La responsabilite social des entreprises dans le secteur minier: Response ou obstacle aux ensjeux de legitimite et de developpement en Afrique?

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Comments
Jeffrey Davidson
Extractive Sector Corporate Social Responsibility Counsellor
Government of Canada

There has been a significant expansion of mineral exploration and mining activities into more remote and marginal regions during the past 20 years. This expansion has been facilitated, as the authors have suggested by the policy and regulatory reforms that have been adopted by many countries especially in Africa but also in Latin America and Asia. The reforms were undertaken with the aim of attracting foreign investment and promoting the commercial development of the country's mineral resource endowment as a potential motor for economic growth.

This increasing "globalization" of extractive activity has been accompanied by two other parallel trends:

- An emerging and growing awareness within the industry itself of the risks and potential opportunities that its expanding presence and activities create for local communities and States
- Increasing expectations on the part of both international and national civil society and institutions for continuous improvement of international business social and environmental performance

Established extractive companies with longer term objectives have recognized the importance of taking social, environmental and geo-political risks and opportunities seriously. Not so long ago, a South African mining executive pointed out that the critical challenges for new project development and for mine operations today are not the ones found under the ground, in other words not the technical challenges of building a mine and extracting and processing the ore, but rather, the ones faced by a company on the surface, which are all about addressing and responding responsibly to the concerns and aspirations of project affected communities and host governments.[1]

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[1] See, for example, "Social risk mitigation taking mining's centre stage" in Creamer Media's **Mining Weekly**, 22 January 2010, and "Communities seeking economic benefit from mining" **ibid.**, 8 July 2011.

The second trend is reflected in the establishment and strengthening of international standards, norms and codes of conduct relating to various aspects of "responsible" business conduct. Most have been codified as soft law (voluntary) instruments but some as hard law. Important voluntary norms include the Voluntary Principles on Security and Human Rights, the Mining and Metals Supplement of the Global Reporting Initiative, the International Finance Corporation's Social and Environmental Performance Standards, the Equator Principles, the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises. Also important are conventions and agreements focusing on State responsibilities and obligations, but with implications for business enterprises, such as the United Nations Declaration on the Rights of Indigenous Peoples.

It is important to understand that the organizational structure of the globalized extractive industry is not homogenous. It is in fact complex and diversified. The mining sector is comprised of large and medium sized private and state-owned transnational enterprises, smaller "junior" companies often specialized in exploration but operating internationally, and small-scale quasi-commercial domestic enterprises along with artisanal or local miners working in an ad-hoc or organized manner and on an informal or formal basis. The extent to which such "enterprises" acknowledge and express their social and environmental responsibilities in policy and practice on the ground in their country or countries of operation, also varies dramatically. Differences exist between the enterprises operating within a single country, as well as between a company's subsidiaries operating in different countries. There are often discrepancies between the stated aims and intentions of head office senior management and what actually unfolds and happens on the ground in another country far away.

All of what I've said provides some context for the challenges that both this book and the Office of the Extractive Sector CSR Counsellor (my job) are trying to understand and address. These challenges relate to the role and capacity of private sector actors operating in other peoples' countries to contribute in positive and meaningful ways to broad-based social and economic development while maintaining the environmental integrity of the places where they are working and safeguarding the people and communities whose lives, livelihoods, and ways of life are invariably affected by such operations.

Turning first to the book!

The authors are focused on "un-packing" and understanding the notion of corporate social responsibility (CSR), but in a way that significantly differs from much of the other academic discourse that has occurred around CSR and its application over the past 15 years. Yes, the authors point to CSR's multiple layers of meaning, and the different ways in which companies have interpreted and implemented CSR, but what makes this research different is the way the authors have situated and linked the discussion of CSR and mining to the broader processes of policy formation

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occurring within the African context. These processes include the assimilation and implementation of external development models; the emergence of new forms of power imbalances between private corporations, national governments and communities; and the re-definition and blurring of public and private sector roles and responsibilities for the provision and delivery of basic services to the country's citizenry, especially in rural areas where the mines are usually located.   The analysis draws on research undertaken in three African countries - all committed to attracting foreign investment and growing their mining sectors, but each having distinctive and different experiences with company and externally directed forms of CSR. The case material highlights the interplay between the roll out and practice of CSR in different country contexts and the strengthening or weakening of national and local institutions. In virtually all cases, the absence of the state from the mining areas creates expectations, either from the communities or the governments or both that companies will step in to fill the gap. In some cases, companies are actually obligated by the terms of their exploitation licenses to do so. Whether deliberate or not, such types of CSR initiatives often become the basis for legitimizing the presence of mining activity in an area. These studies reveal the limits of existing CSR practice but also explore the potential for companies to work in ways that can have significant positive outcomes, for example, by helping to re-balance existing power asymmetries, instead of adding to them; by collaborating on projects that improve the quality of affected peoples' lives and secure a more durable basis for longer-term sustainable community development, instead of ones that foster new dependencies and cannot be maintained without the help of external sponsors.

