government capacity-building is a priority of the CSR Strategy. Some modest initiatives have been undertaken by CIDA, NRCan and DFAIT; recently, the government has announced some more ambitious programs and pilot projects, including a regional initiative on CSR for the Andes; pilot projects for public-private partnerships related to development in mining-affected communities; and, the creation of a research institute on extractive industries and development.			
4.1.2.2. Building Capacity for Judicial Systems in Host Countries			X
Comment: While Canadian legal-judicial institutions working in developing countries with CIDA's support include the National Judicial Institute, the Canadian Bar Association, and the International Centre for Criminal Law Reform and Criminal Justice, the research and			



interviews did not reveal any specific initiatives at this time that are focused on contributing to judicial systems in Host Countries in a manner that is linked to the CSR Strategy			
4.1.2.3. Exercising Influence in Regional and Multilateral Fora		X	
Comment: Canada continues to participate in regional and multilateral fora related to improved CSR performance by Canadian companies in developing countries, including within the United Nations ("UN"), the Organization for Economic Cooperation and Development ("OECD") and the World Bank. Some of the recent multilateral achievements include the adoption of the <i>Voluntary Principles on Security and Human Rights</i> and the <i>Extractive Industry Transparency Initiative</i> ; the work of the UN Special Representative on Business and Human Rights to develop the <i>UN Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights</i> ; and, the revision of the <i>OECD Guidelines</i> and the <i>IFC Performance Standards</i> .			
4.1.2.4. Join the Extractive Industries Transparency Initiative	X		
Comment: Canada joined the EITI soon after the Roundtables report was released as a "supporting government" (as opposed to an "implementing government"). A senior official from NRCan was appointed to sit on the EITI Board of Directors for 2009-2010.			
4.1.2.5. Voluntary Principles on Security and Human Rights	X		
Comment: Canada became a participant country ("Engaged Government") in the <i>Voluntary Principles on Security and Human Rights</i> in March 2009. Canada also recently commenced a new role as the Chair of the <i>Voluntary Principles on Security and Human Rights</i> .			
4.1.2.6. Multilateral Fora (Financial)		X	
Comment: While Canada is a member of the G8 and G20, as well as the World Bank (including its International Financial Corporation), there is little awareness on behalf of any stakeholder group as to Canada's involvement in multilateral financial fora as it pertains to CSR for the extractive industry. One recent achievement of the International Finance Corporation was the revision of the <i>IFC Performance Standards</i> related to environmental and social management.			
5.1.2.1. Canadian Extractive Sector Advisory Group			X
Comment: The Advisory Group was not addressed in the Government's CSR Strategy, nor has any Advisory Group been created since the Roundtables process.			

Stakeholder opinions and feedback on implementation of Roundtables recommendations

Between August and October 2011, the consultants conducted interviews with participants in the Roundtables and other key stakeholders (i.e. representatives of industry, the investment community, civil society and academia with knowledge of CSR issues related to the extractive industry), as well as government representatives



responsible for implementing different components of the CSR Strategy. The interviews were supplemented by an on-line questionnaire and a review of the relevant literature. In total, 51 interviews were conducted, including the following:

- 8 Roundtables Advisory Group Members (16%)¹
- 19 Representatives of Government Departments or Agencies (37%)
- 13 Extractive Industry Representatives (25%)
- 6 Civil Society Representatives (12%)
- 3 Academic Experts (6%)
- 2 International Experts (4%)

The participants in the research project were asked to provide their feedback on the implementation of the Roundtables recommendations, both in terms of their overall satisfaction and with respect to any specific recommendations that were of priority to them.²

In terms of overall satisfaction with the implementation of the Roundtables recommendations:

- 52% expressed some level of satisfaction (7% were "satisfied" and 45% were "somewhat satisfied")
- 27% of participants were "dissatisfied"
- 21% were either "undecided" (14%) or "unaware" (7%)

Further information about the level of satisfaction related to the specific Roundtables recommendations is included in the main body of the report.

Areas of continued importance for stakeholders

The research mandate expressed a desire to gain an understanding of whether various stakeholders remained in support of the Roundtables recommendations as a whole or as

¹ The Advisory Group members interviewed, 4 were from industry, 2 from civil society and 2 from academia. If Advisory Group members are folded into the other categories of stakeholders, there was a total of 37% from government, 33% from industry, 16% from civil society, 10% from academia and 4% international experts.

² It should be noted that government representatives, who are responsible for implementing the CSR Strategy, were not asked to provide their opinions; rather, they were asked to clarify the current and future actions of their department / agencies, and to provide input about emerging issues that are relevant to CSR and the extractive industry.



individual recommendations. The following table summarizes the areas of continued importance for on-going dialogue and implementation of the Roundtables recommendations, as identified by the interviews with stakeholders. It should be noted that, in many respects, this table reflects the awareness of stakeholders about the implementation different Roundtables recommendations, as discussed in further detail in the report. Furthermore, the higher levels of continued importance do not necessarily mean that all stakeholders support the implementation of the initial recommendation in the same manner; rather, the higher levels of continued importance help identify issues that need further attention, dialogue and action.

Recommendation or Cluster of Recommendations	Priority
Development of Canadian CSR framework, standards and reporting obligations (Recommendations 2.1.2.1 - 2.3.2.3)	3 (tie)
Creation of an independent ombudsman and compliance review committee (Recommendation 2.4.2.1)	1
Creation of a CSR Centre of Excellence and development of CSR tools (Recommendations 3.1.2.1 - 3.1.2.5)	2
Investor disclosure and engagement (Recommendations 3.2.2.1 - 3.2.2.4)	8
Legal sanctions and financial incentives (Recommendations 3.3.2.1 - 3.4.2.2)	6
Contributions of the extractive sector to Host Government development priorities (Recommendations 4.1.2.1 - 4.1.2.2)	3 (tie)
International and multilateral initiatives related to the extractive sector (Recommendations 4.1.2.3 - 4.1.2.6)	7
Creation of a Canadian Extractive Sector Advisory Group (Recommendation 5.1.2.1)	3 (tie)

Analysis and conclusions: priority themes related to the Roundtables recommendations

Based on an analysis of the stakeholder feedback about the Roundtables recommendations, the following themes, or areas of convergent opinions, emerged:

- There is a need for better communication / knowledge of actions to implement recommendations (especially outside of government).
- There is a strong desire for multi-stakeholder spaces and initiatives to continue the dialogue on CSR and the extractive sector that was begun by the Roundtables process.
- There is a desire to review the mandate of the Office of the CSR Counsellor over time and to make the adjustments necessary to strengthen its effectiveness from both an industry and civil society perspective.
- Human rights remain a key issue and the recent adoption of the *UN Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights* offers an opportunity for concrete action and guidance.



- Anti-corruption is being identified and discussed more frequently due to recent criminal investigations and prosecutions.
- CSR standards and guidance must also have an impact on the ground in terms of improved performance.
- Canadian *and* international standards: the desire to develop a unique set of Canadian CSR standards has passed given recent developments and revisions to international standards; however, a desire for Canadian leadership in the implementation of those standards remains.
- Government has an important part to play in moving CSR forward; while there are initiatives that industry and/or civil society can undertake, government has unique roles and responsibilities when it comes to policy development and engagement in multilateral institutions, building capacity of Host Governments, etc.

At the same time, there were other areas where the stakeholder feedback diverged significantly. The main areas of divergence were.

- The role of public-private partnerships for development between the government, mining companies and NGOs.
- Greater disclosure of information about environmental, social and governance issues.
- How to deal with the "laggards" or "bad apples" that may tarnish the reputation of responsible companies.

As this report demonstrates, the Canadian government, industry, civil society and academic institutions all have undertaken new actions and initiatives since the Roundtables; however, there have been challenges in communicating these actions and a lack of unifying forces to make them add up to something greater than the sum of their parts. Future multi-stakeholder dialogue should address these "missing links" and strive to make the important efforts of many actors more convergent and coherent--and, also, to communicate that fact.

From the beginning, the Roundtables can be understood as an attempt to improve the credibility and reputation of the Canadian extractive industry overseas through leadership on standards and best practices and mechanisms for greater accountability for "laggards." Because of the delays in developing the government's CSR strategy, as well as the retrenchment of stakeholders into polarized positions over *Bill C-300*, the forward momentum of the Roundtables has been lost. Now, leadership and momentum on CSR issues is often happening at the international level and not in Canada. This is unfortunate for the leading Canadian companies that have adopted strong CSR policies and are implementing responsible and sustainable practices in their global operations, as the Canadian extractive industry continues to struggle against negative public perceptions.



The Mining Association of Canada has an important role in advancing future multi-stakeholder dialogue on issues related to CSR and the extractive industry; and, the current research and report can be used as a tool to communicate a willingness to discuss and address the issues related to the Roundtables recommendations on the basis of fact and with an understanding of current priorities and emerging issues.



PART A: RESEARCH MANDATE AND BACKGROUND

1. Research mandate

i. Terms of reference

The research mandate was defined in the Terms of Reference dated July 13, 2011. The Terms of Reference state that the recently formed International Social Responsibility (ISR) Committee of the Mining Association of Canada is considering drawing on the recommendations framed in the 2007 Advisory Group Report of the *National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries*. These recommendations were supported by the diverse participants in the Roundtables and are frequently and widely cited as a reference for policy objectives.

The purpose of this research is to help the ISR Committee understand the potential value of these recommendations in guiding the work of the ISR Committee. The objective of the requested review is to provide perspective to the ISR Committee on the following questions:

- Are there any new concerns in this policy area that have arisen since the Roundtables issued its recommendations?
- What is the status of the recommendations:
 - Which of the recommendations have been addressed/implemented by government, companies and NGOs (between 2007-2011)? Which recommendations have been implemented with or without new legislation? Are stakeholders satisfied with the implementation of the recommendations?
 - Are the recommendations still supported by the various groups (as a whole or as individual recommendations)?
 - In what ways does the Extractive Sector CSR Counsellor correspond to the Ombudsman recommendation, and what are the differences between the two?
- How are the recommendations situated in the current CSR debate:
 - Are they consistent with John Ruggie's *UN Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights*?
 - Has the *Dodd-Frank Act* changed the landscape?
 - Are they consistent with the current International Council on Mining and Metals' *Framework for Sustainable Development*?
 - What other key gaps or inconsistencies are there between the 2007 recommendations and current CSR “standards”



ii. Research methodology

The research methodology used by the consultants consisted of three main data collection techniques: (i) individual interviews with key stakeholders; (ii) an on-line questionnaire that targeted as many of the participants in the National Roundtables process as possible; and (iii) a literature review.

a. Individual interviews with key stakeholders

Individual interviews were the primary data collection technique for the National Roundtables Advisory Group members; representatives of Government of Canada departments or agencies that are implicated in the Roundtables recommendations or the government's follow-up actions; and, for other key experts in the debate about CSR and the international extractive industry, including resource industry representatives, civil society representatives, academics and stakeholders outside of Canada with knowledge of the Roundtables process.

b. On-line questionnaire for Roundtables participants

An on-line questionnaire was prepared and distributed to other stakeholders, including individual and organizations listed as participants in the Roundtables process. Given the amount of information related to Roundtables recommendations, as well as some of the technical limitations of the survey tool selected, it was decided that the main focus would be the individual interviews. The on-line tool was nonetheless a useful supplementary information gathering method; and, the survey tool allowed us to compile, classify and analyse the information from interviews and online respondents.

c. Literature review

The consultants also conducted a review of the literature related to the Roundtables recommendations and their implementation. This included a review of the various submissions to the Roundtables process; reports and press releases subsequent to the release of *Building the Canadian Advantage: A CSR Strategy for the Canadian International Extractive Sector*; and, other literature relevant to emerging issues in CSR that are relevant to the extractive sector.

iii. Participation by stakeholder group

In total, 51 interviews were conducted, including the following:

- 8 Roundtables Advisory Group Members (16%), 4 of whom were from industry, 2 from civil society and 2 from academia.
- 19 Representatives of Government Departments or Agencies (37%)
- 13 Extractive Industry Representatives (25%)



- 6 Civil Society Representatives (12%)
- 3 Academic Experts (6%)
- 2 International Experts (4%)

When the Roundtables Advisory Group Members are included within the other categories of stakeholders, the overall participation was: 37% from government, 33% from industry and 30% from civil society and academia.

iv. Limitations

In terms of assessing how “representative” the participation was in the research, the following factors are important to consider:

- The participation was relatively comprehensive with respect to key interlocutors from government department and agencies.
- There was relatively good balance between industry, civil society and academics for interviews, including members of the Roundtables Advisory Group.
- There were gaps in participation on the industry side, which could be attributed to a number of factors, including: lack of awareness or interest in Roundtables or CSR issues, particularly from junior companies; timing / too busy to participate within time parameters for the research project; greater focus and uptake from mining companies than oil & gas companies.
- As civil society organizations had collaborated closely during the Roundtables process, a number of civil society organizations approached for interviews chose to defer to the representatives of other organizations that had played more of a leadership role in the Roundtables.
- Given that 4 years has passed since the Roundtables report, it was difficult to find contact information for many Roundtables participants.
- Finally, there were limited responses to the on-line questionnaire, partly due to the amount of information needed to be covered and the difficulty of adapting the survey tool chosen.

2. Background / Chronology on Roundtables process and Government response

This section provides some of the background to the Roundtables process, as well as a chronology of the Government response to the Roundtables recommendations, as well as the subsequent policy and legislative responses of various stakeholders.



In June 2005, the 38th Parliament’s Standing Committee on Foreign Affairs and International Trade (“SCFAIT”) issued its report, *Mining in Developing Countries—Corporate Social Responsibility*, which called on the federal government to “put in place a process involving relevant industry associations, non-governmental organisations and experts, which will lead to the strengthening of existing programmes and policies in this area, and, where necessary, to the establishment of new ones.”³

In response to this Parliamentary report, the government held four National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries between June and November 2006 in Vancouver, Toronto, Calgary, and Montreal. The Roundtables process was overseen by a multi-stakeholder Advisory Group, comprised of 17 individuals who served in their personal capacity but who had expertise and credentials in industry, the investment community, civil society and academia.

On March 29, 2007, the Advisory Group issued a report that was intended to summarize the input received across all of the Roundtables as well as incorporate the input from 104 written submissions received on the topic of CSR and the Canadian extractive sector operating abroad.

The National Roundtables Recommendations

The Advisory Group made 27 main recommendations to the Government of Canada, which can be grouped into the following 8 clusters:

- Development of Canadian CSR framework, standards and reporting obligations (Recommendations 2.1.2.1 - 2.3.2.3)
- Creation of an independent ombudsman and compliance review committee (Recommendation 2.4.2.1)
- Creation of a CSR Centre of Excellence and development of CSR tools (Recommendations 3.1.2.1 - 3.1.2.5)
- Investor disclosure and engagement (Recommendations 3.2.2.1 - 3.2.2.4)
- Legal sanctions and financial incentives (Recommendations 3.3.2.1 - 3.4.2.2)
- Contributions of the extractive sector to Host Government development priorities (Recommendations 4.1.2.1 - 4.1.2.2)
- International and multilateral initiatives related to the extractive sector (Recommendations 4.1.2.3 - 4.1.2.6)
- Creation of a Canadian Extractive Sector Advisory Group (Recommendation 5.1.2.1.)

Each cluster of recommendations is discussed below, particularly in relation to the stakeholder opinions collected through the present research project.

³ Standing Committee on Foreign Affairs and International Trade (SCFAIT), Fourteenth Report: Mining in Developing Countries—Corporate Social Responsibility, 38th Parliament, 1st Session, (June 2005), 2. <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=8979&Lang=1&SourceId=178650>



In March 2009, the Government of Canada released *Building the Canadian Advantage: A CSR Strategy for the International Extractive Sector* (the "CSR Strategy").⁴

Through the CSR Strategy, the government announced that it would take action on the following 4 "pillars":

- Support initiatives to enhance the capacities of developing countries to manage the development of minerals and oil and gas, and to benefit from these resources to reduce poverty.
- Promote, primarily through the Department of Foreign Affairs and International Trade ("DFAIT") and Natural Resources Canada ("NRCan"), the following widely-recognized international CSR performance guidelines with Canadian extractive companies operating abroad:
 - International Finance Corporation ("IFC") *Performance Standards on Social & Environmental Sustainability* for extractive projects with potential adverse social or environmental impacts;
 - *Voluntary Principles on Security and Human Rights* for projects involving private or public security forces; and,
 - *Global Reporting Initiative* for CSR reporting by the extractive sector to enhance transparency and encourage market-based rewards for good CSR performance.
 - Canada has applied to join the *Voluntary Principles on Security and Human Rights* as a Participating Country.
- Set up the Office of the Extractive Sector CSR Counsellor to assist stakeholders in the resolution of CSR issues pertaining to the activities of Canadian extractive sector companies abroad.
- Support the development of a CSR Centre of Excellence within an existing institution outside of government to encourage the Canadian international extractive sector to implement these voluntary performance guidelines by developing and disseminating high-quality CSR information, training and tools.

