

*research for a fairer world*

# Tipping the Power Balance

*Making*

## Free, Prior and Informed Consent

*Work*

Lessons and policy directions  
from 10 years of action research  
on extractives with Indigenous  
and Afro-descendant Peoples  
in the Americas

By Viviane Weitzner

March 2011



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This document represents the final synthesis report of The North-South Institute research program: "Indigenous Perspectives on Consultation and Decision-Making about Mining and other Natural Resource Activities on or near Ancestral Lands in Latin America, the Caribbean and Canada, Phase II—Toward Community Strengthening, Dialogue and Policy Change."

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- The Amerindian Peoples Association (Guyana);
- The Association of Indigenous Village Leaders in Suriname (Suriname);
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- The Forest Peoples Programme (UK);
- Lutsel K'e Dene First Nation (Canada);
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*Tipping the Power Balance — Making Free, Prior and Informed Consent Work: Lessons & policy directions from 10 years of action research on extractives with Indigenous and Afro-descendent Peoples in the Americas*

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The North-South Institute  
55 Murray Street, Suite 500

Ottawa, Ontario

Canada

K1N 5M3

Tel.: (613) 241-3535

Fax.: (613) 241-7435

E-mail: [nsi@nsi-ins.ca](mailto:nsi@nsi-ins.ca), [vweitzner@nsi-ins.ca](mailto:vweitzner@nsi-ins.ca), [vweitzner@gmail.com](mailto:vweitzner@gmail.com)

Web: [www.nsi-ins.ca](http://www.nsi-ins.ca)

***This report and the over 10 years of participatory action research on which it is based, is dedicated to all the Elders in the participating communities and beyond who have worked tirelessly to share their knowledge, defend their culture and lead their people forward in wisdom in the face of increased interests and pressures by extractive and other companies coveting the riches contained in their ancestral territories...***

***and to the next generations following in the footsteps of their Elders, who will lead the way towards self-determined development of their people in the future.***

Photos: Viviane Weitzner



*Son of Ricardo MacIntosh, Chief of Washabo village. The new president of Suriname, a country which has no domestic Indigenous rights legislation whatsoever, has recently attempted to impose one hand-selected chief on all three of NSI's partner villages, in an apparent effort to undermine traditional authority and opposition.*



*In memoriam: Victoria Ballesteros, an advisory committee member for phase I of the project in Colombia, died in 2011. Some say she died of sadness after her people were forcefully removed from Wayuu territory to make way for coal mining and amidst armed conflict.*

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## Acronyms used in this document

APA	Amerindian Peoples Association
CBD	Convention on Biological Diversity
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CERD	UN Committee on the Elimination of Racial Discrimination
CIDA	Canadian International Development Agency
CSR	corporate social responsibility
DfID	UK Department for International Development
EC	European Commission
EIR	Extractive Industries Review
EPA	Environmental Protection Agency
ESIA	environmental and social impact assessment
FPIC	free, prior and informed consent
FPP	Forest Peoples Programme
GENCAPD	Guyana Environmental Capacity Development Project
GGMC	Guyana Geology and Mines Commission
GoG	Government of Guyana
HRIA	human rights impact assessment
IACHR	Inter-American Court of Human Rights
IBA	Impact Benefit Agreement
ICMM	International Council on Mining and Metals
IDRC	International Development Research Centre
IFC	International Finance Corporation
IFNA	Independent First Nations Alliance
IIRSA	Regional Infrastructure Integration in South America/ Integración de la Infraestructura Regional en Sur América
ILO	International Labour Organization
INER	Instituto de Estudios Regionales, Universidad de Antioquia/ Institute of Regional Studies, University of Antioquia
LCDS	Low Carbon Development Strategy
NGO	non-governmental organization
Norad	Norwegian Agency for Development Cooperation
NSI	The North-South Institute
NTC	National Toshao Council
OECD	Organisation for Economic Co-operation and Development
PDAC	Prospectors and Developers Association of Canada
REDD+	Reducing Emissions from Deforestation and Forest Degradation Plus
RICL	Resguardo Indígena Cañamomo Lomaprieta/ Cañamomo Lomaprieta Indigenous Reserve
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
VIDS	Vereniging van Inheemse Dorpschoofden in Suriname/ Association of Indigenous Village Leaders in Suriname

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# ***Executive Summary***

*Photo: Karyn Keenan, Halifax Initiative*



*Traditional Andean dress in Peru. The country has witnessed unprecedented growth in its extractive sector in the last two decades. Along with this growth has come an escalation of social and environmental conflicts.*

This report synthesizes over 10 years of collaborative research with Indigenous and Tribal organizations in Guyana, Suriname, Colombia, Peru and Canada, and their supporters, on issues at the crossroads of extractive activities and Indigenous and Tribal rights.

The North-South Institute's program on "Indigenous Perspectives on Consultation and Decision-Making about Mining and other Natural Resources in the Americas," grew from the recognition that despite increasing conflicts around extractive activities on or near ancestral lands in the Americas — and awareness of the need for more inclusive decision-making — very little research had been undertaken highlighting the perspectives of Indigenous and Tribal Peoples themselves.

We focused on Latin America and the Caribbean because this region has both unprecedented levels of investment by the extractive industry, and a growing number of reported conflicts. We included Canada because Canadian and foreign companies are increasingly interested in the riches under Canadian Indigenous territories, and valuable lessons need to be shared. Also, many extractive companies active in Latin America and the Caribbean are Canadian. In 2009, Canada's largest companies accounted for 32% of all exploration in the region and the largest share (32%) of reported mining-related conflicts.

We established national Indigenous advisory committees to select sites and shape the research process and outcomes. Research in Phase I (2000-2002) focused on what Indigenous Peoples thought of their experiences with government- and industry-initiated consultation and decision-making. This phase identified critical elements for strengthening these processes. In Phase II (2004-present), we examined

how best to support communities dealing with the extractive sector, with an emphasis on enabling free, prior and informed consent processes for proposed projects affecting their lands.

Several key questions guided our “Indigenous Perspectives” research program:

- What are the key extractives issues affecting Indigenous communities, from their perspectives?
- What is the right way for outsiders with interests in Indigenous lands to approach these communities?
- What conditions need to be in place to enable equitable decision-making that upholds the right to self-determination?

Besides obtaining practical advice to inform policy-making and practice, the research was designed to shed light on and inform the literature on public participation, conflict management, social learning, gender analysis, corporate social responsibility (CSR), impact assessment and Indigenous rights.

## Synthesis of crosscutting recommendations

Several crosscutting recommendations emerge from our decade-long program. If implemented, these recommendations will go a long way towards transforming relations, tipping the power balance to level the playing field, and making free, prior and informed consent work.

### ***1. Recognize that Indigenous Peoples have a right to free, prior and informed consent***

Governments and companies must recognize that Indigenous Peoples are not simply another stakeholder group to be consulted regarding projects affecting their territories. They have a right to free, prior and informed consent. Their self-determination, autonomy, cultural identity and responsibilities to future generations are inextricably linked to this right.

### ***2. Strengthen host country governance***

Host governments should:

- Develop effective, fair and transparent mechanisms for clarifying territorial rights and resolving land claims issues, following the processes outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and international jurisprudence. These mechanisms must involve Indigenous representatives and experts chosen by communities;
- Review current legislative frameworks, or develop these where they do not exist, to align with the UNDRIP and international jurisprudence. Clear provisions should be made for obtaining free, prior and informed consent in all projects and plans affecting ancestral territories. Regulations to make this happen should be produced by working groups composed of Indigenous leaders, their appointed experts, governments and donor agencies;
- Review environmental and social impact (ESIA) procedures so that they incorporate due diligence on human rights, provide for meaningful participation by affected communities, and incorporate Indigenous knowledge, following the Akwé: Kon Guidelines for assessment, which were developed in 2004 by parties to the Convention on Biological Diversity;

- Strengthen domestic laws and the judiciary to enable Indigenous Peoples to seek appropriate remedies for complaints within their countries;
- Raise awareness and build the capacities of the public service regarding Indigenous rights, international standards and leading-edge practice in impact assessment and negotiations;
- Build systems and capacities for assessing, monitoring and enforcing laws on human rights and the environment.

### ***3. Strengthen home government accountability and target development assistance***

Home governments should:

- Ensure that in supporting the growth of their companies abroad they are not undermining human rights in the host country. This means undertaking rigorous due diligence to understand the social, environmental and human rights impacts of proposed projects and plans prior to investing public funds in any projects, plans or legislative or administrative reforms. It also means ensuring that appropriate consultation and consent processes are implemented. Careful attention needs to be paid in situations of armed conflict, with due consideration for developing criteria for safeguarding rights and consent processes jointly with civil society and affected communities, and for defining areas where investment should not take place. Our ongoing Colombia project will yield important guidance in this regard;
- Establish an effective mechanism whereby Indigenous communities can hold companies to account for their actions in the host country. For Canada, this means reconsidering legislation to prevent Canadian companies from having adverse impacts on the rights of Indigenous Peoples outside Canada, and establishing an independent ombudsperson with the power to undertake investigations and withdraw public support from companies that have violated Canada's CSR framework. This follows one of the key recommendations of the March 2007 advisory group report of the national roundtables on CSR, and meets the UN Committee on the Elimination of Racial Discrimination's (CERD) 2007 concluding observations for Canada;
- Target development assistance to move beyond the current focus on supporting voluntary CSR initiatives and project-level interventions in the extractive sector, to focus instead on strengthening host governments' social responsibility and accountability mechanisms and strengthening civil society and grassroots organizations. Development assistance should be targeted to strengthening host governments' environmental and human rights protections alongside efforts to maximize economic benefits from extractives; and strengthening communities and their representative organizations through support programs developed independently of companies, with technical support from outside experts and institutions freely chosen by communities and their representative organizations.

### ***4. Improve corporate practice***

Companies should:

- Adopt strong policies governing their relations with Indigenous Peoples — policies that recognize companies' obligation to implement free, prior and informed consent;
- Use the rich guidance available on implementing FPIC. This includes the Akwé: Kon Guidelines; the ongoing work of the UN Permanent Forum on Indigenous Issues as it develops its standard-setting exercise on FPIC; the guidelines on operationalizing consent developed under the World

Commission on Dams and the Extractive Industries Review; and the ever-growing case study literature;

- Where Indigenous and Tribal Peoples do not have recognized land rights, respect these rights as if they were recognized. Use company influence to help further Indigenous rights issues with the host country government;
- Refrain from undertaking any activities, even flyovers, without first obtaining the consent of the communities;
- Refrain from initiating environmental and social impact activities or consultations, until a community has a consent process in place. Provide time and, when asked, support for the development of this process;
- Respect the traditional authorities in Indigenous communities rather than working only with imposed or self-appointed leaders, and ensure that all members of the communities — particularly women, youth and Elders — are integral participants in the process. Negotiate with the appropriate community authorities and their representative institutions, per community guidelines;
- Ensure that communities have timely access to all relevant information about any proposal affecting Indigenous territories. Information must be in formats that are culturally appropriate, available in local Indigenous languages and easy to understand. The appropriate formats and means for sharing information at the community level should be agreed upon in advance;
- Where communities are remote and lack communications infrastructure, consider installing telephone and Internet connections. Donors, governments and project proponents should also consider funding such communication networks;
- Independently assess and verify processes for free, prior and informed consent, using experts chosen in consultation with affected communities.

## ***5. Strengthen Indigenous Peoples governance***

Indigenous Peoples should:

- Establish their own development or life plan in order to judge whether a proposed project fits with the community's aspirations;
- As part of this plan, research and document socio-economic, cultural, spiritual and environmental baseline conditions, and establish a land-use plan;
- Develop protocols for free, prior and informed consent to guide decision-making and develop strategies for maintaining community unity;
- Build alliances with communities affected by mining and with supportive national and international organizations;
- Use these alliances to share knowledge on negotiating strategies, best practice in impact assessments and Indigenous rights under international law;
- Obtain information about project proponents and the impacts of proposed activities;
- Seek independent funding and identify independent experts and legal counsel;

- Consider strategies to influence outcomes, including use of the media and of national and international courts, appealing to international commissions, and calling on eminent people including UN Special Rapporteurs to visit and investigate; and for long-term influence, consider having Indigenous representatives enter mainstream government.

International donors should:

- Fund and support representative Indigenous organizations so that they can effectively represent the communities in dealings with governments, corporations and other actors;
- Ensure initiatives to strengthen Indigenous capacities, policies and decision-making processes are independent of companies, and not only in areas where projects are imminent;
- Allow communities to choose the resource people and organizations that will support them.



*Photo: Viviane Weitzner*

*Lokono women examine a community map they helped to create in West Suriname. Mapping is an important tool for Indigenous Peoples to show the traditional boundaries and uses of their territories.*

## **6. Fully integrate human rights considerations in conditioning support from international financial institutions**

The International Finance Corporation (and other lending institutions and credit agencies) should:

- Fully integrate human rights considerations in its Sustainability Framework and Performance Standards, including the requirement of human rights due diligence, and particularly as a necessary condition for implementing the newly-embraced special requirement of free, prior and informed consent;
- Refer to UNDRIP, standard-setting exercises, community consultation and consent protocols and international jurisprudence in defining the scope and content of free, prior and informed consent processes, and ensure that free, prior and informed consent applies to all projects with potential impacts on Indigenous lands (whether officially recognized or not);
- Implement independent verification of consent processes, with experts chosen in collaboration with the affected communities.

## **7. Consider development alternatives to extractives, and align any extraction that does take place with sustainable development principles**

Host governments should:

- In assessing extractive projects, consider other potential development options for the particular site or region — options that might lead to longer-term sustainable development outcomes;
- Support the development of economic alternatives to small-scale mining, and provide access to credit schemes;
- Develop cheaper technology and effective training for miners to reduce the environmental damage from mercury and cyanide use, and programs to reduce the social impacts of small- and medium-scale mining;
- Support and protect ancestral mining, including implementing certification schemes such as those developed by the Alliance for Responsible Mining, and helping ancestral miners gain better access to markets.

Indigenous Peoples should:

- Continue to strengthen their own regulations and management planning around ancestral mining, and consider certification schemes;
- Experiment with alternative economic activities to small-scale mining, with support from international donors and host governments.

## **Conclusion**

Our decade-long research program underscores the fact that free, prior and informed consent is more than a right; it is also a critical tool that can help reduce power asymmetries, mitigate conflicts, generate better decision-making and potentially reduce the economic, environmental, social and reputational costs that have accompanied irresponsible extraction activities. The stakes will rise as mineral, oil and gas resources increasingly come to be regarded as strategic assets; as the blurry relationship between state and corporate interest becomes ever-more important; and as conflict and state fragility become political preoccupations.

Our work continues. Our project in Colombia examines free, prior and informed consent in the context of armed conflict and is geared to provide much-needed practical guidance. We will also examine further lessons from Canadian experiences. As well, we will explore whether free, prior and informed consent processes lend themselves to certification or some other type of standardized, participatory, third-party monitoring — an issue of great currency and debate within the world's largest development and financial institutions. And we are actively considering undertaking similar research in Sub-Saharan Africa, a region that is plagued by poverty and is also increasingly in the eyes of extractive companies, particularly those from Canada.

Business cannot continue as usual. If the rights of Indigenous Peoples are ignored, conflicts will increase, the industry's global image will be tarnished, and widespread opposition will be generated — all of which also affects industry's bottom line. Implementing free, prior and informed consent is the right thing to do. It also makes business sense.

# **Section 1: Introduction**

## **Global Demand, Ancestral Lands and Conflict**



*The Resguardo Indígena Cañamomo Lomaprieta in Caldas, Colombia, homeland of Embera Chami Indigenous People, is criss-crossed with concessions issued by the State without prior consultation or consent. This photo (bottom right) shows Ingeominas' (a key mining authority in Colombia) web-page, after accessing information on current and requested concessions overlapping with Resguardo Territory.*

The last few decades have witnessed unprecedented growth in activities worldwide to extract minerals, oil and gas. Global demand for extractives has soared, buoyed by investors turning to gold and other commodities to fend off and stabilize the economic downturn, and spurred also by new actors, such as China, scouring the globe for resources to meet the demands of a growing population. Government reforms and free trade agreements are helping slake this global thirst, providing favourable conditions to enable foreign direct investment in the extractive sector.

Riding this wave of demand, extractive companies are travelling to ever-more remote areas in search of new deposits. Increasingly, they are eyeing the rich resources in the ancestral homelands of Indigenous and Tribal Peoples,<sup>1</sup> and in the process are creating panic and igniting conflict.

With Canadian companies at the forefront of extractive activities worldwide<sup>2</sup> — and accountable for most reported incidents of mining-related conflict<sup>3</sup> — much is at stake for all parties in ensuring that conflicts in this sector are prevented, and human rights upheld. To address this situation, it is key to ensure the participation of potentially affected communities in decision-making — and to obtain their free, prior and informed consent (see box 1) before proceeding with any plans or projects affecting their homelands.

While extractive companies have placed enormous pressures on ancestral lands, over the last several decades Indigenous Peoples have made significant inroads and far-reaching gains in the international arena with respect to recognition of their right to have a say in proposed developments affecting their territories. The right to free, prior and informed consent is now recognized as a minimum standard for respecting Indigenous rights. And the distinct vulnerability and special rights of Indigenous and Tribal Peoples are now recognized in a variety of instruments, and are being upheld through a number of mechanisms. Specific gains have included:

- The approval in 2007 of the UN Declaration on the Rights of Indigenous Peoples, which sets out the minimum standards that should be respected in upholding Indigenous rights and is now a consensus agreement, opposed by no country;
- The Inter-American Human Rights System, and international jurisprudence such as the 2007 *Saramaka People* judgment of the Inter-American Court of Human Rights (IACtHR), which establishes clearly that states should uphold the right to free, prior and informed consent for mining projects affecting ethnic territories;
- The inclusion in instruments such as the Convention on Biological Diversity of far-reaching provisions for the protection of traditional knowledge;

#### **Box 1: Free, Prior and Informed Consent**

Free, prior and informed consent is an inherent right of Indigenous Peoples. It is pivotal to the fulfillment and upholding of the full range of rights enjoyed by Indigenous Peoples, including rights to self-determination, development, cultural identity, autonomy and participation. Free, prior and informed consent means that Indigenous Peoples have the right to agree to or to reject activities or plans affecting their ancestral territories, and in cases of agreement, to determine the conditions and terms for proceeding.

**Free, prior and informed consent means:**

**Free** — The proponent cannot use violence, threats, intimidation, pressure, manipulation or bribery, and must act in good faith.

**Prior** — Information-sharing about the proposal and negotiations regarding the consent process should start well before plans are decided, before permits are given, before prospectors start exploring and long before construction begins.

**Informed** — The proponent must provide all information on the proposal, in forms and languages communities can understand. Communities should also be supported in their efforts to gather additional information on the full range of possible impacts and be given the time they need to understand these impacts.

**Consent** — Any decision — whether ‘yes’ or ‘no’ — comes from traditional or other authorities freely chosen by the people to represent them. These decisions should respect customary laws and decision-making processes that take into account the concerns and interests of different community members — women and men, young and old.

Sources: Motoc and Tebtebba (2005); Simms and Colchester (2010); Weitzner (2003).

- Observations and recommendations by international bodies such as the Committee on the Elimination of Racial Discrimination (CERD), established under the Convention of the same name — recommendations that continue to clarify Indigenous and Tribal rights;
- The establishment of the UN Permanent Forum on Indigenous Issues, and the UN Special Rapporteur on the Rights of Indigenous Peoples;
- International Labour Organization (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries;
- Safeguard policies that protect Indigenous rights. Adherence to these policies is now a condition for obtaining financing from international financial institutions such as the World Bank Group and regional development banks.

Yet despite the increasing recognition of the need to include Indigenous Peoples in decision-making in the extractive sector — with international courts clarifying Indigenous rights to participation and free, prior and informed consent in decisions affecting ancestral territories — little research and practical guidance are available on how to do this from the perspectives of Indigenous and Tribal Peoples themselves.

## 1.1 Where we started: Research to highlight Indigenous and Afro-descendant perspectives

In the late 1990s, The North-South Institute (NSI) recognized the importance of engaging in bottom-up research to fill this knowledge gap. In partnership with Indigenous organizations and their supporters, we launched a research program with components in Guyana, Suriname, Colombia, Peru and Canada (see map). We focused on Latin America and the Caribbean because this region has both unprecedented investment by the extractive industry, and a growing number of reported conflicts. We included Canada because Canadian and foreign companies are increasingly interested in the riches under Canadian Indigenous territories, and valuable lessons need to be shared. Also, many of the extractive companies active in Latin America and the Caribbean are Canadian. In 2009, Canada's largest companies accounted for 32% of all exploration in the region<sup>4</sup> and the largest share (32%) of reported mining-related conflicts.<sup>5</sup>

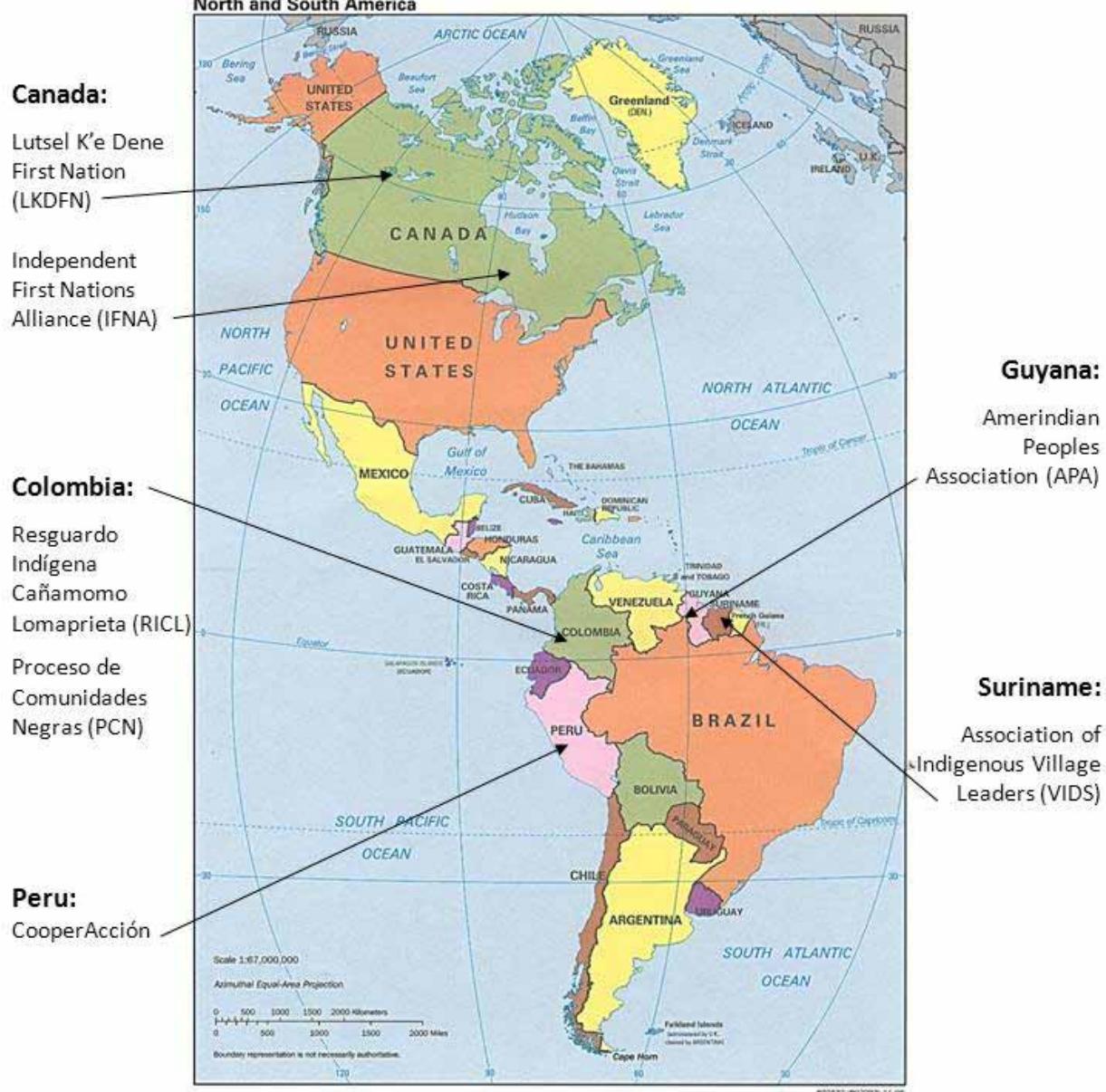
We established national Indigenous advisory committees to select sites and to shape the research process and outcomes. Research in Phase I (2000–2002) focused on what Indigenous Peoples thought of their experiences with government- and industry-initiated consultation and decision-making. This phase identified critical elements for strengthening these processes.<sup>6</sup> In Phase II (2004–present), we examined how best to support communities dealing with the extractive sector, with an emphasis on how they can give free, prior and informed consent for proposed projects affecting their lands.

*"I sit here in panic. As an Amerindian I love the land. I'm glad somebody is here to help us, we [as Amerindians] are not counted. We need our rights, especially for our culture... we are so much concerned about our culture. I'm grieving about the developments... I love my fish, my meat, my farm. If we have our land, we protect it. The mining company... must not interfere with our things."*

**Lokono woman, Apoera, Suriname**

Source: Kambel (2004)

**Map 1:**  
**Partners in NSI's "Indigenous Perspectives" Program**



Phase II Funders: International Development Research Centre, Inter-American Development Bank, Ford Foundation, USAID, Ministry of Foreign Affairs of Norway, Rights & Democracy

Several key questions guided our “Indigenous Perspectives” research program:

- What are the key extractives issues affecting Indigenous communities, from their perspectives?
- What is the right way for outsiders with interests in Indigenous lands to approach these communities?
- What conditions need to be in place to enable equitable decision-making that upholds the right to self-determination?

Besides obtaining practical advice to inform policy-making and practice, the research was designed to shed light on and inform the literature on public participation, conflict management, social learning, gender analysis, corporate social responsibility, impact assessment and Indigenous rights.

## 1.2 Program components and activities

The research in each country responded to the needs identified by the participating communities and organizations.<sup>7</sup> Consequently, we adapted our program to cover not just large-scale mining projects, but also medium- and small-scale, artisanal and ancestral mining, hydroelectric dams, oil and gas exploration, and even conservation initiatives and climate change mitigation programs.<sup>8</sup> This is in keeping with the holistic and territorial, rather than sectoral, perspectives from which Indigenous Peoples analyze the issues at stake, and underscores the multiple and cumulative pressures affecting Indigenous lands.

Our activities surrounding extractives included:

*In Suriname* we looked at the potential impacts on Lokono and Trio peoples of proposed large-scale bauxite mining, including a potential hydroelectric dam, smelter and related infrastructure. We undertook both community-based and independent expert-led research, and presented the findings nationally. Our partner was the Vereniging van Inheemse Dorpshoofden in Suriname (VIDS, Association of Indigenous Village Leaders in Suriname).

*In Canada* we examined the lessons learned by the Lutsel K’e Dene First Nation in the Northwest Territories from their negotiations with multinational companies. We undertook primary research examining Indigenous participation in policy dialogues at the national level; held a workshop on free, prior and informed consent in Canada; and arranged exchange visits between the Dene and Lokono peoples of Suriname. Our partner was the Lutsel K’e Dene First Nation.<sup>9</sup>

*In Guyana* we documented and assessed alternative livelihoods to the types of small- and medium-scale mining undertaken by Indigenous communities and others in Guyana’s interior. We also supported

*“Why have we got to obsessing about free, prior and informed consent?*

*There are three main reasons:*

*1) the human rights framework*

*is more recognized;*

*2) there is recognition of self-determination and human rights; and*

*3) communities are pressing for direct control of their affairs.”*

**Marcus Colchester, Forest Peoples Programme**

Source: NSI (2006)



Photo: Meaghan Simms

*Carla Madsian, a researcher and anthropologist with the Association of Indigenous Village Leaders in Suriname, shares lessons at a training-of-trainers workshop in Georgetown, Guyana, March 2010.*

affected communities; as well as Canada's role in Peru's extractive sector. Our partner was the Peruvian organization CooperAcción.