If one is willing to accept that there can be a positive, appropriate and beneficial role for socially and environmentally responsible forms of exploration and mining activity in the development plans of countries, then the kind of research reflected in the book, can also help frame discussions around what forms of mining make the most sense for a country, and under what policy and institutional frameworks and laws. Such research can also help identify those policies, regulations, institutions, and governance competencies and commitments that need to be in place or at least in process, before a country actively promotes new mineral development.

For companies, the questions and the operating challenges then become what "practices and approaches" will best allow a company to meet its social and environmental management responsibilities and fulfil its social and economic commitments, whether voluntary or obligatory, to government and communities, but in ways that strengthen local communities, local and regional economies, and government institutions, in line with country and community conceived development priorities. This may also require a company to redress and rectify any critical legacy issues inherited from previous developers – especially those to which it continued to contribute or sustain.

Bridging now to the home country strategy for promoting CSR with Canadian oil, gas and mining companies operating outside of Canada!

Professor Campbell wrote a few years ago in another book on mining in Africa that "simply implementing better norms and standards is clearly not sufficient…to ensure that the extractive sector serves as a lever for development."[2]   As I mentioned earlier, one of the hallmark trends of the past 15 years has been the creation and promotion of a plethora of norms and standards with direct relevance to the extractive industries. When the Government of Canada crafted its first CSR strategy in 2009, it named four benchmark standards to be used as the basis for defining Government CSR expectations of companies working abroad[3]. In 2014, the strategy was reviewed and updated. It now includes 6 standards, including the UN Guiding Principles on Business and Human Rights, and the OECD Due Diligence Guidance on Mineral Supply Chains, as well as the updated versions of three of the original four.

I agree with Professor Campbell. New, even stronger, standards are not sufficient in and of themselves to ensure positive development impacts. For Canada, the home country of many of these companies, if the conversation around standards remains at the high level, how can we ensure that the principles on which the norms are based, many of which we may agree are critically important to follow, are taken seriously and transformed into good operating practices on the ground. How do we ensure that practices on the ground are also aligned with host country development plans and community priorities?   What implications might these considerations have for the types of minerals that should be the target of exploration and development, and for the scale, mining methods and design of new mines that might be built?[4]

The book's essay on CSR does not make reference to the updated 2014 strategy, called Doing Business the Canadian Way, and the CIDA-ACDI referred to in the text, no longer exists[5]; but I can bring you up to date on certain of these matters. The Office of the CSR Counsellor was created with the original strategy in 2009, the first Counsellor served to October 2013, but today there is a new Counsellor, hired and given a new mandate letter by the Minister of International Trade in May 2015. This letter reflects the revisions and guidance provided by the updated 2014 strategy.

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[2] Bonnie Campbell (ed), **Mining in Africa: Regulation and Development**, Pluto Press, 2009, p. 257.

[3] There were the OECD Guidelines for Multinational Enterprises, the Voluntary Principles on Security and Human Rights, the Global Reporting Initiative, and the International Finance Corporation's Social and Environmental Performance Standards.

[4] There are aboriginal self-governments, provincial and state governments in both Canada and the US that have imposed moratoriums on uranium development (e.g. the Cree of northern Quebec, the Navajo Tribal Council in the US; Nova Scotia, British Columbia and the Commonwealth of Virginia). A number of countries in Central America have active moratoriums on certain forms of mining, e.g. El Salvador, Costa Rica.

[5] Canada's development assistance programs are now embedded within Global Affairs Canada (the former DFATD).

As a special appointee, I do not and cannot speak for the Government of Canada. However, as the Counsellor, I do represent its interests in promoting good CSR practices with Canadian companies operating abroad, in explaining current Government expectations regarding responsible business conduct, in helping to build a more whole of government approach, and in implementing key components of the current Strategy.