Subsequent to the release of the Government's CSR Strategy, some stakeholders sought additional legislative measures to address corporate social responsibility and human rights related to the extractive industry. These included:

⁴ <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx?view=d>



- Bill C-300, *An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries*, was a private member's bill introduced by John MacKay (Liberal).⁵ Bill C-300 was defeated by a vote of 140 to 134 on the third and final reading in the House of Commons on October 27, 2010.
- Bill C-298, *An Act respecting Corporate Social Responsibility for the Activities of Canadian Mining Corporations in Developing Countries*, was a private member's bill introduced by Paul Dewar (NDP). Bill C-298 did not pass first reading on February 6, 2009.
- Bill C-565, *An Act respecting Corporate Social Responsibility for the Activities of Canadian Mining Corporations in Developing Countries*, was a private member's bill introduced by Alexa McDonough (NDP). Bill C-565 did not pass first reading on June 16, 2008.

The government continues to promote the standards contained in the CSR Strategy and has recently made a number of announcements related to the CSR strategy, including the creation of a Canadian International Institute on the Extractive Industries and Development.

⁵ <http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=3658424&File=33>



PART B: GOVERNMENT AND STAKEHOLDER ACTIONS SINCE THE ROUNDTABLES

3. Implementation of Roundtables recommendations

The Roundtables recommendations targeted a number of different actors for their implementation: while the majority were aimed at the Government of Canada, there were also recommendations that addressed other levels of government and regulatory agencies; extractive sector companies and industry associations; the financial and investment sector; as well as civil society organizations.

This section contains a description of what the different stakeholders have done to implement the Roundtables recommendations. Insofar as possible, it is based on publicly available information; where the stakeholder interviews have revealed new actions or initiatives, the consultants have made best efforts to corroborate the information provided below.

- i. Government of Canada initiatives
 - a. Office of the Extractive Sector Corporate Social Responsibility Counsellor
 - 1. Establishment of the Office and Appointment of CSR Counsellor

The Office of the Extractive Sector Corporate Social Responsibility Counsellor ("CSR Counsellor") was established in 2009 as part of *Building the Canadian Advantage, the Government of Canada's CSR strategy for the Canadian extractive sector operating overseas*. The Office of the CSR Counsellor is under the authority of the Minister of International Trade. Marketa Evans was appointed by Order-in-Council as the first CSR Counsellor in October 2009 for a three-year (renewable) term.⁶

The Office opened in Toronto in March 2010. In addition to the CSR Counsellor, the Office's staff currently consists of one Special Advisor, an Administrative Assistant and a Research Assistant. The CSR Counsellor also has created an Advisory Panel to provide strategic advice and input to the Office.⁷

⁶ The CSR Counsellor is technically a "special adviser" to the Minister of International Trade. The CSR Counsellor's powers, mandate and restrictions are set out in Order-in-Council 2009-0422 (<http://www.pco-bcp.gc.ca/OIC-DDC.asp?lang=eng&Page=&txtOICID=2009-0422&txtFromDate=&txtToDate=&txtPrecis=&txtDepartment=&txtAct=&txtChapterNo=&txtChapterYear=&txtBillNo=&rdoComingIntoForce=&DoSearch=Search+%2F+List&viewattach=20393>)

⁷ The Advisory Panel currently consists of Ian Smillie (co-chair), William McGuinty (co-chair), Caroline Marrs, Nathan Monash, Glenn Sigurdson, Ugochukwu (Ugo) Ukpabi and Luc Zandvliet. The biographies of the Advisory Panel members, as well as meeting reports, are on the Office's website: http://www.international.gc.ca/csr_counsellor-conseiller_rse/Advisory_Panel-Groupe_consultatif.aspx?menu_id=104&view=d



2. CSR Counsellor's Mandate and Guiding Principles

The CSR Counsellor's mandate has two main components: (a) to review the corporate social responsibility practices of Canadian extractive sector companies operating outside Canada; and (b) to advise stakeholders on the implementation of the performance guidelines.⁸

"Key Guiding Principles" for the Exercise of this Mandate

Key Guiding Principles

We have established the Key Guiding Principles for the Office, in alphabetical order: Accessibility, Effectiveness, Independence, Predictability, Responsiveness, Transparency.

The Office recognizes that these principles must not be static. The Office therefore commits to seeing its principles as a work in progress and will seek to improve their functionality over time.

Accessibility

The process must keep "users" squarely in mind, and must aim to be as clear and straight forward as possible to allow accessibility for community members regardless of level of education, social standing, etc. Affected communities should not be expected to have familiarity with global standards, specific corporate policies and procedures, or equivalent technical knowhow.

Effectiveness

An effective mechanism fosters the conditions for solutions, builds trust between the users (company, local communities) and creates lasting, fair outcomes. It makes choices about resource allocations. It must also make explicit the distinction between effectiveness (the achievement of the desired outcome) and efficacy (the resources needed to get us to that outcome). Not in every case would the Office's involvement be an efficient use of its resources.

Independence

The issues surrounding extractive industries are often controversial and deeply polarizing. Positions harden and become entrenched. In this environment, the Office must stake out a balanced approach, being open to different perspectives on the problem without taking sides or pushing particular agendas. The Office and its staff must not be perceived as favouring any interest over another, or be influenced by any key stakeholder groups. Its independence and impartiality will build its credibility and legitimacy. The Office staff must avoid relationships that may be or may be seen to be compromising the Office's ability to bring a balanced view to the situation.

Predictability

The process must have clear timelines, predictable stages and milestones, while flexibility is also critical. The process is clearly articulated in the rules of procedure and in the accompanying information brochure. A web registry keeps the public informed of new requests for review and progress on existing requests

Responsiveness

Under the mandate governed by the Order in Council, the Counsellor is directly accountable to the Minister of International Trade. The Counsellor must however, be responsive to the many other stakeholders with an interest in these issues, and to changing needs, circumstances and the evolution of the external environment.

Transparency

There is a distinction between transparency of process, which is to be encouraged and is deemed critical for the Office, and transparency of information, some of which may well need to be kept confidential in order to have the work proceed in practical terms.

⁸ Order-in-Council 2009-422, section 4. The "performance guidelines" referenced in section 4(b) are defined in section 1 as "the International Finance Corporation Performance Standards, the Voluntary Principles on Security and Human Rights, the Global Reporting Initiative and the OECD Guidelines for Multinational Enterprises, all of which deal with corporate social responsibility and are endorsed by the Government of Canada. (lignes directrices)"



3. Review Process

The CSR Counsellor undertook a public consultation process to develop the draft review process that was submitted to the Minister of International Trade and approved in September-October 2010. The public consultation process included facilitated workshops in five Canadian cities (Toronto, Montreal, Vancouver, Calgary and Ottawa), as well as in Senegal, Mali and Mexico; written submissions and webinars; a series of legal experts' workshops; and a benchmarking exercise related to international good practices for dispute resolution processes.⁹

Milestones in the Establishment of the Review Process¹⁰

- Backgrounder published on Office's website - June 2010
- Public consultation period - 7 June to 15 August 2010
- Consultation report - September 2010
- Revised rules of procedure approved by Minister of International Trade - 20 September 2010
- Review process formally launched - 30 September 2010

According to the Office's website, the CSR Counsellor's approach to the Review Process is as follows:

"In fulfilling the review portion of the mandate, the Office will be an *impartial advisor and facilitator*, an *honest broker* that brings parties together to help address problems and disputes. The Office will create *space for constructive dialogue and problem solving*. This approach is based on the view that a credible, impartial and transparent process with appropriate checks-and-balances may find win/win options to resolve disputes [emphasis added]."

The main steps in the Review Process are:

- Step 1: A Request for Review is submitted to the Office.
- Step 2: The Office will send an acknowledgement to the person(s) making the Request.
- Step 3: The Office will assess eligibility.
- Step 4: The CSR Counsellor will work with the parties in building trust.

⁹ A backgrounder, summaries of the public consultation workshops and of the overall consultation process are on the Office's website at: http://www.international.gc.ca/csr_counsellor-conseiller_rse/presentations-publications.aspx?view=d

¹⁰ Source: Office of the Extractive Sector CSR Counsellor Annual Report to Parliament for 2009-2010.



- Step 5: The CSR Counsellor and the parties may engage in a structured dialogue. The parties might also work with a formal mediator outside of the Office to resolve any issues of concern.

The CSR Counsellor will write reports about requests for review, including final reports at the end of the process.

4. Requests for Review

To date, two requests for review have been received by the Office:

- The first request for review pertains to Excellon Resources Inc. in Mexico (brought by Excellon Workers, National Mining Union and Proyecto de Derechos Económicos, Sociales y Culturales A.C.).¹¹ However, according to recent media reports, Excellon has withdrawn from the Review Process in the context of a labour dispute that has resulted in the shut-down of the mine.¹² The file was closed and a closing report issued by the Office on October 19, 2011, the same day on which Excellon issued a press release denouncing the findings. The implications of the first request for review are discussed further (on page 57) below.
- The second request for review pertains to First Quantum Minerals Ltd. in Mauritania (brought by Maitre Ahmed Mohamed Lemine and others).¹³

The Office publishes information about the requests for review on the "Registry of Requests for Review" section of its website. The information published pertains to the procedural aspects and not of the substance of the requests for review.

The Office has also published two "Guidance Notes for Participants," which provide participants with additional information they may need about the Review Process:

- Guidance Note No. 1, Transparency and Confidentiality,¹⁴ and
- Guidance Note No. 2: A Guidance Note for Canadian companies.¹⁵

5. Advisory Mandate

The second main component of the Office's mandate is its advisory mandate to "advise stakeholders on the implementation of performance guidelines."¹⁶

¹¹ File number 2011-01-MEX dated April 7, 2011. 2 field visit reports are available on the Office's website.

¹² See newswire story of September 30, 2011: <http://www.sacbee.com/2011/09/30/3950844/mine-shut-canadian-miner-excellon.html>

¹³ File number 2011-02-MAU dated August 14, 2011.

¹⁴ http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/guidance%20note%201%20May%202011.pdf

¹⁵ http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Guidance%20note%202%20June%202011.pdf



To date, the CSR Counsellor has undertaken a number of initiatives aimed at fostering multi-stakeholder dialogue:

- Public consultations about the Office and its Review Process.
- Learning partnership with Ryerson University. The partnership seeks to build "a neutral platform to contribute to informed public discussion of important issues related to corporate social responsibility of mining, oil and gas companies, and enhances cross-sector networking opportunities for those interested in these questions." It began by hosting a series of open public seminars at Ryerson's Institute for the Study of Corporate Social Responsibility.
- The CSR Counsellor organizes, participates and makes presentations at various learning and outreach events.¹⁷

6. Limitations on Authority

While the actions and initiatives of the Office of the CSR Counsellor for the Extractive Industry remain nascent, it is also clear what the CSR Counsellor is not permitted to do.

This is the relevant excerpt from the Order-in-Council that appointed Marketa Evans as CSR Counsellor:

5. (1) The Counsellor shall not review any activity that occurred before the day on which the first Counsellor was appointed.
- (2) The National Contact Point shall remain the primary authority concerning the OECD Guidelines for Multinational Enterprises.
- (3) If a request for review is received by the Counsellor that relates only to the OECD Guidelines for Multinational Enterprises, the Counsellor shall refer the request to the National Contact Point.
- (4) If a request for review is received by the Counsellor or the National Contact Point that relates to the OECD Guidelines for Multinational Enterprises and any other performance guidelines, the Counsellor shall lead the review and shall consult with the National Contact Point on issues relating to the OECD Guidelines for Multinational Enterprises.
- (5) The Counsellor shall not:
 - (a) make binding recommendations;
 - (b) make policy or legislative recommendations;
 - (c) create new performance standards; or
 - (d) apply standards other than the performance guidelines.
 - (e) The Counsellor shall only undertake a review with the express written consent of the parties involved.

¹⁶ Order-in-Council 2009-0422, section 4(b).

¹⁷ A list of past events can be found at: http://www.international.gc.ca/csr_counsellor-conseiller_rse/Archived-Events-Archive_des_evenements.aspx?view=d



7. Relationship with OECD National Contact Point

Canada's National Contact Point ("NCP") for the *OECD Guidelines for Multinational Enterprises* is an interdepartmental committee chaired by Foreign Affairs and International Trade Canada. In accordance with section 5(2) of the Order-in-Council appointing Marketa Evans, this interdepartmental committee remains the primary authority with respect to the *OECD Guidelines for Multinational Enterprises*.

Therefore, the Office does not receive Requests for Review that pertain solely to the *OECD Guidelines for Multinational Enterprises*. The review mechanism for the *OECD Guidelines for Multinational Enterprises* remains with the NCP.

A protocol has been established between the Office and the NCP to govern the procedures and communications between the two mechanisms.¹⁸

b. Interdepartmental Committee and OECD National Contact Point

1. Departments and Social Partners Involved in NCP

As mentioned above, Canada's OECD National Contact Point ("NCP") is an interdepartmental committee. It is comprised of representatives of eight government departments: DFAIT (Co-Chair), NRCan (Co-Chair), CIDA, Environment, Human Resources and Skills Development, Aboriginal Affairs and Northern Development Canada, Industry Canada and Finance.

There are 3 social partners that participate in the work of the NCP: They are the Canadian Chamber of Commerce (Business), the Canadian Labour Congress and the Confédération des syndicats nationaux (Labour).

2. Specific Instances Considered

Cases or complaints received by NCPs for the *OECD Guidelines on Multinational Enterprises* are called "specific instances." The following "specific instances" have been considered by Canada's NCP.¹⁹

Year	Specific Instances Considered	Countries
2010-2011	4	Guatemala (ongoing), Mongolia (ongoing), Papua New Guinea, Zambia

¹⁸ http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/counsellor_protocol_conseiller.aspx?lag=eng&menu_id=33&view=d

¹⁹ Not all "specific instances" have resolved through the facilitated dialogue offered by the NCP. Some of the applications have been withdrawn and others have been "resolved" through other processes. For further information, see: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/specific-specifique.aspx?lang=eng&menu_id=7&view=d; as well as the NCP's annual reports: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/reports-rapports.aspx?lang=eng&menu_id=8&view=d



2009-2010	4	Guatemala, Mongolia, Ireland, Norway/Canada
2008-2009	0	
2007-2008	0	
2006-2007	0	
2005-2006	2	Ecuador, Democratic of Congo
2004-2005	2	Democratic Republic of Congo (ongoing re: UNSC), Burma (ongoing)
2003-2004	2	Democratic Republic of Congo (ongoing re: UNSC), Burma (ongoing)
2002-2003	2	Democratic Republic of Congo (re: UN Security Council report implicating 8 Canadian companies), Burma
2001-2002	1	Zambia

c. Foreign Affairs and International Trade Canada (DFAIT)

1. Voluntary Principles on Security and Human Rights

In the Government of Canada's CSR Strategy, it announced that the *Voluntary Principles on Security and Human Rights* ("Voluntary Principles") would be one of the performance standards for CSR and the extractive industry; and, it also announced that Canada would seek membership in the Voluntary Principles as a participating country.

Canada became a participant country ("Engaged Government") in the Voluntary Principles in March 2009. Following the submission of a work plan, Canada was officially accepted as a full participating member of the Voluntary Principles on March 19, 2010, during the tenth Annual Plenary in London, UK. As such, Canada became a member of the Voluntary Principles Steering Committee and began working on the Voluntary Principles Implementation Guidance Tools project to create guidelines for on-the-ground action for its members.

Canada is currently the Chair of the Voluntary Principles Steering Committee (March 2011 to March 2012) and hosted an Extraordinary Plenary Session in Ottawa on September 15-16, 2011. The Human Rights, Humanitarian Affairs and International Women's Equity Division of DFAIT coordinates the interdepartmental work of the Government of Canada in relation to the Voluntary Principles.

2. Anti-Corruption

Lawyers in Foreign Affairs and International Trade Canada ("DFAIT") contribute to Canada's international anti-corruption efforts.