And in *Colombia* our ongoing project will yield concrete recommendations on how to make free, prior and informed consent work when extractive activities fuel armed conflict. These will be relevant to other Indigenous Peoples, governments and companies facing the same explosive mix. Our research is aimed at developing protocols on free, prior and informed consent; strengthening the management of ancestral mining; opening a dialogue with government and the private sector; and analyzing which standards to use to hold companies to account. Our partners are the Embera Chamí of the Resguardo Indígena Cañamomo Lomaprieta (RICL, Cañamomo Lomaprieta Indigenous Reserve) and Afro-descendant Peoples of northern Cauca represented by the Proceso de Comunidades Negras, Asociación de Mujeres (Process of Black Communities, Women's Association).<sup>10</sup>

We brought our partners to Canada to share findings directly with each other and with Canadian industry, government, and non-governmental and Indigenous organizations. We made presentations at academic conferences, industry workshops and the UN Permanent Forum on Indigenous Issues. We also participated in policy debates and testified before a Canadian parliamentary committee to support legislation that would have held Canadian companies to account for their activities overseas.

This report synthesizes the outcomes of our "Indigenous Perspectives" program, with a focus on Phase II findings. Section 2 provides a snapshot of key findings, highlighting practical guidance and crosscutting recommendations. Section 3 reflects on key lessons regarding research with Indigenous Peoples. And section 4 concludes the report with thoughts on further research.

communities affected by mining and climate change mitigation schemes, with capacity-strengthening workshops and the production of a series of practical guides on Indigenous rights and FPIC, participation in environmental and social impact assessments and negotiating benefits. Our partners were the Amerindian Peoples Association and the Forest Peoples Programme, United Kingdom.

*In Peru we analyzed the conflicts and negotiations around the Tintaya Mine; the processes that Talisman Energy, a Canadian oil and gas company, had used to claim that it had obtained free, prior and informed consent from*

## **Section 2: A Snapshot of Key Findings Issues, Governance Gaps and Power Tools**



*Photo: Jean La Rose, Amerindian Peoples Association*

*Residents of an Indigenous community protesting violations by the Barama logging company in Akawini, Guyana. Guyana's environmental impact regulations are not in tune with the needs of the Amerindian population, many of whom are cut off from phone and Internet communication. Nor are newspapers, in which impact assessment meetings are announced, accessible in most parts of the interior.*

The political, institutional and cultural contexts in Guyana, Suriname, Colombia, Peru and Canada vary significantly among and even within each country. For example, Suriname has no legal framework protecting Indigenous rights or requiring environmental impact assessments. It is the only country in the Western hemisphere that does not recognize, to any extent, the ownership rights of its Indigenous Peoples to their ancestral lands; neither does it recognize the rights of its Maroon (Afro-descendant) Peoples. In contrast, Colombia boasts one of the most progressive frameworks for ethnic rights protection in the world. Indigenous Peoples have title to some 30% of the country<sup>11</sup> and Colombia recognizes that Afro-descendant Peoples have collective rights to ancestral land. However, ethnic rights are not upheld in practice, and the armed conflict in Colombia has given rise to other specific issues. Each of our country components has resulted in specific, targeted reports and recommendations (see Appendix 1 for a list of project documents organized by country, and Appendices 2–6 for select recommendations by country). Yet despite the range of contexts, types of resource extracted and scale of activity, important crosscutting issues and recommendations emerged.

## 2.1 Issue #1: Securing traditional lands and territories

The very identities, ways of life and cosmologies of Indigenous Peoples are inextricably related to their relationship with their ancestral territories. Receiving official recognition of their ownership over these territories is therefore a matter of cultural survival, and is often viewed as a pre-requisite to consideration of any potential projects affecting Indigenous lands. Nonetheless, where they exist, the processes established to address these issues are largely inadequate, and much ancestral territory remains unrecognized.

In Suriname, despite binding orders in 2007 from the IACtHR through the *Saramaka People* judgment, there is still no legislative framework to address land rights — or Indigenous or Maroon rights — and no titles have been issued.<sup>12</sup>

In Guyana, Indigenous Peoples hold title to only one-third to one-half of their ancestral lands.<sup>13</sup> According to the Ministry of Amerindian Affairs, “currently 96 of 169 Amerindian communities have been granted titles, 20 of these in the last 8 years. In addition, 6 communities have been granted ‘extensions.’ Overall, according to Government figures, this means that Amerindian titled lands now cover some 14% of Guyana’s territory.”<sup>14</sup> When titles are issued, they do not include river banks where much small- and medium-scale mining takes place. River banks are, however, also central to village life for fishing, washing, potable water supply and transportation, and are therefore critical components of ancestral lands. And even when titles have been issued, they have in some cases been ignored by the government so as to allow mining to proceed unimpeded.<sup>15</sup>

Further, an Amerindian Act was adopted in 2006 that has been criticized for:<sup>16</sup>

- Not providing for the recognition of Indigenous Peoples’ rights to own and control the lands, territories and resources that they have traditionally owned or otherwise occupied and used;
- Excluding waters and subsoil resources from Indigenous control, contrary to the provisions for other citizens owning property;
- Allowing the Minister to veto the decisions of elected Amerindian Village Councils.

The Act was the subject of a series of far-reaching observations by CERD, and led to the World Bank’s suspension of the Guyana National Protected Areas System Project on account of the Act being contrary to the World Bank’s Operational Policy on Indigenous Peoples.<sup>17</sup>

Colombia has a fairly progressive legislative framework in place that recognizes Indigenous and Afro-descendant land rights. Indeed, some 30% of the country has been recognized as Indigenous land. Yet the process for implementing and issuing collective title has been fraught with problems concerning land use by armed and other illegal actors, and is currently under review by the Santos government.

And in Canada, land claims negotiations are almost at a standstill in some provinces, such as British



*“Our top-most priority is to secure our traditional lands and territories. Outstanding land claims must be resolved and our rights secured before mining, logging or any other project that may have direct or indirect impacts on our traditional lands, territories and resources proceeds.”*

**Toshao, Region 7, Guyana**

Source: Colchester and La Rose (2010)

Colombia, with Canada facing severe criticism for its comprehensive land claims processes, which require that Indigenous Peoples extinguish their land title.<sup>18</sup>

Unresolved land rights and inadequate protections and processes for settling land claims constitute perhaps the most acute systemic issue underpinning conflict around Indigenous Peoples and extractives. Establishing these rights is the number one issue on Indigenous Peoples' agendas, using processes in line with Article 26 of the UNDRIP (see box 2). This priority concurs also with binding orders from the IACtHR, where in the 2007 *Saramaka* judgment, Suriname was ordered to:

“...Delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through previous, effective and fully informed consultations with the Saramaka people, without prejudice to other tribal and indigenous communities. *Until said delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people.*”<sup>19</sup> [emphasis added].

Clarity about land rights is also in the best interest of industry.<sup>20</sup> In some instances, Indigenous Peoples have leveraged the power of industry interest in their lands to bring about resolution to land claims issues, such as in the case of the Voisey's Bay mine in Labrador, Canada. In this case, the Labrador Innu were able to pressure the governments involved to resolve their land claim, prior to the mine project being considered and developed.<sup>21</sup>

## 2.2 Issue #2: Enabling self-determined development through free, prior and informed consent

Participating in decision-making and determining their own development paths in line with their aspirations, visions of the future and rights is of paramount importance to Indigenous Peoples.

NSI's research program facilitated in-depth evaluation and reflection on community experiences with consultation and decision-making on extractive projects affecting ancestral lands, in order to identify Indigenous perspectives on how these could be strengthened. Participants described their experiences with external consultations variously as “asymmetrical,” “an unequal dialogue,” “a process that implies the project is ‘a go’,” “interference to put in place a project” and “a formality that is not pro-self-determination.”

The catalogue of problems experienced reads like a manual on “*how not to consult*”: ignorance/lack of respect for the history, self-governance structures, representatives and processes of Indigenous Peoples;

### Box 2: United Nations Declaration on the Rights of Indigenous Peoples, Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

lack of appropriate information and dissemination methods, with Indigenous Peoples relying on what they hear through the rumour mill; and lack of respect for and incorporation of Indigenous knowledge, to name but a few. In addition, the benefits provided by mining companies were described as short-term and tokenistic.

Beyond these weaknesses, consultation processes have been destructive in and of themselves, undermining traditional governance structures and creating community division. Project participants highlighted the power imbalance that is built into the very concept of consultation: it implies that someone *is doing* the consulting, and someone *is being* consulted. Language and concepts need to be decolonized to reflect community agency. For any consultation to be meaningful, it must be premised from the start on acceptance of the right of Indigenous Peoples to reject the proposal being considered; simply mitigating impacts of a project that is going to go ahead regardless of objections is not in line with Indigenous rights to self-determination.

A series of minimum pre-conditions were identified as the basis of respectful relations.<sup>22</sup> These include recognition that Indigenous Peoples are not simply another stakeholder to be consulted in projects taking place on or near their territories. Instead, they are rights-holders whose self-determination, autonomy, cultural identity and responsibilities to future generations are inextricably linked to their right to give — or withhold — their free, prior and informed consent to all projects and plans affecting their lands. Regardless of whether Indigenous Peoples have recognized land title to the full extent of their ancestral territories, they should be approached as the legitimate landowners. For many participants in our “Indigenous Perspectives” program, a pre-requisite for considering any activity going ahead on ancestral lands is that these lands first be officially recognized.<sup>23</sup>

And where they *do* consent to a project going ahead, Indigenous Peoples want to be equal partners rather than merely beneficiaries. This means negotiating, in good faith, agreements that involve: revenue-sharing; joint monitoring and mitigation of environmental, social and human rights impacts; appropriate training and hiring quotas; access to appropriate dispute resolution mechanisms and remedies; security deposits in the case of emergencies and for final closure of the project; and any other negotiated provisions.

Last but not least, Indigenous and Tribal Peoples have their own conceptions of what constitutes appropriate development and of who owns the resources below, on and above ancestral lands. While states continue to insist on their rights to these resources, international courts continue to clarify Indigenous rights.<sup>24</sup> In this context, free, prior and informed consent processes are recognized not only as a minimum requirement for upholding Indigenous rights, but also as critical tools for bridging fundamental cultural differences.

While these conclusions emerged in Phase I of our research program (2000–2002), these minimum pre-conditions are now clearly backed by international norms and jurisprudence, including the UNDRIP. Nonetheless, much work needs to be done to make implementation of these conditions a reality.



### **Recommendation:** *Recognize that Indigenous Peoples have a right to free, prior and informed consent*

Governments and companies must recognize that Indigenous Peoples are not simply another stakeholder to be consulted in projects affecting their territories. They have a right to free, prior and informed consent. Their self-determination, autonomy, cultural identity and responsibilities to future generations are inextricably linked to this right.

## 2.3 Issue #3: Balancing powers — Strengthening host government protections, regulation and enforcement

Every multinational extractive company answers to both the government of the country where its headquarters are located (the home government) and the government of the country where its activities take place (the host government). At the root of conflict in the extractive sector is the enormous power asymmetry that exists between communities on the one hand, and powerful companies and governments on the other. In the words of John Ruggie (2008), UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises:

“The root cause of the business and human rights predicament today lies in the governance gaps created by globalization — between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds *without adequate sanctioning or reparation*. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge” [emphasis added].<sup>25</sup>

Our research highlights the extent to which host governments — far from protecting the rights of Indigenous Peoples — are too often led by their eagerness to attract foreign investment to put the interests of companies above those of communities.<sup>26</sup> The key policy issue is how to shift the role of the state so that it fulfills its obligations to protect human rights and the environment, while also considering economic imperatives.

Photo: Federico Herrera



Meeting between miners of the Association of Miners and Traditional Authorities of the Resguardo Indígena Cañamomo Lomaprieta, Caldas, Colombia to discuss Resolution 031, which regulates ancestral mining within the Resguardo.

Against a backdrop of weak human rights protections and growing investment in extractives, systemic issues remain unaddressed. They include the following:

- *Unrecognized or unsecured rights to ancestral lands*, as discussed earlier.<sup>27</sup> With a recognized land base, Indigenous people have a far better chance of entering into negotiations on a stronger footing. Ultimately, land is the basis for cultural identity, without which the fabric of Indigenous societies, self-governance structures, livelihoods and cosmologies are severely weakened.
- *Lack of appropriate consultation and consent processes when concessions are issued and permits granted for exploration and exploitation, or when mining codes and zoning are put in place*. In all of the countries we looked at, companies can secure a concession without any consultation at all, contrary to international norms and jurisprudence.<sup>28</sup> And even when a company or government initiates consultation, community participants usually feel that it is a formality, and that their views and right to self-determination will not be taken into account. In Canada, for example, the Lutsel K'e Dene First Nation clearly stated that it was not consulted about the first diamond mine affecting its traditional territory; instead it had to go straight into negotiations about a project that was going to go ahead regardless of whether the community wanted it or not.<sup>29</sup> And when laws, such as mining codes, are reformed, Indigenous Peoples need to be appropriately consulted. This right is consistently violated, as witnessed even in the latest round of reforms to the Colombian mining code.<sup>30</sup>
- *The disconnect between national legislative frameworks and international commitments (all the countries examined have approved the UNDRIP, with Canada being the latest addition)*. Countries that have ratified ILO Convention 169, such as Colombia and Peru, and others that have signed onto the UNDRIP do not, as yet, have national regulation to implement the consent (and other) provisions. Instead, even the laws that have been developed have been passed without appropriate consultation or consent processes,<sup>31</sup> and have so far stopped well short of embracing consent. As noted earlier, in Guyana, the Amerindian Act has been severely criticized for contradicting the country's international commitments. And Suriname stands out among all

### **Box 3: United Nations Declaration on the Rights of Indigenous Peoples, Articles 19 and 32**

#### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions *in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them*.

#### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions *in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources*.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

the countries for being the only one in the Western hemisphere to provide no recognition of ethnic rights at all. Still, all the countries examined have approved the UNDRIP. Clearly, the laws of these countries will need to be realigned to protect the minimum standards enshrined in the Declaration, including the right to consent, which is mentioned in numerous articles (see box 3, which highlights two such articles).

- *Policy incoherence between conservation schemes and extractive activities.* But beyond this disconnect between national and international commitments, widespread policy incoherence is also apparent. For example, Guyana welcomes and encourages large-scale mining and related infrastructure projects such as the IIRSA (Regional Infrastructure Integration in South America), which tend to destroy forests, while profiting from the supposed conservation of the country's ancestral forests under internationally-supported climate change mitigation schemes. Caught in the middle of this incoherence are the Indigenous Peoples who must deal with the negative effects of both sets of activities on their rights and lands. Adding to these impacts is the expansion of hydroelectric potential under the rhetoric of conservation. It is a worrying development that hydroelectric dams are considered as under the purview of 'green power' and can be undertaken with funding from climate change portfolios. This is the case with the proposed large-scale Amaila Falls dam in Guyana, which may be funded with some of the first monies secured by Guyana under the Low Carbon Development Strategy (LCDS).<sup>32</sup> Besides the potential displacement of peoples and flooding of lands, these developments also serve to power mining and related infrastructure, including smelters — which are far from green activities. This link with future industrial development is clear in the case of the proposed Kabalebo dam in West Suriname, should it go ahead.
- *Lack of appropriate frameworks and government capacity to conduct appropriate impact assessments and monitor extractive activity.* A key governance gap lies in the weaknesses of official frameworks and capacities around environmental, social and human rights impact assessments. An extreme case is Suriname, which has no legal requirement for environmental and social impact assessments to be undertaken. And in other countries — even those with such a requirement — provisions for ensuring that social, cultural and human rights impacts are taken into consideration alongside environmental and economic considerations are extremely weak.<sup>33</sup> Furthermore, the ability of government officials to monitor assessment processes in progress, and to travel to the mine sites to hear communities' concerns first-hand, is constrained by limited human and financial resources. ESIA and human rights impact assessments (HRIAs) are critical tools in determining the impacts of a potential project, and in getting the information required to make informed decisions. These assessments are imperative not only for affected communities, but also to inform the decision on whether a given project is in the national interest or not. But beyond capacities regarding initial impact assessments, it is likewise crucial for public officials to be able to undertake ongoing surveillance activities, and to know what companies and small- and medium-scale miners are doing in the field. The absence of sufficient surveillance and monitoring by government is an issue for all the countries we examined, including Canada.<sup>34</sup> Lack of capacity to undertake appropriate consultation and consent processes is another critical weakness experienced in all countries, largely attributable to the sheer number of proposed projects in relation to available government personnel to oversee these processes.<sup>35</sup>
- *Lack of appropriate domestic remedies for legitimate complaints.* Access to remedy is a key component of effective integration of human rights considerations in the extractives sector. This has been firmly established by the UN Special Representative on Business and Human Rights, John Ruggie, in his Protect, Respect and Remedy framework and in subsequent draft



Photo: Karyn Keenan, Halifax Initiative

A local woman near the Tintaya mine site in Peru. Parliamentarians in both Peru and Colombia have been engaged in policy processes that will, in theory, lead to the creation of legislation to fulfill their obligations under the International Labour Organization Convention 169 (Indigenous and Tribal Peoples Convention). It is not yet clear if either country will uphold free, prior and informed consent in practice as they go forward.

starting to understand that they too are caught in power asymmetries and that they need to secure more favourable outcomes for their country and their people from extractive projects. In Suriname, for example, the government has commissioned a review of its agreements with companies to understand how to strengthen its hand in future negotiations. Government negotiators are also looking at what they might learn from agreements negotiated in Canada.<sup>37</sup> Reason for hope can also be found in Colombia, where recent decisions by the constitutional court have invoked free, prior and informed consent,<sup>38</sup> and where the government is considering a new law on prior consultation that may well lead to embracing the right to free, prior and informed consent.<sup>39</sup> Guyana has seen an improvement in securing recognition of the need for free, prior and informed consent on some decisions, including for permits concerning small-scale mining on titled lands,<sup>40</sup> with some progress also in the context of climate change mitigation initiatives. And in the Yukon Territory in Canada, the Oil and Gas Act refers explicitly

operational guidelines. Protections exist in some of the countries researched, such as the Constitutional Court of Colombia and that country's *defensoría* (ombudsperson); however, Colombia has issues with appropriately implementing the court's decisions, and the *defensoría* has only one delegate for ethnic peoples to respond to all the conflicts that emerge in that country, including extractives. In other countries, the judiciary simply does not work — or, as in the case of Suriname, Maroon and Indigenous Peoples are actively discriminated against, so that they cannot appeal for their collective rights to be upheld in front of the court.<sup>36</sup> In these cases, appealing to international bodies and the IACHR provides one of the only viable potential mechanisms for justice. Clearly, more needs to be done to boost national justice systems so that they become effective mechanisms for remedy.

The result of this lack of government protection and presence in the field is a situation that has been described as 'No Man's Land' or 'The Wild West.' Communities are left to face powerful actors on their own; companies, lacking clear regulatory requirements and often encouraged by state agencies, charge ahead with their activities. In this context, conflict and human rights violations are far too often the outcome.

Our findings regarding host governments paint a bleak picture, but one that offers glimmers of light. Host governments are

to consent.<sup>41</sup> Progress has also been made toward more rigorous ESIA processes in Canada that consider Indigenous knowledge and rights, and are grounded in principles of sustainability, with valuable lessons that could be shared elsewhere.<sup>42</sup> Some steps have also been taken to include Indigenous Peoples in national policy dialogues concerning mineral activities; however, much remains to be learned regarding how to strengthen Indigenous participation in these processes in Canada, before such processes are adapted abroad (see Appendix 6 for key preliminary conclusions flowing from our research on multi-party dialogues in Canada and implications for processes abroad). Finally (although outside of the realm of government legislation and policy), it is important to note that pressure on lending institutions has resulted in the Royal Bank of Canada beginning to discuss conditioning its financial support on obtaining consent from Indigenous Peoples.<sup>43</sup>



### **Recommendation: *Strengthen host country governance***

Host governments should:

- Develop effective, fair and transparent mechanisms for clarifying territorial rights and resolving land claims issues, following the processes outlined in UNDRIP and international jurisprudence. These mechanisms must involve Indigenous representatives and experts chosen by the community.
- Review current legislative frameworks, or develop these where they do not exist, to align with the UNDRIP and international jurisprudence. Clear provisions should be made for obtaining free, prior and informed consent in all projects and plans affecting ancestral territories. Regulations to make this happen should be produced by working groups composed of Indigenous leaders, their appointed experts, governments and donor agencies.
- Review ESIA procedures so that they incorporate due diligence on human rights, provide for meaningful participation of affected communities, and incorporate Indigenous knowledge, following the Akwé: Kon Guidelines for assessment.<sup>44</sup>
- Strengthen domestic laws and the judiciary to enable Indigenous Peoples to seek appropriate remedy for complaints domestically.
- Raise awareness and build the capacities of the public service regarding Indigenous rights, international standards and leading-edge practice in impact assessment and negotiations.
- Build systems and capacities for assessing, monitoring and enforcing laws on human rights and the environment.

## **2.4 Issue #4: Balancing powers — Strengthening home government protection, regulation and remedy; and refocusing development assistance in the extractives**

Home governments actively pave the way for their companies to grow abroad, funding reforms to mining codes that facilitate investment in extractives, while sometimes also eroding hard-won human rights gains in the host country. In Colombia, for example, mining code reforms funded with technical assistance from Canada have resulted in a series of regressive outcomes, including the erosion of Indigenous rights to territory.<sup>45</sup> These reforms also threaten the traditional livelihoods of artisanal miners who have been engaging in economically, environmentally (no cyanide or mercury) and

culturally sustainable mining for centuries. Artisanal miners who cannot meet onerous new demands risk being declared illegal. And furthermore, the reforms were decided without undergoing appropriate consultation, as required by ILO Convention 169 (which has been ratified by the Government of Colombia).

In countries where land claims are not yet settled, where environmental impact assessment procedures are weak or non-existent, where Indigenous rights are not yet officially recognized, where judiciaries are weak, or where armed conflict exists (as is the case in Colombia), the potential for conflict over extractive development is extremely high. Providing effective remedy for communities in the company's home country is clearly imperative.<sup>46</sup>

Yet the record here is poor. "Soft law" or non-judicial instruments, such as the National Contact Points of the Organisation for Economic Co-operation and Development (OECD), too often fail to achieve timely and substantive results, and do not provide for sanctions — which are highlighted by Ruggie as one of the key requirements for effectively implementing human rights.<sup>47</sup> Also, few legal instruments exist for Indigenous communities in a host country to seek remedy in a company's home country. Those that do exist, such as the Alien Tort Statute in the United States, are difficult and expensive to use, and have produced uncertain outcomes.

Canada has been urged by the CERD to explore ways to hold transnational corporations registered in Canada to account for actions abroad that negatively affect the rights of Indigenous Peoples. Indeed, according to a recent report commissioned by the Prospectors and Developers Association of Canada (PDAC), Canadian companies are responsible for three times as many mining-related conflicts as their closest peers, Australian companies. Of the incidents involving Canadian companies, "60% are related

#### **Box 4: Canadian Mining Exploration in Latin America and the Caribbean**

- Canada is home to 41% of the largest minerals exploration companies in the world.
- In 2009, the proportion of value of exploration programs planned by Canadian-based companies at home and abroad comprised 34% of all the activity expected worldwide.
- Latin America and the Caribbean (LAC) is the region where Canadian companies are currently most active in minerals exploration.

##### **In 2009:**

- Larger company mineral exploration in LAC was valued at US1.7 billion (or 28% of the US \$6.1 billion larger-company market worldwide).
- Canadian companies held 32% of the larger-company mineral exploration market in LAC.
- Larger Canadian companies planned to spend \$556 million in LAC.
- 50% of the larger company budgets for LAC were invested in Mexico and Chile.
- Countries where Canadian companies are most active in minerals exploration in South America include Chile, Peru, Brazil, Argentina, and Ecuador.

(Source: Drake 2010)

to community conflict, 40% to environmental degradation and 30% to unethical behavior.”<sup>48</sup> Latin America sees the largest number of mining-related conflicts fuelled by Canadian companies, with 32% of recorded incidents.<sup>49</sup>

In its closing observations to Canada in 2007, the CERD urged Canada

“to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of Indigenous Peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable.”<sup>50</sup>

This observation ran parallel to intense political debate in Canada. Following investigations and concerns by members of the Canadian Parliament, Canada launched a series of national roundtables on CSR that brought together representatives from non-governmental organizations (NGOs), unions, academia, government departments and the private sector to discuss how best to address Canadian extractive industries operating in developing countries. A multi-partite advisory group was established, and in March 2007 the group published its final report. One of the key recommendations endorsed by all advisory group members — including the executive director of the PDAC and the president and CEO of the Mining Association of Canada — was the establishment of an independent ombudsman and a tripartite Compliance Review Committee. While the ombudsman’s office would investigate and report on complaints, the Compliance Review Committee would make recommendations concerning actions to be taken following investigation findings. These recommendations could include the potential withdrawal of financial and/or non-financial services by the Government of Canada in the event of serious non-compliance.<sup>51</sup>

But when Canada’s official response came two years later it disregarded the advisory group’s recommendation. In October 2009, Canada established a CSR counselor. However, this office has a weak mandate that provides no incentives for companies to change their behaviour. The extractive sector CSR counselor will review — not investigate — complaints, and this only with the consent of the companies involved. And in an unusual twist, the office will also review complaints from companies against civil society organizations or individuals.<sup>52</sup> Ultimately, it advises stakeholders on the implementation of Canadian-endorsed CSR guidelines (the International Finance Corporation’s Performance Standards, the Voluntary Principles on Security and Human Rights, the OECD Guidelines for Multinational Enterprises and the Global Reporting Initiative (GRI)). Canada encourages its companies to voluntarily adopt these standards, but they are not required to do so.<sup>53</sup>

Yet there is clear public demand for a stronger accountability mechanism, as was seen not only during public hearings linked to the national CSR roundtables, but also as witnessed by the narrow defeat in Canada’s House of Commons in 2010 of legislation calling for a tougher mandate. Had Bill C-300 (‘An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries’) passed in Parliament, a complaints mechanism would have been established that would have led to sanctions for companies violating Canada’s CSR framework. And these sanctions could have led to the withdrawal of public and financial support, following the recommendation of the consensus advisory group report of the national CSR roundtable process.

Canadian companies are already among those most invested in the countries where we undertook our “Indigenous Perspectives” project (see box 4 for a brief overview, and Appendix 7, which lists individual companies). Considering that Canada is set to increase its extractive activities to meet global demand, it is clearly imperative to establish a stronger complaints mechanism. Public pressure at home and abroad

will not go away until this is done. If Canadian companies are, as some purport to be, already world leaders in CSR, such a measure should not be a hindrance — particularly if the legislation allows for the company to correct its behavior as a means to once again obtain public financial support.

Canada is not the only country where extractive companies are under scrutiny, and where the public is demanding home country regulation. Recent debates have taken place in the European Union, Sweden, Norway, Denmark, the United Kingdom and the United States, among others. Some of these have led to regulation, such as in the United States, where in July 2010 the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed, promoting responsible mining by requiring companies to report payments to foreign governments and trafficking in conflict materials.<sup>54</sup> Others have established hybrid regulation/market-based mechanisms, such as Norway's Oil Fund, that can put pressure on companies to behave responsibly for fear of being publicly shamed and de-listed.<sup>55</sup> Already, Canada has taken legislative measures to hold to account development assistance through the Development Assistance Accountability Act of 2008 (ODA Accountability Act). Canada should therefore also consider legislative measures to hold to account Canadian companies operating overseas, particularly those receiving government funding and support.

Aside from developing clear regulations for holding their companies to account and an effective complaints mechanism at home, home governments need to strengthen government-to-government capacity. Much effort is currently dedicated to enabling host governments to obtain more benefits from the growth of the extractive sector.<sup>56</sup> But efforts should not only strengthen the capacities of host governments to negotiate better deals with extractive companies, and to feed these benefits back into the social safety net; They should also strengthen host governments' human rights and environmental protections, and build systems and capacities for assessing, monitoring and enforcing these in line with international standards and leading-edge practice. It is also imperative to enable host governments to address the systemic issues discussed earlier, such as land claims processes and policy incoherence surrounding natural resources priorities and implementation.

However, current government-to-government assistance and priorities are clearly informed by self-interest.<sup>57</sup> In the case of Canadian assistance, the questions being asked are not whether mining or oil and gas exploration is the best activity for a particular country or area within a country or whether the supported activities will yield the most sustainable economic, environmental and social results over the long term and from a development perspective. Instead, the focus is on extractive activity going ahead, on trying to maximize the benefits at the state level, and on obtaining a social licence to operate for a "win-win" outcome. In line with these priorities, Canadian development assistance shows a growing trend of supporting NGOs working directly with mining companies to undertake a variety of projects.<sup>58</sup>

Our program sheds light on several problematic aspects of the current approach.

While no one would take issue with the importance of maximizing the benefits of any project that *does* go ahead, our program findings highlight the essential need to *engage first* in rigorous free, prior and informed consent processes to inform decision-making on whether a project *should or should not go ahead*; and if it does, under what conditions. An informed decision-making process also considers economic development alternatives to the project being proposed. By pegging assistance to projects that are going ahead, the current Canadian approach seems to miss this vital step.