Critically important to understand is the significant shift in thinking reflected in the 2014 update. The Counsellor was directed to invest more time and effort in upfront engagement and outreach, to being more pro-active and preventative, to keeping eyes and ears open to be able to detect emerging issues and situations requiring "earlier the better" attention. This would hopefully allow the Counsellor to be better positioned to intervene in ways that might help ameliorate problem situations. This might mean working with parties to better understand their own situation, or suggesting alternative approaches, forms of engagement, ways of bridging differences, or resolving concerns and issues. The objective in all cases would be to reduce the risk of escalation and conflict, and to increase the potential for positive outcomes for the parties involved. This differs significantly from the previous, more reactive model to dispute resolution undertaken by the Office.

The Strategy also created a new pool of partners within Government tasked to advocate for good practice and monitor situations in country. These are the Trade Commissioners and other diplomatic and development staff on post, including the Ambassadors.

As a result, outreach is now moving in multiple directions, with the Counsellor having reached out to companies, industry associations, civil society organizations, academic communities of interest, and government departments on the one hand; and with individuals, companies, Trade Commissioners and Ambassadors reaching out to the Counsellor on the other. The Counsellor has received requests for assistance, including for the Counsellor to facilitate the resolution of ongoing issues between parties; or to find out more about a particular incident, event or situation and whether follow-up with the company, the parties on the ground, or just more research is required, etc. The Counsellor and some of his staff have now visited six countries at the invitation or with the collaboration of Embassy staff, including Peru, Tanzania, Ghana, Honduras, Guatemala and Panama. The purpose of these visits has been to get a deeper and more nuanced understanding of the context, history, conditions, concerns and challenges in countries where Canadian extractive activities are significantly involved. This understanding comes from listening to the concerns and hopes of all stakeholders, not just the companies.

In the last 3 of these countries, we visited mine sites in different stages of their life cycle – two in development, two in operation, one in partial closure and one in post-closure - to see with our own eyes how the companies were managing social and environmental issues particular to their situations; we met with the project teams, with affected community people, with local government authorities, with NGOs, and

the countries' human rights ombudsperson(s). We are now evaluating the effectiveness and value addition (if any) to stakeholders of such trips.

The Government of Canada is currently reviewing its strategic approach to promoting responsible business conduct. It is likely that the Office of the Extractive Sector CSR Counsellor will continue to work in a pro-active and preventive way, but with more resources, a renewed mandate, and a new strategy that will reflect additional refinements or shifts in thinking of the current Government. The Government's current policy review will likely lead to an expanded Government approach to promoting responsible conduct across all sectors, and may include the establishment of additional implementing units as needed.

A final reflection!

Whether we focus on the role of the host government or of the home government, when it comes to resource development, both have a vested interest in getting the policy frameworks right and in putting in place proper, sufficiently resourced and appropriate supporting and implementing measures.   Then there are the actors in country on the ground and their interests - the companies and people engaged in this business, whether of foreign or local origin; and the communities, households and individuals impacted for the better or for the worse by such activities.

Mining at the site level cannot be a marriage of convenience. It must be a wedding of common interest entered into with purpose and commitment, if it is to happen at all.   Such an activity must be put together, designed and carried out, and the relationships upon which its success will be based must be maintained, in ways that respect and reflect the values, concerns and aspirations of all parties. However, for the time being, it is more likely than not, that the "onus of collaborative accommodation" [6], along with the onus of performance and the ability to explain and demonstrate performance[7] will lie mainly with the companies (project developers) versus the governments or with the communities.

In our most recent visits to Central America, what we saw was an almost burned in lack of trust on the part of individuals and communities for both government and the proponents and operators of industrial projects in the rural areas – not just oil, gas and mining, also agribusiness and hydro power. "…Trust cannot be regulated into existence or secured with gifts" [8]; it cannot be contracted or sub-contracted through formal agreements. Rather it comes through demonstrated behaviors from all sides, including the way we engage, the way we listen, the way we act with and

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[6] Bruce Harvey and Sara Bice (2014), "Social impact assessment, social development programmes and social licence to operate: tensions and contradictions in intent and practice in the extractive sector," **Impact Assessment and Project Appraisal**, 32:4, p.332.
[7] To use the Counsellor's words, when explaining to companies, how the CSR strategy works.
[8] Harvey and Bice, **ibid.**, p. 331,

treat each other, the way we respond to a question or concern, and the way we live and work together.