This results from the fact that the Minister of Foreign Affairs is listed as the minister responsible for the *Corruption of Foreign Public Officials Act* ("CFPOA"). The passage of the CFPOA on February 14, 1999 was the domestic legislative step required for Canada to implement the *OECD Convention on Combating Bribery of Foreign Public*



Officials in International Business Transactions ("OECD Convention"),²⁰ which it ratified on December 17, 1998. Subsequent amendments were made to the CFPOA in January 2002 as a consequence of amendments to Canada's *Criminal Code*.²¹

Under the CFPOA and the OECD Convention, the Minister of Foreign Affairs must table an annual report to Parliament on Canada's anti-corruption activities. These reports are prepared in collaboration between Foreign Affairs, International Trade, the Department of Justice and the Attorney-General of Canada. The 12th annual report was tabled in Parliament in October 2011.²²

Canada has also ratified the following anti-corruption conventions:

- *Inter-American Convention Against Corruption*, signed on June 7, 1999 and ratified on June 1, 2000.²³
- *United Nations Convention Against Transnational Organized Crime*, signed on December 14, 2000 and ratified on May 13, 2002.
- *United Nations Convention Against Corruption*, signed on May 21, 2004 and ratified on October 2, 2007.²⁴

Canada's implementation and enforcement of CFPAO is monitored and reviewed by other States Parties to these international anti-corruption conventions. For instance, monitoring reports by the OECD Working Group on Bribery in International Business Transactions have urged Canada to undertake further efforts to enforce the CFPOA through criminal prosecutions and to consider extending nationality jurisdiction to the foreign bribery offence (i.e. extraterritorial application of the CFPOA).²⁵ There are also peer review mechanisms under the *Inter-American Convention Against Corruption* and the *United Nations Convention Against Corruption*. Canada will go before the "Review

²⁰ The OECD Anti-Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It is the first international anti-corruption instrument focused on the 'supply side' of the bribery transaction. The 34 OECD member countries and four non-member countries - Argentina, Brazil, Bulgaria, and South Africa - have adopted this Convention.

²¹ The list of offences related to corruption of a foreign public official is in section 183 of the *Criminal Code*. Provisions against domestic corruption are found in sections 119 to 121 (bribery of Canadian officials and frauds on the government), 123 to 125 (municipal corruption and selling or influencing appointments to office), and 426 (secret commissions by an agent).

²² The previous 11 annual reports to Parliament can be found at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/index.aspx?view=d>

²³ Information about the Inter-American Convention Against Corruption can be found at: <http://www.oas.org/juridico/english/FightCur.html>

²⁴ Information about the UN Convention Against Corruption can be found at: <http://www.unodc.org/unodc/en/treaties/CAC/index.html>

²⁵ See paragraphs 2 and 9 of the Working Group's Phase 2 report: <http://www.oecd.org/dataoecd/5/6/36984779.pdf>. Further information about the implementation of the OECD Convention in Canada can be found at: http://www.oecd.org/document/46/0,3746,en_2649_34859_44572654_1_1_1_1,00.html



Mechanism for the Implementation of the United Nations Convention Against Corruption" in 2012.

DFAIT also provides "front-line" advisory services to Canadian companies operating abroad through embassies and trade missions.²⁶ Training on Canada's anti-corruption laws and policies is provided to DFAIT personnel going out to embassies and trade missions, and also will be extended to locally-engaged personnel. There has been an uptake in demand for these advisory services subsequent to recent RCMP prosecutions that garnered significant attention in the media and within the extractive industry. The RCMP's education and enforcement actions are discussed further in section viii below.

3. Support to Embassies and Trade Missions

In addition to the counselling services on anti-corruption measures mentioned above, DFAIT also provides advisory services, outreach and other support to Canadian companies in relation to the Government of Canada's CSR Strategy and the associated performance standards. Training sessions are provided for Trade Commissioners and Heads of Mission; an internal on-line training tool for Trade Commissioners is about to be launched; other tools (e.g. Mining Toolkit) have been adapted for specific regions; and, a brochure on CSR (*Corporate Social Responsibility: A business strategy that reflects Canadian values*) has been published.

The following table presents the number of CSR projects that DFAIT has supported by region for the last three fiscal years. The internal budget allocation for CSR projects is now oversubscribed by project requests from embassies and trade missions; while all requests are accommodated to some extent, additional funding sources and partnerships are sometimes required.²⁷

REGION	FY 2011-12	FY 2010-2011	FY 2009-2010
Africa and Middle East	14	9	12
Asia-Pacific	10	7	4
Europe	7	9	3
Latin America and Caribbean (w. Mexico)	23	20	10
North America	1	0	0
Regional Offices and Headquarters	5	3	4
Total projects	60	48	33
Total value	\$250,000	\$250,000	\$180,000

²⁶ While DFAIT officials cannot provide legal advice, they provide information about Canada's laws and policies and tools available to companies. For legal compliance advice, companies are recommended to retain legal counsel.

²⁷ Examples of the CSR projects funded can be found on the DFAIT website: http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/fund_summary-resume_fonds.aspx?view=d. Other projects with CSR-related components are also funded through DFAIT's START (Stabilization and Reconstruction Task Force) programme.



d. NRCan, including Extractive Industry Transparency Initiative

Natural Resources Canada ("NRCan") is currently the Co-Chair Interdepartmental Committee on CSR along with DFAIT. This Committee acts as Canada's OECD National Contact Point. NRCan is an observer to the Executive Committee of the CSR Centre for Excellence, and it provides on-going advice to the CSR Counsellor and participated in the review of the Office's Review Process.

NRCan promotes the Government's endorsed performance standards and is involved in the development and review of standards through multilateral processes. For instance, NRCan has a representative on the *Extractive Industries Transparency Initiative* (EITI) and served as the Chair of EITI until March 2011.²⁸ NRCan has produced a fact sheet on the benefits for governments and companies to engage in the EITI.²⁹

Extractive Industries Transparency Initiative

- Overview of EITI principles and criteria
- Distinction between "Compliant Countries," "Candidate Countries" and "Supporting Countries"
- Other "Supporters" include companies, civil society organizations, industry associations, institutional investors, and international organizations and financial institutions.
- Features of company implementation of EITI:
 - Collaborating with host government regarding EITI, including helping to establish the country's EITI implementation work plan, agreeing on a common reporting template, currency and reporting period
 - Involvement in diverse forms of stakeholder engagement
 - Providing support to capacity building
 - Promoting the EITI initiative freely, under no compulsory discussion obligation
 - Publicly disclosing all payments made to host governments:
 - based on cash accounting as opposed to accrual
 - regarding cash payments already made (e.g. royalties, taxes, petroleum transportation fees - indirect economic benefits such as construction of infrastructure or employment of local personnel are not included)
 - limited to details that are agreed upon with implementing host country
 - No expectation to break confidentiality
 - No expectation to disclose payments from non-implementing countries
 - Ensuring payment data is independently auditable (i.e. an external auditor must confirm that the information submitted to the EITI is consistent with company financial statements)

NRCan has bilateral relationships with Host Governments through memoranda of understanding and other ad hoc arrangements. The focus is on capacity-building; although NRCan is not a capacity-building agency, it facilitates visits with other government departments and provincial counterparts to show "how is it done in Canada?" Moreover, NRCan tools have been adapted for use in different country contexts, in particular the *Mining Information Kit for Aboriginal Communities*, which was developed in partnership with the Mining Association of Canada, the Prospectors and Developers

²⁸Canada provides funding for EITI (through CIDA): \$750,000 initial contribution to Multi-Donor Trust Fund and \$200,000 per year from 2008-2011.

²⁹ http://eiti.org/files/page/canada_eiti_brochure.pdf



Association of Canada, Canadian Aboriginal Minerals Association and Indian and Northern Affairs Canada.³⁰

NRCan engages with industry associations (CIM, MAC, PDAC), has discussions with companies (e.g. on royalty / tax measures; police; environmental and social impact assessments; artisanal and small-scale mining; etc.); and, also interacts with the World Bank and other development banks.

e. CIDA programmes and projects

The Canadian International Development Association ("CIDA") is the focus for Canada's capacity-building efforts for Host Governments and communities (one of the pillars of the Government's CSR Strategy). This work fits within CIDA's Sustainable Economic Growth Strategy. One of the themes of this strategy is "building economic foundations," and one of the official priorities for action is to "build national and local capacities in managing natural resources and the environment in a sustainable and socially responsible way to support economic growth."³¹

CIDA is currently developing an Action Plan to guide its future strategy and actions in this sector. The Action Plan will encompass CIDA's existing programmes and projects, including some recently announced pilot projects.

As opposed to the other government departments who are involved in the Government's CSR Strategy, CIDA has a significant budget and resources for programming and capacity-building projects. It is anticipated that CIDA will allocate up to \$40 million over the next 5 years on programmes and projects related to the management of natural resources. While this is said to be a priority area for CIDA, there is caution about additional funding as a result of the Government's Deficit Reduction Strategy.

*Recent CIDA initiatives*³²

On October 27, 2011, Prime Minister Stephen Harper announced the creation of the Canadian International Institute for Extractive Industries and Development (the "Institute"). According to the government's press release, this initiative seeks to benefit partner countries by enhancing their capacity to manage their respective natural resources, including minerals, oil and gas.

The Institute will undertake policy research to identify best practices in extractive sector management for individual countries, and arrange technical assistance for governments and communities in developing countries through a partnership between the Federal

³⁰ <http://www.nrcan.gc.ca/mms-smm/abor-auto/htm/kit-gui-eng.htm>

³¹ [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUImages/EconomicGrowth/\\$file/Sustainable-Economic-Growth-e.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUImages/EconomicGrowth/$file/Sustainable-Economic-Growth-e.pdf)

³² On September 29, 2011, at a Devonshire Initiative event, CIDA's Minister Oda announced new initiatives to increase the benefits of natural resource management for people in Africa and South America. See CIDA press release: <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/CAR-929105317-KGD>. The text of Minister Oda's speech is to be posted on the CIDA website soon.



government, Canada's private sector and Canadian civil society organizations. The Institute will draw on the lessons learned in Canada on extractive sector management.

The Institute will be housed in a Canadian university that combines a strong public-policy capacity with knowledge of the extractive sector and of mining in particular. Selection of the university will be carried out through a competitive process and the successful applicant will be expected to make an in-kind contribution to the creation and operation of the Institute.

On September 29, 2011, the Minister of International Development, Bev Oda, announced funding for the Andean Regional Initiative for Promoting Effective Corporate Social Responsibility (\$20 million funding). This initiative in Colombia, Peru, and Bolivia will strengthen local governments' and communities' capacity to implement sustainable development projects for the well-being of people living near extractive operations, and will improve dialogue between communities and the private sector.

On the same day, the Minister also recently announced three private-public partnership "pilot projects" in Ghana, Burkina Faso and Peru:

- In Ghana, CIDA is supporting the World University Service of Canada ("WUSC"), to provide direct skills training to 400 young people to help diversify the local economy within mining communities. This investment will also strengthen the local government's ability to provide quality education and access to clean, safe, water for 134,000 residents. WUSC's partner for this project is Rio Tinto Alcan.
- In Burkina Faso, CIDA is supporting Plan Canada, and its partner IAMGOLD, in implementing a job skills training project in 13 communities to meet labour market demands in a variety of sectors, including the mining sector and its sub-sectors.
- In Peru, CIDA is supporting World Vision Canada, in a program that will increase the income and standard of living of 1,000 families affected by mining operations. For this project World Vision is working with Barrick Gold.

Continuing CIDA initiatives

Through CIDA, Canada will continue to support the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development ("IGF").³³ The IGF grew out of Johannesburg World Summit on Sustainable Development and has evolved into a learning and capacity-building platform for government officials responsible for mining, minerals and metals. Membership in the IGF is open to UN Member States; 43 countries are currently members of the IGF and Canada is serving as the Secretariat.

The IFG has developed a *Mining Policy Framework*.³⁴ This framework was tabled in the course of the nineteenth meeting of the United Nations Commission on Sustainable

³³ <http://www.globaldialogue.info/>

³⁴ <http://www.globaldialogue.info/Mining%20Policy%20Framework%20final.pdf>



Development that was held in May 2011 in New York. It is presented as a compendium of best practices for governments to best deal with the full range of issues related to mining in order to enhance the contribution of mining to sustainable development.

CIDA also has a number of projects in developing countries and regions that are related to CSR and the extractive industry. One project, in particular, was identified by a number of stakeholders inside and outside government of having merit for working on CSR and capacity-building with regional industry associations. For instance, some stakeholders suggested that the Centre for Excellence could form partnerships with ARPEL (the Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean) and similar regional organizations for the mining sector in Latin America and West Africa.

ARPEL Governance Project

The ARPEL Governance Project (AGP) is a \$4.9 million CIDA funded project which was initiated in July 2007 and is expected to be completed by July 2012. The project involves strengthening the capabilities of ARPEL (Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean) member companies to deal with key governance issues in the oil and gas sector in Latin America including social issues such as corporate social responsibility, relations/conflicts with indigenous people/communities, gender, ethics, transparency and accountability, community development, and human rights. Project activities are carried out through workshops, regional and national fora, development of policies/guidelines/best practices, and direct technical assistance.

AGP has developed state of the art guidelines to promote effective Corporate Social Responsibility (CSR) in the oil and gas sector in the LAC region. A CSR Management System has been developed to assist ARPEL member companies in implementing their CSR obligations. The conceptual and implementation frameworks of this System offer guidance and sequential steps companies can take in their day-to-day operations to make

f. Industry Canada, including GRI reporting

Industry Canada has the responsibility for promoting the *Global Reporting Initiative* ("GRI") reporting framework for all Canadian industries (not just extractive sector).³⁵

GRI Reporting

The Global Reporting Initiative (GRI) is a network-based organization that produces a comprehensive sustainability reporting framework that is widely used around the world. GRI is committed to the framework's continuous improvement and application worldwide. GRI's core goals include the mainstreaming of disclosure on environmental, social and governance performance. GRI's reporting framework is developed through a consensus-seeking, multi-stakeholder process. Participants are drawn from global business, civil society, labour, academic and professional institutions.

The GRI is currently in its 3rd iteration (G3 Guidelines); however, the G4 Guidelines are currently open for public commentary and will be launched in 2013.³⁶

³⁵ http://www.ic.gc.ca/eic/site/csr-rse.nsf/eng/h_rs00018.html

³⁶ <http://www.globalreporting.org/ReportingFramework/G31Guidelines/#AnchorTwo>



The GRI also prepares "Sector Supplements" for reporting on key environmental, social and governance issues related to different industries. The Mining and Metals Supplement was released in March 2010 at the PDAC Convention.³⁷

Currently, Industry Canada is working with the GRI on the development of the next generation of the reporting framework (G4), as well as a new Sector Supplement for the oil & gas industry.

In Canada, some slightly dated statistics about GRI reporting are available from a 2008 benchmarking exercise of TSX-listed companies.³⁸

TSX-listed companies' sustainability reporting	2001	2003	2005	2007
Some environmental or social information included in annual report or stand-alone sustainability report	35%	60%	70%	80%
Stand-alone sustainability report	10%	22%	25%	18%
Using GRI Guidelines as general guide or through adherence to its requirements	7%	13%	18%	15%
Using assurance (internal audit or 3rd party assurance)	9%	13%	18%	15%

g. Export Development Canada

1. Performance standards

Export Development Canada ("EDC") is subject to the following provisions and guidelines governing international trade: the *OECD Guidelines for Multinational Enterprises*; *Extractive Industries Transparency Initiative*; and, the *World Trade Organization's Countervail Measures Agreement*.

Furthermore, as a signatory to the *Equator Principles*,³⁹ EDC applies the *IFC Performance Standards* and the *World Bank Environmental, Health and Safety Guidelines* when assessing its clients' eligibility for project financing, insurance and other services.

EDC also has adopted and implemented the *OECD Recommendation on Common Approaches on Environment*. The *OECD Common Approaches Agreement* is an international multilateral consensus on environmental review practices.⁴⁰ The *OECD Common Approaches Agreement* is currently being reviewed and an updated version will

³⁷ <http://www.globalreporting.org/ReportingFramework/SectorSupplements/MiningAndMetals>; and, <http://www.globalreporting.org/NR/rdonlyres/B539FB92-DF1D-4E8E-9056-7DD2AFE24F03/0/MiningAndMetalsQuickRefSheet.pdf>

³⁸ http://www.stratos-sts.com/documents/Best_Practice_Study_2008_1.pdf

³⁹ EDC became a signatory to the Equator Principles in October 2007. The Equator Principles are considered to be a financial industry benchmark for determining, assessing and managing social and environmental risk in project financing. For more information, see: <http://www.equator-principles.com/>

⁴⁰ For further information on the OECD Common Approaches, see: http://www.oecd.org/document/4/0,3343,en_2649_201185_38752004_1_1_1_1,00.html



be launched in 2012, likely with further development of standards related to environmental and social review and disclosure for OECD export credit agencies.