Moreover, in order to engage in appropriate consent processes, Indigenous and other communities need support from organizations and allies that they choose themselves and that are *independent* of companies. Yet securing resources for independent support is becoming increasingly difficult.



Photo: Patrick Holler

*Canadian youth participate in a demonstration on Parliament Hill in support of Bill C-300. The proposed legislation, which would have required the Government of Canada to investigate alleged abuses by publicly-supported mining companies and could have resulted in the withdrawal of funding, was defeated by just six votes in October 2010.*

In addition, as José de Echave highlights in his analysis of Canada's role in Peru,<sup>59</sup> the approach leads to project-level interventions, rather than addressing the systemic issues at stake. But further, it misses the opportunity of building up *local* civil society organizations and networking, a more innovative approach that could push for positive systemic change from the ground up.

Finally, questions emerge regarding whether scarce development resources should be used to subsidize well-endowed mining companies, or instead be channeled to addressing systemic governance issues that could better contribute to poverty alleviation and sustainable development over the long-term.



### **Recommendation: Strengthen home government accountability and target development assistance**

Home governments should:

- Ensure that in supporting the growth of their companies abroad they are not undermining human rights in the host country. This means undertaking rigorous due diligence to understand the social, environmental and human rights impacts of proposed projects and plans prior to investing public funds in any projects, plans or legislative or administrative reforms; it also means ensuring that appropriate consultation and consent processes are implemented. Careful attention must be paid in situations of armed conflict, with due consideration for developing criteria with input from civil society and affected communities and for defining areas where investment should not take place.<sup>60</sup>

- Establish an effective mechanism whereby Indigenous communities can hold companies to account in the host country. For Canada, this means reconsidering legislation to prevent Canadian companies from having adverse impacts on the rights of Indigenous Peoples outside Canada, and establishing an independent ombudsperson with the power to undertake investigations and withdraw public support from companies who have violated Canada's CSR framework. This follows one of the key recommendations of the March 2007 advisory group report of the national roundtables on CSR, and meets CERD's 2007 closing observations for Canada.
- Target development assistance to move beyond the current focus on supporting voluntary CSR initiatives and project-level interventions in the extractive sector, to focus instead on strengthening host governments' social responsibility and accountability mechanisms. Development assistance should be targeted towards strengthening host governments' environmental and human rights protections alongside efforts to maximize economic benefits from extractives; and towards strengthening communities and their representative organizations through support programs developed independently of companies, with technical support from organizations freely chosen by communities.

## **2.5 Issue #5: The company — The limitations of voluntary approaches**

Companies and industry associations have devised corporate social responsibility policies. Some also have far-reaching policies on Indigenous Peoples, with select companies even considering policies on free, prior and informed consent.<sup>61</sup> While these are important first steps, our research provides evidence that on their own, these voluntary mechanisms are largely ineffective, because there is no penalty for ignoring them (see box 5). Company policies and voluntary initiatives simply cannot take the place of strong protection, regulation and enforcement by host and home governments.

While the first priorities should be strengthening home and host country governance and addressing systemic issues, companies and their industry associations should simultaneously continue to develop stronger policy positions and focus on ensuring that they are implemented in practice.

### **2.5.1 Clarifying misconceptions: Respecting rights includes respecting free, prior and informed consent**

Aside from the voluntary nature of company CSR policies and the reluctance of industry associations to even require codes of conduct as a condition of membership,<sup>62</sup> a key barrier to progress around FPIC is the myriad misconceptions about its nature and scope.

Currently, many companies have committed to “respecting human rights”,<sup>63</sup> with some also considering the feasibility of implementing free, prior and informed consent. Conceptually, it is unfathomable to commit to respecting human rights, and then to pick and choose which rights will be respected and recognized, and which rights will not. A company that purports to respect human rights should also respect the right to free, prior and informed consent.

While issues have surfaced around understanding the full scope of what “respecting human rights” means in practice, misunderstandings abound regarding what the right to free, prior and informed consent means, and how to implement it. These misconceptions have not only stopped companies and governments from embracing this right; they have also led to the development of ill-conceived policies, and claims that consent has been obtained in cases where Indigenous communities disagree.

### **Box 5: Suriname — A litmus test for the effectiveness of corporate social responsibility**

Suriname is the perfect place to test the effectiveness of CSR, as the country is a legislative vacuum: Indigenous rights are not recognized, and there are no legal requirements to undertake ESIA. Companies are, in effect, left to their own devices.

For several years, our program accompanied the West Suriname Lokono People, who were facing a proposed integrated aluminum industry: large-scale bauxite mining, a potential hydroelectric dam and smelter, and a series of infrastructure projects such as roads and bridges that would link remote West Suriname to the Guyanas to facilitate easier movement of goods from Brazil to Venezuela. The two companies proposing these activities were members of the International Council on Mining and Metals, an industry association comprising the world's largest mining companies. One company was in charge of the exploration program.

The evidence makes clear that even the largest global mining companies do not implement their own commitments if they are not forced to do so. In West Suriname, advanced exploration was conducted in 2800 km<sup>2</sup> of primary rainforest without undertaking an ESIA, contrary to the company's own policies. When the Indigenous Peoples called the company on this, it issued several public apologies after the fact, but did not restore the damage it had done to the environment. The company also did not obtain the consent of Indigenous authorities to engage in the advanced exploration and related activities, and continued ignoring the communities' own consultation and consent policy. It engaged in an ESIA process that would have been deemed illegal in other jurisdictions, and eventually entered into questionable negotiation tactics with the Lokono communities; one of the most problematic aspects of these tactics was their violation of the communities' right to legal counsel.

The results of this test case are clear: If even the largest companies with the deepest pockets are not implementing their own CSR commitments regarding respect for Indigenous rights and protection of the environment, what is the likelihood that other companies with not-so-deep pockets will? Furthermore, considering that CSR initiatives have been in place for over 10 years — as José de Echave highlights in his analysis of the Peruvian experience — why is the number of extractive-related conflicts increasing, instead of decreasing?

The evidence points to a need to move away from over-reliance on voluntary CSR initiatives, towards addressing the systemic issues and strengthening government social responsibility — *government accountability* — so that environmental and human rights protections are in place, required and enforced, and affected communities are not alone in the face of such a large power imbalance.

Sources: Weitzner (2007); Goodland et al. (2009); De Echave (2010)



*Photo: Courtesy of VIDS*

*Exploratory drilling for bauxite in the pristine rainforests of West Suriname.*

It is clearly imperative to identify and clarify these misconceptions.” Over the course of our “Indigenous Perspectives” research program, the following misconceptions have come to light.<sup>64</sup>

### ***Misconception 1: FPIC is granted by governments.***

***By recognizing FPIC in a country that does not, companies may be violating the sovereignty of that country, and would in effect be granting rights to communities.***

**Clarification:** FPIC is an inherent right that belongs to members of Indigenous and Tribal peoples by virtue of their belonging to a people with internationally recognized special rights. FPIC is not granted by governments or companies. A government’s failure to issue domestic legislation is no excuse for not recognizing and upholding FPIC, or for not paving the way for positive precedents. In fact, in countries where the state has not recognized FPIC in legislation, policies or practice, the international courts are ordering the countries to do so. This is the case with Suriname, where in 2007 the IACR issued the binding *Saramaka People* judgment, in which the court ruled that, “regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the state has a duty, *not only to consult with the Saramakas, but also to obtain their free, prior and informed consent according to their customs and traditions.*”<sup>65</sup> A company failing to ensure that FPIC is implemented in such a context may be opening itself and the country’s government to a potential court challenge.

### ***Misconception 2: FPIC is a veto right, and could mean that one person could decide the fate of a project.***

**Clarification:** FPIC is inextricably linked to a whole range of rights protected by international law, including rights to self-determination, development, cultural identity, autonomy and participation. Conflating FPIC simply with a veto right ignores the range of other rights that require the implementation of FPIC in order to be upheld. How consent is reached within Indigenous and Tribal communities is subject to the norms and traditions of collective decision-making. If FPIC processes are undertaken appropriately, it is hard to imagine a case in which one individual could veto a whole project on behalf of an entire community.

*“Free, prior and informed consent should be in the relationship about how we see our right to development... When we say ‘no’, we are saying we have different rights to different paths.”*

**Afro-Colombian leader**

### ***Misconception 3: FPIC will result in more no-go decisions.***

**Clarification:** Indigenous participants in NSI’s “Indigenous Perspectives” project constantly underscore that they are not anti-development. Their reservations about mining projects on their territories have more to do with unrecognized land rights, the legacies of previous mining projects and a lack of evidence that their community will obtain more benefits than costs. The full recognition and implementation of FPIC by project proponents — together with a willingness to enter into revenue-sharing or benefit-sharing arrangements — may lead to more clarity and certainty regarding potential projects and investments, and could pave the way for business *if* conditions and mitigation measures are judged agreeable.<sup>66</sup>

*“We are not against development, but it shouldn’t be done at our expense. Industry must take all the consideration when dealing with us to ensure that all our rights are upheld.”*

**Lutsel K’e Dene First Nation  
negotiator and former Chief**

#### ***Misconception 4:***

##### ***FPIC is a one-time event.***

**Clarification:** FPIC is an ongoing process that should start prior to the issuing of concessions and to exploration and, if all parties agree that a project should go ahead, terminate when all potential legacy issues from the closed project have been addressed (see figures 1 and 2).<sup>67</sup> To highlight the dynamic rather than static nature of consent processes, Indigenous Peoples use terms such as *living consent* and *maintaining consent*.<sup>68</sup> Another way of seeing this is that *if* free, prior and informed consent is given for a project to go ahead, this provides a social licence to proceed in conformity with negotiated conditions. However, the power of any licence is that it is authorized, and can be revoked if rules are not followed.<sup>69</sup> Nonetheless, FPIC should not be seen solely as a social licence to operate.

#### ***Misconception 5:***

##### ***FPIC is equivalent to a social licence to operate.***

**Clarification:** Currently, companies are confusing or conflating free, prior and informed consent with a social licence to operate.<sup>70</sup> The problem with this conflation is that it assumes that a project *will* go ahead. Respecting FPIC means respecting the right of communities to say “No” and to withhold their consent to a particular project, in line with their right to self-determination.<sup>71</sup> Looking at FPIC through the lens of a social licence to operate is far more appropriate in the case of projects that communities do consent to. But as noted earlier, licences can be revoked if negotiated rules are not followed.

#### ***Misconception 6:***

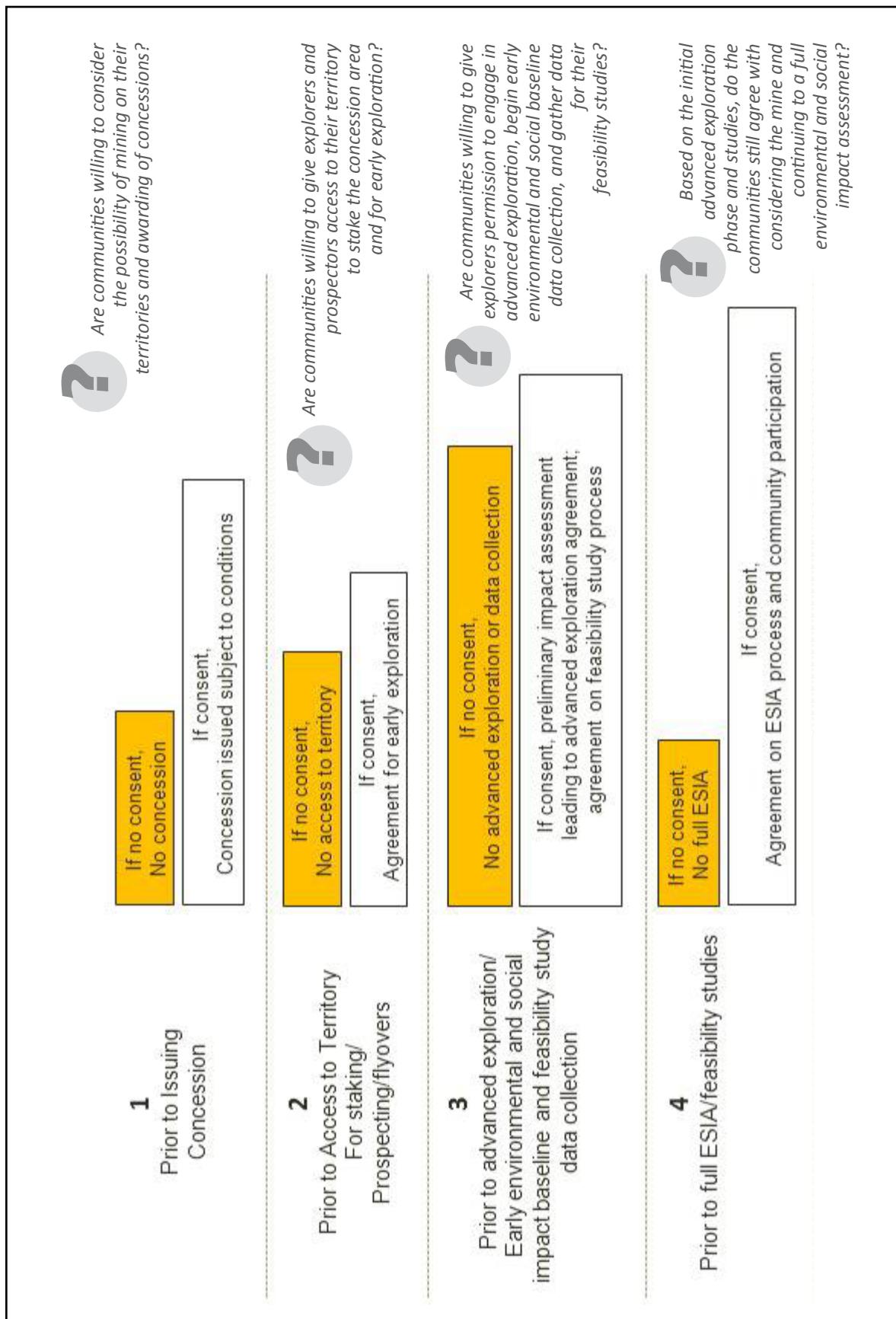
##### ***Impact Benefit Agreements (IBAs) or compensation agreements are evidence of obtaining free, prior and informed consent.***

**Clarification:** Research with the Lutsel K'e Dene First Nation in Canada's Northwest Territories has highlighted the fact that IBAs might actually have very little to do with consent processes. In many instances, *communities feel that they have no other option than to negotiate an IBA in the face of development projects that will go ahead regardless of whether they consent or object*. In these situations — far from being cases of FPIC wherein the right of affected peoples/communities to say no is upheld — the IBAs reflect community consent only to accrue certain benefits from a development *that they may fundamentally disagree with*, and an attempt to mitigate its negative impacts.<sup>72</sup>



*Photos courtesy of Lutsel K'e Dene First Nation  
Consent? The Impact and Benefit Agreement they  
negotiated with BHP Billiton was not the same  
as FPIC said many residents of the Lutsel K'e Dene  
First Nation in Canada's Northwest Territories  
— they didn't feel they had the option  
to say 'No' to the mine.*

**Figure 1: Key triggers for obtaining consent in the mining cycle**



**5**  
Prior to issuing permit  
For Exploitation

If no consent,  
No permit; Mine does not go ahead

If consent,  
Impact Benefit Agreement

(environmental and social impacts management plans,  
closure plan, monitoring, community grievance mechanisms,  
implementation committee, revenue-sharing, review timeframe, etc.)

**6**  
Prior to any changes to the scale or  
scope of mining activities; any new  
processes or technologies different  
to those assessed in the ESIAs and  
agreed to in the Impact Benefit  
Agreement,  
require separate ESIAs

If no consent,  
No changes made

If consent,  
New ESIAs and, if acceptable,  
negotiations of new Impact Benefit Agreement

**7**  
Prior to Mine Closure:  
Review original mine closure plan  
agreed prior to permitting

If adjustment needed to original plan,  
renegotiation of closure plan

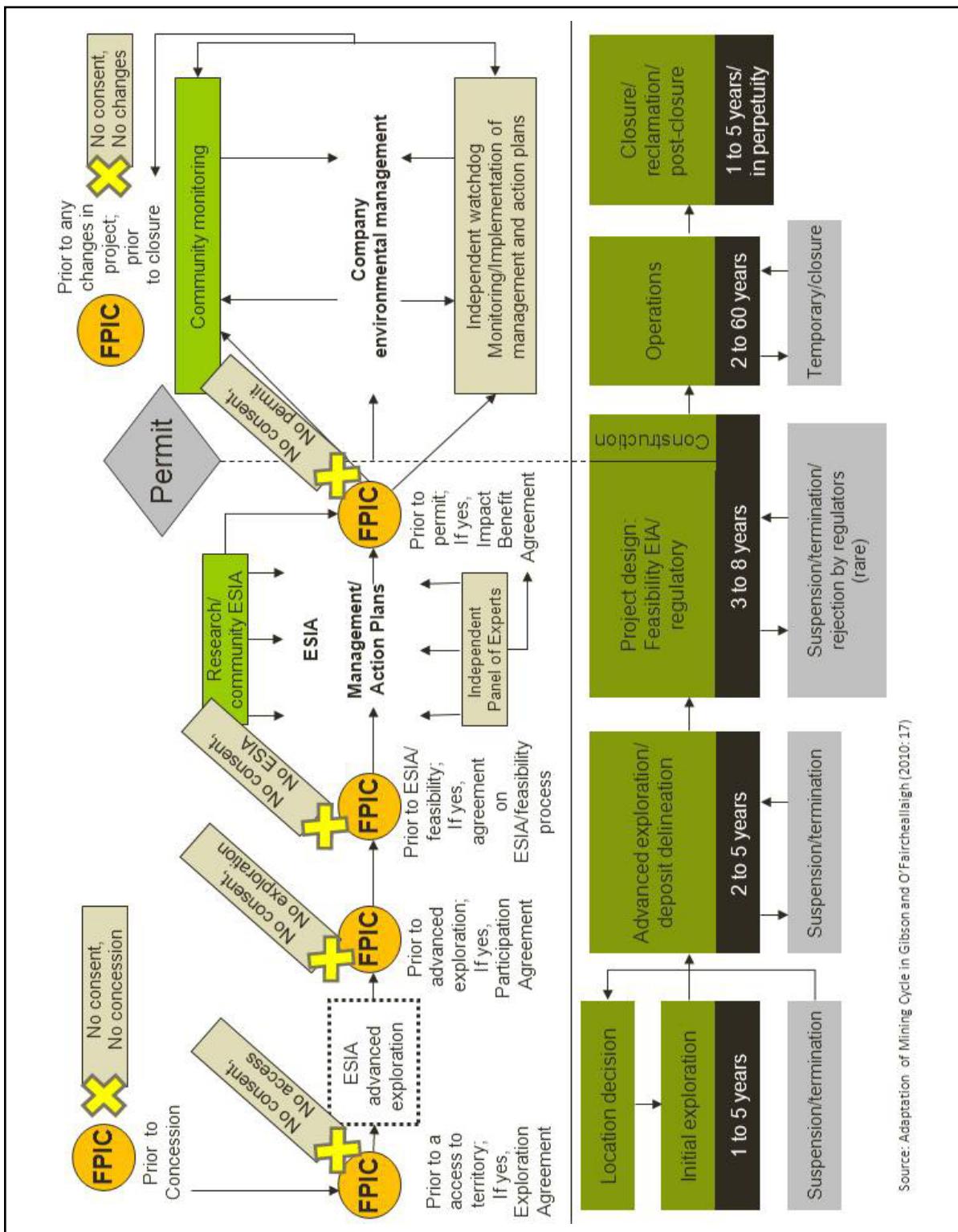
Are the communities willing to  
proceed with the mine going  
ahead, based on  
the environmental  
assessment studies,  
management plans and  
impact benefit  
agreements negotiated?

Are the communities in agreement  
with considering changes to the  
scale, scope, new processes  
or technologies proposed?

Does the original  
closure plan developed  
prior to mine permitting  
need to be reviewed  
and adjusted?

**Note:** These are key moments based on a generalized mining cycle. Each community will develop their own thresholds for where consent should and should not be triggered, and include these in their agreements with the companies and the state, where the state is included in negotiations. While communities have different perspectives on whether or not the state should be involved in mining negotiations, it is imperative that the state guarantees communities' right to free, prior and informed consent, particularly in initial planning, zoning and issuing of concessions, as well as throughout decision-making and permitting for individual projects.

**Figure 2: Best practice and key triggers for obtaining consent in the mining process**



Respecting and upholding free, prior and informed consent involves understanding and respecting that communities may not want to negotiate an agreement at all. In the case of communities that *do* want a project to go ahead, it means abiding by their consultation and consent guidelines and not only negotiating agreements, but implementing and maintaining them. It also means recognizing Indigenous Peoples as the rightful owners of their ancestral territories, whether they have received official recognition or not.

#### ***Misconception 7: FPIC is new.***

**Clarification:** FPIC is an age-old way of making agreements. Research has highlighted that it goes back to agreement-making between Indigenous people and newcomers when Europeans first settled the Americas.<sup>73</sup>

### **2.5.2 Making FPIC work — Advice for companies**

Having clarified misconceptions around the nature and scope of free, prior and informed consent, the key question is how to make FPIC work in practice.

Several international expert mechanisms — including the World Bank’s World Commission on Dams, the Extractive Industries Review (EIR) and the UN Permanent Forum on Indigenous Issues — have provided guidance on how to implement free, prior and informed consent.<sup>74</sup> Our research clarifies that there is no blueprint, no easy checklist, for free, prior and informed consent processes. At its core, FPIC is about building respectful relationships, and requiring outsiders to recognize that they are visitors in someone else’s homeland. But beyond respectful relationships and rights, it is good business practice.<sup>75</sup>

A major company that invests in a project in which explorers have done proper due diligence and undertaken appropriate consent processes will, for example, be in a far better position regarding both the potential for the project to move forward and shareholder confidence. Incentives should exist for this reason, with major companies providing funding to cover the costs of juniors who can demonstrate that they have undertaken rigorous consent processes. Consideration should also be given to how the costs of such processes can be covered even if the result is a no-go decision.

Because each process is culturally specific, guidance from those who hold the right to give or withhold consent is critical. The best-case scenario for any project proponent is engaging with communities who have articulated clearly their FPIC process and who have established rules and regulations regarding their decision-making process, and the appropriate means to implement these.

The best-case scenario for any community engaging with a company is that the company has embraced the right to free, prior and informed consent in their policies and practice, and has managers and operators knowledgeable about international standards and leading-edge practice in engaging with Indigenous Peoples and in Indigenous rights.<sup>76</sup>

Yet current practice — even by some of the most well-endowed operators — is far from this best-case scenario. We have seen cases where companies have completely ignored the presence of Indigenous Peoples, or pretended they do not exist. In the case of the Embera Chamí people living in the RICL in Caldas, Colombia, a multinational company went ahead and conducted flyover aerial exploration without first obtaining the consent of the Indigenous Peoples. The results were psychologically devastating, with

children, Elders and women running for cover and fearing for their lives; and the company breeding polarization and tarnishing its reputation at the earliest possible stage.<sup>77</sup>

Too often, what a company or government calls consultation is merely delivery of information that is not culturally appropriate and is difficult to understand. And too often, customary decision-making processes are undermined.

At times, powerful actors try to rush decisions before the community has had sufficient time to digest and discuss the proposal. We have seen cases of intense pressure being put on leaders and community members to make decisions and of negotiations proceeding in bad faith. In Suriname, a multinational company pressed the Lokono people to sign an extremely weak agreement, without allowing them time to conduct a legal review and without legal counsel present. Yet the company had its legal counsel present throughout.

We have also seen cases where companies have claimed that they have obtained free, prior and informed consent, while the communities have a very different view of what took place. A case in point is oil and gas exploration in Peru, where (among other weaknesses) the scope of the proclaimed consent process was inadequate considering the affected area, the representative organization of the affected communities at the Indigenous Nation level was not involved, and the communities had inadequate support.<sup>78</sup> This case underscores the inadequacy of corporate self-reporting on free, prior and informed consent processes, and highlights the importance of well-thought-out verification processes that include independent experts chosen in consultation with affected communities.

Yet some companies are starting to understand that business as usual is no longer tenable, and some are trying to make changes. However, these changes are not going far enough, fast enough. The following recommendations for companies provide guidance that could turn the current situation around.



### **Recommendation: *Improve corporate practice***

Companies should:

- Adopt strong policies governing their relations with Indigenous Peoples — policies that recognize company obligations to implement free, prior and informed consent.
- Use the rich guidance available on implementing FPIC. This includes the Akwé: Kon Guidelines; the ongoing work of the UN Permanent Forum on Indigenous Issues as it develops its standard-setting exercise on FPIC; guidelines on operationalizing consent, developed under the World Commission on Dams; and the ever-growing case study literature.
- Where Indigenous and Tribal Peoples do not have recognized land rights, respect these rights as if they were recognized. Use your influence to help further Indigenous rights issues with the host country government.<sup>80</sup>
- Refrain from undertaking any activities, even flyovers, without first obtaining the consent of the communities.
- Refrain from initiating environmental and social impact activities or consultations, until a community has a consent process in place. Provide time and, when asked, support for the development of one.
- Respect the traditional authorities in Indigenous communities rather than working only with imposed or self-appointed leaders, and ensure that all members of the communities —

particularly women, youth and Elders — are integral participants in the process. Negotiate with the appropriate community authorities and their representative institutions, as per community guidelines.

- Ensure that communities have timely access to all relevant information about any proposal affecting Indigenous territories. Information must be in formats that are culturally appropriate, available in local Indigenous languages and easy to understand. The appropriate formats and means for sharing information at the community level should be agreed upon in advance.
- Where communities are remote and lack communications infrastructure, consider installing telephone and Internet connections. Donors, governments and proponents should also consider funding such communication networks.
- Independently assess and verify processes for free, prior and informed consent, using experts chosen in consultation with affected communities.

## 2.6 Issue #6: Balancing power — Strengthening Indigenous Peoples

The power imbalance between government, industry and Indigenous Peoples makes it difficult for the party with the least power — almost invariably the Indigenous peoples — to insist on their right to free, prior and informed consent. In Guyana, for example, community members felt intimidated when they were presented with complex documents on a national conservation scheme at meetings with government ministers who had flown in to “consult.” Before the people could understand the documents, let alone express an opinion on them, the ministers were gone.

However, we found evidence that Indigenous Peoples are responding by strengthening their capacities; issuing their own guidelines for free, prior and informed consent; and using these in negotiations. Our project has highlighted numerous ways Indigenous Peoples can strengthen their position in negotiations, and the likelihood of outcomes that are in tune with their rights and aspirations toward self-determined development. Key stepping stones include the following:

- *Community vision.* The community must have a clear vision of how it wants to shape its future over the next 50 and 100 years, and even for the next generations. Some call this a *plan de vida*, a “life plan.” This vision serves as the baseline against which to gauge whether a proposed development for the ancestral territory does or does not fit.
- *Community protocols for free, prior and informed consent.* Articulating clear guidelines about how consent should be sought for a project or plan affecting ancestral lands is a powerful

*“The first step is to get a unified, cohesive picture of what your community wants, and to know: What is our vision for the future — 50 years, 100 years, 6 generations from now? What do we want for our youth? Where are our Elders telling us to go? How are we going to get there ... The homework you have to do before you get to the table is very, very important. And only gives your negotiators and your community strength.”*

**Resource Person, Lutsel K'e Dene First Nation**

Source: Weitzner (2006)

means to ensure that community members understand the correct process that consent entails and do not become involved in processes that deviate from the rules. In addition, protocols offer project proponents clear information about what they should and should not do. These protocols are living documents, and may change and be adapted with experience. They are clearly the intellectual property of the communities, and it is up to communities to articulate a version that can be made public. Proponents must understand that such protocols may exist at the community, but also at the Indigenous Nation, at the regional or at the national level.<sup>81</sup>

- *Mapping and land rights.* Maps showing customary use and occupation are powerful ways to defend ancestral territories. They are a key tool for negotiating land rights that cover the appropriate extent of ancestral lands. And even if the rights have not as yet received official recognition, such maps provide evidence when interacting with proponents.
- *Land use planning and establishing no-go zones or community conserved areas.* Land use plans help identify which areas might be open for mining (whether ancestral or large-scale mining) and which areas are no-go zones. Some communities are choosing to use their own laws to declare their territories no-go zones for large-scale mining, particularly if the land base is small compared to the population living on it, and if large-scale mining activities could significantly affect food security or even human security (in the case of armed conflict). Another tool Indigenous Peoples are increasingly considering is the establishment of community conserved areas, a protection category recognized by International Union for the Conservation of Nature (IUCN) that enables Indigenous Peoples to continue the full range of their customary activities, but that excludes large-scale mining. Something akin to a community conserved area is currently being negotiated by the Lutsel K'e Dene First Nation.<sup>82</sup>
- *Knowledge of international standards, leading-edge practice and rights.* To strengthen capacities for interacting with proponents, it is critical to understand internationally recognized rights, international standards regarding environmental, social and human rights impact assessment, as well as leading-edge practice in negotiations.
- *Community-based research.* This is vital to understanding the full range of impacts a potential project may have, including how these might affect women, youth and Elders differently. Building capacity among local experts to document baseline conditions is a pro-active way of establishing current conditions in case of future developments. Community-based research is also critical in, for example, understanding community aspirations regarding the future, and how to strengthen existing decision-making processes. Furthermore, it is a vital element in supplementing research commissioned by companies for environmental impact assessment purposes.
- *Access to information.* Access to information about a potential project and its proponents — in formats that are culturally appropriate, easy to understand and in the appropriate language — is essential for implementing FPIC. Often, remote communities are cut off from any information, with little, if any, access to Internet or print materials. This is certainly the case, for example, in the interior of Guyana, where communities are still largely unaware of the climate change mitigation projects that the government is proposing for their territories.
- *Indigenous-to-Indigenous exchanges and site visits.* Nothing is more eye-opening than hearing first-hand from other communities how they have been affected by similar developments. Our program has enabled the sharing of experiences between Colombia, Suriname, Canada and Guyana, and among communities within each of these countries. While visits can be costly and

challenging to organize, first-hand experience is critical for capacity-strengthening, improving understanding of impacts and what might be possible to negotiate, as well as networking and solidarity. However our program has highlighted that any site visits that do take place should be organized by the affected communities themselves. Such visits will yield more direct and relevant information than visits that are organized only by the companies — as companies can limit the areas being seen and manipulate the agenda.

