



# CANADIAN & AUSTRALIAN APPROACHES TO SUSTAINABLE & SOCIALLY RESPONSIBLE MINING IN SOUTH AMERICA: ILLUSTRATIONS FROM CHILE

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# CHALLENGE

- Transnational mining firms (TMFs) based in developed countries are accused of not meeting acceptable levels of environmental and social behaviour in their operations in developing countries.
- **Some have suggested that:** TMFs should be required to meet the environmental and social laws of the developed countries where they are headquartered (extra-territorial application) no matter where they operate.
- **Research question explored in paper:** What can we learn about the social responsibility governance approaches (rule instruments, institutions, instruments and processes) currently being brought to bear on developed country TMFs operating in developing countries?
- **Method:** Investigate the social responsibility governance approaches applying to two TMFs (one Australian, one Canadian) operating in Chile, using *sustainable governance* as a framework of analysis



# WHAT DO WE MEAN BY “SOCIAL RESPONSIBILITY”?

- Definition from ISO 26000 draft (2008):

“responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that:

- contributes to sustainable development, health and the welfare of society;
- takes into account the expectations of stakeholders;
- is in compliance with applicable law and consistent with international norms of behaviour; and
- is integrated throughout the organization and practiced in its relationships”



# WHAT IS “SUSTAINABLE GOVERNANCE”?

- Systematic use of public, private sector and civil society initiatives (instruments, institutions, processes) and actors to address complex societal problems. Involves both collaborative and rivalrous approaches.
- Typology includes:
  - **Instruments:** delineate acceptable from unacceptable behaviour (i.e., laws, standards, and codes).
  - **Institutions:** entities that have a formal role in developing or implementing instruments (i.e., government agencies, standards bodies, and dispute resolution bodies).
  - **Processes:** techniques that facilitate ability of actors to meaningfully participate in decision-making that affects their interests (i.e., court-based adjudication, private sector or civil society-based approaches to dispute resolution).
  - **Actors:** governmental, private sector, and civil society organisations, as well as individuals. (Webb, 2004)

# THE OPERATIONS OF TWO TMFs ARE EXAMINED:

- 1) Minera Escondida (BHP Billiton, Australian)
- 2) Pascua Lama (Barrick Gold, Canadian)

Information concerning the operations of the TMFs are based solely on publicly-available documents. Authors make no claims regarding veracity of claims being made in these documents.

## **Considers five types of instruments/institutions/processes:**


- Governmental (e.g., law of Australia, Canada, Chile)
- Private sector (e.g., mining association initiatives)
- Civil society (e.g., NGO ombudsman)
- Firm level (e.g., internal codes)
- International (inter-governmental and otherwise)

# TMF OPERATIONS IN CHILE

## **Minera Escondida**

- Operating in Atacama desert, northern Chile
- Largest copper mine in the world
- BHP operates facility, owns 57.5% (40% private partners, 2.5% IFC)
- Australia-based BHP is one of the biggest mining companies in the world

## **Pascua Lama:**

- A proposed project in development since 2000
  - Northern Andes, straddling Chilean/Argentinian border
  - Owned by Barrick Gold, headquartered in Canada
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# GOVERNMENTAL INSTRUMENTS. INSTITUTIONS, PROCESSES – CANADA & AUSTRALIA

- **Australia and Canada:**
  - laws allow shareholders to inquire into corporate behaviour;
  - both countries are signatories to OECD guidelines for MNEs that allow for complaints against MNEs;
  - no current Australian or Canadian environmental/social mining laws have extra-territorial application to TMFs' overseas operations
- **Australia:** failed parliamentary efforts to pass into law bill governing activities of Australian firms operating abroad
- **Canada:** despite federal government-brokered multi-stakeholder roundtable process leading to consensus recommendations on need for environmental and social standards to apply to Canadian firms operating abroad, no response yet from federal government



## PRIVATE SECTOR INSTITUTIONS, INSTRUMENTS, PROCESSES – CANADA & AUSTRALIA

- **Australia & Canada:** industry organizations have developed programs to help members address issues of sustainability/social responsibility
- **Australia & Canada:** have voluntarily negotiated and signed agreements with aboriginal communities, setting terms and conditions for operation of mine sites



# CIVIL SOCIETY – CANADA & AUSTRALIA

- **Canada & Australia:** since mid-1990s, emergence of active, critical constituency sharing information and attempting to shape development of public policy
- **Australia: Oxfam Australia**
  - 2000: creates Mining Ombudsman
  - Investigates complaints by those negatively affected by operations of Australian transnational mining firms, and when individual cases merit, presents issue to relevant firm for response and resolution
  - Desires state to establish official complaints mechanism
  - Ombudsman represents paradigm shift from critic to active engagement by civil society



# BHP, BARRICK, AND SR

## ○ **Both firms:**

- Report on social responsibility performance (assessed by third parties), have internal policies re: SR, recognize multiple international standards re: SR.
- Made commitments with respect to international, governmental and private initiatives addressing SR concerns
- Seemingly making efforts to comply with laws of Chile
- Negotiated changes to restrictions on operations via regulatory/adjudicative procedures and venues
- Altered behaviour in response to concerns raised by Chilean and/or international actors



# CHILE –

- Framework of law in place to address SR dimensions of mining activities taking place within its borders
- Chilean mining industry association has not developed self-regulatory mechanisms like Canadian and Australian industry
- Chilean stakeholders have appealed to non-Chilean dispute resolution: suggests not all of them accept adequacy of domestic rules, institutions, & processes
  - Appeals by non-Chilean stakeholders to non-Chilean standards and dispute resolution suggests they also do not accept adequacy of Chile's ability to respond
- Perception of inadequacy of Chilean governance buttressed by Barrick Gold's commitment to meeting various international instruments or submitting to review of their Chilean activities according to international instruments



## INTERNATIONAL INITIATIVES -

- Currently, inter-governmental and private non-binding international instruments, institutions and processes (initiatives) are available that can address transnational mining activities
- Considerable latitude for multiple and even competing international initiatives to apply to particular activities
- Provides firms and others with choice concerning which initiative they will adopt or follow, but leaves all in a position of uncertainty as to which initiatives are considered acceptable to the full range of interested parties, and how they apply



# CONCLUSIONS

- Existing array of public/private/civil society instruments, institutions, and processes being brought to bear on Canadian and Australian TMFs in Chile cannot be characterized as forming a sustainable governance approach
- Sustainable governance calls for the *systematic* use of diverse governance components
- Current environment is not systematic, hence it resembles more a *proto-sustainable governance* model
- **Systematic approach** might consist of:
  - widely agreed upon, international, social and environmental instruments, institutions and processes
  - reflected in national and local approaches
  - buttressed and supported through a range of institutions, processes and actors, from government, private sector, civil society, operating in a collaborative and rivalrous manner



# THANK YOU

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