EDC also has an *Environmental and Social Risk Management Policy* that was revised, approved by EDC's Board of Directors and came into force on November 1, 2010.⁴¹ The policy states a commitment to "assess environmental and social risk in the transaction decision-making process, to advocate best practices with its counterparts, and to strive for high standards of mitigation and monitoring of projects it supports while ensuring this does not unduly hinder EDC's ability to support Canadian companies as they compete in global markets." The *Environmental and Social Risk Management Policy* is to be reviewed no later than November 1, 2013.

The *Environmental and Social Risk Management Policy* is supported EDC's *Environmental Review Directive*, a domestic legal requirement aligned with the OECD Common Approaches, which establishes the process that is followed when EDC assesses the environmental and social impacts of projects it is asked to support.⁴²

2. Reporting standards

EDC's *Disclosure Policy* guides the release of information on individual transactions, EDC's aggregate business volumes and transactions with the potential to cause significant adverse environmental effects. EDC also discloses information through a number of public documents, including annual reports, corporate plans, annual corporate social responsibility reports and news releases that are available on our corporate website.

When EDC is *considering* providing support in the form of financing or political risk insurance to lenders, or equity to the project sponsor of a Category A project under the Environmental Review Directive, EDC will seek consent to inform the public via its Environmental and Social Reporting procedures. EDC also discloses information about Category A and B projects that it has *approved and signed*:

- EDC provides details on those Category A projects approved for support including: the date of public notification of EDC's consideration of support; the date the project was approved for support (date of signing); the country where the project is located; the project name; general description of the project; the project sponsor; and, the applicable environmental standards and type of environmental information reviewed.
- Since October 26, 2007, EDC provides details on those Category B projects approved for support including: the date the project was approved for support (date of signing); the country where the project is located; the project name; general description of the project; the project sponsor; and, the applicable environmental standards and type of environmental information reviewed.

⁴¹ http://www.edc.ca/english/docs/ESRM_Policy_e.pdf

⁴² http://www.edc.ca/english/docs/ERD_e.pdf



The following chart provides information about the Category A and B projects that are currently disclosed on the EDC website.⁴³

Category of Project	Number	Countries of projects
Category A Projects currently under consideration	2	USA, Saudi Arabia
Signed Category A Projects (after November 10, 2010)	3	Saudi Arabia, Serbia, Russia
Signed Category A Projects (prior to November 10, 2010)	28	Mexico, Australia, Saudi Arabia (4), Dominican Republic (2), Canada (3), USA, Bahrain, Chile, Panama, Qatar (3), United Arab Emirates, Egypt (2), Madagascar, Zambia, Kuwait, Venezuela, Ecuador, Russia, Oman
Signed Category B Projects ⁴⁴	19	Australia (2), Angola, USA (6), Chile, Mexico, Canada, Nicaragua, Russia, Ghana, Panama, United Arab Emirates, Bahamas, Turks and Caicos
Case Studies on Environmental and Social Reporting ⁴⁵	5	Madagascar, Turks and Caicos, Brazil, USA, Ukraine

3. Anti-corruption

In 1998, EDC formally articulated its policy with respect to bribery in its *Code of Business Ethics*.⁴⁶ Furthermore, in response to the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, EDC developed an Anti-corruption Program that consists of processes, systems enhancements and documentary safeguards. Documentary safeguards include the requirement for applicants of EDC support to sign an anti-corruption declaration and/or representations and covenants. Moreover, EDC will debar any party that has been convicted of bribery until such time as it has been determined that the party has taken appropriate measures to deter further bribery.⁴⁷

4. Statement of Commitment on Human Rights

In April 2008, EDC released its *Statement of Commitment on Human Rights*. EDC also actively followed the work of John Ruggie, the UN Special Representative on Business and Human Rights, particularly with respect to the portions of the *Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights* that address export credit agencies. Further to its *Statement of Commitment on Human Rights*, EDC

⁴³ http://www.edc.ca/english/disclosure_9238.htm

⁴⁴ Since October 26, 2007, EDC provides details on those Category B projects approved for support including: the date the project was approved for support (date of signing); the country where the project is located; the project name; general description of the project; the project sponsor; and, the applicable environmental standards and type of environmental information reviewed.

⁴⁵ See "case studies" at: http://www.edc.ca/english/social_environment.htm

⁴⁶ In 2000, the OECD Working Party on Export Credits and Credit Guarantees (ECG), of which EDC is a member, agreed on an Action Statement on Bribery and Officially Supported Export Credit. This statement was strengthened in 2006 pursuant to the OECD Council Recommendation on Bribery and Officially Supported Export Credits.

⁴⁷ More details on EDC's policy to deter bribery are outlined in EDC's Anti-corruption Policy Guidelines: http://www.edc.ca/english/docs/acpg_e.pdf; and, in EDC's Anti-corruption Brochure: http://www.edc.ca/english/docs/csr_ant Corruption_e.pdf



will work with the Government of Canada and other stakeholders to identify best practices for assessing human rights impacts as part of its due diligence processes.

EDC Statement of Commitment on Human Rights

EDC values human rights and provides its financing and insurance services with a view to the promotion and protection of internationally-recognized human rights. Investment projects may have potentially significant impacts on the human rights of individuals. EDC recognizes that financial institutions must endeavour to assess the potential for adverse human rights outcomes for individuals directly affected by such projects.

Valuing and Promoting the Protection of Human Rights

EDC is a wholly-owned arm of the Government of Canada that operates in a manner consistent with the Canadian government's policies. EDC receives public policy guidance from the Government of Canada with respect to Canada's international obligations, such as those elaborated in the United Nations' Universal Declaration of Human Rights. Further to a memorandum of understanding signed in 2002, the Government shares intelligence with EDC on the human rights situation for a wide range of countries.

Recognizing Factors that Impact Human Rights

EDC's Political Risk Assessment Department routinely conducts country- and project-level political risk assessments that include an analysis of factors that influence human rights conditions in host countries. An additional layer of due diligence will be undertaken for investment projects and countries assessed to have a higher potential for human rights issues. This supplementary analysis may include an examination of factors such as the country's socio-economic dynamics, history of conflict and site-specific issues such as security, location and relations with local communities. These assessments take into account a range of external indicators including the World Bank's Country Governance Indicators, Minority at Risk data, Freedom House's Freedom of the Press and Civil Liberties ratings and conflict data from the University of Maryland's Center for Development and Conflict Management, among others.

Identifying Best Practices for Financial Institutions

EDC recognises the evolutionary nature of corporate social responsibility (CSR) practices, and actively monitors the international discussion of human rights issues. EDC also draws on the collective experience of the distinguished Canadians who comprise its Advisory Council on CSR. In terms of the field of assessment of potential human rights impacts, EDC is committed to working with the Government of Canada and other stakeholders to identify emerging best practices and to incorporate into its due diligence those practices that are relevant to the mandate of a financial institution.

h. Royal Canadian Mounted Police ("RCMP") Anti-Corruption Unit

1. International Anti-Corruption Initiative

In response to Canada's signature of international anti-corruption treaties and the passage of the *Corruption of Foreign Public Officials Act*, the RCMP has created an international anti-corruption initiative. Falling under the RCMP's Financial Crime Directorate, the international anti-corruption initiative has a mandate to "reduce the impact of commercial crime on Canadians and maintain the integrity of our economy through enforcement, public education and crime prevention as well as to deliver services on four fronts: investigation, prosecution, prevention and detection."⁴⁸

The RCMP collaborates closely with DFAIT and the Department of Justice in relation to Canada's international anti-corruption efforts.

⁴⁸ RCMP's "International Anti-Corruption Units" brochure.



Two international anti-corruption units have been established in Ottawa and in Calgary. The units have powers to conduct investigations relating to the following:

- Allegations that a Canadian person or business has bribed a foreign public official.
- Allegations that a foreign person has bribed a Canadian public official.
- Allegations that a foreign official has secreted or laundered money in, or through, Canada.
- Requests for international assistance from other law enforcement agencies.

2. Cases under investigation or prosecution

Currently, the RCMP is conducting 23 investigations into allegations of corruption that have arisen all around the world. The RCMP is working with its international partners to conduct these investigations through police-to-police communications and a mutual legal assistance programme. As international anti-corruption efforts have developed under regional or multilateral treaties, there are increasingly numerous mechanisms for international cooperation.

A number of the RCMP's investigations have resulted in criminal prosecutions and, recently, in the first criminal sanctions through a plea bargain and multi-million dollar fine. As future prosecutions go to court (rather than settle through a plea bargain), Canadian courts will begin to develop jurisprudence of some of the outstanding legal questions about anti-corruption (e.g. extra-territorial jurisdiction and "substantial connection;" illegality of facilitation payments; etc.).

Niko Resources Prosecution

- Allegations of bribery of Bangladesh's State Minister of Energy and Mineral Resources (\$190,000 vehicle and travel and entertainment to Canada and the U.S.)
- 6 years after delivery of vehicle, Niko Resources agrees to a \$9.5 million fine.
- Agreed statement of facts in Her Majesty the Queen v. Niko Resources.
- Report on Business article on "Niko Resources: Ottawa's Corruption Test Case"

3. Education and Prevention

The RCMP's Anti-corruption Units undertake a number of education and outreach initiatives with the goal of preventing corrupt practices. With greater media and industry attention to the issue, especially after the Niko Resources case, there is increasing demand for the RCMP to make presentations, as well as greater attendance of stakeholders at these presentations.



The RCMP currently partners with Transparency International for some of its education and prevention efforts, but is also looking to reach out to other industry associations and civil society organizations to develop initiatives to raise awareness about and prevent corruption.

ii. Multi-stakeholder initiatives

a. Centre for Excellence in Corporate Social Responsibility⁴⁹

1. Mandate and Executive Committee

The Centre for Excellence in Corporate Social Responsibility is housed at the Canadian Institute of Mining, Metallurgy and Petroleum (“CIM”). Currently, it is intended to fulfil the following roles and functions:⁵⁰

- A web-based resource will be the hub of knowledge on CSR-related practices in the extractive sector and serve as a tool to assist Canadian companies doing business around the world.
- A multi-stakeholder executive committee will ensure that a broad spectrum of perspectives are included and make the Centre for Excellence a useful tool, not only for industry and government, but for the civil society organization (“CSO”) community as well.⁵¹
- The Centre for Excellence will also offer a forum through which various stakeholders - including industry, government, Aboriginal organizations, non-governmental organizations, civil society organizations, human rights associations, academics, environmental managers, and various associations - can obtain timely access to high-quality CSR information and, in so doing, raise the bar for excellence in CSR-related practices in the extractive industry. For instance, the Centre for Excellence recently organized a multi-stakeholder workshop in Ottawa with Professor John Ruggie about the *UN Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights*.

⁴⁹ www.cim.org/csr/

⁵⁰ www.cim.org/csr/menuPage.cfm?menu=67

⁵¹ The Executive Committee members are currently: Andrea Baldwin, Jan Boon, Catherine Coumans, Ginny Flood, Julie Gelfand, Paul C. Heidebrecht, Dennis Jones, Stephen Kibsey, Fiona Koza, Ron Nielsen, Doug Olthuis, Valerie Pascale, Bill Singleton, Joe Ringwald, Judith St. George, Ian Thomson, Jean Vavrek, Kernaghan Webb, Lauren Whyte, Scott Yarrow.



2. Working Groups

The Centre for Excellence has established mandates and procedures for a number of Working Groups related to the following priorities:

- Website development;
- Events;
- Community engagement (including with northern and aboriginal communities in Canada and communities overseas);
- Content approval (for ensuring all stakeholder groups are in agreement with the content of materials and tools to be placed on the Centre for Excellence's website).

3. Tools & Resources

The Centre for Excellence has launched its website at www.cim.org/csr. Currently, the website contains information about the following:

- Reporting CSR Practices
 - Sample mining CSR policies
 - Sample mining sustainability reports
- CSR Toolkits
 - Canadian Government
 - GRI
 - PDAC's e3 Plus: A Framework for Responsible Exploration Towards Sustainable Mining
 - Mining Information Kit for Aboriginal Communities
 - Additional CSR Frameworks
 - CSR Awards
- Country Profiles
 - Democratic Republic of Congo
 - Guatemala
 - Peru
 - Tanzania
- CSR Directory
 - Government
 - Mining Companies
 - CSR Consultants
 - CSR Related Media
 - Universities



b. Devonshire Initiative

The Devonshire Initiative is not part of the Government's CSR Strategy; but it is an initiative that numerous stakeholders referenced as an example of joint industry-NGO collaboration.

1. Mandate, Steering Committee and Member Organizations

The Devonshire Initiative is a forum for international development NGOs and mining companies to come together in response to the emerging social agenda surrounding mining and community development issues. According to its website, "[the Devonshire Initiative] believes that a collaborative presence between the Canadian private sector and NGOs in emerging markets can be a force for positive change. The ultimate objective of the Devonshire Initiative is improved social and community development outcomes wherever Canadian mining companies operate overseas."⁵²

Overseen by a Steering Committee comprised of industry and NGOs,⁵³ the Devonshire Initiative currently has the following Member Organizations:

- NGOs: Plan Canada, World Vision Canada, Save the Children Canada, Engineers Without Borders Canada, CARE Canada, AMREF Canada, TechnoServe, Search for Common Ground, World University Service of Canada, Pact, Canadian Executive Service Organization and SOPAR
- Industry: Barrick Gold Corporation, IAMGOLD Corporation, Inmet Mining Corporation, Goldcorp Inc., Prospectors and Developers Association of Canada (PDAC), Mining Association of Canada, Rio Tinto Alcan, Breakwater Resources

2. Activities and Projects

To date, the Devonshire Initiative's activities have been primarily dedicated to hosting and facilitating workshops. Some examples of past events include:

- *Partnerships for Development: Looking to the Future of Multi-Stakeholder Public-Private Partnerships* - CEO Summit featuring Mr. Ian Smillie as keynote.
- *Workshop on Human Rights Issues in the Extractives Industry* at Ryerson University.

In addition, a number of the members of the Devonshire Initiative have recently received CIDA grants for public-private partnerships for development initiatives related to overseas mining operations. For further information, see page 28 about CIDA's activities.

⁵² <http://devonshireinitiative.org/Welcome.html>

⁵³ Ross Gallinger (Co-Chair), Nadine Grant (Co-Chair), Gerry Backs, Caitlin Glynn-Morris, Anne-Marie Kamanye, Peter Sinclair.



iii. Industry initiatives

a. Mining Association of Canada

The Mining Association of Canada represents a broad array of organizations (Members and Associate Members) spanning many sectors either directly or indirectly associated with mining and mineral processing.⁵⁴

MAC also promotes collaboration among its partners to achieve common goals while sharing industry information and knowledge. MAC works with organizations across Canada and around the world, together forming a solid foundation for mining's continued growth, responsible operation, and shared best practices. These organizations include: Canadian provincial & territorial mining associations; Canadian mining related organizations; Canadian Mining Hall of Fame partners; Canadian Government departments related to mining; international organizations; commodity associations; mining unions; and, mining information sources and publications.⁵⁵

1. Towards Sustainable Mining⁵⁶

MAC has developed a set of *Towards Sustainable Mining Guiding Principles* ("TSM") that outline the association's commitment to support advocacy, stewardship and collaboration on behalf of Canada's mining and mineral-processing industry. Developed in collaboration with communities of interest and key stakeholders, these principles help MAC's members meet society's needs for minerals, metals and energy products in the most conscientious way possible, conducting all facets of our business effectively, transparently and accountably.

TSM Performance Indicators

The Towards Sustainable Mining (TSM) Performance Indicators support the TSM Guiding Principles by setting down specific measurement criteria in six key areas of operational performance:

- Tailings management,
- Energy and greenhouse gas emissions management,
- Aboriginal and community outreach,
- Crisis management planning,
- Safety and health
- Biodiversity conservation.

MAC members are working to develop specific indicators to address mine closure.