- *Community unity.* Perhaps the most important ingredient in building community strength and balancing power is community unity. Community division often results when new projects are proposed. The importance of strategies for ensuring unity and speaking with one voice cannot be overstated.

Many more lessons have flowed from our research about tipping the power balance, such as building alliances, obtaining appropriate funding, having access to independent experts and legal counsel, and using the media.

Our research also suggests that if a community decides it *does* want to enter into negotiations regarding a particular project because it fits with the community vision and offers more foreseeable benefits than drawbacks, further considerations remain for the community. This situation is highlighted in the case study and video on the Lutsel K'e Dene First Nation's experience negotiating with several mining companies,<sup>83</sup> and in the series of community guides that were produced for Guyana and that are forthcoming for Colombia. These guides examine free, prior and informed consent, IBAs, and Impact Assessment.<sup>84</sup>

*"To achieve change you need to enter government on the inside eventually, and make sure your own people are in positions of power to fight for your cause."*

**Negotiator, Lutsel K'e Dene First Nation**

*"For [the company] to try to play a game of poker with the lives of people was something that didn't surprise me. But I did learn — or it did confirm my thinking — that industry will not deal with people all in the same way if they don't have to, or to keep the high standard of being fair and respectful to the people, or the area they are in."*

**Lutsel K'e Dene First Nation (Canada) negotiator, on the key lesson she learned while visiting the mine sites and Lokono People in West Suriname**

Finally, however, a critical element in balancing powers is the existence of strong regional- and national-level Indigenous organizations that can take communities' concerns to the highest levels. NSI's experience is that these organizations are severely underfunded and under-resourced. Because of this, their ability to engage in strategic planning and to provide continued support to communities is significantly hampered. No doubt, institutional strengthening needs to happen at this level as

well, particularly as these organizations are part of the structure of Indigenous governance; in order to truly represent their people, they require human resources, funding and access to expertise.

In addition, several project partners have insisted on the need for their people to enter mainstream government as the ultimate way to try to influence changes in policy and practice. This strategy provides more direct access to decision-making, and potentially to influence.



## Recommendation: *Strengthen Indigenous Peoples governance*<sup>85</sup>

Indigenous Peoples should:

- Establish their own development or life plan in order to judge whether a proposed project fits with the community's aspirations;
- As part of this plan, research and document socio-economic, cultural, spiritual and environmental baseline conditions;
- Develop protocols for free, prior and informed consent to guide decision-making and develop strategies for maintaining community unity;
- Build alliances with other communities affected by mining and with supportive national and international organizations;
- Use these alliances to share knowledge on negotiating strategies, best practice in impact assessments and Indigenous rights under international law;
- Obtain information about project proponents and the impacts of proposed activities;
- Seek independent funding and identify independent experts and legal counsel;



*Photo: Meaghan Simms*

*Lawrence Anselmo of the APA introduces some possible impacts of mining in Guyana, as Amerindian trainers and Robert Goodland, one of the world's leading experts on environmental and social impacts assessment, listen. Goodland was among a number of international experts who lent their support to the Indigenous Perspectives Program.*

- Consider strategies to influence outcomes, including use of the media and of national and international courts, appealing to international commissions, and calling on eminent people including UN Special Rapporteurs to visit and investigate; and for long-term influence, consider having Indigenous representatives enter mainstream government.

International donors should:

- Fund and support organizations representing Indigenous Peoples so that the organizations can represent the communities in dealings with governments, corporations and other actors;
- Ensure that initiatives to strengthen the capacities, policies and decision-making processes of Indigenous Peoples take place independent of companies and not only in areas where projects are imminent;
- Allow communities to choose the resource people and organizations that will support them.

## **2.7 Issue #7: Conditioning support from international financial institutions**

In the face of weak governance and regulations to hold companies to account within both host and home governments, international financial institutions play a critical role in requiring conditions of companies and governments borrowing funds. The World Bank Group — and particularly the IFC, the private-sector lending arm of the Group — is seen globally as the standard-setter for corporate behaviour. Besides being the basis for many home government policies, including those of Canada, the IFC's Performance Standards and policies also guide commercial banks who are members of the Equator Principles initiative.

Because of their extensive reach, the safeguard policy reviews currently underway at the World Bank are of utmost importance. At the time of writing, the most recent drafts of the proposed IFC Sustainability Framework, including its Performance Standards, show progress in that language refers now to the need to obtain the free, prior and informed consent of Indigenous Peoples in specific circumstances. This is a great improvement over the previous (2006) Performance Standards that referred only to free, prior and informed *consultation*, to 'good faith negotiation' which is 'successfully concluded' and to 'broad community support.' Nonetheless, there are issues in terms of the scope and interpretation of the current language. For example, Performance Standard 7 on Indigenous Peoples, paras 14-16, refers to special circumstances requiring free, prior and informed consent. In these paragraphs, the onus is on the client to document the process, which is problematic because a client's understanding of a process may often be very different from an Indigenous communities' understanding; and the qualifier that, "consent does not necessarily require unanimity and may be achieved even when individuals or sub-groups explicitly disagree" is vague (IFC 2010, para 15). Clearly, it is up to the Indigenous communities to decide what constitutes consent, rather than the client or even the IFC, and the communities should be actively involved in the verification of the consent process.

As mentioned in the Forest Peoples Programme's most recent analysis,<sup>86</sup> there is scope for confusion in how to interpret free, prior and informed consent in light of the current lack of references to international standard-setting exercises, international instruments such as the UNDRIP, and international jurisprudence defining the scope of FPIC — instead, the draft language leaves too much of the interpretation of what FPIC comprises, and whether it has been obtained, to the discretion of companies. The draft Performance Standards also limit the application of FPIC to projects with



The environmental and social impact assessment for the proposed Kabalebo Dam (left) in Suriname and the Amalia Falls Dam in Guyana were both targeted for possible project funding from the Inter-American Development Bank, among other financiers. The Kabalebo dam would enable potential smelting of bauxite in West Suriname, and fuel the expansion of mining in this area.

Photo: Suralco  
(from a presentation given at a national workshop in Paramaribo, 2005)

significant or adverse impacts ‘on’ indigenous lands, instead of considering all projects affecting Indigenous lands whether or not these lands are officially recognized. There is additional confusion regarding Indigenous lands that have been individually or collectively titled, and which Performance Standards should apply in those cases.<sup>87</sup> The FPP also points out that verification of consent processes remains lacking.

Finally, the IFC has fallen short of fully embracing human rights throughout the Performance Standards as a key consideration alongside social and environmental impacts, and currently human rights due diligence is not required in assessing projects or in the decision to fund.<sup>88</sup> These weaknesses need to be addressed, in order to maximize the potential of the current review to uphold the rights of those most affected by decision-making regarding IFC projects. Should rights issues not be incorporated fully into the review, the World Bank Group could be charged with appearing to “pursue development at the expense of human rights,”<sup>89</sup> and not fulfilling the IFC’s mandate to “help to reduce poverty and improve people’s lives” through private sector investment in developing countries.<sup>90</sup>



### ***Issue #7 Recommendation: Fully integrate human rights considerations in conditioning support from international financial institutions***

The IFC (and other lending institutions or credit agencies) should:

- Fully integrate human rights considerations in its Sustainability Framework and Performance Standards, including the requirement of human rights due diligence, and particularly as a necessary condition for implementing the newly embraced special requirement of free, prior and informed consent;
- Refer to UNDRIP, standard-setting exercises, and international jurisprudence in defining the scope and content of free, prior and informed consent processes, and ensure that FPIC applies to all projects with impacts on Indigenous lands, whether officially recognized or not;
- Consider independent verification of consent processes, with experts chosen in collaboration with the affected communities.

## 2.8 Issue #8: Looking at the big picture, asking the hard questions

Besides the specific issues outlined concerning governance gaps and corporate practice, fundamental questions need to be asked about whether mining should or should not be undertaken in specific contexts, particularly those that involve armed conflict, and about the link between extractive activities and deeper questions around sustainable development.

### 2.8.1 Extractives, sustainable development and economic alternatives

Whether mining contributes to sustainable development or poverty alleviation is a question that has informed numerous policy debates and academic research. It led, for example, to the World Bank's Extractive Industries Review (2000-2004),<sup>91</sup> and the Mining, Minerals and Sustainable Development Initiative (2000-2002).<sup>92</sup> Both these multi-partite international dialogues clearly pointed to some of the problems inherent with these types of projects, particularly on account of their large impacts and the governance gaps often present.<sup>93</sup> The dialogues also added to the evidence backing the common knowledge that many of the countries richest in non-renewable natural resources are, ironically, also some of the poorest in the world, and are often ridden with conflict.<sup>94</sup>

By its very nature, mining leads to depletion of the resources in question, so it is not a sustainable form of development. The only way mining can fulfill some of the goals of sustainable development is to mitigate its impacts using the best available technologies, and to slow the process of extraction so as to provide maximum benefits to the local communities.<sup>95</sup>

And where these impacts are deemed too great, to prohibit the type of mining — such as in the case of Costa Rica, where there is a national ban on open-pit gold mining;<sup>96</sup> or in Colombia, where the government has determined that no mining will take place in ecologically sensitive areas such as those known as *paramos*.

But a key question that does not seem to be asked, particularly in the context of large-scale projects, is whether the proposed extractive project is the best economic alternative for the specific site and area in the first place, or whether some other economic activity might be better suited. The very nature of large-scale, non-renewable extraction implies that resources will dwindle and run out, leading to the closure of the project. Are the short-term gains worth it, when set against the negative impacts, and other development options possible for the area? (See box 6). As José de Echave argues so compellingly in his

#### Box 6: Tambogrande, Peru — Why destroy a thriving agricultural economy for a mine?

One of the key policy failures around the discourse on development and extractives is the failure to consider economic alternatives for specific areas slated for mining, and to examine these alternatives through the lens of sustainable development and human rights. In the case of Tambogrande, for example, a large-scale mine was being proposed in an area with a thriving agricultural economy; if the mine went ahead, it would lead to impacts that would severely affect this existing economy and productivity, not to mention the ways of life of the local people. In response, a major uprising took place to prevent the mine from going ahead. The movement was successful in stopping the mine, although not without its costs — indeed, one of the key leaders of the anti-mining campaign was killed in the process. In some cases, large-scale mining may be feasible and wanted by local populations; but in others, where livelihoods will be destroyed, the likelihood for opposition and potential conflict is extremely high.

Source: de Echave (2010)



Photo: Federico Herrera

*Nestor Jaiver Castaneda, Miner and Member of the Association of Miners of the Resguardo Indígena Cañamomo Lomaprieta in Caldas, Colombia, sits next to a "German Table" used to separate gold through gravity. The Resguardo prohibits use of cyanide and mercury in ancestral mining.*

analysis on the Peruvian context, these are some of the hard development questions that seem to fall by the wayside and are not rigorously considered when examining questions around whether a particular project is in “the national interest.”

Where mining is considered a viable option by the local Indigenous Peoples, there are ways of better aligning it with sustainable development principles. For large-scale mining, this alignment includes using the best environmental technology possible and slowing the pace of production so that local peoples have a chance of getting training and the higher-paid jobs, and to mitigate the boom and bust cycle of mining.<sup>97</sup>

But even at different scales, Indigenous Peoples too are examining alternatives to destructive mining practices. In the interior of Guyana, for example, a large proportion of Amerindians engage in small-scale mining, either for themselves or for others, often Brazilian *garimpeiros* (small- and medium-scale miners). In so doing, however, Guyana’s Indigenous miners are contributing to environmental contamination from the use of mercury and cyanide as well as to increasing river turbidity. They are also compounding social problems, including severe gender-related issues that arise from mining activities, such as family breakups, prostitution and even human trafficking.<sup>98</sup> Many see no economic alternatives possible for making ready cash, and therefore engage in this activity as an alternative to migrating to the cities. However, were other economic alternatives available — including economically viable, responsible artisanal mining — the Indigenous Peoples involved would likely embrace these.<sup>99</sup> While eco-tourism schemes and cottage industries are feasible — as detailed in the alternative

economies report written by Tom Griffiths and Lawrence Anselmo under the Guyanese component of our program<sup>100</sup> — much work would need to be done to ensure appropriate marketing schemes, and available credit or capital to kick-start these small-scale industries.

Ancestral mining that does not use cyanide and mercury, and that is well-regulated by the Indigenous or Afro-descendant Peoples involved, is an example of how sustainable development and mining could mesh. The scale and pace is slow, but in some cases, as in Northern Cauca, Colombia, this type of mining — even in the same locations and mountains — has taken place since the 1600s, and is still the mainstay of the local people. However, in the Northern Cauca context, the struggle is to be able to preserve this livelihood and way of life in the face of pressures from multinational companies with interests in ancestral mining areas. Such pressure is responsible for ongoing violence and threats towards miners and social leaders, including threats of forced evictions of ancestral mining communities, like the Afro-descendant community of La Toma in Cauca. The struggle is exacerbated by reforms to the Colombian mining code that would lead to the criminalization of ancestral mining if certain conditions and administrative requirements were not met. Ancestral miners describe these state-imposed conditions as inappropriate given the special jurisdiction they have over their territories, and the customary rules and procedures they follow to manage their mining.

In the context of ancestral gold mining, key issues involve obtaining better access to markets to get a fairer price for the gold extracted, examining potential certification schemes such as those being tested by the Alliance for Responsible Mining, and strengthening ancestral miners' own regulations and management plans.



### Recommendation:

*Consider development alternatives to extractives, and align any extraction that does take place with sustainable development principles*

Host governments should:

- In assessing extractive projects, consider other potential development options for the particular site or region — options that might lead to longer-term sustainable development outcomes;
- Support the development of economic alternatives to small-scale mining, and provide access to credit schemes;
- Develop cheaper technology and targeted training to reduce the environmental damage from mercury and cyanide use, as well as programs to reduce the social impacts of small- and medium-scale mining;
- Support and protect ancestral mining, including implementing certification schemes such as those developed by the Alliance for Responsible Mining, and facilitating artisanal miners in gaining better access to markets.

Indigenous Peoples should:

- Continue to strengthen their own regulations and management planning around ancestral mining, and consider certification schemes;
- Experiment with economic activities alternative to small-scale mining, with support from international donors and host governments.

## 2.8.2 Investing in areas of armed conflict: The case of Colombia

Colombia has one of the most progressive regimes in the world for constitutional and legislative recognition of Indigenous and Afro-descendant rights. For example, ILO Convention 169 was ratified in 1991 and, together with all the main treaties concerning human rights, was enshrined in the Colombian Constitution. It also supports the UN Declaration on the Rights of Indigenous Peoples. Nonetheless, because of the lack of political will and the internal armed conflict in Colombia, these rights are not being upheld in practice.<sup>101</sup> And violence continues to increase for ethnic minorities. UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples James Anaya's 2010 report on Colombia cites some devastating statistics. These include figures from the Vice-President's Office recording a 71 per cent increase in the killing of indigenous persons between January and September 2009, compared with 2008.<sup>102</sup> Some of the most egregious violations are taking place alongside and in parallel to the activities of multinational extractive companies; another extremely worrying trend is the establishment of medium- and small-scale mining operations by illegal armed groups (called BACRIMs or *bandas criminales emergentes*), with the consequent human rights violations that these engender.<sup>103</sup>

Some have argued that "conflict zones should be no-go areas for Canadian companies on moral grounds alone," as "the money foreign firms provide, even if it is in the form of seemingly legitimate fees for licenses or tax payments, can help fuel further fighting and increase the loss of life."<sup>104</sup> However, in the case of Colombia, collaborative research undertaken by the NSI and the Instituto de Estudios Regionales at the Universidad de Antioquia (INER, Institute of Regional Studies, University of Antioquia) in Phase I of our project (2000–2002) reveals that potentially-affected Indigenous communities are not necessarily opposing all projects on their lands.<sup>105</sup> While some no-go zones should be established — and criteria to this end developed through participatory research with Indigenous and Afro-Colombian communities<sup>106</sup> — Indigenous research participants emphasized they are not anti-development but pro self-determination: any projects that do take place on Indigenous (or Tribal) lands must uphold internationally-guaranteed Indigenous rights and follow international standards, including rights and standards relating to consultation and free, prior and informed consent.

In the context of armed conflict, critical questions arise around whether free, prior and informed consent can be implemented at all. How free is any consent process in the context of threats to lives, and disappearances of Indigenous and Afro-descendant leaders, especially those who demand that their right to free, prior and informed consent be upheld in the face of large-scale mining interests in their ancestral lands? What policy directions emerge in that context? These are key questions, considering the increasing Canadian interest in the Colombian extractive sector,<sup>107</sup> and the multiple free trade agreements that Colombia has negotiated with other countries. It is also key in light of an increase in the involvement of illegal armed groups in medium- and small-scale mining, and the effects of this trend on Indigenous and Afro-descendant Peoples and their territories.<sup>108</sup>

Our Colombia project is ongoing, and will yield concrete recommendations relevant locally and also to other countries where extractive activities have led to violence and fuelled armed conflict.



*Father José Reinel Restrepo was killed by unknown assailants in Colombia in September 2011. He was a staunch opponent of plans by a Canadian mining company to create an open-pit mine at Marmato, Caldas.*

## **2.9 In Sum: Strengthening governance, ensuring policy coherence and implementing FPIC**

This synthesis of key issues and crosscutting recommendations highlights the complex power dynamics and diverse governance issues that need to be addressed in order to balance asymmetries in decision-making in the extractive sector.

John Ruggie has referred to the inadequate balance — and the incoherence of domestic and international policy — that pervades the treatment of human rights considerations in decision-making concerning business. He concludes:

“Governments should not assume they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impact of corporate activities. On the contrary, the less governments do, the more they increase reputational and other risks to business.”<sup>109</sup>

Our project findings concur with these conclusions. There are strong arguments for balancing human rights in decision-making and providing more policy coherence both domestically and internationally; for developing enabling legislation in home and host countries to protect human rights and the environment and to hold companies to account; and for strengthening the monitoring and enforcement capacities of government agencies in this regard.

Therefore, in line with international jurisprudence and treaties — and consistent with leading-edge practice and business interests — recognizing and implementing free, prior and informed consent is paramount. Extractive companies, many of them Canadian, are staking increasing numbers of claims on Indigenous territories. Implementing strong free, prior and informed consent processes is central to reducing conflicts, bridging cultural differences and respecting Indigenous and Tribal rights to self-determination. Yet before FPIC can work, the many misconceptions concerning this right need to be addressed in corporate and government policies and practice. Free, prior and informed consent needs to be implemented from the earliest planning and zoning processes, to the issuing of concessions, and through to the closure and reclamation of project sites, if there is consent for projects to go ahead. And on their part, Indigenous organizations need to obtain support to strengthen their own governance and FPIC processes in order to enter into discussions on a more level playing field, while following community guidelines that protect community visions and aspirations for their future generations and that enable community unity.

Hard questions need to be asked about whether extractive activities are the optimal economic activities for specific locales, as compared with potential alternatives. Free, prior and informed consent processes are invaluable tools in these deliberations concerning sustainable development options and whether particular extractive projects are indeed in the national interest. For Indigenous Peoples, who are in economic terms among the poorest members of many countries,<sup>110</sup> much is at stake in ensuring that projects affecting ancestral lands *do* lead to poverty alleviation and environmentally and culturally sound outcomes — not only for their own people and their future generations, but for their country.

## **Section 3: Shifting Grounds**

### **Impacts of the “Indigenous Perspectives” Program**



Photo: Meaghan Simms

*No REDD without rights. An Indigenous participant listens as Guyana’s Minister of Amerindian Affairs presents at the UN Permanent Forum on Indigenous Issues, May 2011. Through the project, the APA has brought significant attention to the need for Indigenous rights to be protected as Guyana moves forward with climate change schemes, like the Low Carbon Development Strategy and the Reduced Emissions from Deforestation and Forest Degradation (REDD) program.*

Besides the policy directions that emerge from the “Indigenous Perspectives” program, this research has led to diverse and concrete outcomes, impacts and knowledge creation, nationally and internationally. This section outlines the key impacts for each project component. In addition, a separate impacts log<sup>111</sup> has been developed, highlighting the statistics on citations of our research by others, and providing source information.

#### **3.1 Guyana impacts**

In Guyana, our program had numerous important impacts.<sup>112</sup>

***Significantly increased attention to Indigenous rights issues, particularly in relation to climate change mitigation schemes***

In the wake of foreign support for the Low Carbon Development Strategy and other climate change mitigation schemes, such as Reducing Emissions from Deforestation and Forest Degradation Plus (REDD+ — supported in Guyana by a number of donors, with funds managed by the World Bank), we adapted

the Guyanese component of our project to examine the potential impacts of these schemes on the territorial and other rights of Indigenous Peoples. This enabled the following:

- Crucial support to our partner, the APA, so it could get informed and provide much-needed input to the proposed schemes early in the process. The APA undertook research, attended information sessions and stakeholder meetings, engaged with government and donors, and obtained feedback from communities that had participated in official “consultations.”
- The strengthening of the capacity and confidence of participating Indigenous communities, to allow them to make more informed choices around the LCDS. This strengthening was achieved by providing training in advance of World Bank due diligence missions in two regions. We also brought together leading experts and representatives of over 20 Amerindian communities from five regions for training of trainers sessions on free, prior and informed consent; on ESIAs; and on IBAs in the context of mining *and* the LCDS.

Our program had many specific outcomes. For example:

- Representatives of Amerindian communities expressed their concerns regarding the proposed climate change mitigation schemes directly to the Norwegian ambassador, representatives of the Norwegian Agency for Development Cooperation (Norad) and foreign ministry staff following national training workshops in March 2010.
- Media attention increased significantly following publication of a joint statement issued by participants at the March 2010 workshop. This statement sparked a flurry of letters and articles, which included expressions of support and concern from the Guyana Human Rights Commission, Indigenous organizations and others (as well as unpublished statements of support from the World Bank and others).
- Several community leaders demonstrated increased capacities and confidence in standing up to pressure from the government and the National Toshao Council to demand more information and time, and to push for land issues to be settled prior to the LCDS going forward.

While the profile of Indigenous rights issues was raised, some unfortunate outcomes have also resulted. These include increased harassment of the APA and Indigenous leaders, including death threats against the APA’s president, a protest against training workshops led by the Minister of Amerindian Affairs, and constant attempts to discredit the APA in the media.

Yet some signs of progress are evident as well. The government has committed to a version of free, prior and informed consent in the Norway-funded LCDS, which, while flawed,<sup>113</sup> may create an important precedent. In addition, greater funds have been allotted for land titling and demarcation.

The government has also committed to improving consultations around the LCDS.

Nonetheless, many challenges remain. Despite pressure from the World Bank and recommendations from the CERD, the flawed 2006 Amerindian Act has not yet been amended. It is disconcerting that the World Bank continues to support the LCDS and REDD+, even though it previously pulled out of supporting Guyana’s National Protected Areas because the Amerindian Act failed to meet the World Bank’s own standards for Indigenous Peoples. Finally, the LCDS includes support for the development of hydroelectric power that could significantly affect Indigenous territories, and Guyana continues to encourage mining despite its detrimental impacts, which include deforestation and high carbon emissions.

### ***Increased awareness of rights and international standards relating to the extractive sector***

Project impacts have been less substantive relating to the extractive sector, however training of trainers workshops in March and December 2010, together with the publication and dissemination of new resource materials, will intensify impacts following the closing of the program. Impacts to date include the following:

- Increasing the expertise, knowledge and capacity of the APA and community resource persons through in-community workshops, training-of-trainers workshops with leading experts, NSI-led research on mining companies active in the country and the provision of resource materials.
- Addressing communications shortcomings and difficulties caused by remoteness by giving communities comprehensive, sustainable plain-language resource materials on key issues at the heart of FPIC and mining. These brochures and comprehensive guides have focused on practical steps to achieve free, prior and informed consent; to participate in ESIAs; and to negotiate IBAs.
- Focusing public, media and donor attention on issues around mining, environmental abuses and violations of Indigenous rights.

### ***Specific outcomes***

Project support to the mining-affected community of Chinese Landing, a severely challenged and largely illiterate community in Region 1, has resulted in the community becoming more active in dealing with problems around both medium- and large-scale mining. Community leaders have written letters of complaint to the Minister of Amerindian Affairs concerning mining, and they have also met with her to discuss these issues. Another community, Arau, submitted a case of illegal mining and flawed land title to the courts, and has been vocal in the media in defence of its rights. For its part, the APA has communicated concerns to key donors and in the media; these concerns involve impacts of mining and violations of Indigenous Peoples' right to consent. Moreover, the joint statement from the national training workshop in March 2010 and the project's policy brief both highlighted mining-related issues, and recommended responses (see Appendix 2). The Government of Guyana (GoG) has been under intense pressure to better address the impacts of small- and medium-sale mining, including by increasing staffing, potentially banning mercury use, and strengthening exploration and permitting requirements.

### ***Challenges***

Many challenges still remain to be addressed in Guyana. While the attention of the APA, communities and the government has been focused on the LCDS and REDD+, large-scale exploration and mining have expanded rapidly. The LCDS and hydro-power developments that will take place under it will likely increase further still the potential for mining. And as large-scale discoveries are made, small- and medium-scale concessions spring up around them, intensifying impacts on Indigenous territories and nearby communities. Oil and gas exploration is also starting to increase. Despite these pressures, laws and official processes in Guyana that could support mining-affected communities are deeply flawed; these include protections around mining in the Amerindian Act, and in environmental assessment legislation. Communities need to be supported in their efforts to address these shortcomings. Foreign donors and home countries should more actively encourage or influence the GoG to make necessary revisions, and the absence of Internet and telephone communications in most Amerindian communities needs to be addressed as a priority, to enable residents to get better informed about threats to their territories.

## 3.2 Suriname impacts

The “Indigenous Perspectives” project led to many firsts in Suriname:

- The first time an environmental assessment process was conducted with information-sharing meetings in Indigenous communities, following Indigenous Peoples’ demand that this take place.
- The first time an Indigenous organization established an independent review panel to assess company-produced documents, in order to strengthen the process (this might be one of the firsts in the whole region).
- The first time a company committed to negotiating an IBA with Indigenous communities in Suriname (the company has since withdrawn, but now the precedent has been set, should different players come forth).
- The first time an ongoing dialogue table was established between Indigenous leaders, high-level company officials and the national Indigenous organization. As Suriname project documents highlight, this table showed some major weaknesses; but they also offer lessons on how to strengthen similar processes in the future.
- The first time Indigenous Peoples in Suriname developed their own set of regulations and policies around free, prior and informed consultation and consent (*a living document*). These communities are now becoming the go-to communities for their experience in this regard, and the draft protocol they developed is being shared with other communities.
- The first time a national Indigenous organization, like the VIDS, convened workshops at the national-level to enable information-sharing between powerful companies and local-level leaders.
- The first time Indigenous leaders presented at the national level the outcomes and recommendations of their own research. The Minister of National Resources opened the workshop and stayed for the entire morning’s proceedings.