⁵⁴ <http://www.mining.ca/site/index.php/en/about-us/members.html>

⁵⁵ <http://www.mining.ca/site/index.php/en/mining-in-canada/our-partners.html>

⁵⁶ <http://www.mining.ca/site/index.php/en/towards-sustainable-mining.html>



Participation in TSM is a condition of membership in MAC.⁵⁷ It requires members to subscribe to a set of guiding principles that are backed by specific performance indicators against which member companies must report annually. These reported results are externally verified every three years. TSM is spearheaded by the TSM Governance Team, a committee led by MAC's Board of Directors. Within each member company, TSM is supported by internal representatives called initiative leaders. Also, as part of the TSM initiative, MAC created the Community of Interest (COI) Advisory Panel. This multi-stakeholder group's mandates are to help MAC members and communities of interest improve the industry's performance, to foster dialogue between the industry and its communities of interest, and to help shape TSM goals.

MAC members must measure and report on their performance in the 6 key areas of operational performance annually. Findings are outlined in MAC's yearly Towards Sustainable Mining Progress Report. When measuring performance, MAC employs social, economic and environmental indicators to provide the most in-depth analysis possible about successes and areas for improvement.

2. International Social Responsibility Committee

MAC has recently formed an International Social Responsibility Committee that is engaging on a number of issues related to policy issues relevant to its members in Canada and internationally.

b. Prospectors and Developers Association of Canada

The Prospectors and Developers Association of Canada (PDAC) represents the interests of the Canadian mineral exploration and development industry. It is a national organization with 7,684 individual members (including prospectors, developers, geoscientists, consultants, mining executives, and students, as well as those involved in the drilling, financial, investment, legal and other support fields) and 1,081 corporate members (including senior, mid-size and junior mining companies and organizations providing services to the mineral industry).

The work of the association is guided by the following mission statement:

The PDAC exists to protect and promote the interests of the Canadian mineral exploration sector and to ensure a robust mining industry in Canada. The PDAC will encourage the highest standards of technical, environmental, safety and social practices in Canada and internationally.

⁵⁷ MAC's membership currently includes: ArcelorMittal Mines Canada, Agnico-Eagle Mines, Baffinland Iron Mines Corporation, Barrick Gold Corporation, BHP Billiton Base Metals, Breakwater Resources Ltd., Cameco Corporation, Canadian Zinc Corporation, Capstone Mining Corp., Cliffs Natural Resources, De Beers Canada Inc., Diavik Diamond Mines Inc., HudBay Minerals Inc., IAMGOLD Corporation, INMET Mining Corporation, Iron Ore Company of Canada, Kinross Gold Corporation, Newmont Canada Corporation, North American Palladium Ltd., North American Tungsten Corporation Ltd., Royal Canadian Mint, Shell Canada Energy, Suncor Energy Inc., Syncrude Canada Ltd., Teck Resources Limited, Taseko Mines Limited, Vale, Xstrata



1. e3 Plus – A Framework for Responsible Exploration⁵⁸

The overall purpose of *e3 Plus A Framework for Responsible Exploration* ("e3 Plus") is to provide a set of Principles to which all explorers should aspire, together with Guidance Notes that illustrate what is required to convert the Principles into action. Additionally, three comprehensive and practical toolkits have been developed which cover issues concerning social responsibility, environmental stewardship and health and safety.

The e3 Plus Principles

1. Adopt responsible governance and management
2. Apply ethical business practices
3. Respect human rights
4. Commit to project due diligence and risk assessment
5. Engage host communities and other affected and interested parties
6. Contribute to community development and social wellbeing
7. Protect the environment
8. Safeguard the health and safety of workers and the local population

The PDAC developed e3 Plus on the basis of broadly based consultation. It follows PDAC's e3 (environmental excellence in exploration), designed initially as a program to foster environmental excellence. The program evolved with the integration of community engagement and social responsibility issues. e3 now covers all of the components of the new program; the plus demonstrates a significant expansion of the original program.

The PDAC's Corporate Social Responsibility Committee ("CSR Committee") assumed responsibility for the project. The first step was to seek advice from the exploration community and other interested parties on how to direct the principles and guidance. The association issued an invitation to all members and key stakeholders to attend a 2-day workshop, in conjunction with the 2007 PDAC International Convention.

The CSR committee developed a preliminary draft of the principles and guidance and embarked on a national consultation process through a series of workshops. The first was a focus group, attended primarily by representatives of NGOs, academia and government. In 2008, two larger workshops focussed on the exploration community.

From the comments received at these workshops, the committee developed an advanced draft of the principles and guidance. The committee held two more focus group meetings to discuss this draft, the first designed for multiple stakeholders, and the second involving Aboriginal peoples from across the country.

The first phase of e3 Plus was completed in March 2009. The second phase, which will include performance objectives; reporting criteria; and verification, is underway.

⁵⁸ <http://www.pdac.ca/e3plus/index.aspx>



2. PDAC CSR Committee

PDAC has a CSR Committee comprised of twenty-three interdisciplinary mining industry professionals. In addition to overseeing the development and implementation of e3 Plus (as described above), the Committee engages on emerging issues relating to corporate social responsibility in the mining sector which could be of import to their membership and/or the industry on the whole.

c. Canadian Institute for Mining, Metallurgy and Petroleum

The Canadian Institute of Mining, Metallurgy and Petroleum ("CIM"), a technical society from industry, government and academia who are dedicated to the discovery, production, utilization and economics of minerals, metals and petroleum. Thousands more are also involved as CIM Branch members all across Canada. CIM periodicals also reach 2,000 other subscribers across the world in various universities and libraries. Most CIM members live in Canada although around 1,000 live abroad.

The Institute was incorporated by an Act of the Parliament of Canada in 1898 as the Canadian Mining Institute. In 1920, it became the Canadian Institute of Mining and Metallurgy, and in 1990, the Canadian Institute of Mining, Metallurgy and Petroleum.

1. Centre for Excellence

As discussed above, CIM hosts the Centre for Excellence in CSR, which is one of the pillars of the Government's CSR Strategy.

2. Environment and Social Responsibility Society

The CIM has a number of "societies" that are focused on specific issues and that organize roundtables and other learning events for its members. Recently, an Environment and Social Responsibility Society has been created, signalling greater interest in the social dimension of sustainability. The society's new mandate will promote the industry's dialogue on responses to environmental and social responsibility challenges, emphasizing best practices, required research and development activities; work with external organizations to discuss opportunities for joint conferences; put a greater focus on the environmental and social responsibility programs of the annual CIM Conference & Exhibition; strengthen the content in conferences hosted by other CIM societies, as appropriate; and publicize global conferences with strong mining/environmental content. In the future, it also hopes to add workshops and join forces with groups that are focused on corporate social responsibility.⁵⁹

⁵⁹ http://www.cim.org/bulletin/bulletinlive/articles.cfm?Issue_ID=996&Type=1&row=6&Segment_ID=31



d. Industry learning events on CSR

1. CSR Event Series at the PDAC Annual Convention

The Prospectors and Developers Association of Canada ("PDAC") hosts the largest international convention, trade show and investors exchange dedicated solely to the mineral industry. The PDAC Convention has grown in size, stature and influence over the years and today is the venue of choice for the world's mineral industry. In 2011, there were 27,714 convention participants; represented by 120 countries, 936 companies and organizations and 64 government agencies.

The Convention has, in the past, hosted workshops and short courses on CSR and in 2010 the PDAC expanded their offerings to a CSR Event Series to include a number of half-day sessions featuring a variety of industry, government and NGO presentations providing up-to-date information on different aspects related to CSR. The PDAC plans to continue to offer and enhance the CSR Event Series going forward. CSR related topics are also increasingly offered as part of the regular Technical Program.

2. CIM Annual Conference & Workshops

The annual CIM Conference and Exhibition introduces process and equipment vendors to senior stakeholders from the extraction and processing sectors of Canada's mining industry. This is one of the world's premier mining exhibitions. The technical program features sessions on Projects, Best Practices, People & Business Management, Environmental & Social Responsibility, Innovation & Technology, and Earth Science. CSR has had an increasing profile on the technical program; the 2010 conference featured at least 3 speakers on CSR.

3. AME-BC's Annual Round-up

AME BC's flagship event is the annual Mineral Exploration Roundup conference. Roundup offers an opportunity to connect with others and learn about developments in mineral exploration industry and includes technical sessions and short courses. The short courses have, for at least the past two years, included CSR on the agenda. (2010 Short Course Incorporating Social Responsibility and Environmental Best Practices into Exploration Programs, 2012 Short Course Corporate Social Responsibility and Community and Indigenous Engagement).

iv. Civil society and Academic initiatives

a. Academic departments, programmes and learning events on CSR

- Dalhousie University Mineral Resource Engineering, Faculty of Management, Sustainability at Dalhousie



- McGill University Mining and Metals Engineering, Desautels School of Management, Office of Sustainability
- Queen's University Mining Engineering, Queen's School of Management, Office of Sustainability
- Ryerson University, Ted Rogers School of Management, Institute for the Study of Corporate Social Responsibility
- University of Alberta, Alberta School of Business, Office of Sustainability
- University of British Columbia, Norman B. Keevil Institute of Mining, Sauder School of Business, UBC Sustainability Office
- Université de Québec à Montréal, Groupe de recherche sur les activités minières en Afrique, Chaire de recherche sur responsabilité sociale et développement durable
- University of Toronto, Rothman School of Management, Sustainability Office
- York University, Schulich School of Business' Centre for Responsible Business, Canadian Business Ethics Research Network

b. Tool development

Among the tools developed in Canada since the Roundtables process, the following are the ones that have strong potential for use in relation to the extractive industry and affected communities overseas:

- Rights & Democracy, *Getting it Right: Human Rights Impact Assessment Guide*, v. 3.0. On October 20, 2011, Rights & Democracy launched a revised, online version of its Human Rights Impact Assessment guide. The guide provides a step-by-step process for those wishing to take stock of the positive and negative human rights impacts of an investment project in their community. The guide also provides a virtual library, examples of research techniques, and a detailed, interactive process for selecting assessment indicators. The guide is adaptable for ex-ante or ex-post assessments, and can be used by civil society organizations or in company-led processes that include the participation of affected communities. The guide is accessible in English and French at <http://www.dd-rd.ca/hria/en> (Spanish forthcoming).
- *Understanding Conflict Tool for Exploration*. Building upon World Vision's global experience with conflict prevention and its tool for Making Sense of Turbulent Contexts (MSTC), World Vision Canada has partnered with the PDAC and CDA Collaborative Learning Projects, to provide a conflict assessment tool for exploration companies. A copy of the presentation of the tool at the PDAC 2011 Conference is available at: http://www.cdainc.com/cdawww/pdf/other/pdac_2011__presentation_training_undersanding_conflict_Pdf_1.pdf



c. Codes of Conduct for civil society organizations

One of the Roundtables recommendations was for civil society organizations to develop and adhere to a Code of Conduct. Many civil society representatives commented that this was superfluous, because the Canadian Council for International Cooperation ("CCIC"), the main international development umbrella organization in Canada, had already developed a *Code of Ethics* for civil society organizations with a peer review process.⁶⁰ This *Code of Ethics* appears to be aimed primarily at the obligations for civil society organizations when undertaking development activities and creating partnerships, rather than about the conduct of advocacy activities related to the extractive industry or specific projects. The latter appears to be the priority for industry representatives, who find the advocacy tactics of some civil society organizations to be questionable.

Currently, many Canadian civil society organizations adhere to the CCIC *Code of Ethics* or their own Codes of Conduct. On issues related to disclosure, transparency and sustainability, it is interesting to note that there is also now a GRI reporting sector supplement for NGOs.

Conclusions about current actions to implement Roundtables recommendations

From the interviews and research conducted, it is evident that numerous actions have been taken by government departments and agencies, as well as other industry, civil society and academic stakeholders, to implement the Roundtables recommendations. Many recommendations (15) are either partially implemented at present (and could be further implemented in the future) or require on-going efforts to implement the recommendation, and some (9) of the Roundtables recommendations have not been implemented at all.

The most important conclusion to draw from this review is that a widespread misperception exists that nothing has been done to implement the Roundtables recommendations. Communicating the government's follow-up actions to various stakeholders and the public at large has been a challenge, in part because of the difficulty in coordinating and sharing information between the numerous departments and agencies that are responsible for the CSR Strategy. Also, frequent turnover of staff within the government departments and agencies contributes to lack of institutional memory and less effective communication with external stakeholders.

⁶⁰ http://www.ccic.ca/about/ethics_e.php



PART C: STAKEHOLDER FEEDBACK

4. Stakeholder feedback on implementation of recommendations

a. Stakeholder Satisfaction

The following were the levels of satisfaction about the implementation of the Roundtables recommendations that the different participants in the research expressed during their interviews. Given that many actions to implement the Roundtables recommendations have not been effectively communicated, some participants chose responses such as "undecided" or "unaware" rather than expressing an opinion. The number of participants stating that they were "undecided" or "unaware" increased when discussing the more detailed or technical of the Roundtables recommendations.

i. Overall satisfaction with implementation of Roundtables recommendations

Satisfied	7%
Somewhat satisfied	45%
Undecided	14%
Dissatisfied	27%
Unaware	7%

In terms of overall satisfaction, a slight majority expressed some degree of satisfaction with the actions taken to implement the Roundtables recommendations (52% were either satisfied or somewhat satisfied). On the other hand, 27% of stakeholders were "dissatisfied" and another 21% were either "undecided" or "unaware." The high number of "undecided" and "unaware" is indicative of the fact that many stakeholders are unfamiliar with the actions that the government and other actors have undertaken.

The following two quotes are representative of the divergent opinions between those that are satisfied and those who are dissatisfied:

- "The response was an attempt to address most of the recommendations (which was an extremely powerful document). There may have been a lack of realism in the recommendation - the expectations set by the Roundtables report may not have been reasonable."
- "Very disappointed in the government response and actions, which do not meet the recommendations. The Roundtables were a high-water mark for public policy; and, many of the recommendations would be strengthened if the Roundtables took place in 2011 given international developments in the field of CSR."



ii. Development of Canadian CSR framework, standards and reporting obligations
(Recommendations 2.1.2.1 - 2.3.2.3)

Canadian CSR Framework (Recommendation 2.1.2.1)

Satisfied	-
Somewhat satisfied	57%
Undecided	29%
Dissatisfied	14%
Unaware	-

The response to this question closely mirrors the levels of overall satisfaction given that the recommendation for a CSR Framework was meant to provide a coherent and comprehensive policy response to the issues addressed in the Roundtables. It is interesting to note that when the question is formulated specifically in reference to the CSR Framework--and the CSR Strategy developed by the government in response--that no stakeholders stated that they were "satisfied," the majority of 57% were "somewhat satisfied," a large proportion of 29% were "undecided" (often due to lack of information about the government's actions), and, a smaller proportion of 14% was "dissatisfied."

Canadian CSR Standards (Recommendation 2.2.2.1)

Satisfied	43%
Somewhat satisfied	43%
Undecided	14%
Dissatisfied	-
Unaware	-

All stakeholders were either "satisfied," "somewhat satisfied" or "undecided." The main reason for the level of satisfaction relates to the recent revisions of two of the main international standards that were adopted by the CSR Strategy, namely *the OECD Guidelines* and the *IFC Performance Standards*. The revised *OECD Guidelines* and *IFC Performance Standards* now make more explicit reference to international human rights and indigenous peoples rights standards, which were lacking in previous CSR standards. Moreover, there were many references to the *UN Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights* as an opportunity to further develop and operationalize the human rights aspect of CSR.

Canada Investment Fund for Africa Reporting (Recommendation 2.3.2.2)

Satisfied	-
Somewhat satisfied	-
Undecided	86%
Dissatisfied	-
Unaware	14%

This recommendation was not a priority for any stakeholders. The recommendation addressed a gap in disclosure for the Canada Investment Fund for Africa that existed at



the time of the Roundtables; as the disclosure requirements were improved promptly after the Roundtables report in a manner that addressed the recommendation, stakeholders had turned the page and moved on.