Photo: Viviane Weitzner

*Captain Alapate reacts after a presentation by the US mining company Suralco revealed that thousands of kilometres of his peoples’ traditional territory could be flooded by a proposed hydro-electric dam. A national workshop organized by the Association of Indigenous Village Leaders in Suriname in 2005 was the first time the Trio leader had received information directly from the company on the proposed activities.*



*Company officials from BHP Billiton and Alcoa meet with Lokono community members to discuss details of proposed large-scale bauxite mining, Apoera, West Suriname. This meeting was at the insistence of community leaders, who are among the first in Suriname to convince mining companies to agree to share information directly at the community level.*

*Photo: Viviane Weitzner*

### ***Association of Indigenous Village Leaders in Suriname (VIDS)***

Throughout the project, the VIDS strengthened its skills and credibility as a legitimate interlocutor between the people it represents and the government. Its ability and political savvy to draw high-level government officials to the table to hear first-hand the results of the project and key recommendations shone through in several events. These events reinforced recognition of the seriousness and professionalism of the VIDS, and its keen sense of how to manoeuvre politically. The VIDS also demonstrated its ability to forge alliances with Indigenous organizations and other experts internationally, as witnessed in its active participation in exchange visits within Suriname and with Guyana and First Nations in Canada, and links with high-level experts such as ecologist and impact assessment specialist Robert Goodland and Stuart Kirsch, an anthropologist and associate professor with the University of Michigan.

### ***Lokono People of West Suriname***

For their part, the Lokono People participating in the project (from the villages of Apoera, Section and Washabo — as well as the Trio People living in the settlement at Zandlanding) strengthened their awareness of the potential impacts of the large-scale projects proposed for their homelands, and of their rights. They now know that a mine project that at first appears far away (some 75 km) will have many severe and significant impacts that will literally come through their villages. Besides drafting village-level regulations on consultation and consent, the Lokono People also developed their own plan for how they see the future of their territory, and consolidated much-needed information to support official recognition of their land rights (including archival research and community-based research on customary land use and occupation). As well, the villages now have in place a seasoned team of community-based researchers with skills in participatory mapping, facilitation of small group discussions, house-to-house information-sharing and surveys, village walks and transects, and participant observation and interviewing. The confidence of these young team members shone through as they presented results, as did their pride in being Lokono.

Nonetheless, much work needs to be done to continue to strengthen leadership in the communities, and to maintain unity and vision, as the area continues to be the subject of interest by extractive companies.

### ***Other Indigenous and Maroon communities***

The project had impacts for other Indigenous and even Maroon communities across Suriname, and some of the learning and lessons around free, prior and informed consent are being played out in East Suriname. Here, the VIDS is supporting communities affected by proposed mine-related road development; and research on impacts and awareness of free, prior and informed consent has led to Indigenous and Maroon Peoples standing up to say no, and being heard. There has also been more coverage of this issue in the national media.<sup>114</sup>

### ***Government of Suriname***

The Suriname component may have also led to government representatives having more awareness of Indigenous rights and of international standards around environmental and social impact assessments and the negotiation of IBAs. We met with diverse government officials throughout the course of the project to highlight preliminary findings and recommendations, and even, at their request, engaged in a closed-door session with government negotiators on the content of Canadian agreements around mining.

### ***Companies***

It is more difficult to gauge whether our project generated concrete outcomes or lessons for companies. However it is important to note that high-level authorities of the mining companies were engaged in discussions with community leaders throughout; that they strengthened their community relations point people; and that they did commit to negotiating an IBA. Nonetheless, the companies never referred to or recognized the Lokono People's consultation or consent protocol; they pressed the Lokono leaders into signing an extremely weak agreement under conditions that violated Indigenous rights to legal counsel; they were not willing to use their influence to push for recognition of Lokono land rights despite company policy commitments that could enable them to do this; and they did not follow their own standards, let alone international standards around ESIA.

### ***Challenges***

Many challenges lie ahead as West Suriname continues to be an area of interest to multinational companies and is very much in the government's sights for a range of potential economic activities. Climate change mitigation schemes are also being proposed in Suriname, which means that the VIDS will be attending to these issues alongside those surrounding existing and proposed large-scale mining. A big push is needed to implement the IACtHR *Saramaka People* judgment before more rights violations occur.

## **3.3 Colombia impacts**

Our project work in Colombia is ongoing. To date, however, we have seen several impacts from our collaborative research program with the Resguardo Indígena Cañamomo Lomaprieta and Proceso de Comunidades Negras, Asociación de Mujeres.

### ***Select national-level impacts***

- Our project has received an official endorsement from the Office of the High Commissioner for Human Rights, and we have political support from several foreign embassies. Also, we have been offered an official seat on the advisory committee set up by the office to guide the Colombian government in the process leading to the adoption of legislation concerning prior consultation, which may also include provisions on consent.

- We are starting to see a shift in how people (academics, NGOs, Indigenous and Afro-descendant organizations, even some government officials) speak: moving away from speaking only about prior consultation, to speaking about free, prior and informed consultation *and* free, prior and informed consent — this since our project started in December 2009.
- The national workshop we held in July 2010 on free, prior and informed consent in the extractive sector — with keynote speaker Rodolfo Stavenhagen, former UN Special Rapporteur on Indigenous Peoples rights — helped to raise the profile of the right to consent, and spurred national debate. The workshop set a precedent in Colombia on a number of fronts. It was the first time a workshop was organized jointly by Indigenous and Afro-descendant Peoples around consent in extractives; for ethnic communities that have often been in conflict with one another, this type of collaboration is important for strengthening strategies and momentum. It was the first time a national workshop was convened by ethnic groups bringing together government representatives, the private sector and social organizations. In the words of Colombia's ombudsperson for ethnic groups: "It's the first time ever all those who need to be at the table are at the table ... with the notable exception of the department of indigenous affairs."<sup>115</sup> The workshop is leading to further consolidation and an incipient network of academics, NGOs, Indigenous Peoples and Afro-descendant organizations, and even certain government point people (Ombudsperson's Office, and some in the Parks Directorate) who are sharing information on free, prior and informed consent.
- Ours is the first pilot project on implementing free, prior and informed consent in Colombia. The guidance and other project materials we are generating will be useful to other communities across the country to guide the development of community protocols on free, prior and informed consent and to strengthen capacities. We are already seeing interest from other ethnic groups, with USAID providing funding for Indigenous Peoples affected by oil and gas exploration in Putumayo to participate in the project events in Cauca, in Caldas and at the national level.
- We are also forging links with other Colombian NGOs, such as DeJusticia, an organization with whom we jointly hosted a workshop on responsible mining.

### Select Cauca impacts

- Reactivation of the Inter-Ethnic Commission (composed of both Afro and Indigenous communities) as the key body that will develop rules and regulations regarding free, prior and informed consent and that can help resolve inter-ethnic conflicts.
- Establishment of a mining roundtable between government and community people to address conflicts, especially issues around the granting of concessions without consulting the people, and the ongoing threat of relocation of the ancestral mining community of La Toma.



*Photo: Viviane Weitzner*

*Javier Hernández of the UN High Commissioner on Human Rights Office in Colombia (OACNUDH) comments following a panel of presentations by State representatives at a 2010 national workshop in Bogota, Colombia on free, prior and informed consent and extractives organized by NSI together with its Colombian partners.*

*Meeting between miners of the Association of Miners and Traditional Authorities of the Resguardo Indígena Cañamomo Lomaprieta, Caldas, Colombia to discuss Resolution 031, which regulates ancestral mining within the Resguardo.*

*Photo:  
Federico Herrera*



- The production of a video by community youth that in 2010 won the prize for best documentary at a Cali film festival. The video highlighted the imminent relocation of La Toma.
- Support and advice concerning an injunction submitted to the constitutional court concerning the issuing of concessions without appropriate consultation or consent. In May 2011 the Constitutional Court issued a judgment (T-1045A) in favour of the communities, thereby setting precedent for the entire country.<sup>116</sup>

### **Select Caldas impacts**

- The RICL is now seen as the go-to community for mining issues and advice in the region.
- The community-based ESIA is leading to a pilot project that will put in place a management plan for ancestral mining, therefore mitigating negative impacts and generating the possibility that these miners will not be declared illegal.
- The documentation of ancestral mining history is generating pride and strengthening intergenerational connections, while providing evidence of long-term traditional activity and passing on knowledge.
- The RICL has now established a functioning human rights secretariat.
- A regional response to large-scale open-pit gold mining at Marmato is currently being developed, given the many effects this mine will have on neighbouring and downstream communities.

### **Challenges**

Multiple, diverse challenges lie ahead as we move forward with this research program in Colombia — not least because of the ongoing threats to Indigenous and Afro-descendant leaders who are standing up for their rights. The weak role of the state and the lack of human and other resources in protecting Indigenous and Afro-descendant rights is particularly noteworthy, especially in the face of ongoing and increasing land pressures — not only by multinational companies, but also by illegal armed groups who are getting involved in minerals activities and in-migrating to ancestral lands.

## 3.4 Peru impacts

Our research in Peru is being published simultaneously with this synthesis report, thus the impacts of its findings are still unfolding. Already, however, the expertise of the NSI and our Peruvian partner, CooperAcción, on issues around free, prior and informed consent has been noted by Talisman, one of the companies featured in our research. We may be involved in further discussions as this company implements and strengthens its policies on free, prior and informed consent.

## 3.5 Canada impacts

In Canada, our work has included primary research, background research, outreach and policy influence.

### 3.5.1 Lutsel K'e Dene First Nation case study and exchange between Lokono from Suriname and Dene

Our case study and video on the Lutsel K'e Dene First Nation's negotiations with mining companies in Canada generated valuable information and has helped raise awareness of negotiation possibilities and strategies in Lokono communities in Suriname. These resources have also been shared in Guyana, Colombia and Canada, not only providing affected communities with food for thought when negotiating with mining companies, but also generating a sense of solidarity, stemming from understanding that communities in Canada are just as affected by the impacts of multinational mining companies as communities in other parts of the world. Field visits and exchanges in 2005 between members of the Lutsel K'e Dene First Nation and Lokono communities in West Suriname, and the visit by a representative of the VIDS to Lutsel K'e in 2007, spawned several other impacts:

- Lutsel K'e members learned from the Lokono People about the power of local radio, and brought home the lesson that this essential form of communication can be negotiated for and paid for by multinational mining companies.
- Many Suriname communities, not only those in the West, learned about tactics used in setting up negotiating meetings with companies; and about the power of highlighting Indigenous culture, relations to the land and language in setting the stage for interactions. Lutsel K'e Dene members attended a workshop of Indigenous Peoples and mining proponents, the first of its kind in Suriname. The Lutsel K'e presence highlighted the VIDS's international



*Photo: Carla Madsian, VIDS*  
*Delphine Enzoë of Lutsel K'e Dene First Nation, NWT, Canada, stands in front of a 'mapping' of Indigenous rights legislation in Paramaribo, 2005. Delphine came to Suriname to share the experience of her community with BHP Billiton, the same company affecting Indigenous communities in Suriname.*

alliances, likely generating more favourable conditions for equitable interactions with the companies.

- And through a visit to the Lutsel K'e Dene First Nation, the VIDS learned about how to strengthen community visioning involving youth as a central pillar, and also about Indigenous tactics and the process of public hearings around the issuing of water licences in Canada.<sup>117</sup>
- Lutsel K'e members who visited Suriname have been featured on radio programs by CBC North, and aspects of this casework have also been referred to in other materials, such as the Impact Benefit Agreement Toolkit produced by the Gordon Foundation.<sup>118</sup>

### **3.5.2 Background research on Indigenous participation in Canada**

The background research gathered in our paper, *Aboriginal Peoples and Mining in Canada: Consultation, Participation and Prospects for Change*,<sup>119</sup> has been featured on reading lists for courses in several academic institutions, with the most recent request coming in 2010 from the University of Waterloo — this, some eight years after the research was published, showing the continuing relevance of the materials.

Our background research and workshop on free, prior and informed consent in Canada is relatively recent, and will lead to a dedicated research project. However, the richness and substance of the November 2010 workshop discussions<sup>120</sup> highlighted the critical need for ongoing debate and research to elaborate further the issues at stake in Canada.

### **3.5.3 Outreach and policy influence in Canada and internationally**

Throughout our program we have been invited to present and participate in several forums in Canada organized by government, industry, civil society, Indigenous organizations and academia.<sup>121</sup> In addition, we participated in the standards fast-talk discussions leading into the national roundtables on CSR, and were invited to participate in discussions leading to the development of industry policy.<sup>122</sup> We have also highlighted the substance of our research in testimony to Parliament. In 2002, the Standing Committee on Foreign Affairs and International Development asked NSI to submit key recommendations concerning its research in Colombia (from 2000–2002). And in November 2009, we used our research in testimony to support Bill C-300, a proposed piece of legislation to hold Canadian companies to account *in Canada* for their operations overseas. We also published research findings in academic journals,<sup>123</sup> in addition to highlighting them in our institutional magazine (*Review*) and through NSI listservs.

And in *international forums*, we have organized panel discussions at the World Bank's ABCDE conference featuring our research results;<sup>124</sup> participated in the UN Permanent Forum's Expert Mechanism on the Rights of Indigenous Peoples; presented in both national and international academic conferences;<sup>125</sup> and commented on industry guidelines, such as the Minerals and Metals supplement of the GRI, the International Council on Mining and Metals' (ICMM) guidelines to implement its position statement on mining and Indigenous Peoples, and the IFC's Performance Standards Review 2010.<sup>126</sup> Our research has been cited in diverse materials, ranging from submissions to the World Bank EIR, to industry discussion papers, to non-governmental and academic publications. (A separate impacts log has been generated and is available upon request).

In all our debates in Canada and internationally, we have highlighted the importance of Indigenous participation — and particularly the right to free, prior and informed consent — as the key message that has emerged from our collaborative research on decision-making in extractives, and we have shed light on how to make free, prior and informed consent work in practice.

## **Section 4: Lessons from and Reflections on Collaborative Research with Indigenous and Afro-descendant Peoples**

*Photo: Courtesy of the Association of Indigenous Village Leaders in Suriname*



*A community-based researcher interviews a Lokono family in West Suriname for a study on customary land use and occupation. The study was undertaken as part of the Indigenous Perspectives Program.*

Action research with Indigenous and Afro-descendant organizations and communities is not the usual purview of think-tanks such as the NSI. And yet any research involving governance and natural resources must consider traditional authorities and Indigenous governance systems, and highlight the diverse voices and rights of those most affected by decisions involving natural resources.

### **4.1 Key lessons**

The “Indigenous Perspectives” research program was a first for NSI. Over 10 years, it has produced some clear lessons about collaborative research with Indigenous and Tribal Peoples affected by extractives.

1. *Research with Indigenous and Tribal Peoples is a time-intensive, long-term proposition that must build in flexibility.* By necessity and on account of the realities and responsibilities facing our research partners — as underfunded, under-resourced representative organizations responding to the urgent needs of constituents living in remote communities — the program was far more demanding than most. Much time was spent administering, troubleshooting and adapting various components of the program as new issues emerged.

2. *Adhering to ethical principles of research, undertaking participatory planning and evaluations, and ensuring transparency (including fiscal transparency) throughout are the basis for respectful partnerships that yield meaningful results.* Some Indigenous Peoples, such as the Lutsel K'e Dene First Nation, have specified clearly their expectations for research projects affecting their territories and have established free, prior and informed consent protocols. But in other cases, it is up to those collaborating with Indigenous and Tribal Peoples organizations to ensure that ethical research principles are followed and to suggest the development of free, prior and informed consent protocols for research where these do not exist. Throughout our collaborative research program, we have developed projects together with our partners, negotiating all aspects — from the wording of objectives, to project governance and evaluation indicators, to the funders we will or will not approach. We have also been very transparent about financial aspects. Investing time up front in nurturing relationships, and jointly developing research objectives, activities and budgets, are all critical aspects of respectful and collaborative relationships.
3. *Research with Indigenous and Tribal organizations is an inherently political activity.* Because Indigenous and Tribal Peoples are traditional authorities and policymakers in their own right, any research conducted with them needs to benefit them and transform realities toward positive outcomes, or else there is little reason for them to participate. This reality created a permanent tension between the expectations of our research institute — a think-tank that produces independent research and is not an advocacy organization — and the expectations of our research partners, who want the research to inform change processes and be advocacy-oriented. NSI researchers involved in the “Indigenous Perspectives” program found this line between research and advocacy extremely difficult to navigate; where the line should be drawn is subjective and far from clear-cut. In addition, research with Indigenous and Tribal Peoples needs to go hand-in-hand with awareness-raising about rights issues, and organizational/capacity strengthening so that the research generated can yield the best results and move toward action. Making the case at the NSI for why awareness-raising and capacity-strengthening is just as important as the actual research was a constant necessity.
4. *Approaching the work with humility is a central component of research with Indigenous and Tribal partners.* The role of a supporting research organization is to provide technical support for rigorous research as appropriate, and to enable and facilitate spaces where Indigenous and Tribal organizations and their members can use the evidence-based research generated and speak for themselves. Over the course of our research, and with appropriate capacity-strengthening, the expertise of several community-based researchers has shone through. While in some cases community researchers can benefit from new ways of gathering and analyzing information, it is imperative to be open to, and to elicit and understand the different cultural modes of undertaking research — modes specific to each community — in order to ensure culturally appropriate methodologies and findings.<sup>12</sup>
5. *Gender analysis can be a challenging concept to convey to Indigenous and Tribal communities.* Our research program found that mining, oil and gas projects have profoundly different effects on women and on men, significantly affecting household relations and cultural identity. Small-



*“These developments divide us as families ... the contractors created problems for the women and abused the women, while women left their husbands and husbands left their women.”*

**Lokono leader**

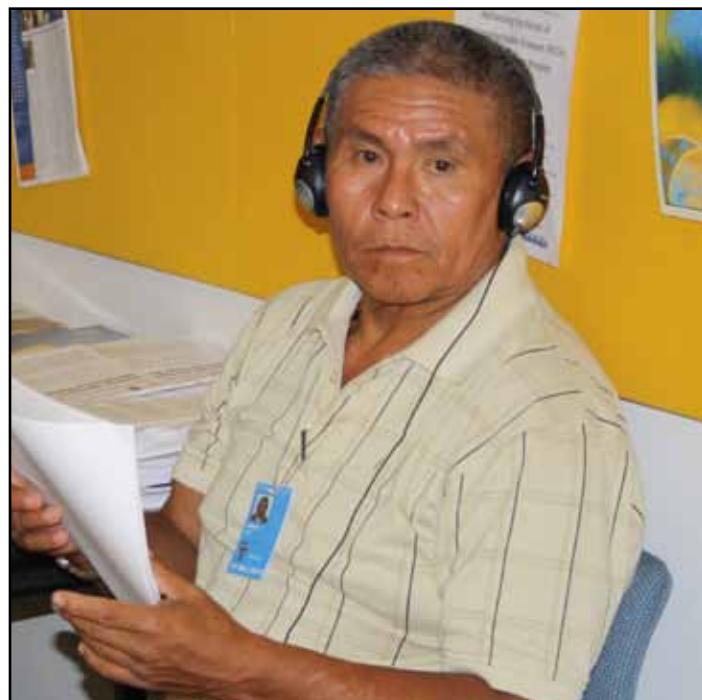
scale mining impacts are particularly severe, with women following the camps and engaging in sex work, and young men participating in mining for lack of alternative economic activities that can bring in sufficient cash.<sup>128</sup> Nonetheless, push-back often occurs if the word gender is used to describe this type of analysis. Describing impacts in terms of effects on the family, relations between women and men, or cultural activities (such as agriculture and the way extractive activities may have affected the roles of women and men, young and old) yields far greater results than using the term gender — a term that can put Indigenous and Tribal communities on the defensive against what they might perceive as the imposition of a Western concept.

6. *Outside research organizations can play a key role in helping to convene actors to the table, and to access information that is difficult for Indigenous and Tribal organizations to get.* The fact that the NSI is a well-respected international research organization helped in convening workshops and discussions with actors that might not otherwise have come to the table. In Suriname, for example, having the NSI as a partner alongside the VIDS may have been pivotal in bringing multinational companies to the first workshop, and paved the way for future events and discussions. In Colombia, this partnership also helped open doors for communities to access companies, state agencies and foreign embassies. A major concern of Indigenous and Tribal partners is that any discussion they enter into with companies might be construed as consultation, even when it is far from that; in this context, outsider organizations can be pivotal in taking the initial steps, and accessing information on behalf of local partners.
7. *Institutional commitment from all organizations involved — Indigenous, non-governmental, and funding organizations — is critical.* This cutting-edge program would not be possible without the foresight, vision, commitment and flexibility of the donors who have supported it over the years. But it would also not be possible without management support from the NSI, and the support and commitment of our partners. Alongside institutional support, the role of key individuals in establishing and maintaining respectful relations — and championing these collaborative projects within their various organizations — is also imperative.<sup>129</sup> Much remains to be done to break down assumptions and discriminatory attitudes about the abilities of Indigenous and Tribal Peoples to undertake rigorous research; having champions who work within organizations and understand the power of and need for this type of bottom-up research is of utmost importance.
8. *Donor presence at field events is important, not only for raising awareness of the realities and issues at stake that can then be brought back to headquarters, but because it raises the profile of the events and a sense of accompaniment and solidarity for the Indigenous and Tribal partners.* For the NSI, the presence, for example, of International Development Research Centre program specialists in field events was invaluable in terms of mutual learning and generating understanding about the realities in the field, and the impacts of these realities on the project. It also led to linkages with other organizations undertaking similar research. Involving donors at the planning stage can additionally help shape the project in ways that make it more likely to receive funding — with all parties cognizant of the need for the final project to be as independent as possible, for final decision-making to be the purview of the partners leading the research, and for copyright of final documents to be in the hands of the joint research partners whenever possible.
9. *Donors should consider working directly with Indigenous organizations.* Indigenous organizations, for example the VIDS, are well-placed to undertake research with their constituents toward Indigenous policy-making and regulations with a view to self-determined development. However, they are often constrained by scarcity of financial resources. This often forces valued advisors and staff to seek work elsewhere, and contributes to the inability of the organization to undertake

strategic planning and actions; instead, many Indigenous organizations operate on a tenuous project-to-project basis. An important aspect of tipping the power balance in decision-making is strengthening these organizations in terms not only of evidence-based research capacity, but of organizational capacity, which can lead to more effective policy influence at the national and international levels.

10. *Strong regional case studies and teams, together with national and international activities, enable the most productive results across scales.* In terms of project design, our ongoing work in Colombia is perhaps the most innovative for the depth of the research and learning taking place at a variety of levels. This process — integrating two case studies, one with Indigenous Peoples, one with Afro-descendant Peoples; incorporating regional workshops enabling cross-cultural learning and joint strategizing across the case studies; and then engaging in national-level activities and national- and international-level research — is maximizing the opportunity for learning and policy influence at several levels. Indeed, in many respects our Colombia case study work is a pilot for other communities to consider across the country, and potentially even regionally. However, this depth of research is expensive, and has required intensive fundraising and administration to manage funds from several donors. We have been fortunate in having in place such a committed and professional team at the case study level, and a national coordinator who is well-respected in a variety of circles in Colombia for her extensive experience and expertise in ethnic rights issues.<sup>130</sup>

11. *Undertaking research in the context of armed conflict is both necessary and extremely challenging.* Often, illegal armed groups are quick to threaten social leaders who speak up for their rights to consultation and consent in the face of proposed large-scale extractive projects on their ancestral territories. Navigating this reality, and conducting research with teams of such leaders, requires careful preparation and constant vigilance about when and where to undertake activities, and what type of accompaniment is needed. In the case of our Colombian work, aside from strategizing on safety measures, we furnished team members with BlackBerrys, which provide maximum opportunity for instant communication as needed while in the field. In addition, it has become apparent that the simple fact that an international organization is working closely with local organizations, and is often in the field with them, can help provide more protection from a safety perspective. Finally, our national coordinator has been actively following up with national protection agencies and others on threats and other urgent situations facing our project team; this



*Photo: Meaghan Simms*

*The life of Chief Tony James, a Wapichan leader from Southern Guyana, was threatened in late 2010. As the President of the Amerindian Peoples Association he has played a critical role in defending Indigenous rights in the face of mining pressures and pressures to commit village lands to international climate change schemes.*

follow-up is time intensive. Nonetheless, our partners have clearly stated that the type of research we are undertaking with them is vital and necessary to raise the profile of the issues at stake, and enable the possibility of change.

12. *The power of radio, video and visual materials, alongside plain language reports, cannot be overstated in terms of conveying information and research results at the community level.* In Suriname, community radio was an invaluable means of conveying project plans and outcomes to affected Lokono communities. In addition, video became an important tool in capturing images from site visits by Lokono delegations to existing mine and hydroelectric sites; the delegations could then show and explain the video once they were back in their home communities, thereby ensuring grassroots accountability from leaders on the delegation visits. The idea for a training video based on the Lutsel K'e Dene First Nation's experiences negotiating with mining companies came directly from the Wildlife, Lands and Environment Committee established in Lutsel K'e to guide decision-making, including that around research. Following the advice of this Committee, we filmed and produced a video that was translated into Spanish, and has now been shown and used in all the countries involved in our "Indigenous Perspectives" program. And in Colombia, where large-scale mining is not yet known, aside from coal mining in the Guajira area, videos from other countries and mine sites have been used to raise awareness about potential impacts. Furthermore, aside from meetings and workshops, a variety of different formats for conveying research results — such as posters, brochures and plain language training guides — have proven useful in enhancing the reach of the work at the community level.

## 4.2 Research for future generations

With the Colombia project ongoing and key research reports and community reference guides only recently released it seems likely that the impacts of our "Indigenous Perspectives" program will continue to surface and grow in the months and years to come. But especially critical for research that benefits future generations will be building on the lessons learned from the research design and methodologies. Collaborative research on the extractive sector can undoubtedly help tip the power balance to provide more equitable conditions for dialogue and decision-making. Our program underscores that Indigenous-designed, -driven and -executed research on extractives is pivotal in supporting decision-making that upholds self-determination. With appropriate technical support from international players, including research organizations, the ability of Indigenous organizations and communities to influence policies and practice with evidence-based arguments is strengthened.

And all this, in the words of an Elder from Lutsel K'e Dene First Nation, is invaluable not only for this generation, but "for the children." A key lesson from our research is the importance of involving children and youth in all activities. Doing so not only helps focus discussions appropriately in the presence of those who will live with the effects of decision-making, but helps children understand from an early age the issues at stake.<sup>131</sup>

*"This information I'm giving you is not for you ...  
it's for the children."*

**Elder, Lutsel K'e Dene First Nation**

## **Section 5: Conclusion**

### **Free, Prior and Informed Consent — More Than a Right**



Photo: Viviane Weitzner

*Rodolfo Stavenhagen, Former United Nations Special Rapporteur on Indigenous Peoples, listens as Hector Jaime Vinasco, Councillor and past Governor of Resguardo Indigena Canamomo Lomaprieta, explains a memorial to slain Indigenous leaders; among them is a former Governor of the Resguardo, who was killed for standing up for the rights of his people in the massacre of “La Herradura,” committed by paramilitary groups and the National Army in 2003.*

Our decade-long research program underscores that free, prior and informed consent is more than a right; it is also a critical tool that can help reduce power asymmetries, mitigate conflicts, generate better decision-making and potentially reduce costs. The stakes will rise as mineral, oil and gas resources come to be regarded as strategic assets; as the blurry relationship between state and corporate interest becomes ever-more important; and as conflict and state fragility become political preoccupations.

Since we launched our research program in 2000, pressures on Indigenous lands have intensified. Land grabs continue as commercial interests in extractives, large-scale agriculture and other resources increase exponentially. Indigenous Peoples are caught in the middle of policy incoherencies that are allowing their lands and resources to be sold for climate change mitigation schemes even as they are being opened up to mining, oil and gas projects through bilateral and other trade agreements providing favourable investment conditions.

But at the same time, Indigenous and Tribal Peoples are making gains in domestic and international courts, with far-reaching decisions increasingly clarifying Indigenous and Tribal rights to self-determination, cultural identity, lands and resources, and consent. As companies and governments start examining how to implement free, prior and informed consent, it will be important to provide ongoing guidance from the bottom-up.

Our work continues. Our project in Colombia examines free, prior and informed consent in the context of armed conflict and is geared to provide much-needed practical guidance. We will also examine further lessons from Canadian experiences and will investigate whether FPIC processes lend themselves to certification schemes or some other type of standardized, participatory, third-party monitoring — an issue of great currency and debate within the world's largest development and financial institutions. And we are actively considering undertaking similar research in Sub-Saharan Africa, a region that is plagued by poverty and is also increasingly in the sights of extractive companies, particularly those from Canada.<sup>132</sup>

Business cannot continue as usual. If the rights of Indigenous Peoples are ignored, conflicts will increase, the industry's global image will be tarnished, and widespread opposition will be generated — all of which also affects industry's bottom line. Implementing free, prior and informed consent is the right thing to do. It also makes business sense.



*Photo: Viviane Weitzner*

*Lokono girl from West Suriname, who may soon need to contend with plans for an integrated aluminium industry proposed for Lokono territory.*

# **Appendix 1: List of Publications from Indigenous Perspectives Program, 2000-2011**

## **Exploring indigenous Perspectives on Consultation and Engagement within the Mining Sector of Latin America, the Caribbean and Canada (Phase I), 2000-2002**

### **Policy Briefs:**

Weitzner, V. 2002. Cutting Edge Policies and Practice Regarding Indigenous Peoples and Mining: Key Lessons for WSSD and Beyond. The North-South Institute, Ottawa, ON, Canada. Sept. 2002. [http://www.nsi-ins.ca/english/pdf/weitzner\\_mining\\_eng.pdf](http://www.nsi-ins.ca/english/pdf/weitzner_mining_eng.pdf).

Weitzner, V. 2002. Políticas innovadoras sobre los pueblos indígenas y la minería: lecciones clave para la Cumbre Mundial y para el futuro. Instituto Norte-Sur, Ottawa, ON, Canada. Sept. 2002. [http://www.nsi-ins.ca/english/pdf/weitzner\\_mining\\_spa.pdf](http://www.nsi-ins.ca/english/pdf/weitzner_mining_spa.pdf).

### **Final Synthesis Reports:**

Weitzner, V. 2002. Through Indigenous eyes: Toward appropriate decision-making processes regarding mining on or near ancestral lands. The North-South Institute, Ottawa, ON, Canada. Sept. 2002, <http://www.nsi-ins.ca/english/pdf/synenfinal.pdf>.

Weitzner, V. 2002. A través de ojos indígenas: Hacia procesos adecuados de toma de decisiones sobre actividades mineras en tierras ancestrales o en sus proximidades. Instituto Norte-Sur, Ottawa, ON, Canada. Sept. 2002. <http://www.nsi-ins.ca/english/pdf/synspfinal.pdf>.

### **International Workshop Reports:**

The North-South Institute. 2006. Summary Report: "Indigenous Perspectives" Project International Team Meeting, The North-South Institute, Ottawa, Canada. Unpublished Manuscript.

The North-South Institute and Assembly of First Nations. 2006. Summary Report: "Mining on or Near Ancestral Lands in the Americas," A workshop jointly organized by The North-South Institute and Assembly of First Nations, Ottawa, Canada, October 5, 2005, [http://www.nsi-ins.ca/english/pdf/summary\\_Report\\_Oct5\\_Eng.pdf](http://www.nsi-ins.ca/english/pdf/summary_Report_Oct5_Eng.pdf).

The North-South Institute y Assembly of First Nations. 2006. Informe Sumario: "Las actividades mineras en tierras ancestrales de las Américas o en sus proximidades," Un encuentro organizado conjuntamente entre el instituto Norte-Sur y la Asamblea de Primeras naciones, Ottawa, Canada, 5 de octubre, 2005, [http://www.nsi-ins.ca/english/pdf/Summary\\_Report\\_Oct5\\_Spa.pdf](http://www.nsi-ins.ca/english/pdf/Summary_Report_Oct5_Spa.pdf).

### **Colombia Final Reports:**

Jimeno, G. 2002. Posibilidades y perspectivas de los Pueblos Indígenas en relación con las consultas y concertaciones en el sector minero en América Latina y el Caribe: Exploración temática. The North-South Institute, Ottawa ON, Canada. Aug. 2002, [http://www.nsi-ins.ca/english/pdf/colombia\\_final\\_report\\_spa.pdf](http://www.nsi-ins.ca/english/pdf/colombia_final_report_spa.pdf).

Jimeno, G. 2002. Colombia: Possibilities and Perspectives of Indigenous Peoples with Regard to Consultation and Agreements within the Mining Sector in Latin America and the Caribbean: Thematic Exploration. The North-South Institute, Ottawa ON, Canada. Aug. 2002, [http://www.nsi-ins.ca/english/pdf/colombia\\_final\\_report\\_eng.pdf](http://www.nsi-ins.ca/english/pdf/colombia_final_report_eng.pdf)

**Guyana Final Report:** Colchester, M.; La Rose, J.; James, K. 2002. Mining and Amerindians in Guyana. Final report of the APA/NSI project on "Exploring Indigenous Perspective on Consultation and Engagement within the Mining Sector in Latin America and the Caribbean." The North-South Institute, Ottawa, ON, Canada. 2002, [http://www.nsi-ins.ca/English/pdf/Guyana/Guyana\\_final\\_report.pdf](http://www.nsi-ins.ca/English/pdf/Guyana/Guyana_final_report.pdf).

**Canada Research:** Hipwell, W.; Mamen, K.; Weitzner, V.; Whiteman, G. 2002. Aboriginal Peoples and mining in Canada: Consultation, participation and prospects for change. The North-South Institute, Ottawa, ON, Canada. Jan. 2002, <http://www.nsi-ins.ca/english/pdf/syncanadareport.pdf>.

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## **Appendix 2: Recommendations from Guyana**

**Excerpt from: Colchester, Marcus and Jean la Rose. 2010. *Our Land, Our Future: Promoting Indigenous Participation in Guyana*. Final Report of the APA/FPP/NSI project 'Exploring Indigenous Perspective on Consultation and Engagement within the Mining Sector in Latin America and the Caribbean: Phase II: Toward Community Strengthening, Dialogue and Policy Change'. Ottawa: APA, FPP and NSI.**

### **Pathways to the future**

The future of Indigenous Peoples is tied up with their lands. 'Our land is our future'. A constructive way forwards, which will heal the growing rift between Amerindians and the Government of Guyana, will come about when Amerindian peoples' rights to own and control their lands and territories are respected by the Government in national laws, policy and practice, in line with Guyana's obligations under international law.

Reiterating the Recommendation in the Public Statement from the final training workshop of this project, our concluding recommendations therefore are:

- We again call for urgent measures to establish effective, fair and transparent mechanisms to clarify Amerindian land and territorial rights in Guyana, including measures for a land rights settlement procedure that must involve indigenous representatives and experts freely chosen by our communities. Delineation, demarcation and titling must be based on customary occupation, land use and traditional tenure in full conformity with relevant international norms.
- We demand that Guyanese Geology and Mines Commission (GGMC) and other relevant national authorities take urgent measures to fully respect our right to free, prior and informed consent (FPIC) and take necessary actions to ensure the full respect of FPIC principles in the zoning of mining areas, issuing of permits and licenses and in the implementation of all mining activities that may affect our traditional lands and territories, in accordance with national laws and relevant international standards.
- We demand that GGMC adhere to their legal obligation to give prior notice and information to our communities and to respect FPIC before the granting of permits and concessions that may impact directly or indirectly on our lands and ways of life.
- We urge the Environmental Protection Agency (EPA) to keep their environmental and social impact assessment (ESIA) regulations up to date and to respect international environmental standards under the various international instruments that Guyana has acceded to.
- We likewise call on the EPA to upgrade its ESIA regulations to meet international best practice, including the *Akwe:kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments*.
- We urge the EPA and other relevant government authorities to ensure that all national and foreign companies and investors (mining, agricultural, aquaculture, timber, carbon, etc.) fully conform to ESIA regulations and uphold the right of FPIC for Indigenous Peoples.
- We call on the government and donor agencies to provide funds and support for the installation of telephone and internet connections in all Amerindian communities in Guyana — powered through local small-scale sustainable energy sources — as a matter of priority (including through the use of satellite connections) to enable timely access to public policy information, especially in relation to issues relating to the government's current Low Carbon Development Strategy (LCDS) and Reduced Emissions from Deforestation and Forest Degradation (REDD) -plus proposals.

## **Appendix 2**

- We demand that all relevant government agencies such as the GGMG, EPA, Guyana Forestry Commission (GFC) to provide all required information about proposed projects that may affect our traditional lands and to seek FPIC from the affected Indigenous Peoples and communities.
- We demand that the current ESIA process for expansion of mining operations around *Marit-tao* be suspended forthwith and immediate actions taken to ensure that affected communities in the Southern Rupununi are fully informed and that rights to FPIC are fully respected with regard to this mining proposal. Consultation and FPIC procedures shall be agreed with representative Amerindian authorities, including the South Central and South District Toshao Councils.
- We call on the government and donor agencies to take effective action to ensure that our recommendations on rights, FPIC and land issues are fully incorporated in to LCDS and REDD-plus policies and that our collective consent is sought prior to the adoption of these policies in accordance with Article 19 of the UNDRIP.
- We demand that any official procedures for “opting in” (and opting out) to LCDS or REDD-plus, or any other government programmes, be based on established principles of FPIC, including our right to develop and adopt our own FPIC and good faith negotiation guidelines and rules at the village, local, territorial and national levels.
- Measures to ensure FPIC and ensure adherence to standards in UNDRIP must be mainstreamed into the Guyana REDD-plus Governance Development Plan (RGDP) under the Norway-Guyana MoU on “Issues related to the Fight against Climate Change, the Protection of Biodiversity and the Enhancement of Sustainable Development” (November 2009).
- We hereby call on Norway and the Government of Guyana to ensure that the draft RGDP is fully consulted with Indigenous Peoples prior to its finalisation and consideration for adoption.
- We call on the Government of Guyana and international funding agencies, including Norad, DFID (UK Department for International Development), European Commission (EC), World Bank and Inter-American development Bank (IDB), to take all necessary measures to ensure that LCDS and REDD + policies and actions fully meet standards and protections set out in the UNDRIP and in relevant safeguard policies of said agencies and financial institutions. To this end, we recommend that a working group inclusive of our leaders and appointed experts, the government and donor agencies be established on implementation of UNDRIP.
- We additionally specifically request that international donors, including Norway, ensure that serious shortcomings in Guyana’s legal framework in connection with Indigenous Peoples’ rights, as identified, *inter alia*, in 2006 and 2008 by the UN Committee for the Elimination of All Forms of Racial Discrimination (CERD) be fully addressed in all climate and other development and environmental initiatives in order to ensure that international funds do not undermine Guyana’s capacity to fulfill its obligations to respect the rights of Indigenous Peoples.
- We request that donor governments and agencies, such as the Norwegian Government, provide funds, technical and legal assistance to help the National Toshao Council (NTC) to carry out its functions in an independent and autonomous manner.

Finally, on our side, we are in the process of developing our own proposals and guidelines for FPIC in our communities at different levels, as appropriate (Village [and minor settlements], territory, sub-district, district, people etc). Until such time as we have these community policies on FPIC in place, we call on the government and international agencies to refrain from any proposed implementation of extractive industry, infrastructure,

LCDS, REDD-plus or other projects and programmes that may affect our lands, territories and resources.<sup>133</sup>

## **Appendix 3: Select recommendations from Suriname**

*The Surinamese component resulted in several reports, some with targeted recommendations related to the environmental and social management of the Bakhuys Bauxite project, and others with targeted recommendations to the communities regarding, among other things, strengthening their organization and decision-making process. While BHP Billiton announced that it will not pursue the Bakhuys project, the project idea continues to be shopped around by the Government of Suriname, and therefore the recommendations emerging from our joint VIDS/NSI research are relevant to whatever project proposal emerges next.*

**The following is an excerpt from:** Weitzner, Viviane. 2007. *“Determining Our Future: Asserting Our Rights.”* Synthesis Report: Suriname Pilot Project. A collaborative project between the Association of Indigenous Village Leaders in Suriname (VIDS) and The North-South Institute (NSI). Ottawa: Association of Indigenous Village Leaders in Suriname and The North-South Institute.

### **Recommendations**

A variety of recommendations emerge from this VIDS/NSI project that if implemented could further reduce the power asymmetry between communities, government and companies. They include:

#### ***For Affected Indigenous and Tribal Communities (including those who did not participate in this study):***

1. Develop your own vision for what you want in the future and then see if the project proposals *fit* with this vision.
2. Develop and articulate *in writing* the process by which you expect to be consulted by outsiders, and who can negotiate, make agreements and give consent on behalf of the community.
3. Identify what *the internal process* should be to come to collective decisions to inform the person(s) representing the communities in negotiations.
4. Consider developing a Working Group to address these issues and provide recommendations to the community leadership.
5. Do not lose sight or stop working on your long-term community goals, especially land rights.
6. Strengthen community leadership and decision-making processes, and communication with all groups in the community (radio, meetings, etc.) and with neighbouring affected communities.
7. Continue to form alliances with other national and international groups, and consider actively encouraging Oxfam Australia’s ombudsman for mining to open communications with BHP Billiton’s head office, and possibly to do a site visit to Bakhuys.
8. Request that Joji Cariño, former Commissioner of the World Commission on Dams and expert on the Convention on Biological Diversity, come to visit.
9. Request that the Government of Suriname invite Rodolfo Stavenhagen, UN Special Rapporteur on the Situation of Indigenous Peoples, to conduct an on-site visit to West Suriname to provide advice to the government, companies and Indigenous and Tribal Peoples.

## **Appendix 3**

### **For the Government of Suriname**

1. Urgently implement all UN Committee for the Elimination of Racial Discrimination recommendations for Suriname (March 2004, reiterated in March and August 2005), which include among others:
  - Ensure legal acknowledgement of the rights of Indigenous and Tribal Peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources;
  - Ensure the compliance of the revised draft Mining Act with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the Committee's 2004 recommendations. For example:
    - o Ensure that indigenous and tribal peoples are granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage.
  - Elaborate a framework law on the rights of Indigenous and Tribal Peoples with the technical assistance from the Office of the United Nations High Commissioner for Human Rights
2. Implement Inter-American Commission and Court of Human Rights jurisprudence that upholds the right of Indigenous and Tribal Peoples *to give or withhold their free, prior and informed consent* to any activity that affects that traditionally owned lands, territories and resources.
3. Develop appropriate information systems that allow identification of which Indigenous or Tribal communities may be affected by a given project in order to consult with them and seek their agreement prior to issuing a concession or exploration permit (collate existing maps; undertake sketch mapping for other areas).
4. Commence discussions with West Suriname Indigenous communities about the establishment of an Indigenous-owned protected area at Kaboeriekreek. This is consistent with:
  - Indigenous Peoples' rights in international law;
  - Suriname's obligation under the Convention on Biological Diversity;
  - The new IUCN protected areas categories.This should not be seen as a substitute for addressing the wider land rights issues in west Suriname or nationally, but rather as a confidence building measure and a means of avoiding conflict.
5. Only consider approving the projects and negotiating agreements with the companies and communities when:
  - The government and affected communities have received and understood a full set of satisfactory environmental and social impact studies, and agree with mitigation measures proposed.
  - The affected Indigenous and Tribal peoples and their communities have given their free, prior and informed consent for these projects to go ahead, using appropriate consultation and consent procedures designed by legitimate representatives of each of the communities.
6. Require from the companies environmental liability insurance to ensure that in the case of environmental or social damage, sufficient monies are available to cover the harm fully, and in the worst-case scenario.

## **Appendix 3**

7. Ensure there are effective, prompt and culturally appropriate grievance mechanisms in place to address and resolve any complaints raised by Indigenous and Tribal Peoples and their communities. These mechanisms must be established both at the level of the operating companies and at the national level.
8. For the Bakhuis transportation and refinery ESAs and the Kabalebo and Tapanohony River/Jai Kreek projects:
  - Establish an independent advisory committee of experts to guide the ESIA process, as allowed in NIMOS guidelines, including appointees named by affected Indigenous and Tribal communities.

### ***For BHP Billiton/Alcoa***

1. Implement BHP Billiton's public commitment to negotiating protocols for FPIC and recognition of traditional rights to be in place for the life of the project, from environmental assessment through to closure (should the project proceed). This will enable:
  - Fulfillment of Indigenous and Tribal Peoples' human rights;
  - Reduction of corporate risk should the communities seek recourse to national and international tribunals to protect their rights;
  - Fulfillment of BHP's Sustainable Development Policy to "understand, promote and uphold fundamental human rights within our sphere of influence, respecting the traditional rights of Indigenous Peoples and valuing cultural heritage."
2. In keeping with the UN CERD's recommendations, persuade the Government of Suriname to make progress in settling the land rights issues related to the areas that will be affected by the mining- and dam-related developments prior to the mining operations and dam construction. This is a pre-requisite to fulfilling:
  - The companies' Sustainable Development Charter commitments;
  - Suriname's national policy on rights-based development and its international commitments;
  - The communities' policies, rights and aspirations.
3. Improve the quality of current and future ESIA processes in Suriname so they meet reasonable and normal standards.
4. Negotiate Impact Benefit Agreements (IBAs) with affected Indigenous and Tribal communities. Key elements of the IBA should be revenue-sharing, training and employment of Indigenous and Tribal People, monitoring of socio-environmental impacts using traditional knowledge, appropriate communication and dispute resolution mechanisms, and implementation committees and review processes, among other elements.
5. Study the environmental and social impacts of the exploration activities at Bakhuis already suffered by the affected Indigenous and Tribal communities, and duly compensate these people through good faith negotiations.
6. Commit publicly that the companies will not engage in advanced exploration activities in Suriname without first engaging in exploration ESAs with meaningful participation by affected communities. This should include negotiating legally binding agreements around compensation for any impacts to people's livelihoods on account of exploration activities, and the terms of Indigenous and Tribal participation in the exploration activities.

## **Appendix 4: Recommendations from Peru**

Excerpt from: de Echave, José. 2010. *Growth of the Extractive Sector, Indigenous/Peasant Participation in Multi-Partite Processes, and the Canadian Presence in Peru*. Ottawa: CooperAcción and The North-South Institute.

### **Conclusions and Recommendations**

The paper concludes that the number and intensity of conflicts in Peru have escalated over the years, underscoring that the various initiatives such as dialogue tables, voluntary mechanisms and interventions by agencies of the Peruvian State, or of international cooperation agencies such as CIDA, have failed to address the systemic and structural issues underpinning these conflicts.

Urgent action is needed to establish an adequate framework of regulations and effective institutional mechanisms. This action includes deep structural changes that build democratic governance and institutional capacity to deal with the social and environmental dimensions of conflict.

#### ***Strengthen Peru's Regulatory and Institutional Framework***

There is an urgent need to reform and strengthen Peru's regulatory and institutional framework, and to develop:

- new management tools for social and environmental issues that lead to implementation of the highest environmental and social standards;
- appropriate management of economic benefits generated by extractive industries; and
- effective civic participation mechanisms, and implementation of free, prior and informed consultation and consent.

However, such reforms must be grounded in a rigorous and holistic diagnosis of how the system currently works in practice as a prerequisite to appropriate and effective redesign.

#### ***Strengthen and Support the Role of Communities and Civil Society***

With regards to the role of communities and their non-governmental supporters, it is critical to do the following:

- Undertake an analysis of what communities and those working to protect the environment and promote human rights have achieved, the problem areas that should be resolved, and initiatives that could then be undertaken. It is necessary to consolidate strategies and planning beyond simply addressing local issues towards influencing outcomes at regional and national levels.
- Continue challenging the “rules of the game” as well as the strategies that attempt to maintain the status quo, while also developing more elaborate alternative proposals and a broader perspective. New fora should be developed and alliances created to build bridges with other actors that could become important allies, such as academics, agencies such as the Ombudsman’s Office, regional institutions and international networks. New alliances will enable strengthened capacities for in-depth debates of a programmatic nature, and the development of more effective tools and renewed strategies for responding to new challenges. Prior consultation and consent mechanisms represent important vehicles that could help fill the current vacuum in evidence-based discussion of issues such as whether projects serve the best interests of the nation.

## **Appendix 4**

### ***Ensure that Canadian-funded projects promote better social and environmental practices***

Projects funded by Canada that address the extractive sector should contribute to bridging the existing inequalities in the relations between extractive industry companies and local populations as well as strengthening governance. Above all, Canada should consider the following actions:

- funding projects that work to strengthen grassroots communities and their organizations in order to generate relations of respect and help balance asymmetries in the areas of influence of extractive activities;
- promoting better social and environmental practices in general and, with respect to human rights, moving beyond the emphasis on the voluntary practices of companies. In particular, Canada should consider interventions to promote effective regulations and adequate spaces for civil society participation in Peru; and
- establishing a strong mechanism in Canada for presenting and processing complaints from Peruvian communities and authorities.

## **Appendix 5: Recommendations from Colombia**

*Note: These recommendations are from the final report from Colombia and the synthesis report of Phase I of our project (2000-2002); new recommendations will emerge upon completion of Phase II in 2012.*

### **Recommendations**

Excerpt from: Jimeno, G. 2002. *Posibilidades y perspectivas de los Pueblos Indígenas en relación con las consultas y concertaciones en el sector minero en América Latina y el Caribe: Exploración temática*. The North-South Institute, Ottawa ON, Canada. Aug. 2002, [http://www.nsi-ins.ca/english/pdf/colombia\\_final\\_report\\_spa.pdf](http://www.nsi-ins.ca/english/pdf/colombia_final_report_spa.pdf), cited 29 Mar. 2011.

#### ***With regard to the social and political elements that flow from the analysis of Phase I:***

- Indigenous organizations have identified a clear political trend of weakening of the rights, guarantees and claims won and recognized at the legal and constitutional level over the last 150 years. These rights constitute a good judicial framework for the protection and defense of Indigenous Peoples. These organizations call on all Colombia's Indigenous organizations, the government and the state to stop the judicial pressure to proceed with reforms that cutback or violate rights that have already been recognized — reforms which set back Indigenous Peoples by decades. These Indigenous organizations also call for legal and political revisions to those reforms that have already been undertaken with regard to the Mining Code, the Penal Code and others.
- The Attorney General and Ombudsperson's offices responsible for the protection and defense of human rights and the rights of Indigenous Peoples should activate their role of checking the Government and this trend to reform existing laws and regulations in violation of the rights of Indigenous Peoples.
- The Government of Colombia and national, multinational or international natural resource extraction companies operating in Colombia should reactivate and fulfill their obligation to implement prior consultations with Indigenous Peoples and communities who own, possess or use the territories where proposed developments will take place. In addition, they should ensure that the instrument of prior consultation — which is highlighted in ILO Convention 169 that Colombia has ratified — embraces free, informed and prior consent. Prior consultation has been abandoned by the government and by companies, and the government agencies responsible for monitoring its implementation have also not fulfilled their responsibilities.
- The national government and the state should develop a public policy targeting the protection, enforcement and implementation of the rights of Indigenous Peoples. There is an urgent need to develop a public policy that confronts the humanitarian catastrophe in which Indigenous Peoples live, a crisis that is exacerbated by the extraction of renewable and non-renewable natural resources on Indigenous territories, exploitations that have a direct influence on the dynamics of violence and expropriation against Indigenous Peoples and communities.
- The government, natural resources and mining companies operating in Colombia should fulfill their obligations under in ILO Convention 169, as well as those in the Draft OAS and UN Declarations on the Rights of Indigenous Peoples. In this context, it is particularly important to respect in a real and effective way, Indigenous rights to self-determination or self-government, territory, identity and culture.

#### ***With regard to Phase II of the project:***

- It is necessary to clarify and reflect more deeply on the concept and legal definition of prior consultation and free, informed and prior consent. For this purpose, it is necessary to examine international instruments and debate on the matter, and their implications and consequences for national instruments. In addition, a review is warranted of the original text of ILO Convention 169 to determine whether it corresponds to the official Spanish version which has been approved as a national law. It is also necessary to detail the concept of free, informed and prior consent.

## **Appendix 5**

- It is important to deal with consultations and agreements and free, prior and informed consent in a holistic manner, not by sector. By fragmenting these processes, it is possible to corrupt and confuse the type of instrument that consultation and agreements represent for protecting the rights of Indigenous and Black communities, and as guarantees for their ethnic and cultural survival.
- Together with the Indigenous organizations and Peoples, there should be deeper reflection on the scope of these processes and legal instruments for the protection of specific rights, and clarification of the terms that Indigenous Peoples must establish with the national government to exercise their self-determination.
- It is advisable to expand the reflection on consultations, agreements and free, informed and prior consent among the Indigenous Peoples and Black communities who have also had enormous experience and share an arbitrary regulation which did not involve consultation of either group.
- It is necessary to establish different spaces for dialogue and go into deeper reflection with the various actors involved: the various ethnic groups, the state and the business community. The second phase of work should try to develop and strengthen scenarios for dialogue so that the accumulated experience is not lost and rights cannot be violated in the future for lack of application. The design of the second phase should include national spaces for reflection and action on this topic.
- Spaces for reflection and exchange of experiences and perspectives among the Indigenous Peoples and organizations at the international level are required so that the trends, concepts and scopes of the instruments for international human rights and mining policies can be clarified.
- Educational spaces should be created for Indigenous Peoples and their internal organizations to enhance the processes of reflection. In the project workshops, it was observed that a deeper level of reflection also involves creating training spaces on different topics for Indigenous Peoples and their internal organizations. Key topics include the national and international context, legal and constitutional issues, and environmental and human rights concerns.
- This participatory research project should be continued. The project will support the actions of Indigenous Peoples and their organizations to re-examine the topics of consultation and free, informed and prior consent, and to clarify and re-position these processes again as valuable instruments for the protection and defence of ethnic and cultural rights. This involves decisions to act by the Indigenous organizations themselves.

Excerpt from Weitzner, V. 2002. Through Indigenous eyes: Toward appropriate decision-making processes regarding mining on or near ancestral lands. The North-South Institute, Ottawa, ON, Canada. Sept. 2002, <http://www.nsi-ins.ca/english/pdf/synenfinal.pdf>, cited 29 Mar. 2011

### ***Foreign Governments Doing Business in the Context of Armed Conflict: Colombia***

**Recommendation:** Foreign governments and international financial institutions who are open for business with Colombia should provide funding to engage in participatory research for the development of criteria with regard to “no-go” zones for mining. Colombia’s Indigenous Peoples should be involved in the planning and implementation of this research, as well as the monitoring of enforcement once criteria are determined.

**Recommendation:** Foreign governments and financial institutions — including export credit agencies — open to supporting mining development projects in war-torn areas should undertake increased and ongoing third-party monitoring of these companies in order to ensure that their presence and operations are not exacerbating the conflict and the human rights situation. In addition, they should consider dedicating official development funds and technical assistance to projects leading to the transparency, accountability and strengthening of that country’s relevant institutions.

## **Appendix 6: Recommendations from Canada**

### **From Lutsel K'e Dene First Nation (NWT) Case Study Research**

*The Lutsel K'e Dene First Nation in Canada's Northwest Territories has negotiated with several multinational mining companies undertaking diamond mining activities on its traditional territory. The following are highlights of key recommendations from interviews with diverse community members, and advice to others considering negotiating with mining companies. Advice is organized into several key "moments": Considering whether or not to negotiate, preparing for negotiations, choosing a negotiation team, and negotiations. Much of the advice has been left in the voice of the people, and is further fleshed out in the case study.*

**Excerpt adapted from Weitzner, Viviane. 2006. "Dealing Full Force": Lutsel K'e Dene First Nations Experience Negotiating with Mining Companies. Ottawa: Lutsel K'e Dene First Nation and The North-South Institute.**

#### ***Considering Whether or not to Negotiate***

- Know what your community wants through deep and inclusive (youth, women, elders) internal consultations.
- Learn from other communities and build alliances.
- Stand behind what your community wants — or does not want.
- Let mining representatives know how you use the land, and where your cultural sites are; build a relationship so they can understand your culture.
- Ask them to come to the community and listen to the people's concerns.

#### ***Choosing Your Negotiating Team: Who sits at the table***

- Choose a proud and strong community person, not a consultant or a lawyer; consider including an Elder and a youth on the team.

#### ***Preparing for Negotiations***

- Know your Aboriginal rights and the laws of your country.
- Gather and record your traditional knowledge and map your land use and cultural sites to get your land rights recognized.
- Know the mining industry and the value of the minerals on the international market, and invite the powerful representatives to your community.
- Build alliances, and get support from larger organizations you might be part of.
- Get organized.