EDC Disclosure Requirements (Recommendation 2.3.2.3)

Satisfied	-
Somewhat satisfied	14%
Undecided	71%
Dissatisfied	14%
Unaware	-

A large majority of the stakeholders were undecided about this recommendation, largely because the disclosure requirements of Export Development Canada ("EDC") are not a mainstream concern or issue. Of the few stakeholders interviewed with specialized knowledge and expertise related to EDC (and export credit agencies in general), an equal number were "somewhat satisfied" given the incremental steps ECD has taken to improve its disclosure policies along with other OECD export credit agencies; and, an equal number were "dissatisfied" because, even with greater disclosure, there is still insufficient project information made public to allow for meaningful stakeholder participation and accountability in the decision-making process for EDC project financing or insurance.

iii. Creation of an independent ombudsman and compliance review committee (Recommendation 2.4.2.1)

Satisfied	-
Somewhat satisfied	29%
Undecided	-
Dissatisfied	64%
Unaware	7%

There were no stakeholders interviewed that expressed full satisfaction with the government response to this recommendation: the Office of the Extractive Sector CSR Counsellor was seen by all stakeholders (from industry, civil society and academia) as missing the mark for an independent ombudsman function. That said, some were willing to give the current CSR Counsellor credit and a chance to develop her mandate in a constructive manner; while the majority expressed dissatisfaction and serious reservations about whether the mandate and powers to the CSR Counsellor could actually resolve disputes and/or provide any meaningful access to remedy.

This recommendation is discussed in greater detail on page 59. It is important to note that the interviews were conducted before the withdrawal of Excellon Resources from the CSR Counsellor's Review Process.



iv. Creation of a CSR Centre for Excellence and development of CSR tools
(Recommendations 3.1.2.1 - 3.1.2.5)

CSR Centre for Excellence (Recommendation 3.1.2.1)

Satisfied	-
Somewhat satisfied	25%
Undecided	25%
Dissatisfied	33%
Unaware	17%

With respect to the CSR Centre for Excellence, a large proportion of stakeholders were "undecided" (25%), "dissatisfied" (33%) or "unaware" (17%). This is largely the result of the fact that the CSR Centre for Excellence has been established for a couple of years and has not produced many visible outputs. The stakeholders who have participated in the development of the CSR Centre for Excellence as members of its Executive Committee has more positive views, explaining the importance of taking time to develop effective procedures and working groups in a multi-stakeholder context. A common concern across stakeholders who were aware of the CSR Centre of Excellence (those who were "somewhat satisfied", "undecided" and "dissatisfied")

Industry Association Tools (Recommendation 3.1.2.2)

Satisfied	8%
Somewhat satisfied	33%
Undecided	50%
Dissatisfied	-
Unaware	8%

Many stakeholders expressed some degree of satisfaction (8% were "satisfied" and 33% were "somewhat satisfied") with the development of industry association tools; and, conversely, none of the stakeholders were "dissatisfied." Nonetheless, a majority were either "undecided" (50%) or "unaware."

Those who were familiar with the different industry tools and frameworks pointed to the potential of PDAC's *e3 Plus* and MAC's *Towards Sustainable Development* to improve CSR performance on the ground in developing countries; however, it was questioned to what degree these tools were being applied consistently for overseas operations (vs. Canadian operations) and what mechanisms were in place for assurance or certification of the effective application of the industry tools.

International experts also highlighted the important work done by the International Council on Mining and Metals ("ICMM") on the development of international frameworks, policies and tools for mining companies; in the Canadian context, it was suggested that it may be most productive to focus on the development of further tools and guidance for the junior / exploration sector rather than duplicate the work done by ICMM that could apply to the more senior / operating companies.



Tools to Support Small-Scale Mining (Recommendation 3.1.2.3)

Satisfied	-
Somewhat satisfied	-
Undecided	58%
Dissatisfied	-
Unaware	42%

All stakeholders were "undecided" and "unaware" of any tools developed to support small-scale mining. This is because the CSR Strategy is silent on this issue and, from the interviews and research undertaken, there have been no such tools developed in the Canadian context since the Roundtables report.

Tools and Capacity-Building to Support Civil Society (Recommendation 3.1.2.4)

Satisfied	-
Somewhat satisfied	8%
Undecided	33%
Dissatisfied	33%
Unaware	25%

With respect to tools developed to support civil society, once again there was a high level of "undecided" (33%) and "unaware" (25%). Relatively few tools have been developed in the Canadian context to support civil society abroad. A few stakeholders were "somewhat satisfied" and pointed to the potential of the human rights impact assessment tool developed by Rights & Democracy and the conflict assessment and management tool developed by World Vision. An important proportion of stakeholders were "dissatisfied" (33%) as a result of funding cuts to Canadian civil society organizations working on issues related to the international extractive sector, thereby depriving these organizations the opportunity to develop further tools for project-affected communities.

Civil Society Transparency and Accountability (Recommendation 3.1.2.5)

Satisfied	25%
Somewhat satisfied	8%
Undecided	42%
Dissatisfied	8%
Unaware	17%

This recommendation elicited divergent views: civil society representatives were mainly satisfied that the recommendation was already addressed through the adherence of the majority of Canadian NGOs to the CCIC *Code of Ethics*; however, a number of representatives of industry and the investment community stated that there remained a gap related to the codes of conduct and ethics related to the advocacy and media activities of some anti-mining or anti-oil groups. Just as the conduct of industry "laggards" is often raised by civil society, there is a reciprocal concern about the tactics and strategies of some NGOs. As one stakeholder suggested, the concern for civil society should be that the conduct of a few radical organizations could be creating a negative and defensive



posture on the part of industry and/or government towards all NGOs, thereby creating obstacles to further multi-stakeholder dialogue, partnership and collaboration.

v. Investor disclosure and engagement (Recommendations 3.2.2.1 - 3.2.2.4)

N.B. There were not enough respondents to this set of recommendations to have a representative sample of opinions; those who did were "dissatisfied" with the lack of action on disclosure requirements and definitions of materiality; and, "satisfied" with investor engagement actions.

This series of recommendations was of interest and priority only to a small number of participants, particularly from the investment and financial sector, as well as one of the international experts. The main message was one of dissatisfaction given that very little has been done in Canada to improve disclosure of economic, social and governance issues since the Roundtables while other jurisdictions, notably in Europe, are rapidly advancing on disclosure of non-financial issues. One of the obstacles to improved disclosure is that securities regulation is a matter of provincial jurisdiction, so it is difficult to devise a national strategy or standard. However, it was suggested that the federal government could nonetheless play a leadership role in advancing dialogue with the provinces on this set of issues, but that it has not yet done so. Given the amount of money that now is invested according to UN's *Principles for Responsible Investing* (\$30 trillion), it was hoped that individual companies would see the merits of disclosing non-financial information, including through the Global Reporting Initiative framework. It was acknowledged that many leading extractive industry companies are disclosing a significant amount of non-financial information through sustainability and CSR reporting, often using the GRI framework.

vi. Legal sanctions and financial incentives (Recommendations 3.3.2.1 - 3.4.2.2)

Extraterritorial Criminal Law (Recommendation 3.3.2.1)

Satisfied	-
Somewhat satisfied	25%
Undecided	25%
Dissatisfied	50%
Unaware	-

This issue elicited a divergent set of responses with industry representatives being "somewhat satisfied" or "undecided" about the lack of development of extraterritorial criminal law; and, civil society representatives and academics being "dissatisfied." As one international expert said, there is a great deal of misunderstanding and fear about the topic of extraterritoriality, and "discussions about it tend to generate more heat than light." In the Canadian context, the polarizing nature of the discussion about extraterritoriality can be seen in the Parliamentary debates around *Bill C-300*. Some of the forward-looking stakeholders predicted that the barriers against extraterritorial legal obligations were only going to diminish, whether through multilateral treaties or policies;



the precedents set by other influential governments like the U.S. or the U.K.; or the decisions of Canadian courts to exercise jurisdiction with respect to Canadian companies operating overseas.

Corruption of Foreign Public Officials Act (Recommendation 3.3.2.2)

Satisfied	-
Somewhat satisfied	50%
Undecided	50%
Dissatisfied	-
Unaware	-

This recommendation elicited a considerable amount of interest from different stakeholder groups. Because of a recent high-profile case (Niko Resources) many were aware that anti-corruption investigations and charges were increasing; however, there was a great deal of uncertainty about the scope for and substance of potential breaches of Canadian anti-corruption laws while operating overseas. The civil society and academic stakeholders interested in extraterritorial application of law cited the international anti-corruption measures as being at the forefront of a movement to diminish the conceptual and legal barriers to extraterritoriality.

This recommendation is discussed in greater detail on page 62 below.

Income Tax Act (Recommendation 3.3.2.3)

Satisfied	-
Somewhat satisfied	-
Undecided	75%
Dissatisfied	-
Unaware	25%

This recommendation elicited only "undecided" (75%) or "unaware" responses. This results from the fact that the CSR Strategy is silent on the issue, and no actions have been taken to provide incentives for CSR measures through the *Income Tax Act*.

Financial and Insurance Support (Recommendation 3.4.2.1)

Satisfied	-
Somewhat satisfied	-
Undecided	50%
Dissatisfied	25%
Unaware	25%

As the CSR Strategy is based on voluntary measures, there have been no commitments or actions related to conditioning financial, insurance or other government support on compliance with CSR performance standards. Therefore, the majority of stakeholders were either "undecided" (50%) or "unaware" (25%) about the implementation of this recommendation. Some stakeholders from civil society and academia were "dissatisfied"



(25%), because this is seen as a minimalist measure that could be used to improve performance of those companies wanting to have access to public funds to finance their overseas operations.

Conditioning of Government Support (Recommendation 3.4.2.2)

Satisfied	-
Somewhat satisfied	-
Undecided	50%
Dissatisfied	25%
Unaware	25%

Same as the recommendation above.

vii. Contributions of the extractive sector to Host Government development priorities (Recommendations 4.1.2.1 - 4.1.2.2)

Contribution to Host Government development priorities (Recommendation 4.1.2.1)

Satisfied	-
Somewhat satisfied	-
Undecided	29%
Dissatisfied	71%
Unaware	-

None of the stakeholders interviewed were satisfied with the government's contribution to Host Government capacity-building and development priorities (71% "dissatisfied" and 29% "undecided"). From all stakeholder groups, there was a general feeling that the government had not undertaken any new initiatives to contribute to Host Government capacity-building even though this was a key pillar of the CSR Strategy (and all were in agreement that this was an important priority). It should be noted that the government has made a series of announcements since the interviews were conducted (related to a regional initiative for CSR in the Andes; pilot projects for private-public partnerships for development related to mining operations; and, the creation of an institute for extractive industries and development). Therefore, perceptions may have changed about the implementation of this recommendation.

Contribution to Judicial Systems in Host Countries

Satisfied	-
Somewhat satisfied	-
Undecided	71%
Dissatisfied	14%
Unaware	14%

The high levels of "undecided" (71%) and "unaware" (14%) are a reflection of the fact that there are no specific initiatives at this time that are focused on contributing to judicial systems in Host Countries in a manner that is linked to the CSR Strategy. CIDA and



other Canadian legal and judicial reform organizations are doing work overseas; however, their work is not currently part of a strategy to improve the rule of law and regulation for the extractive sector.

viii. International and multilateral initiatives related to the extractive sector
(Recommendations 4.1.2.3 - 4.1.2.6)

Exercising Influence in Regional or Multilateral Fora (Recommendation 4.1.2.3)

Satisfied	-
Somewhat satisfied	33%
Undecided	67%
Dissatisfied	-
Unaware	-

Most stakeholders were aware that the government participated in various multilateral fora, but most were "undecided" (67%) because they were not sure of the details of all the government's actions and priorities. Those stakeholders who were "somewhat satisfied" (33%) pointed to specific actions such as the work within the *Extractive Industry Transparency Initiative*, the *Voluntary Principles on Security and Human Rights* or to support the mandate of the UN Special Representative on Business and Human Rights, John Ruggie.

Join the Extractive Industry Transparency Initiative (Recommendation 4.1.2.4)

Satisfied	33%
Somewhat satisfied	33%
Undecided	33%
Dissatisfied	-
Unaware	-

As Canada joined the EITI relatively quickly after the Roundtables report was released, there were no dissatisfied stakeholders. Those who were less satisfied (33% somewhat satisfied vs. 33% satisfied) pointed to the fact that Canada was only a "supporting government" rather than an "implementing government;" this issue was highlighted because of the recent announcement of President Obama that the U.S. would become an "implementing government."

Join the Voluntary Principles on Security and Human Rights (Recommendation 4.1.2.5)

Satisfied	-
Somewhat satisfied	67%
Undecided	33%
Dissatisfied	-
Unaware	-

Most of the stakeholders were "somewhat satisfied" with the government's actions to join the *Voluntary Principles on Security and Human Rights*; however, many of these were



unaware of Canada's new role as the Chair of the Voluntary Principles, which may change the perception of a somewhat passive involvement to a more active involvement in the development and application of the Voluntary Principles.

Multilateral Fora (Financial)

Satisfied	-
Somewhat satisfied	-
Undecided	100%
Dissatisfied	-
Unaware	-

No stakeholder interviewed was aware of the details of Canada's involvement in multilateral financial fora as it pertains to CSR for the extractive industry. Nonetheless, Canada is a member of the G8 and G20, as well as the World Bank, including its International Financial Corporation. Probably much of the recent focus (and media attention) of the work of the multilateral financial institutions has been on the response to the global financial crises, but there exists a communications gap in terms of Canada's priorities and positions in these institutions related to CSR issues.

ix. Creation of a Canadian Extractive Sector Advisory Group (Recommendation 5.1.2.1)

Satisfied	-
Somewhat satisfied	-
Undecided	-
Dissatisfied	100%
Unaware	-

All stakeholders were aware that this recommendation had not been implemented by the government's CSR strategy. A few stakeholders speculated about whether the CSR Centre for Excellence might be able to fulfil the function of on-going multi-stakeholder dialogue around the issues raised by the Roundtables report, but there was unanimous disappointment that there was no clear and effective mechanism to continue the multi-stakeholder dialogue that was begun through the Roundtables process.

b. Areas of continued importance for stakeholders

The research mandate expressed a desire to gain an understanding of whether various stakeholders remained in support of the Roundtables recommendations as a whole or as individual recommendations. The areas of continued importance for on-going dialogue and implementation of the Roundtables recommendations, as identified by the interviews with stakeholders, are summarized in the following table. It should be noted that, in many respects, this table reflects the awareness of stakeholders about the different Roundtables recommendations, as discussed in further detail in the report.



Recommendation or Cluster of Recommendations	Priority
Development of Canadian CSR framework, standards and reporting obligations (Recommendations 2.1.2.1 - 2.3.2.3)	3 (tie)
Creation of an independent ombudsman and compliance review committee (Recommendation 2.4.2.1)	1
Creation of a CSR Centre of Excellence and development of CSR tools (Recommendations 3.1.2.1 - 3.1.2.5)	2
Investor disclosure and engagement (Recommendations 3.2.2.1 - 3.2.2.4)	8
Legal sanctions and financial incentives (Recommendations 3.3.2.1 - 3.4.2.2)	6
Contributions of the extractive sector to Host Government development priorities (Recommendations 4.1.2.1 - 4.1.2.2)	3 (tie)
International and multilateral initiatives related to the extractive sector (Recommendations 4.1.2.3 - 4.1.2.6)	7
Creation of a Canadian Extractive Sector Advisory Group (Recommendation 5.1.2.1)	3 (tie)



PART D: ANALYSIS - THEMES AND AREAS OF CONVERGENCE IN STAKEHOLDER OPINION

- i. Theme One: Need for better communication / knowledge of actions to implement recommendations (especially outside of government)

Many stakeholders are unaware of what has been done beyond the release of the Government's CSR strategy, but government actions, as well as those of other stakeholders, are either not available or not communicated effectively. Most stakeholders are interested in knowing more about the implementation of the recommendations; even well-connected stakeholders are frustrated about the difficulty in finding current information.

In interviews with stakeholders in Western Canada, there was a recurrent frustration expressed about the difficulty in keeping up to date with what is happening in Central Canada, particularly in Ottawa and Toronto. In considering future efforts to better communicate with interested stakeholders, the difference between Central Canada and other regions (particularly the West in the case of the extractive industry) should be taken into account.

MAC is commended for taking the initiative to undertake this study. Simply compiling current information about what different stakeholders inside and outside of government are doing in the field of CSR is seen to be of value. There is an opportunity for MAC to share this up-to-date information about implementation of recommendations with the participants in the research; and, to contribute to a better-informed and more strategic discussion about CSR and the extractive industry.

- ii. Theme Two: Need for multi-stakeholder spaces and initiatives

The Roundtables process was seen by many as a high-water mark for multi-stakeholder dialogue and compromise, as well as for building trust and momentum on pressing issues. Some of this trust and momentum may have been eroded afterwards; numerous stakeholders cited the retrenchment of industry and civil society into conflicting positions and strategies over *Bill C-300*. Nonetheless, the appetite for further multi-stakeholder initiatives remains; however, there are many unanswered questions about where, who and how?

Given the lack of an on-going role for a formal Advisory Group to guide future government policy development (as recommended in the Roundtables recommendations), some of stakeholders pointed to a potential role for the Centre for Excellence given its multi-stakeholder Executive Committee. While most stakeholders are aware of the Centre for Excellence, there is some uncertainty about its long-term potential as an effective multi-stakeholder space for dialogue and learning, given some of its current limitations (e.g. financial resources and long-term funding; lack of more formal implication of government).



For those who have been implicated in the Centre for Excellence's work to date, there is an understanding that time was required for the Executive Committee to work through start-up issues, including defining the mandate and procedures for different Working Groups. Currently, there is a shared sense of urgency for the Centre to begin having more concrete outputs and visible initiatives; however, funding uncertainties are a significant constraint on long-term strategic planning.

The Centre for Excellence is in the last year of its initial funding from DFAIT (3 years @ \$50,000/year). According to a funding formula established by the Executive Committee, additional resources can be received from industry at a maximum of a 1:1 ratio to government contributions. In addition, the CIM provides significant in-kind contribution for the Centre's secretariat function. The members of the Executive Committee, including the observers from the Government of Canada, also provide in-kind contributions for their time.

In the short-term, the renewal of funding from the Government of Canada is a priority; and, a new funding proposal is being prepared. In the longer-term, there are concerns about the constraint on the Centre for Excellence's ability to leverage other source of funding given the 1:1 rule established by the Executive Committee. One potentially useful idea (that had been previously discussed by the Roundtables Advisory Group) would be to create an arms-length foundation, overseen by "persons of impeccable character," that would receive additional funds from various sources and insulate the Centre for Excellence from real or perceived influence from funders.

At present, government representatives from DFAIT, NRCan and CIDA are observers on the Executive Committee. Other members of the Executive Committee attested that the government observers had been active participants in discussions and actions to date; however, there was a note of caution that the government should perhaps have a more formal role in supporting and participating in the multi-stakeholder dialogue moving forward.

The Centre for Excellence was the subject of a fair amount of stakeholder feedback given the fact that it is part of the Government's CSR Strategy. A number of stakeholders underlined the fact that it was important to have numerous spaces for multi-stakeholder dialogue. In this regard, the Devonshire Initiative and the learning events organized by industry associations (MAC, PDAC and CIM), civil society and universities were mentioned as contributing to multi-stakeholder dialogue in Canada. The key issue seems to be about how to avoid duplication and fragmentation and to create connections and synergies between different spaces and fora. In this regard, it will be interesting to see the focus of the recently-announced Canadian International Institute for the Extractive Industries and Development, as how it will interact with other initiatives such as Devonshire Initiative and the Centre for Excellence.



iii. Theme Three: Need to Review the Mandate of the Office of the Extractive Industry CSR Counsellor

Virtually all stakeholders were aware of the Office of the Extractive Industry CSR Counsellor. Rarely, if at all, did any stakeholder express satisfaction with the mandate currently given to the Office when compared with the Advisory Group recommendation. However, respondents afterwards fell into two camps:

- the first camp stated that "let's give the Office a chance" (sometimes expressed in more personal terms about giving the CSR Counsellor a chance), "something is better than nothing," or "this was a small but useful first step;" and
- the second camp tended to see the Office as a "paper tiger," a "missed opportunity for something with teeth," or incongruous with principles of accountability and access to remedy.

In addition, important questions are asked from the perspective of affected communities overseas: how would they know about the Office? Why should they use this new mechanism rather than other established international accountability mechanisms?

Many stakeholders stated that the real test for the Office would be whether it could successfully facilitate and resolve a complaint from the beginning to end of the Review Process. However, only some stakeholders were aware that the Office had received its first two Requests for Review. Very recently, one of the Requests for Review had been closed, as the company implicated has withdrawn from the process as a result of labour unrest at the mine. The company, Excellon Resources, was very dissatisfied with the process, stating that the review had proceeded on erroneous information, had legitimized illegitimate actors and "cannot add any value to Excellon nor any other Canadian company which may be drawn into this process."⁶¹ On the other hand, civil society organizations and advocates for project-affected communities cite the company's withdrawal from the Review Process as proof that the CSR Counsellor is a "whitewash and a bogus PR job".⁶²

Most stakeholders were unaware of how the CSR Counsellor's mandate was established by Order-in-Council, and of the possibility that subsequent renewals / appointments of the CSR Counsellor could also change the mandate. A few stakeholders, however, noted that there is an opportunity for the mandate to develop incrementally, through revision of the terms of future Orders-in-Council, and for the Office to develop into something that satisfies some of the calls for greater accountability and access to remedy.

⁶¹ <http://www.marketwire.com/press-release/excellon-resources-expresses-disappointment-with-csr-counsellors-closing-report-issued-tsx-exn-1575473.htm>

⁶² <http://www.cbc.ca/news/business/story/2011/10/31/mining-watchdog-agency.html>



iv. Theme Four: Human rights are at the heart of the matter

Many stakeholders, and not only from civil society, see human rights as the key issue to be addressed going forward. Some noted how the policy debate was originally framed at the Standing Committee on Foreign Affairs and International Trade as human rights and mining, but this eventually became broadened (or "watered-down") to CSR and the extractive industry. Advisory Group members also noted that the discussions and recommendations around international standards related to human rights had been left open to take into account the work of John Ruggie, UN Special Representative on Business and Human Rights, which had begun at the time of the Roundtables, but had not been completed.

The Protect, Respect and Remedy Framework

The framework rests on differentiated but complementary responsibilities. It comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. Each principle is an essential component of the framework: the State duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business; and access to remedy, because even the most concerted efforts cannot prevent all abuse, while access to judicial redress is often problematic, and non-judicial means are limited in number, scope and effectiveness.

Key concepts for the corporate responsibility to respect human rights

- There are few internationally recognized rights that business cannot impact, or be perceived to impact, in some manner. Therefore, companies should consider all such rights.
- In addition to compliance with national laws, companies have a baseline responsibility to respect human rights. Failure to meet this responsibility can subject companies to the courts of public opinion (comprising employees, communities, consumers, civil society, as well as investors), and occasionally to charges in formal courts. Whereas governments define the scope of legal compliance, the broader scope of responsibility is defined by social expectations, as part of what is sometimes called a company's 'social licence to operate.'
- Corporate responsibility exists independently of States' duties. Because the responsibility to respect is a baseline expectation, a company cannot compensate for human rights harm by performing good deeds elsewhere. 'Doing no harm' is not merely a passive responsibility, but may entail positive steps.
- To discharge the responsibility requires ongoing due diligence about human rights. In this regard, companies should consider the following: (a) the country context in which business activities take place, to highlight any specific human rights challenges that might be posed; (b) what human rights impacts company activities may have within that context; and (c) whether companies might contribute to abuse indirectly through relationships connected to their activities.
- A basic, human rights due diligence process should include: (a) adopting a corporate human rights policy; (b) undertaking human rights impact assessments of existing and proposed activities; (c) integrating human rights policies throughout the company; and (d) tracking performance, including regular updates of human rights impact and performance.
- Corporate responsibility includes avoiding complicity, which refers to indirect involvement in human rights abuses where the actual harm is committed by another party, including governments and non-state actors. Ongoing due diligence can help a company avoid complicity.

Corporate responsibility includes access to remedies. This requires providing a means for those who believe they have been harmed to bring this to the attention of the company and seek remediation, without prejudice to the legal challenges available. Providing access to remedy does not presume that all allegations represent real abuse or bona fide complaints.



Given that the UN Human Rights Council has welcomed Professor Ruggie's *Protect, Respect and Remedy Framework* in 2008 and endorsed a subsequent set of *Guiding Principles on Business and Human Rights* in 2011, there is now a broad consensus about the respective responsibilities of States and businesses in relation to human rights and access to remedies. The Human Rights Council has recently established a 5-person Working Group on Business and Human Rights to carry forward the work of the United Nations with other stakeholders on operationalising the *UN Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights*.⁶³ At the time of writing, the Working Group was accepting input from stakeholders about priorities for its work programme.

Many different stakeholders underscored how the *UN Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights* are already being integrated into other key international standards that have been accepted as part of the Government's CSR Strategy, including the *OECD Guidelines for Multinational Enterprises*⁶⁴ and the *IFC Performance Standards*.⁶⁵ In addition, ISO 26000, *Guidance for Social Responsibility*, has integrated human rights as one of the seven core subjects of social responsibility.⁶⁶ Future initiatives by the European Union and ASEAN on business and human rights are also expected to converge with the work of Professor Ruggie.

Moreover, the *Protect Respect and Remedy Framework and Guiding Principles on Business and Human Rights* are being adopted and implemented by numerous governments, industry associations, companies and civil society organizations.⁶⁷ For the extractive industry, it is important to note that the International Council on Mining and Metals ("ICMM"), as well as the International Petroleum Industry Environmental Conservation Association ("IPIECA"), have followed the development of the Ruggie framework and guiding principles; and, have released guidance for their members on management and best practices to respect human rights.⁶⁸

⁶³ <http://www.business-humanrights.org/Documents/UNWorkingGrouponbusinesshumanrights>

⁶⁴ Revised OECD Guidelines, including provisions relating to human rights due diligence, were adopted by OECD Member States on May 25, 2011:

http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48029523_1_1_1_1,00.html

⁶⁵ Revised IFC Sustainability Framework and Performance Standards, including acknowledgement of business responsibility for human rights (and recommendation of human rights due diligence for high risk projects) were adopted by IFC's Board of Directors on May 12, 2011 and will come into effect on January 1, 2012. See the IFC fact sheet with information about the revised framework and standards:

[http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Updated_SustainabilityFramework_Fact-sheet/\\$FILE/Updated_SustainabilityFramework_Fact-sheet.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Updated_SustainabilityFramework_Fact-sheet/$FILE/Updated_SustainabilityFramework_Fact-sheet.pdf)

⁶⁶ http://www.iso.org/iso_catalogue/management_and_leadership_standards/social_responsibility/sr_discovering_iso26000.htm

⁶⁷ A UN Guiding Principles Portal has been launched that includes the text of the Guiding Principles; Commentaries; Implementation and Uses of the Guiding Principles; Events; History of the Guiding Principles; and Additional Materials: <http://www.business-humanrights.org/Documents/UNGuidingPrinciples>

⁶⁸ ICMM, *Human Rights in the Mining & Metals Industry: Overview, Management Approach and Issues* (2009): <http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues>; IPIECA, "Human rights and ethics in the oil and gas industry" (2008): http://www.ipieca.org/sites/default/files/publications/human_rights_ethics.pdf



ICMM Guidance on Human Rights and Related Topics

- *Voluntary Principles on Security and Human Rights Implementation Guidance Tool* (2011).⁶⁹ Particularly aimed at those operating in areas of geographical conflict and weak governance, the tool contains four practical modules on stakeholder engagement; risk assessment; public security providers; and, private security providers. These can be used either individually or together, offering useful guidance on many challenging business environments.
- *Human Rights in the Mining and Metals Industry: Overview, Management Approach and Issues* (2009).⁷⁰ One of the principles adopted by ICMM's Council of CEO's in 2003 was that its members should "uphold fundamental human rights and respect customs, cultures and values". In this publication, ICMM seeks to advance industry good practice on human rights and review management approaches that member companies have applied to dealing with human rights challenges, including with respect to employment, security, resettlement, indigenous peoples, conflict, artisanal and small-scale mining, and anti-corruption and transparency.
- *Human Rights in the Mining and Metals Industry: Handling and Resolving Local Level Concerns and Grievances* (2009).⁷¹ The purpose of this guidance is to help companies both design complaints procedures or mechanisms and/or enhance existing procedures as needed. It has been developed based on a review of external literature, discussions with and guidance from ICMM members and interviews with some external stakeholders. A short core text is supplemented with a handful of relevant case studies, both from ICMM's membership and beyond.
- *Good Practice Guide: Indigenous Peoples and Mining* (2010).⁷² This Guide aims to assist help companies achieve constructive relationships with Indigenous Peoples. It is also intended to help companies comply with their commitment to Indigenous Peoples as stated in ICMM's position statement. The Guide highlights good practice principles, discusses the challenges in applying these principles at the operational level and provides real-world examples of how mining projects have addressed these challenges. It also explores the cost of getting it wrong.

⁶⁹ <http://www.icmm.com/library/voluntary-principles-on-security-and-human-rights>. The Voluntary Principle Implementation Guidance Tool was co-financed and developed by ICMM, the International Finance Corporation (IFC), the global oil and gas industry association for environmental and social issues (IPIECA) and the International Committee of the Red Cross (ICRC).

⁷⁰ <http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues>

⁷¹ <http://www.icmm.com/page/15816/human-rights-in-the-mining-metals-sector-handling-and-resolving-local-level-concerns-grievances>

⁷² <http://www.icmm.com/library/indigenouspeoplesguide>. ICMM also produces a "Mining and Indigenous Peoples Review;" and, has a publication on "Agreements between Mining Companies and Indigenous Peoples."



- *Partnership for Development Toolkit*.⁷³ The toolkit responds to a need in different parts of the world for a more systematic and objective way to quantify and agree to ways to enhance mining's economic and social contribution. It is currently being applied in a number of countries and can be used by mine managers and those interested in promoting economic and social development (host governments, development agencies and development-focused NGOs).
- *Working Together: How large-scale mining can engage with artisanal and small-scale miners* (2010).⁷⁴ This resource provides a mapping of key issues, as well as a series of diagnostics, approaches and tools, for engagement with ASMs.

For the participants in the research on the Roundtables recommendations who discussed human rights, the question is no longer if--but rather how--to implement the due diligence responsibilities for companies? The work of Professor Ruggie has created a broad consensus about the core elements of business responsibilities for human rights, but "operationalization" for specific industries presents some of the following challenges:

- Articulating the linkages between human rights and sustainable development. Many governments, companies and industry associations have developed their corporate social responsibility policies and practices within the conceptual framework of sustainable development with a focus on maximizing economic, environmental and social benefits. Human rights are clearly a related and relevant topic, but the theoretical and operational linkages to sustainable development still need to be explored and clarified.
- Similarly, integrating human rights into established guidelines and processes for environmental and social risk assessment and management is an area for future reflection and development of good practices. Given that human rights impact assessments are part of a due diligence for human rights, there is a case to be made for proactively integrating human rights into ESIA processes that may be required by regulators and lending agencies. In other instances, stand-alone HRIAs may also be an important stand-alone tool for companies, investors or communities. The guidelines for the revised IFC Performance Standards suggest that human rights impact assessments should be used for high-risk projects.
- Many stakeholders expressed concern about an incoherent proliferation of guidance and initiatives on human rights due diligence. With respect to sector-specific guidance, a number of Canadian and international stakeholders felt that MAC and its members could collaborate with and apply ICMM's guidance on human rights and related issues (for instance if and when considering adding a human rights component to the *Towards Sustainable Mining* framework). It was repeatedly mentioned that the biggest gaps relate to guidance for small and medium enterprises (SMEs); and, that Canada's extractive industry should concentrate on developing guidance for junior

⁷³ <http://www.icmm.com/mpdtoolkit>

⁷⁴ <http://www.icmm.com/page/17638/new-publication-on-engaging-with-artisanal-and-small-scale-miners>



companies and best practices for the exploration and development stages. Some suggested that MAC consider potential partnerships and activities with the junior/exploration sector to develop guidance and practices that could address the current performance gaps and enhance due diligence throughout a project's life cycle.

- A final preoccupation expressed by several stakeholders was to ensure that a focus on the corporate responsibility to respect human rights and due diligence does not deflect attention from the ongoing obligations of States to protect human rights and provide access to remedies. The *Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights* outline the obligations of Home States, Host States, Multilateral Agencies and Export Credit Agencies. While progress needs to be made on the corporate side, governments also need to strengthen their legal, regulatory and policy frameworks relating to business and human rights. Each pillar of the Protect, Respect and Remedy Framework is meant to be complementary; therefore, all require and progress if the desired results are to be achieved.

v. Theme Five: Anti-corruption is identified and discussed more frequently

The threat of successful criminal prosecution is a powerful motivator: media attention around recent anti-corruption prosecutions under the *Corruption of Foreign Public Official Act* ("CFPAO") in Canada--such as the \$9.5 million fine to Niko Resources discussed above--and other high-profile international cases is driving many companies (and their legal advisors) to scramble for further information about compliance with anti-corruption laws.