## **Appendix 6**

### ***During Negotiations***

- Take your time and raise funds to support your negotiations (consider getting funding from sources in addition to industry and government).
- Show your culture, and try to build a relationship with the top executives.
- Be prepared to compromise.
- Get well-prepared translators, and make sure things are said simply so they can be well translated and understood.
- Never sign away your Aboriginal Rights.
- Get the company to incorporate traditional knowledge into their plans.
- Don't put all your cards on the table.
- Keep very good notes on your meetings.
- Expect they may try to exclude certain affected communities.
- Be cautious about wording, and make sure commitments have funding attached so they can be implemented.
- Have information and evidence to back up what you're saying, and put everything you agree to in writing.
- Ensure that benefits include employment, training, joint ventures, and royalties.
- Demand the least environmentally damaging technologies, and funds for research and monitoring; go on site visits; and always ask for a high amount of compensation for ruining your land.
- Demand the company make a security deposit for clean-up and reclamation.
- Establish an independent, public watchdog.
- Get training in budgeting and funds management; consider building into the Agreement a description of how funds are accessed.
- Share information with the community, especially the youth.
- Don't give up. Keep having meetings until a deal is done.
- Track and monitor the changes and impacts in your community and the environment.
- Include an article stipulating that the Agreement will be reviewed every 5 years.
- Use your heart, think for the next generation.

## **Appendix 6**

### **From Research on Multipartite National Dialogues following the Whitehorse Mining Initiative**

Excerpt from Weitzner, Viviane. 2010. Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons can Canada and Others Share? In *Canadian Journal for Development Studies* 30, nos. 1-2, Pp. 87-109.

#### ***Enabling Conditions for Indigenous-led Tri-partite National Dialogue in the Minerals Sector***

This review of Indigenous participation in the Whitehorse Mining Initiative and subsequent multi-partite processes in the minerals sectors of Canada and overseas underscores that while the trend toward inclusive dialogue marks an important step towards more democratic and representative political processes, there are many shortcomings to the WMI “model” and others — particularly with respect to the involvement of Indigenous and Tribal Peoples. Below, some of the core enabling conditions towards more balanced and effective multi-partite dialogue are highlighted. They flow from the literature and analysis, and reflect on the implications of such dialogue for Indigenous or Afro-descendent organizations that may be considering spearheading their own multi-partite processes regarding the minerals sector, as is the case with NSI’s partners in Guyana, Colombia, and Suriname.

##### **Conclusion #1: Government/industry buy-in is essential**

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

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

##### **Conclusion #2: Narrow the focus of the dialogue and negotiate a legally-binding outcome**

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

## **Appendix 6**

and judicial systems.<sup>134</sup> Aside from issues around enforceability, the review of Canadian and international initiatives highlighted that the more narrow the focus of the dialogue, the greater the potential for achieving agreements that can be translated into action.

### **Conclusion #3: Ensure sufficient funding, human resources and time to undertake an in-depth process**

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

### **Conclusion #4: Ensure appropriate Indigenous representation, particularly from Indigenous women**

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

### **Conclusion #5: Engage an independent facilitator**

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

### **Conclusion #6: Educate all parties regarding transforming conflict, Indigenous rights, and international leading practice**

Lessons from the Tintaya Table in Peru highlight the importance of building capacities among all parties on a variety of issues, including conflict resolution, in order to both facilitate successful dialogue and ensure the implementation of agreements the dialogue produces. However, for obvious reasons, Indigenous and Tribal organizations often focus inwards in terms of capacity-strengthening and awareness-raising. NSI’s Indigenous and Tribal partners, for example, focus much of their attention on building the capacities of Indigenous communities and leaders with regards to Indigenous rights and international leading-edge practice in the minerals sector as a means to prepare for negotiation and dialogue. Nonetheless, for Indigenous-led multi-partite dialogue to be more productive, it would be beneficial to raise the awareness of other actors about these same issues (Weitzner 2000). This clearly has financial and human resources implications.

### **Conclusion #7: Be willing to compromise**

The term “national dialogue” is a misnomer, as one interviewed NGO representative pointed out. Dialogues are in effect negotiations, and while parties at the table need to be well prepared, and ideally have in place a unified vision prior to multi-partite discussions, a willingness to compromise also needs to exist.

### **Conclusion #8: Establish an implementation and monitoring mechanism**

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

## **Appendix 7: Canadian Companies in Colombia, Peru, Guyana, Suriname, and Canada**

*Prepared May 31, 2011*

The following lists Canadian mining companies with interests in Peru, Suriname, Colombia, Guyana, and Canada. We define Canadian companies to be those that are listed on the Toronto Stock Exchange (TSX) and/or are headquartered in Canada. In some cases, it was difficult to determine whether the companies are Canadian. For these companies, we note the stock exchanges on which they are listed and the location of their headquarters. The information was gathered from company websites, as well as the Canadian & American mines handbook 2010/2011. The latter may not be fully up to date.

### **Legend**

(N) Not Listed on the TSX (O) Headquarters outside of Canada

\*Member of PDAC

\*\* Member of MAC

\*\*\* Member of PDAC and MAC

### **Colombia**

Alder Resources Ltd.	Galway Resources Ltd.
*Anglo American Exploration Canada	Gemini Explorations Inc. (N) (OTCBB)
*Antioquia Gold Inc.	*Greystar Resources Ltd.
Arcturus Ventures Inc.	Horseshoe Gold Mining Inc.
Auro Resources Corp.	Lara Exploration Ltd.
B2Gold Corp.	*Medoro Resources Ltd.
Bandera Gold Ltd.	*Mercer Gold Corporation (N) (OTCBB)
*Batero Gold Corp.	*Miranda Gold Corp.
Bellhaven Copper & Gold Inc.	OroAndes Resource Corp.
Caerus Resource Corporation	*Seafield Resources Ltd.
*CB Gold Inc.	Sunward Resources Ltd.
Coalcorp Mining Inc.	*U308 Corp.
*Colombian Mines Corporation	*Ventana Gold Corp.
Continental Gold Limited	Waymar Resources Ltd.
*Eaglecrest Explorations Ltd.	Xstrata plc (Xstrata Nickel*) (Xstrata Copper Canada**; Xstrata Nickel Canada**; Xstrata Zinc Canada**)
El Zancudo Mining Company (N) (O)	*Yamana Gold Inc.
First Source Resources Inc.	

### **Guyana**

*Argus Metals Corp.	Mahdia Gold Corp (N) (CNSX)
Cinro Resources Inc.	Mulgravian Ventures Corp.
Denarii Resources Inc.	Otish Energy Corp.
*First Bauxite Corporation	Reunion Gold Corporation/Reunion Manganese Inc.
GMV Minerals Inc.	Riva Gold Corporation
Gold Port Resources Ltd.	Sacre-Coeur Minerals Ltd.
*Guyana Frontier Mining Corp.	Sandspring Resources Ltd.
Guyana Goldfields Inc.	Stronghold Metals Inc.
Guyanex Minerals Corp.	*Takara Resources Inc.
Guyana Precious Metals Inc.	*U308 Corp.

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### **Peru**

Agila American Resources Ltd.  
\*Alturas Minerals Corp.  
\*AM Gold Inc.  
Americas Petrogas Inc.  
\*AndeanGold Ltd.  
\*Anglo American Exploration Canada  
Antares Minerals Inc.  
\*AQM Copper Inc.  
Arcturus Ventures Inc.  
\*\*\*Barrick Gold Corporation  
\*Bear Creek Mining Corporation  
Black Tusk Minerals Inc. (N) (OTCBB; Germany; U.S.)<sup>135</sup>  
\*Candente Copper Corp.  
Candente Gold Corp.  
\*Cardero Resource Corp.  
Century Mining Corporation (O: U.S.)  
\*Condor Resources Inc.  
Crocodile Gold Corp.  
\*Cuervo Resources Inc. (N) (CNSX)  
Dorato Resources Inc.  
\*Duran Ventures.  
\*Dynacor Gold Mines Inc.  
\*El Condor Minerals Inc.  
\*Entrée Gold Inc.  
\*Esperanza Resources Corp.  
\*Estrella Gold Corporation  
\*Fission Energy Corp.  
Focus Ventures (O: U.S.)  
Fortuna Silver Mines Inc.  
Galena Capital Corp.  
\*Geologix Explorations Inc.  
Gitennes Exploration Inc.  
Gold Hawk Resources Inc.  
Golden Alliances Resources Corporation  
\*Golden Minerals Company (O: U.S.)  
Grandview Gold Inc.  
Grenville Gold Corporation  
\*\*\*IAMGOLD Corporation  
\*Iberian Minerals Corp.  
Inca Pacific Resources Inc.  
\*International Minerals Corporation (O: U.S.)  
Journey Resources Corp.  
Lara Exploration Ltd.

LeBoldus Capital Inc.  
Macusani Yellowcake Inc.  
Malaga Inc.  
Mawson Resources Limited (Mawson West Ltd.)  
Minera IRL Limited  
Network Exploration Ltd.  
New Dimension Resources Ltd.  
New Oroperu Resources Inc.  
Newmont Mining Corporation (O: U.S.) (NYSE)  
Nilam Resources Inc. (N) (OTCBB)  
\*Norsemont Mining Inc.  
Pan American Silver Corp.  
Panoro Minerals Ltd.  
Peregrine Metals Ltd.  
\*Plexmar Resources Inc.  
\*Radius Gold Inc.  
Redzone Resources Ltd.  
Rio Alto Mining Limited (Rio Alto Mining\*)  
Rio Cristal Resources Corporation  
Rocmec Mining Inc.  
\*St.Elias Mines Ltd.  
Santa Barbara Resources Limited  
Sienna Gold Inc.  
Silver Standard Resources Inc.  
\*Silver Wheaton Corp.  
Sinchao Metals Corp.  
Solid Resources Ltd.  
\*Southern Andes Energy Inc.  
\*Sprott Resource Corp.  
\*St.Elias Mines Ltd.  
\*Strait Gold Corporation  
\*Sulliden Gold Corporation  
\*Tamerlane Ventures (O: U.S.)<sup>136</sup>  
\*\*\*Teck Resources Limited  
Tinka Resources Limited  
Trevali Resources Corp.  
\*Tumi Resources Limited  
Ultra Lithium Inc.  
Upper Canyon Minerals Corp.  
Vale S.A. (N) (NYSE) (Vale\*)  
\*Vena Resources Inc.  
Wealth Minerals Ltd.  
\*Zincore Metals Inc. (O: Peru)

### **Suriname**

\*Golden Star Resources Ltd. (O: U.S.) (NYSE)  
\*First Bauxite Corp.  
\*\*\*IAMGOLD Corporation

\*Newmont Mining Corporation (O: U.S.) (NYSE)  
Reunion Gold Corporation  
Sara Creek Gold Corp. (N) (OTC: U.S.)

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### Canada

- \*49 North Resources Inc.
- \*Abitex Resources Inc.
- \*Acadian Mining Corporation
- \*Adex Mining Inc.
- \*Adriana Resources Inc.
- \*Adroit Resources Inc.
- \*Adventure Gold Inc.
- \*Alberta Star Development Corp.
- \*Alderon Resource Corp.
- \*Aldrin Resource Corp.
- \*Alexandria Minerals Corporation
- \*Alexco Resource Corp.
- \*Alexis Minerals Corporation
- \*Almaden Minerals Ltd.
- \*Alto Ventures Ltd.
- \*AM Gold Inc.
- \*American Creek Resources Ltd.
- \*American Manganese Inc.
- \*Anglo American Exploration Canada<sup>137</sup>
- \*Apella Resources Inc.
- \*Arctic Star Diamond Corp.
- \*Argus Metals Corp.
- \*Armistice Resources Corp.
- \*Ashley Gold Mines Limited (N)
- \*Athabasca Uranium Inc.
- \*Atlanta Gold Inc.
- \*Atna Resources Ltd.<sup>138</sup>
- \*Atocha Resources Inc.
- \*Augyva Mining Resources Inc. (TSX Venture)
- \*Aura Silver Resources Inc.
- \*Aurcrest Gold Inc.
- \*Aurizon Mines Ltd.
- \*Aurora Energy Resources Inc.
- \*Avalon Rare Metals Inc.
- \*Azimut Exploration Inc.
- \*Barker Minerals Ltd.
- \*Barkerville Gold Mines Ltd.
- \*Bayfield Ventures Corp
- \*BC Ministry of Energy, Mines & Petroleum
- \*BCGold Corp.
- \*Beaufield Resources Inc.
- \*Benton Resources Corporation
- \*Blue Note Mining Inc.
- \*Bralorne Gold Mines Ltd.
- \*Brigus Gold Corp.
- \*Brionor Resources Inc.
- \*Buchans Minerals Corporation
- \*Cadillac Ventures Inc.
- \*Canada Zinc Metals Corp.
- \*Canadian Arrow Mines Ltd.
- \*Canadian Orebodies Inc.
- \*Canadian Zinc Corporation
- \*CanAlaska Uranium Ltd.
- \*Canasia Industries Corp.
- \*Capstone Mining Corp.
- \*Cardero Resource Corp.
- \*Cartier Resources Inc.
- \*Cash Minerals Ltd.
- \*Castillian Resources Corp.
- \*Castle Resources Inc.
- \*Celtic Minerals Ltd.
- \*Channel Resources Ltd.
- \*China Minerals Mining Corporation<sup>139</sup>
- \*Claude Resources Inc.
- \*Clifton Star Resources Inc.
- \*Cline Mining Corporation
- \*Cogitore Resources Inc.
- \*Commander Resources Ltd.
- \*Commerce Resources Corp.
- \*Compliance Energy Corporation
- \*Condor Resources Inc.
- \*Constantine Metal Resources Ltd.
- \*Continental Mining and Smelting Limited
- \*Continental Nickel Limited
- \*Copper Fox Metals Inc.
- \*Copper Mountain Mining Corporation
- \*Copper Ridge Explorations Inc.
- \*Cornerstone Resources Inc.
- \*Crosshair Exploration & Mining Corp.
- \*Crowflight Minerals Inc.
- \*Crown Gold Corporation
- \*Darnley Bay Resources Limited
- \*Detour Gold Corporation
- \*Diadem Resources Ltd.
- \*Diamonds North Resources Ltd.
- \*Dianor Resources Inc.
- \*Ditem Explorations Inc.
- \*DNI Metals Inc.
- \*Donner Metals Ltd.
- \*Dynasty Gold Corp.
- \*Eagle Hill Exploration Corp.
- \*Eagle Plains Resources Ltd.
- \*Eastmain Resources Inc.
- \*Encanto Potash Corp.
- \*Entourage Metals
- \*Erdene Resource Development Corp.
- \*Ethos Capital Corp.
- \*Everton Resources Inc.
- \*Exploration Syndicate, Inc.

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- \*Fancamp Exploration Ltd
- \*First Coal Corporation
- \*First Nickel, Inc.
- \*First Point Minerals Corp.
- \*Fission Energy Corp.
- \*Foran Mining Corporation
- \*Formation Metals Inc.
- \*Fortune Minerals Limited
- \*Forum Uranium Corp.
- \*Frontline Gold Corp.
- \*Garibaldi Resources Corp.
- \*Gastem Inc.
- \*Geodex Minerals Ltd.
- \*Geonics Limited
- \*Globex Mining Enterprises Inc.
- \*GLR Resources Inc.
- \*Gold Canyon Resources Inc.
- \*Goldbrook Ventures Inc.
- \*Goldcorp, Inc.
- \*Golden Band Resources Inc.
- \*Golden Dory Resources Corp.
- \*Golden Hope Mines Ltd.
- \*Golden Share Mining Corporation
- \*Golden Valley Mines Ltd.
- \*Goldsource Mines Inc.
- \*Gossan Resources Limited
- \*Gowest
- \*GTA Resources and Mining Inc.
- \*Halo Resources Ltd.
- \*Happy Creek Minerals Ltd.
- \*Hard Creek Nickel Corporation
- \*Hinterland Metals Inc.
- \*HTX Minerals Corp.
- \*Hughes Exploration Group
- \*Hunter Dickinson Inc. (N)
- \*Hy Lake Gold Inc.
- \*Imperial Metals Corporation
- \*Inspiration Mining Corporation
- \*International Millennium Mining Corp.
- \*International Samuel Exploration Corp.
- \*INV Metals Inc.
- \*Jiminex Inc.
- \*Junex Inc.
- \*Kaminak Gold Corporation
- \*Kat Exploration Inc.
- \*Kermode Resources Ltd.
- \*Kettle River Resources Ltd.
- \*Kings Bay Gold Corp.
- \*Kiska Metals Corporation
- \*Knight Resources Ltd.
- \*KWG Resources Inc.
- \*Labrador Iron Mines Limited
- \*Largo Resources
- \*Lateegra Gold Corp.
- \*Laurentian Goldfields Ltd.
- \*Laurion Mineral Exploration Inc.
- \*Lexam VG Gold Inc.
- \*Liberty Mines
- \*Lions Gate Metals
- \*Lithium One Inc.
- \*Logan Copper Inc.
- \*Logan Resources Ltd.
- \*Lounor Exploration Inc
- \*MacDonald Mines Exploration Ltd.
- \*Manicouagan Minerals Inc.
- \*Mantis Mineral Corp
- \*Marathon Gold Corporation
- \*Matamec Explorations Inc.
- \*MDN Inc.
- \*Mega Precious Metals Inc.
- \*Merrex Gold Inc.
- \*Messina Minerals Inc.
- \*MetalCORP Ltd.
- \*Metals Creek Resources
- \*Mexivada Mining Corp.
- \*Midland Exploration Inc.
- \*Minfocus International Inc.
- \*Moneta Porcupine Mines Inc.
- \*Montero Mining and Exploration
- \*Murgor Resources Inc.
- \*Mustang Minerals Corp.
- \*New Gold Inc.
- \*New Millennium Capital Corp.
- \*New Nadina Explorations Limited
- \*Nichromet Extraction Inc.
- \*NioGold Mining Corporation
- \*Noront Resources Ltd.
- \*North Arrow Minerals Inc.
- \*Northern Freegold Resources Ltd.
- \*Northern Gold Mining Inc.
- \*Northern Shield Resources Inc.
- \*Northern Superior Resources Inc.
- \*Northern Tiger Resources Inc.
- \*Northgate Minerals Corporation
- \*NovaGold Resources Inc.
- \*Novus Gold Corp.
- \*NS Gold Corporation
- \*Nuinsco Resources Limited
- \*Olivut Resources Ltd.
- \*Orbite Exploration V.S.P.A.
- \*Osisko Mining Corporation
- \*Pacific Bay Minerals Ltd.

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- \*Pacific North West Capital Corp.
- \*Paragon Minerals Corporation
- \*PC Gold Inc.
- \*Pelangio Exploration Inc.
- \*Pele Mountain Resources Inc.
- \*Peregrine Diamonds Ltd.
- \*Pitchstone Exploration Ltd.
- \*Plato Gold Corp.
- \*Playfair Mining Ltd.
- \*Portal Resources Ltd.
- \*Probe Mines Limited
- \*Prodigy Gold Inc.
- \*Pure Nickel Inc.
- \*Purepoint Uranium Group Inc.
- \*Quadra FNX Mining Ltd.
- \*Queenston Mining Inc.
- \*Quest Rare Minerals Ltd.
- \*Radisson Mining Resources Inc.
- \*Radius Gold Inc.
- \*Rainy River Resources Ltd.
- \*Rambler Metals & Mining
- \*Randsburg International Gold Corp.
- \*Rare Earth Metals Inc.
- \*Redstar Gold Corp.
- \*Renforth Resources Inc.
- \*Ressources Appalaches inc.
- \*Richmont Mines Inc.
- \*RJK Explorations Ltd.
- \*ROCA Mines Inc.
- \*Rock Tech Lithium Inc.
- \*Rogue Resources Inc.
- \*Romios Gold Resources Inc.
- \*Royal Nickel Corporation
- \*Rubicon Minerals Corporation
- \*Rupert Resources Ltd.
- \*Ryan Gold Corp.
- \*Sabina Gold & Silver Corp.
- \*Sage Gold Inc.
- \*San Gold Corporation
- \*Sandstorm Resources Ltd.
- \*Seafield Resources Ltd.
- \*Selwyn Resources Ltd.
- \*Serengeti Resources Inc.
- \*Shear Diamonds Ltd.
- \*Shore Gold Inc.
- \*SIDEX societe en commandite
- \*Silver Quest Resources Ltd.
- \*Silver Spruce Resources Inc.
- \*Silvore Fox Minerals Corp.
- \*Sirios Resources Inc.
- \*Slam Exploration Ltd.
- \*Sona Resources Corp.
- \*Spanish Mountain Gold Ltd.
- \*Spider Resources Inc.
- \*St. Andrew Goldfields Ltd.
- \*St. Elias Mines Ltd.
- \*Starfield Resources Inc.
- \*Stikine Energy Corp.
- \*Stina Resources Ltd.
- \*Stornoway Diamond Corporation
- \*Strateco Resources Inc.
- \*Strongbow Exploration Inc.
- \*Sultan Minerals Inc.
- \*Tamerlane Ventures Inc.
- \*Taranis Resources Inc.
- \*Tarsis Resources Ltd.
- \*Tata Steel Minerals Canada Ltd.
- \*Temex Resources Corp.
- \*The Predator Group
- \*Thelon Capital Ltd.
- \*Thundermin Resources Inc.
- \*TNR Gold Corp
- \*Trade Winds Ventures Inc.
- \*Transition Metals Corp
- \*Treasury Metals Inc.
- \*Trelawney Mining & Exploration Inc.
- \*Tres-Or Resources Ltd.
- \*Tri Origin Exploration Ltd.
- \*True North Gems Inc.
- \*Trueclaim Exploration Inc.
- \*Tyhee Gold Corp.
- \*UEX Corporation
- \*Uracan Resources Ltd.
- \*Uranium North Resources
- \*Valencia Ventures Inc.
- \*Velocity Minerals Ltd.
- \*Victory Nickel Inc.
- \*VIOR
- \*Virginia Energy Resources Inc.
- \*Virginia Mines Inc.
- \*Visible Gold Mines
- \*Vismand Exploration Inc.
- \*Wallbridge Mining Company Limited
- \*Western Coal Corp.
- \*Western Copper Corporation
- \*Western Potash Corp.
- \*Western Troy Capital Resources Inc.
- \*Wildcat Exploration Ltd.
- \*Xmet Inc.
- \*Yellowhead Mining Inc.
- \*Yorbeau Resources Inc.
- \*Zenyatta Ventures Limited

## Endnotes

- 1 For ease of citation, the rest of this policy brief refers only to Indigenous Peoples. Our research has included Afro-Colombians, and it is important to note the special rights of these Peoples under international, and in the case of Colombia, domestic law.
- 2 In 2009, 53% of minerals exploration companies were domiciled in Canada. Their activities comprised 34% of all activity expected worldwide, with Latin America the largest destination (Drake 2010, 5.1, 5.4, 5.9).
- 3 A recent report commissioned by the PDAC reveals that Canada is responsible for three times as many mining-related conflicts as its closest peer, Australia (CCSRC 2009, p. 16).
- 4 Drake (2010, 5.9).
- 5 CCSRC (2009, p. 9).
- 6 Phase I research partners included the INER in Colombia, and in Guyana the APA with technical support from the FPP. Further partners joined as we grew the programme in Phase II.
- 7 With the exception of Peru, where NSI commissioned CooperAcción to undertake research on multi-partite dialogues in the extractive sector, Canada's role in Peru, and fieldwork regarding decision-making processes in oil and gas exploration by Canadian company Talisman.
- 8 For example, at one workshop in Santa Marta, Colombia, the Koggi, Kankuamo, Arhuaco and Ette Enaka Peoples gathered were facing a conflict with a conservation NGO over a management plan for their traditional territories that did not consider Indigenous conceptions and values equally alongside Western ideas. Discussions centred on how to strengthen the planning process toward meaningful Indigenous participation and outcomes. And in Guyana, programming in 2010 focused largely on attempting to ensure that free, prior and informed consent was implemented in government-initiated climate change mitigation initiatives proposing to sell the environmental services of ancestral forests.
- 9 We also established an Indigenous-to-Indigenous training component, first in partnership with the Assembly of First Nations, and then with the Independent First Nations Alliance (IFNA) in Northern Ontario. This component was funded by the Canadian International Development Agency (CIDA). While one exchange visit did take place, with two trainers from IFNA visiting West Suriname, this training component came to an end when IFNA had to focus all its efforts on addressing the emergencies around the H1N1 epidemic affecting remote Indigenous Nations in 2009.
- 10 Phase I research in Colombia (2000–2002) was conducted with the INER.
- 11 James Anaya, UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, notes that "according to the Government, [indigenous reserves] occupy a total of approximately 34 million hectares, equivalent to 29.8 per cent of Colombia's national territory" (2010, p.12), and cites other sources that refer to Indigenous Peoples occupying only 22 per cent of the territory.
- 12 The Inter-American Development Bank is currently funding a project that will examine the possibility of implementing title in Suriname's Interior (K. Bishop, Social Development Specialist, Gender and Diversity Unit, Inter-American Development Bank, personal communication, 2010).
- 13 It is important to recognize the role that international donors, including the United Kingdom's Department for International Development, are playing in supporting the GoG in addressing issues around land titling (Colchester and La Rose 2010, p. 11).
- 14 Colchester and La Rose (2010, p. 11).
- 15 For examples, see Colchester and La Rose (2010).
- 16 These and other concerns were raised by the APA and the FPP submission to CERD under its Urgent Action/Early Warning Procedure.
- 17 Colchester and La Rose (2010, p. 8).
- 18 Stavenhagen (2005a).
- 19 IACHR (2007, para 194).
- 20 In a recent article, Pierre Gratton, the new president of the Mining Association of Canada, is cited urging the federal government of Canada to speed up the treaty process in the province of British Columbia. Gratton notes that "The future of mining in British Columbia will be shaped by no issue greater than how we relate to first nations," adding that "the provincial government too has been mired, with not a single resource-revenue-sharing agreement signed since last summer" (Hunter 2011). This is an apparent turnaround for the mining industry, who had previously spoken up against the Recognition and Reconciliation Act, proposed legislation that would have recognized Aboriginal title for all first nations in BC (Hunter 2011). Other similar articles are starting to hit mainstream Canadian media, showing the relative power that Indigenous communities have over resource decision-making particularly in light of the lack of resolved treaties (e.g., Tait and Vanderklippe 2011).
- 21 This case is often looked to as one of the more successful examples not only of Indigenous Peoples using a variety of tactics to ensure that their rights to territory and consent were upheld, but of ESIA and negotiation and implementation of IBAs. Among others, see Innes (2010); Gibson (2005).
- 22 See Weitzner (2002).