International Corruption Case File⁷⁵

Arms for Africa

It all seemed so believable. Two African political aides kept popping up on American soil, offering up fat contracts to U.S. weapons manufacturers like Smith & Wesson. All they had to do was pay a little graft to secure the deal. But in January, 2010, when police spread out across the Shooting, Hunting, Outdoor Trade Show in Las Vegas and arrested nearly two dozen executives and salesmen, the "African aides" were revealed for undercover FBI agents.

BAE and the Saudis

A round-the-world yacht tour, a cargo jet rental to bring back the purchases from a Los Angeles shopping spree—these were some of the gifts enjoyed by the Saudi royal family that were paid for by BAE Systems, the world's third-largest arms manufacturer. Under Saudi pressure, Prime Minister Tony Blair urged British prosecutors to stand down. In 2010, BAE pleaded guilty in the U.S. to false accounting and making misleading statements in relation to allegations of corruption. It paid a fine of about \$400 million (U.S.).

Making the oil flow

Albert (Jack) Stanley, the former chairman of Kellogg Brown & Root, one of the top contractors to the U.S. government, pleaded guilty in 2008 to approving the bribery of Nigerian officials in return for a lucrative contract for installing a natural gas rig. Sentencing guidelines suggest he will be sent to prison for more than six years, but the decision has been postponed more than 10 times.

Pay to build

Bribery became part of the business model for German engineering giant Siemens. From 2001 to 2007, the company distributed about \$1.4 billion in graft to public officials around the world—in poor countries such as Bangladesh and Vietnam, but also in developed nations like Italy and Argentina. In 2008, the company paid record-setting fines totalling \$1.6 billion (U.S.) to the German and U.S. governments.

⁷⁵ From Greg McArthur, "Niko Resources: Ottawa's corruption test case," Report on Business Magazine, August 25, 2011: <http://www.theglobeandmail.com/report-on-business/rob-magazine/niko-resources-ottawas-corruption-test-case/article2140358/>



We are still in early days of the coordinated international push for greater enforcement of anti-corruption laws through the OECD, the United Nations and various regional multilateral institutions. There was agreement between stakeholders that education and dialogue on this issue is important, since there is a huge lack of awareness and many misconceptions about what anti-corruption laws mean; and, there are opportunities for multi-stakeholder initiatives in this emerging field. In particular, the RCMP is looking to reach out to industry associations and civil society organizations to further its education and outreach objectives.

Moving forward, some stakeholders wanted discussion and guidance related to different country contexts, where corruption and bribery may be commonplace. Key questions include: When are entrenched cultural, political and business practices no longer acceptable? What do you do when companies from other countries do not play by the same anti-corruption rules?

The discussion of Canada's anti-corruption efforts with stakeholders often led to a broader conversation about extraterritoriality. While coming from different perspectives about whether or not greater extraterritorial enforcement of domestic laws is desirable, there was agreement that this area will develop more quickly in the next years, as countries like the United States and the United Kingdom pass laws with greater extraterritorial reach, and as courts take an increasingly restrictive view of *forum non conveniens*.⁷⁶

Association canadienne contre l'impunité c. Anvil Mining⁷⁷

On April 27, 2011, the Quebec Superior Court rejected an effort by Anvil to dismiss a civil suit brought against the company relating to killings by Congolese soldiers in 2004. At issue (in part) was whether the Quebec court should decline jurisdiction to hear the case on the basis of *forum non conveniens*. The latter, a common law doctrine incorporated into the Quebec civil code, permits a court to decline to hear a case better adjudicated in another jurisdiction. It has been the stumbling point for at least some lawsuits brought against Canadian multinational companies concerning their overseas operations. In the Anvil case, however, the court held that the test was whether the company had shown that a foreign jurisdiction was clearly the more appropriate venue to hear the case. Anvil was unable to do so, and the court therefore dismissed Anvil's dismissal request. The matter is now on appeal.

While coming from different perspectives, all stakeholders agree that CSR efforts must have impact on the ground, whether that be in terms of capacity of Host Governments to develop and enforce domestic laws or regulations; the empowerment of communities to negotiate with companies and hold them to account for negative impacts; or for companies to have tools to exercise (and demonstrate) due diligence and to maximize the positive impacts of resource development.

In this regard, there is a certain fatigue for divisive policy and legislative debates and a desire to move forward on practical and operational solutions that can be applied

⁷⁶ *Forum non conveniens* is legal doctrine whereby courts may refuse to take jurisdiction over matters where there is a more appropriate forum available to the parties.

⁷⁷ Craig Forcece, "Extraterritorial Liability and MNCs: Forum Non Conveniens and Quebec:" <http://craigforcece.squarespace.com/public-international-law-blog/2011/8/4/extraterritorial-liability-and-mncs-forum-non-conveniens-in.html>



overseas. Industry representatives, in particular, were oriented towards on-the-ground efforts that could be undertaken in partnership with government and civil society organizations.

vi. Theme Six: Canadian AND international standards

The initial Roundtables recommendations were framed in terms of developing a set of unique "Canadian standards" that may have been perceived, at the time, to exceed international standards. However, with the *UN Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights*, as well as the revision of the *OECD Guidelines on Multilateral Enterprises*, *IFC Performance Standards*, *Equator Principles*, *ISO 26000*, etc., there is a sense that international standards have evolved to address many of the Roundtables issues and recommendations.

Furthermore, from stakeholders both within and outside of Canada, there is a fear of proliferating incoherent sets of standards and guidance. Therefore, the idea that we need to develop a distinct set of Canadian standards is much less of a priority at present than it was at the time of the Roundtables.

Yet, there is still a desire from many stakeholders for Canadian engagement in the further development of international standards and good practice for the extractive industry. A potential synthesis is for Canadian leadership on some aspects of international standards where there are gaps that Canada has the expertise and niche to address (e.g. what better country to assume leadership on standards and guidance for the junior/exploration side of the extractive industry?)

A few stakeholders underscored that Canadian leadership on standards and good practices should "start at home;" in other words, we need to demonstrate how various factors (governance and regulatory capacity; dialogue between companies and NGOs; skills and technical capacity, etc.) come together to create the conditions for responsible mining and sustainable development in Canada. This provides a stronger platform for advocating and building capacity for CSR in developing countries. In this regard, MAC's Towards Sustainable Mining framework was mentioned as having an important role to play in demonstrating standards and good practices in Canada; and, which could eventually be extended internationally.

vii. Theme Seven: Government has a necessary role to move forward

Whatever the stakeholder perspectives about specific aspects of the implementation of the Roundtables recommendations, there is convergence about the fact that Government needs to be involved in initiatives to move CSR forward. Conversely, there is a legitimate concern about the Government off-loading some of its responsibilities and functions onto industry.



In the current political and budgetary context in Canada, it may be important for stakeholders outside of government to act as catalysts for new initiatives. At the same time, stakeholders underlined the importance of continued efforts to bring government to multi-stakeholder discussions and to make the case for strategic government investments in the international performance and reputation of this very significant industry sector. In this regard, concerns were also expressed about continued funding and sustainability for the Government's CSR Strategy and its different pillars.

As discussed above, the *UN Protect, Respect and Remedy Framework and Guiding Principles on Business and Human Rights* is cited by stakeholders as reinforcing and reminding governments around the world of their responsibilities in terms of law, policy and access to remedies for business and human rights.

Issues of Concern and Potential Divergence

viii. Public-Private Partnerships for Development

The recent announcement of public-private partnerships that were funded by CIDA elicited some very strong responses from a wide range of stakeholders. There was a surprising non-consensus about this approach. There were important principles and points asserted on both sides of the debate:

- On the one hand, there were broad concerns about using public money to fund the CSR initiatives of profitable corporations, as well as more detailed concerns about how government could choose to support one company over another company (creating have and have-nots); potentially creating further political influence for companies in developing countries; and, potentially undermining the resources and motivation of government to pursue sector-wide approaches to CSR.
- On the other hand, there were points made that companies wanted to contribute to social development goals in communities, but were not always the best channels to deliver long-term social programs; and, therefore it was more appropriate to partner with NGOs and governments to reinforce governance capacity and contribute to positive outcomes in communities.

Given the importance of both foreign direct investment and overseas development assistance to creating economic growth (that, in turn, translates into sustainable development outcomes), the merits and limits of private-partnerships for development is certainly an area where further dialogue is needed to build a common path forward.

ix. Disclosure of information about environmental, social and governance issues.

There were marked differences between different stakeholder groups on current disclosure requirements in Canada. For the proponents of greater disclosure, this is also an area of frustration because very little has been done to implement the Roundtables



recommendations dealing with disclosure with respect to disclosure requirements for the Canada Pension Plan; definitions of materiality used by provincial securities commissions; support for greater use of the *Global Reporting Initiative* ("GRI") framework.

Given the emerging international practices (particularly in Europe), as well as the existing disclosure practices of many Canada extractive industry companies that are operating abroad, stakeholders found it sometimes difficult to understand the barriers for further action in this area. The fact that issues related to market disclosure often come under the jurisdiction of provincial securities commissions is seen as a convenient excuse for doing nothing. Further dialogue and discussion is needed to clarify what are the legitimate barriers to enhanced disclosure for the extractive industry, particularly given the international attention to this issue prompted by that forthcoming U.S. Security and Exchange Commission ("SEC") rules to implement the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank Act").⁷⁸

Dodd-Frank Act provisions on Disclosure for Extractive Industry⁷⁹

The Dodd-Frank Act is a wide-ranging and comprehensive series of legislative and regulatory measure passed by the U.S. Congress in response to the financial crisis of 2007. In the "Other Measures" section of the Dodd-Frank Act, there are a number of provisions that affect the extractive industry. In particular, the Dodd-Frank Act requires the SEC to implement new rules relating to: disclosure requirements for the extractive industry related to payments to foreign governments; disclosure provisions for mine safety (for U.S. coal mines); and disclosure due diligence requirements related to conflict minerals in the Congo (and adjoining countries). The SEC is currently conducting public consultations on its proposed rules to implement the Dodd-Frank Act; and, it is expected that they will come into force towards the end of 2011.

Disclosure requirements for extractive industry

The SEC must require those engaged in the commercial development of oil, natural gas, or minerals to include information about payments they or their subsidiaries, partners or affiliates have made to the U.S. or a foreign government for such development in an annual report and post this information online. These provisions significantly strengthen the implementation of the Extractive Industries Transparency Initiative in the U.S.

Mine safety disclosure

Companies that operate or control coal mines are required to make certain disclosures relating to mine safety violations, citations, patterns of violations, and mine shutdowns in any federal securities law periodic report that is filed on or after the date of the Dodd-Frank Act's enactment.

Congo Conflict Minerals

These provisions require those who file with the SEC and use "conflict minerals"¹ originating in the Democratic Republic of Congo (and adjoining countries)¹ in manufacturing to disclose measures taken to exercise due diligence on the source and chain of custody of the materials and the products manufactured.

Illicit Minerals Trade Strategy

The Dodd-Frank Act also requires the U.S. State Department to submit a strategy to address the illicit minerals trade in the region and a map to address links between conflict minerals and armed groups and establish a baseline against which to judge effectiveness.

⁷⁸ http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf

⁷⁹ The Dodd Frank Act contains measures related to: (1) a framework for financial stability; (2) an orderly liquidation regime; (3) changes to bank regulatory structure; (4) increasing consumer protection; (5) derivatives regulation; (6) capital markets and investor protection; (7) registration of advisors; (8) insurance oversight and regulatory reform; (9) federal reserve system changes; and (10) other provisions. See: http://banking.senate.gov/public/_files/070110_Dodd_Frank_Wall_Street_Reform_comprehensive_summary_Final.pdf



The *Dodd-Frank Act* will have direct implications for Canadian extractive companies if they (or their affiliates, subsidiaries, etc.) are listed on U.S. securities exchanges.

Over time, the *Dodd-Frank Act* provisions related to payments to foreign officials, mine health and safety and due diligence for conflict minerals in Congo will likely influence definitions of materiality for other securities exchanges, as well as the requirements and expectations for disclosure for all extractive industry companies.

In terms of forthcoming issues for the extractive industry, the *Dodd-Frank Act* can also be interpreted as bringing a new focus on the following issues:

- Supply-chain issues for mining industry (e.g. links to electronics industry to ensure mineral supply is "conflict free")
- *Voluntary Principles on Security and Human Rights* given the need for due diligence about conflict minerals.
- Women's rights issues given the prevalence of sexual and gender-based violence in the Democratic Republic of Congo ("DRC").
- The Great Lakes region of Africa, given that the *Dodd-Frank Act* also extends to the 9 adjoining countries that share an internationally recognized border with the DRC.



PART E: CONCLUSIONS AND OPPORTUNITIES FOR FUTURE ENGAGEMENT

In conclusion, the Mining Association of Canada's initiative related to the Roundtables recommendations was appreciated by all stakeholder groups. Although some fatigue and sore points exist after the polarized debate around *Bill C-300*, all stakeholder groups agree that there is a need for renewed multi-stakeholder dialogue on issues related to CSR and the extractive sector--and, that the Roundtables were an appropriate starting point to frame that dialogue.

Moreover, the value of compiling current information about the government's and other stakeholders' actions to implement the Roundtables recommendations was frequently underlined by participants in the research. As it is a challenge to communicate all the actions that various stakeholders have undertaken to date, the MAC research can establish a factual foundation for future multi-stakeholder discussions.

As this report demonstrates, the Canadian government, industry, civil society and academic institutions all have undertaken new actions and initiatives since the Roundtables; however, there have been challenges in communicating these actions and a lack of unifying forces to make them add up to something greater than the sum of their parts. Future multi-stakeholder dialogue should address these "missing links" and strive to make the important efforts of many actors more convergent and coherent--and, also, to communicate that fact.

From the beginning, the Roundtables can be understood as an attempt to improve the credibility and reputation of the Canadian extractive industry overseas through leadership on standards and best practices and mechanisms for greater accountability for "laggards." Because of the delays in developing the government's CSR strategy, as well as the retrenchment of stakeholders into polarized positions over *Bill C-300*, the forward momentum of the Roundtables has been lost. Now, leadership and momentum on CSR issues is often happening at the international level and not in Canada. This is unfortunate for the leading Canadian companies that have adopted strong CSR policies and are implementing responsible and sustainable practices in their global operations, as the Canadian extractive industry continues to struggle against negative public perceptions.

The Mining Association of Canada has an important role in advancing future multi-stakeholder dialogue on issues related to CSR and the extractive industry; and, the current research and report can be used as a tool to communicate a willingness to discuss and address the issues related to the Roundtables recommendations on the basis of fact and with an understanding of current priorities and emerging issues.



The following are some of the opportunities identified for potential engagement on issues or institutions related to the Roundtables Recommendations.

Opportunity	Institution	Issue
Input into work programme of Working Group on Business and Human Rights (deadline is December 8, 2011)	UN Human Rights Council, Working Group on Business and Human Rights	Defining priorities for further guidance and tools related to the <i>Protect, Respect and Remedy Framework and Guiding Principles</i>
Review of OECD Common Approaches (current - 2012)	Export Development Canada	Opportunity to update the review and disclosure standards for export credit agencies on environmental and social issues
End of Canada's initial funding to <i>Extractive Industry Transparency Initiative</i> (2011)	NRCan (and CIDA)	Opportunity to confirm Canadian participation in and support for the implementation of EITI
End of CSR Counsellor's initial mandate (October 2012)	Office of CSR Counsellor; Minister of International Trade and Privy Council Office	Opportunity to review terms of the Order-in-Council that sets the Counsellors mandate and limitations
End of initial funding for Centre for Excellence in CSR (2012)	DFAIT, CIM and members of Centre's Executive Committee	Opportunity to address long-term strategy, funding and outputs of the Centre for Excellence
UN peer review of Canada's anti-corruption efforts (2012)	United Nations Anti-Corruption Working Group	Opportunity to evaluate Canada's efforts to enforce international anti-corruption standards
Review of <i>EDC Environmental and Social Risk Management Policy</i> (by November 1, 2013)	Export Development Canada	Opportunity to review the standards and procedures used by EDC to assess and manage environmental, social and human rights risks and impacts
5-Year Review of CSR Strategy (2014)	Government of Canada	Opportunity to review implementation of Government's CSR strategy: the progress on the 4 main pillars vs. initial Roundtables recommendations and emerging international standards