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- 23 This is also in line with international norms and jurisprudence of the Inter-American Human Rights System. According to a recent Inter-American Commission on Human Rights report, “if environmental and social impact assessments identify claims to indigenous communal property that have not been previously registered by the State, the execution of the project should be suspended until said claims have been duly determined through adequate procedures” (ICHR 2009, para 249).
- 24 The Inter-American Commission on Human Rights has recently synthesized jurisprudence regarding Indigenous and Tribal Peoples rights over their ancestral lands and natural resources, noting that while States may claim ownership of sub-surface mineral and water rights, for example, “this does not imply...that indigenous or tribal peoples do not have rights that must be respected in relation to the process of mineral exploration and extraction, nor does it imply that State authorities have freedom to dispose of said resources at their discretion. On the contrary, Inter-American jurisprudence has identified rights of indigenous and tribal peoples that States must respect and protect when they plan to extract subsoil resources or water resources; such rights include the right to a safe and healthy environment, the right to prior consultation and, in some cases, informed consent, the right to participation in the benefits of the project, and the right of access to justice and reparation” (ICHR 2009, para 180). Indeed the ICHR links indigenous rights to territorial property to “the right to use and enjoy territory in accordance with indigenous and tribal peoples’ traditions and customs,” noting that “the right to the natural resources which are both in and within the ancestral lands is a necessary derivation, including the specific rights of indigenous peoples over the natural resources of the subsoil”(para 181). “The property rights of indigenous and tribal peoples thus extend to the natural resources which are present in their territories, resources traditionally used and necessary for the survival, development and continuation of the peoples’ way of life. For the Inter-American human rights system, resource rights are a necessary consequence of the right to territorial property” (para 182). Further, “according to the inter-American Court, ‘members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have the right to own the land they have traditionally used and occupied for centuries’(para 182). And still further: “As with the right to property in general, indigenous and tribal peoples’ right to property over the natural resources may not be legally extinguished or altered by State authorities without the peoples’ full and informed consultation and consent, or without complying with the general requirements for cases of expropriation, and with the other legal safeguards of indigenous territorial property.”(para 186). Importantly, rights to territory and natural resources exist independent of whether a State has officially recognized or delimited them, and the Maya Indigenous Communities of Toledo District (Belize) of October 2004, notes that States must abstain from “granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated or titled or otherwise clarified ad protected, in the absence of effective consultations with and the informed consent of the [respective] people”. (cited in ICHR, 2009, para 187). The IACR’s *Saramaka People* judgment, for example, clarifies the rights of Maroon (and by extension Indigenous) Peoples to their traditionally owned territory and to enjoy and use the natural resources within these territories, stating that states must preserve the survival of the Saramaka People (IACR 2007, para 157) and can infringe on this right only in certain cases: “The members of the Saramaka people have a right to use and enjoy the natural resources that lie on and within their traditionally owned territory that are necessary for their survival.... the State may restrict said right by granting concessions for the exploration and extraction of natural resources found on and within Saramaka territory only if the State ensures the effective participation and benefit of the Saramaka people, performs or supervises prior environmental and social impact assessments, and implements adequate safeguards and mechanisms in order to ensure that these activities do not significantly affect the traditional Saramaka lands and natural resources” (para 158).
- 25 Ruggie (2008, p. 3, para 3).
- 26 This can be seen, for example, in Colombia’s reform of its mining code, which has resulted in regressive outcomes for communities, and was undertaken without adequate consultation (Jimeno Santoyo 2002).
- 27 The Food and Agriculture Organization of the United Nations’ “Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources” are currently being established to provide practical guidelines for a variety of different organizations in recognition of the significant impacts that weak governance on land tenure has on peoples and their livelihoods: “Weak governance of tenure results in the loss of life and livelihoods; it deters investment and widespread economic growth and discourages the sustainable use of natural resources. In contrast, responsible governance of tenure ensures that relevant policies and rules lead to sustainable, beneficial results, and that related services are delivered efficiently, effectively and equitably. Responsible governance is not confined to statutory tenure (e.g. private and public ownership and other rights and responsibilities) but it recognizes as well customary and common property tenures. It is anticipated that voluntary guidelines will help countries to improve the governance of tenure.” (Land and Tenure Management Unit 2009:1)
- 28 *Saramaka People*, for example, orders the State of Suriname to “ensure that environmental and social impact assessments are conducted by independent and technically competent entities, *prior to awarding a concession for any development or investment project within traditional Saramaka territory*, and implement adequate safeguards and mechanisms in order to minimize the damaging effects such projects may have upon the social, economic and cultural survival of the Saramaka people” (IACR 2007, para 194 (e)). Aside from ESIAs, the judgment notes that “*the State has a duty to consult with [the Saramaka], in conformity with their traditions and customs*, regarding any proposed mining concession within Saramaka territory, as well as allow the members of the community to reasonably participate in the benefits derived from any such possible concession” (para 155). Essentially, three safeguards need to be in place for the granting of any concessions, to

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- ensure that a people is not denied their survival as a people: effective participation and consultation in accordance with customs and traditions, prior ESIAs and benefit-sharing (paras 146, 156).
- 29 See Weitzner (2006).
- 30 On May 11, 2011, the Constitutional Court of Colombia declared the 2010 reform of the mining code unconstitutional, in light of lack of consultation with Indigenous Peoples. The Court has given two years for new legislation to be drafted, following due process. The court “insisted that prior consultation with communities is required when norms are issued that can affect the habitat and environment of communities” (El Espectador 2011). The court challenge was presented by the Colombian Commission of Jurists (M.C. Galvis, lawyer and specialist in the inter-American system and issues around prior consultation and consent, personal communication, 2011).
- 31 For example, in Colombia Decreto 1320 was issued in 1998 to establish a framework for consultation with Indigenous Peoples, and continues to be applied despite the following: a) in its final observations on Colombia in 2010, the Committee of Experts on the Application of Conventions and Recommendations of the ILO noted that as far back as 2001, the Governing Body found that Decree 1320 is inconsistent with ILO Convention 169 in terms of process (it was not developed in consultation or with the participation of the Peoples protected by the Convention) or content, and the Government of Colombia was asked to align the Decree with the Convention, with the active participation of Indigenous Peoples representatives of Colombia (GB.282/14/3 and GB.282/14/4); b) the Colombian constitutional court judgment T-652 of 1998 suspended the application of this Decree in the specific case of the Embera Katio of the Alto Sinú because it was deemed unconstitutional and not in conformity with ILO Convention 169 (CEACR 2010, Pp. 764). In his 2010 report on Colombia, James Anaya also referred to this decree, underscoring once again the need to engage in consultations with Indigenous Peoples to ensure that the Decree aligns with the Convention (Anaya 2010).
- 32 Colchester and La Rose (2010, p. 22).
- 33 Colchester and La Rose (2010, p. 17) observe that in the case of Guyana, “while the GGMC [Guyana Geology and Mines Commission] has begun to make some progress in monitoring the environmental impacts of mining, there is less evidence of any real change in dealing with the social impacts.”
- 34 In Guyana, for example, “the substantial increase in mining activity over the last 10 years has not been matched by a commensurate increase in State controls to limit the social and environmental impacts of the sector. Until recently, regulations adopted in 2005 that were designed to promote responsible mining — such as through the use of retorts to recover mercury during the flaming of the amalgam and the impoundment of mine waste to allow sedimentation before waters are released back into rivers — have been largely disregarded by miners. These regulations are also unenforced by GGMC officials, who struggle to keep up with even their main responsibilities, which are to register properties, extract fees and control sales, and in doing so stop smuggling and ensure the country gets a proper revenue stream from the sector” (Colchester and La Rose 2010, p. 16). And in Colombia, Andres Ruiz, an outgoing director of Ingeominas, Colombia’s Institute of Geology and Mining, noted: “We respond to 6,000 mining titles across the country and we only have an operating capacity of 70 people to do 9,000 inspections a year in each mine, it’s literally impossible.” He stated further that “Ingeominas works with \$11.9 million a year, and we need another \$64.7 million to operate acceptably”. These comments came in the wake of two accidents within one week in January 2011 that claimed the lives of 26 miners (Arnonowitz 2011). Meanwhile, in Ontario, Canada, the province’s environmental commissioner recently brought media attention to the lack of monitoring of mining companies’ activities in the province’s far north, when two illegal airstrips and one illegal mining camp on Crown land were discovered. “There is no staff and there is no funding,” the commissioner noted, saying “provincial employees are outmatched by mining companies and subcontractors” (Greenberg 2010).
- 35 In Colombia, this issue has come to a head. The Ministry of the Interior has a consultation group that verifies and issues certificates whenever ethnic minorities are present in the area of a proposed project, which in turn triggers prior consultation processes. However, the consultation group has been severely underfunded and understaffed while the number of concessions issued has grown exponentially. Companies say they are experiencing undue delays because of this situation, and have offered to provide funding to the Colombian government. The Ministry of the Interior sees this as a conflict of interest, however, and does not agree to accept mining company funding (Anonymous, personal communications with Colombian government representatives and representatives of companies operating in Colombia, February 2011). The proof of how seriously the Santos government views protection of Indigenous and Afro-descendent rights will be seen in how funding and institutional strengthening of this office is addressed. In Guyana, Colchester and La Rose (2010, p. 17) note that “whereas the Government has adopted an express policy to allow Amerindians to veto small- and medium-scale operations proposed for their lands, there is little sign that the GGMC has been able to build up its capacity to ensure the communities are consulted before exploration and mining permissions are issued....Amerindians are sometimes not even consulted when mining properties are issued on their *titled lands*.” The Guyana final report details several examples to illustrate this problem.
- 36 This issue drew significant attention in the *Saramaka People* case, where evidence was presented showing how the domestic court system is ineffective for Maroon (and by extension Indigenous) Peoples, as their legal capacity as a collective entity is not recognized, with the court system favouring individual rights (para 180). The court ordered the State to “adopt legislative, administrative and other measures necessary to provide the members of the Saramaka people with

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- adequate and effective recourses against acts that violate their right to the use and enjoyment of property in accordance with their communal land tenure system" (IACtHR 2007, para 194 (f)).
- 37 This came after we briefed a government negotiation team on what Canada and Canadian Indigenous Peoples demand of mining companies in terms of environmental, economic and social benefits.
- 38 Corte Constitucional (2009).
- 39 The UN Office of the High Commissioner for Human Rights has asked that a representative of our project team sit on the advisory committee to guide the Colombian government in this task.
- 40 In 2005, the Minister for Amerindian Affairs, Carolyn Rodrigues, outlined the provisions as follows: "In terms of traditional mining the Village Council, with guidelines provided by the GGMC, will issue the permission. In terms of small and medium scale mining the Amerindian communities will have veto powers. Moreover, if the community and the GGMC agree for the mining to take place, the miner will be required to pay at least 7% tribute to the community. For large scale mining the State retains the right to over-ride non-consent by the community if the mining is determined to be in the national interest" (Rodrigues 2005).
- 41 For a discussion on free, prior and informed consent within the Canadian context, see Simms and Weitzner (2009).
- 42 See for example, Gibson (2005, 2007).
- 43 See for example, Christian (2011).
- 44 Following the Akwé: Kon Guidelines developed by parties to the Convention on Biological Diversity (CBD 2004). These are seen as leading-edge practice in assessment involving Indigenous Peoples, and have been highlighted by the Inter-American Court on Human Rights in Saramaka People v. Suriname as "one of the most comprehensive and used standards for ESIAs in the context of Indigenous and Tribal Peoples" (para 41, footnote No. 23).
- 45 See, for example, March 18 2002 letter by Roy Culpeper to Sub-Committee on Human Rights and International Development of the Standing Committee on Foreign Affairs and International Development in Weitzner (2002, Pp. 71-74); Sintraminercol (2004), pp. 28-33.
- 46 Ruggie notes that "access to formal judicial systems is often most difficult where the need is greatest. And non-judicial mechanisms are seriously underdeveloped — from the company level through national and international levels" (2008, p. 9, para 25). Further, "there is increasing encouragement at the international level, including from the treaty bodies, for home States to take regulatory action to prevent abuse by their companies overseas" (2008, p. 7, para 19).
- 47 National contact points (NCP's) are established to help implement the OECD Guidelines for Multinational Enterprises. Ruggie notes that while these guidelines are "currently the most widely applicable set of government-endorsed standards related to corporate responsibility and human rights, their human rights provisions lack specificity" and are in need of revision (Ruggie 2008, p. 13, para 46). A review is currently underway, and expected to be concluded in 2011. Norway is an example of one country that is trying to push the mandate and effectiveness of NCP's, by hiring independent fact-finders for NCP missions, as happened in 2011 with a Norwegian Ministry of Foreign Affairs commissioned investigation around the Mindoro Nickel Project in the Philippines.
- 48 CCSRC (2009, p. 16).
- 49 Followed by sub-Saharan Africa with 24% of recorded incidents (CCSRC 2009).
- 50 Committee on the Elimination of Racial Discrimination (2007, para 17).
- 51 Advisory Group (2007, pp. 23–24).
- 52 The current counsellor has acknowledged that she is unaware of any review or complaints process that works this way. Already companies have many resources at their disposal to launch procedures against NGOs or individuals, and they have done so. For a more in-depth discussion, see Amnesty International Canada et al. (2010).
- 53 Government of Canada (2009).
- 54 Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and Alien Tort Claims Act (1789).
- 55 Drohan (2010).
- 56 CIDA, for example, has been involved in a series of projects in Andean countries looking at these issues. Together with the IFC, it has launched the Enhancing the Development Impact of Extractive Industries in Peru initiative, which "will assist municipal governments in managing the large revenues generated by the mining sector" (Oda 2010).
- 57 See, for example, Ling (2011).
- 58 In May 2010, for example, a meeting was held at CIDA between NGOs and mining companies, several of whom had projects in place or proposals for working together with CIDA funding. The Devonshire Initiative is another instance where companies and NGOs are coming together to work on joint projects.
- 59 Echave 2010.
- 60 Our Colombia project will yield important guidance on doing business in the context of armed conflict, particularly on how to ensure that free, prior and informed consent processes can take place, and on criteria around no-go zones.

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- 61 Canadian oil and gas company Talisman, for example, engaged legal counsel to investigate the feasibility of embracing a policy on free, prior and informed consent (Lehr and Smith 2010). BHP Billiton and other companies are also engaging in dialogue on these issues.
- 62 In Canada, members of the PDAC are not required to adhere to the E3 guidelines the association has produced; these guidelines recognize the importance of the UNDRIP and the issues around the need to recognize Indigenous Peoples as owners of their lands despite official state positions (PDAC 2009). Indeed, interviews with members have revealed ignorance that these very guidelines exist. The Mining Association of Canada's Towards Sustainable Mining guidelines are currently required of operations in Canada, but not abroad. This double standard seems hard to reconcile.
- 63 According to Ruggie (2008, p. 9), corporations have a responsibility to respect human rights. This means "not to infringe on the rights of others – put simply, to do no harm." "The broader scope of the responsibility to respect is defined by social expectations – as part of what is sometimes called a social license to operate" (Ruggie 2008, p. 17, para 54). Commitments to respecting human rights are found in several company policies, and in industry association commitments such as ICMM's (2003) principles and sustainable development framework. Principle 3 notes that member companies will:
- "Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities
- Ensure that all relevant staff, including security personnel, are provided with appropriate cultural and human rights training and guidance
  - Minimise involuntary resettlement, and compensate fairly for adverse effects on the community where they cannot be avoided
  - Respect the culture and heritage of local communities, including indigenous peoples"
- 64 This section is adapted from Weitzner (2009).
- 65 IACHR (2007, para 134).
- 66 See, for example, Herz et al. (2007). However, for some communities mining is not part of their vision of development. These communities will no doubt continue to say no to mining on their territories; it is in the best interests of all to know this as early as possible to minimize misspending of funds, human rights violations and probable social conflict.
- 67 Companies have argued that it is impractical from a business perspective to invest large amounts of funding in a project once consent has been given, only to have that consent later withdrawn. See, for example, ICMM's comments regarding the Framework for Responsible Mining: "It is also necessary to comment on the suggestion that consent could be withdrawn at any stage. This would make it virtually impossible to finance any mine development because of the absence of necessary security and it would expose companies and society generally to extortionate claims from those local individuals who would stand to benefit financially" (ICMM 2005). There is no doubt that the more a company invests in an exploration process and potential mine, the more difficult it is for a community to be able to stand its ground in the event it does not agree with the mine going ahead. Nonetheless, it is in the community's – and the state's right – to say 'no' to a mine that will have detrimental effects, and companies need to be very aware of the risks they are taking in exploration activities affecting ancestral lands, including the possibility of a 'no go' decision.
- 68 M. Alexander, lawyer representing the Kaska Nation, personal communication, December 2008.
- 69 If companies are fulfilling their commitments to the communities, and are maintaining high environmental and human rights standards, the likelihood of consent being withdrawn is slim. It would not be in the best interests of either party to opt out, especially if the community would accrue significant benefits from the project. However, if commitments are not being met, and communities and their livelihoods are at risk, then communities have the responsibility to act in the best interest of their people and future generations, which may mean withdrawing consent and the social licence to operate.
- 70 This was evident for example, in interventions by Tony Hodge, president of ICMM, at a 2009 panel on Free, prior and informed consent organized by PDAC, and in comments by a Talisman representative at a 2010 meeting organized by the Canadian International Development Agency. It is also evident in a report produced for Talisman on the feasibility and benefits of implementing FPIC (Lehr and Smith 2010).
- 71 And if a community does say 'no', then the company should respect this and not keep pressuring the community until it extracts a 'yes'.
- 72 See Weitzner (2006). While most Canadian IBAs require Indigenous Peoples to agree to not oppose the mine in the future — clauses that run counter to the nature of FPIC and other rights of Indigenous Peoples protected under international law — there are precedents of IBAs that have included more pro-FPIC language, such as IBAs around Voisey's Bay.
- 73 See Colchester and MacKay (2004).
- 74 Motoc and Tebtebba (2005); Mehta and Stankovitch (2000); Caruso (2003).
- 75 See Herz et al. (2007).
- 76 From discussions with Canadian mining companies, it is apparent that very little time is dedicated to this important aspect. To ensure Canadian companies are well aware of the human rights context in Colombia, the Canadian Embassy there has

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recently entered into an agreement with the Sergio Arboleda University to provide Canadian companies seminars on issues such as human rights and free, prior and informed consultation (personal communication with Canadian Ambassador to Colombia Genevieve des Rivières, February 2011). While this is a positive step forward, from the course outline it appears discussions around free, prior and informed consent are not emphasized or perhaps even missing, the very minimum standard that communities increasingly demand be implemented. There is no doubt that training companies with regards to human rights and free, prior and informed consent is imperative, and should be undertaken in a sustained fashioned for maximum long-term effect. Companies should prioritize funding this training themselves particularly if they intend to work in areas where Indigenous and Afro-descendent Peoples are present.

- 77 Weitzner (2011).
- 78 See de Echave (2010). While the company provided support to the communities through a consultant who helped train for negotiations, no independent help was given for communities to develop their own vision for their territories and to understand the full range of impacts the proposed exploration might have, prior to negotiating compensation agreements (Anonymous 2009).
- 80 The commitment to undertake this type of support is articulated in ICMM's position statement on Indigenous Peoples and mining (ICMM 2008). PDAC has also used its influence with the Canadian government to lobby on behalf of the interests of Canada's Indigenous Peoples, including with regards to expediting resolution of outstanding land claims. See PDAC (2008).
- 81 See for example protocols developed by the Taku River Tlingit, Lutsel K'e Dene First Nation and Voisey's Bay Innu, all of which specify the appropriate steps outsiders should take when approaching the authorities in these ancestral territories for potential projects.
- 82 Innes (2010).
- 83 Weitzner (2006).
- 84 Simms and Colchester (2010); Gibson and Simms (2010); and Markussen-Brown and Simms (2011).
- 85 Further recommendations and guidance for communities are outlined in the case study and video on Lutsel K'e Dene First Nation's experience negotiating with mining companies (Weitzner 2006), and the practical guides on FPIC (Simms and Colchester 2010), IBAs (Gibson and Simms 2010) and impact assessment (Markussen-Brown and Simms 2011) produced for Guyana and forthcoming for Colombia.
- 86 Forest Peoples Programme (2011).
- 87 The FPP (2011) makes concrete recommendations on how to strengthen the language of the current IFC Performance Standards towards fully embracing free, prior and informed consent.
- 88 Several submissions have been made to the IFC highlighting this critical issue. See, for example, the Indian Law Resource Center (2011).
- 89 Joint Civil Society Statement on IFC's Draft Sustainability Framework (2011).
- 90 IFC (2011).
- 91 [www.ifc.org.eir](http://www.ifc.org.eir).
- 92 [www.iied.org/sustainable-markets/key-issues/business-and-sustainable-development/mmsd-introduction](http://www.iied.org/sustainable-markets/key-issues/business-and-sustainable-development/mmsd-introduction)
- 93 The EIR led to some very strong recommendations around closing governance gaps, including insisting that free, prior and informed consent be upheld. "Their [Indigenous Peoples'] resettlement should only be allowed if the community has given free, prior and informed consent, as a result of a consent process, to a proposed project and its expected benefits for them. Indeed, the WBG should not support extractive industry projects that affect indigenous peoples without prior recognition of and effective guarantees for their rights to own, control and manage their lands, territories and resources (EIR 2003, paras 5-6)
- 94 See also Ross (2001) for an analysis leading to the conclusion that mining does not lead to poverty alleviation. Campbell (2009) analyzes these issues in depth for Africa, pointing to weak governance as the pivotal issue.
- 95 Innes (2010).
- 96 Reuters (2010).
- 97 Voisey's Bay mine in Labrador, Canada, is a good example of this approach.
- 98 Colchester et al. (2002); Colchester and La Rose (2010).
- 99 While much work has been done to try to develop processes to reduce or reuse mercury in small-scale mining through initiatives such as the CIDA-supported Guyana Environmental Capacity Development Project (GENCAPD), a key issue is that the retort technology is still too expensive for cash-strapped miners to consider. In addition, while technologies could reduce potential environmental impacts, it is critical to also consider social impacts of small-scale mining, which projects such as GENCAPD need to address more rigorously. See Colchester et al. (2002).
- 100 Griffiths and Anselmo (2010).

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- 101 The UN Permanent Forum visit to Colombia in July 2010 concluded that “In spite of constitutional recognition of the human rights of indigenous peoples, the situation of indigenous peoples in Colombia is serious, critical and deeply worrisome;” and that “in spite of the legal recognition of the right to consultation, the Forum has received allegations regarding projects being implemented in indigenous territories, without the realization of a prior consultation seeking to obtain their free consent.” (UN Permanent Forum 2010).
- 102 Anaya writes: “According to the Monitoring Unit, from 1998 to July 2008 there were 1075 murders of indigenous persons in Colombia. However, according to other sources, the figure is higher – 1,365 murders of indigenous persons during that period, plus, *inter alia*, cases of threat (321), forced disappearance (254), injury (492) and sexual violence and torture (216)....He also cites the problematic ‘demobilization’ of paramilitaries, who have regrouped under other names, including the infamous new criminal gangs (Bacrim) (Anaya 2010, p. 8, para 18, 20).
- 103 Stavenhagen (2005b); Goforth (2011).
- 104 Drohan (2007).
- 105 Although some communities may reject any type of development or conservation project on their lands, depending on the outcome of internal consultations (Jimeno 2002).
- 106 Recommendations targeting Colombia from Phase I research (2000–2002) included the following: “Foreign governments and international financial institutions open for business with Colombia should provide funding to engage in participatory research for the development of criteria with regard to “no-go” zones for mining. Colombia’s Indigenous Peoples should be involved in the planning and implementation of this research, as well as the monitoring of enforcement once criteria are determined”; and “Foreign governments and financial institutions — including export credit agencies — open to supporting mining development projects in war-torn areas should undertake increased and ongoing third-party monitoring of these companies in order to ensure that their presence and operations are not exacerbating the conflict and the human rights situation. In addition, they should consider dedicating official development funds and technical assistance to projects leading to the transparency, accountability and strengthening of that country’s relevant institutions.” See Weitzner (2002, p. 65).
- 107 According to the Canadian Embassy, “Canadian investment in the Colombian extractive sectors such as mining and oil and gas exploration and production has increased consistently since 2004” ([www.tradecommissioner.gc.ca/eng/office.jsp?oid=62](http://www.tradecommissioner.gc.ca/eng/office.jsp?oid=62)). According to Colombia’s Ministry of Mines and Energy, in 2008 Canadian exploration companies accounted for 51% of all exploration in the country (cited in Inter Pares 2009).
- 108 See for example Goforth (2011).
- 109 Ruggie (2008, p. 8, para 22).
- 110 According to the State of the World’s Indigenous Peoples: “Indigenous Peoples number about 370 million. While they constitute approximately 5 per cent of the world’s population, indigenous peoples make up 15 per cent of the world’s poor. They also make up about one third of the world’s 900 million extremely poor rural people” (United Nations. 2009, p.21). In addition, indigenous peoples suffer from discrimination in terms of employment and income: “According to the ILO, indigenous workers in Latin America make on average about half of what non-indigenous workers earn. Approximately 25–50 per cent of this income gap is ‘due to discrimination and non-observable characteristics, such as quality of schooling.’” (United Nations, 2009, p. 22).
- 111 Available upon request.
- 112 This section on Guyana impacts is adapted from notes produced by North-South Institute researcher Meaghan Simms.
- 113 From the perspective of a number of Amerindian community leaders, true FPIC has been absent from the LCDS planning process. For example some communities have been given the lengthy and complex LCDS document only days before official “consultations,” while others have merely been referred to the Strategy’s website — this despite the fact that most Amerindian communities in Guyana have no access to Internet. Leaders have also been informed that they will not be told how to “opt out” of the LCDS, until they opt-in. Confusion and pressure have been commonplace. Furthermore and in a fundamental contradiction to international law, the LCDS version of FPIC applies only to titled land; traditional territories would be automatically included in the scheme.
- 114 Indigenous Peoples in East Suriname affected by potential road developments for proposed mining have refused an ESIA on proposed roads through their territories, as they a) disagree with this option because other options are available, and b) have not yet obtained official recognition of their land rights. The communities have said they will start engaging only after their land rights are officially recognized (C. Madsian, personal communication, September 2010). See also, Dagblad Suriname (2011).
- 115 Guerrero Garcia (2010).
- 116 Nonetheless, only 10 days later, a bulldozer appeared in one of La Toma’s communities, and started working to exploit the gold resources, without the consultation or consent of the communities. The communities issued an early warning concerning this on May 13, 2011. This shows the delicate situation with regards to implementing court decisions domestically, particularly given the presence of illegal armed actors and their increasing involvement in small- and medium-scale mining in the area.

## Endnotes

- 117 The visit coincided with a youth visioning exercise for a protected area that is being proposed, and a hearing regarding the issuing of a water licence for a diamond mine.
- 118 Gibson and O'Faircheallaigh (2010).
- 119 Hipwell et al. (2002).
- 120 Workshop report forthcoming.
- 121 These included the following: a mine managers meeting organized by the Mining and Metals Sector of Natural Resources Canada (November 2005); a meeting on free, prior and informed consent organized by KAIROS (April 2006); a meeting on extractive industries in Canada's North organized by the National Aboriginal Health Organization (March 2008); a panel on free, prior and informed consent organized by PDAC (March 2009); a brownbag organized by IDRC on extractives in Latin America and collaboration between Canadian civil society organizations (January 2011); academic conferences in Canada such as the 2008 ACFAS (a panel organized by Dialog — Réseau de recherche et de connaissances relatives aux peuples autochtones) ; Canadian Association for the Study of International Development (2008); and CERLAC (March 2009).
- 122 In the case of the PDAC, we participated in one meeting regarding the E3 guidelines; we decided not to participate further in light of these guidelines not being required as a condition of membership, among other concerns. We were invited to sit on the first Community of Interest Panel established by the Mining Association of Canada to guide its Towards Sustainable Mining initiative; the timing coincided with an extended leave by Viviane Weitzner, who would have been the person appointed on behalf of NSI.
- 123 Academic articles were published by Viviane Weitzner in 2003 in the McGill International Review, and in 2010 in the Canadian Journal for Development Studies.
- 124 Held in Oslo in 2002.
- 125 For example, the November 2009 Responsible Regions conference at the Universidad del Norte, Barranquilla, Colombia.
- 126 See ICMM (2008) and IFC (2010).
- 127 For example, in Cauca, Colombia, song, music and dance are the backbone of cultural expression. Alongside producing written materials for capacity-strengthening on issues such as FPIC, team members are suggesting writing songs that will help facilitate understanding. In addition, much of the history on ancestral mining and land use can be found in the lyrics of songs.
- 128 Colchester et al. (2002).
- 129 Undertaking research of this scope and depth requires more than just individual commitment on behalf of researchers and their organizations. With extensive travel commitments, the importance of a supportive family for researchers undertaking this type of collaborative research cannot be overstated.
- 130 Nonetheless, the ability to engage in international activities with representatives from other project components could lead to even more strategic learning; we organized such events in 2005, and future international events should also be considered.
- 131 And on a personal note, as a researcher with the NSI, I have found that bringing along my own young children to project events is a great help in focusing on the task at hand and the why of our work, while raising awareness about the issues at stake at an early age.
- 132 After Latin America, Southern Africa is the region with the highest number of Canadian company-spurred mining-related conflicts, according to the CCSRC (2009).
- 133 Taken direct from Public Statement by Participants in a Training of Trainer Workshop on Indigenous Peoples Rights, Extractive Industries and National Development Policies in Guyana, Held at Cara Lodge, Georgetown, Guyana (March 2-8, 2010): [http://www.forestpeoples.org/documents/s\\_c\\_america/guyana\\_apa\\_wshop\\_statement%20\\_mar10.pdf](http://www.forestpeoples.org/documents/s_c_america/guyana_apa_wshop_statement%20_mar10.pdf)
- 134 For example, NSI's Guyanese partner, the Amerindian Peoples Association, has stressed that it wants the outcomes of dialogues to be legally binding. However, putting aside issues of political will to engage in such a dialogue, a key issue in the context of Guyana is the strength of the judicial system to address possible violators of any nationally negotiated, legally binding agreement with Indigenous Peoples.
- 135 Black Tusk Minerals Inc. is a reporting issuer in Canada and in the U.S. and its public company shares are traded under the symbol BTKT in the U.S. and 4HNN in Germany.
- 136 First incorporated in British Columbia.
- 137 Subsidiary of Anglo American plc which is on the LSE.
- 138 Corporate headquarters in the U.S., legal headquarters in Canada.
- 139 Has headquarters in both China and Canada.

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The North-South Institute  
L'Institut Nord-Sud

*The North-South Institute*  
55 Murray Street, Suite 500  
Ottawa, Ontario  
Canada  
K1N 5M3  
Tel.: (613) 241-3535  
Fax.: (613) 241-7435  
E-mail: [nsi@nsi-ins.ca](mailto:nsi@nsi-ins.ca)  
[www.nsi-ins.ca](http://www.nsi-ins.ca)

