

SSHRC Imagining Canada's Future Initiative
Knowledge Synthesis: Energy and Natural Resources

*Building Sustainable Partnerships:
Aboriginal Peoples and Canadian Extractive Industry in Global Perspective*

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Theme: The cultural, environmental, economic, gender, political and social implications of the quest for and extraction, production and use of energy and natural resources in Canada.

Sub-theme: How can Canadian natural resources be developed in such a way as to respect the rights, experiences and aspirations of Aboriginal peoples?

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Key Messages

This knowledge synthesis report identifies key factors in the building of sustainable partnerships between Aboriginal communities and extractive industry proponents seeking to work on traditional lands. The objectives of the study are to highlight promising policies and practices, to identify gaps in the literature that need to be filled, and to facilitate dialogue and the exchange of ideas between governmental and non-governmental stakeholders and rights holders on the topic. The study adopts a comparative approach by examining best practices in Canada and around the world. The study reveals a number of key findings:

1. Free, Prior, and Informed Consent (FPIC)--The First Step to Obtaining a Social License to Operate

For extractive sector activities to be compatible with Aboriginal peoples' rights, expectations and demands, the implementation of a regime of Free, Prior, and Informed Consent (FPIC), with the power to veto projects and plans that may impact their territories, is essential. FPIC regimes enable strong partnerships, nation-to-nation negotiations, and enhance Aboriginal-state relations. The presence of veto power more frequently results in a company securing a stronger social license to operate than a conventional consultation process might achieve.

2. Legal and Regulatory Standards--Voluntary Codes of Conduct are Not Enough

Indigenous communities worldwide are most vulnerable to asymmetrical power relations with extractive industries when there is legal uncertainty over land titles and a lack of recognition and respect for Indigenous rights. Negotiated agreements over benefits and impacts are a key mechanism to overcome power imbalances and ensure legal certainty. Impact and benefit agreements (IBAs) are standard practice in Canada. Similar agreements are needed to ensure protections for Indigenous peoples in countries without strong legal and regulatory standards.

3. Indigenous and Environmental Activism--The Importance of Respect, Meaningful Engagement, and Mutual Benefit

In the absence of FPIC and IBAs, Indigenous groups are more likely to resort to extra-systemic tactics to protect their lands and livelihoods. Confrontations with extractive industries pose significant risks for Indigenous peoples as well as to domestic political and economic stability. This is especially the case in countries of the Global South. Canadian corporations operating overseas must be willing go beyond the bare minimum of legal requirements in host countries and become employers of choice by following codes of conduct that are practiced at home.

4. Research Gaps: What Works and Why

More comparative, cross-regional studies on extractive industry best practices are needed. More in-depth research is needed on the gender and generational impacts of extractive industry operations in or near Aboriginal communities. New research is needed on the possibility of extending FPIC regimes to non-Aboriginal populations within affected areas and the potentially positive impact this might have on relations between Aboriginal and non-Aboriginal Canadians.

Executive Summary

Canada's greatest challenge, as a global energy leader, is to develop natural resources in such a way that not only respects Aboriginal rights, but improves Aboriginal-state relations. This knowledge synthesis report takes up the challenge by reviewing the ways in which Indigenous communities in the Global North and South are struggling to transform a historic relationship with the state that has been characterized by domination and marginalization into one based on mutual respect and understanding and in which both parties are able to pursue their economic, social, and political goals. The report reviews and synthesizes the existing literature in the area of Indigenous rights and Canadian extractive industry, at home and abroad, as a means to identify knowledge gaps and to highlight best practices in the field.

Growing academic and public concern over the environmental and social impacts of extractive industries, such as mining, oil, and gas operations, has led to highly polarized debates over the topic of sustainable development. On the one hand, mining and energy corporations argue that they are agents of progressive change, and that modern technology and new corporate social and environmental responsibility programs can make extractive activities sustainable and beneficial to all stakeholders (e.g. Dashwood 2007; Sagebien et al. 2008). On the other side of the debate, critics argue that extractive industries have too often failed to address the development needs of local communities—who demand the right to be consulted (including the right to say “no”), to share in the profits, and to receive compensation for damages and lost livelihoods due to environmental degradation—and that until such time that these conditions are met, large-scale extraction activities should cease (Coumans 2010; Gordon and Webber 2008; Kuyek 2006). In the middle of these debates are the communities, in the Global North and South, who accept mining or oil and gas operations as an activity that could, in some circumstances, bring about direct benefits to them, even if only in the short term (Hipwell, Mamen, Weitzner and Whiteman 2002; O’Faircheallaigh 2010). These divides raise the questions: Is socially and environmentally responsible extractive industry possible? If so, how can it be achieved?

A major area of research in the field concerns the implementation of the principle of free, prior and informed consent (FPIC). Under FPIC, community consent is sought at every stage of project development and it is given with full access to information and without coercion, intimidation or manipulation (Bustamante and Martin 2014; Szablowski 2010). The FPIC principle became popularized with the passage of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, in which free, prior, and informed consent is explicitly mentioned. Canada, alongside Australia, New Zealand, and the United States, stirred up considerable controversy when it voted against the adoption of the UNDRIP. Canada's stated objections included the portion of the text pertaining to the principle of free, prior, and informed consent when used as a veto against extractive activities (Coates and Holroyd 2014; Rice 2014). In November 2010, the Government of Canada reversed its decision and formally endorsed the UNDRIP. In its statement of support, the government emphasized the non-binding nature of the Declaration and its confidence that Canada can interpret its principles in a manner that is consistent with our constitution and legal framework (Woods 2013). The knowledge synthesis examines the way in which FPIC principles are slowly working their way into governmental and extractive industry discourse and practice.

A second major area of research concerns the strategies and tactics of Aboriginal groups who are faced with extractive industries in or near their traditional territories. The responses of Aboriginal groups are varied and diverse. In some instances, frustrated community members may resort to blockades and occupations in an attempt to signal a strong message to the government (Belanger and Lackenbauer 2015; Veltmeyer and Bowles 2014). In other cases, affected groups may wage legal battles at the national or international level to stop the advance of extractive projects that impinge upon their rights (Anaya 2004; Scholtz 2006). Yet, in some instances, potentially impacted communities may enter into binding contractual agreements with the extractive sector as a means to secure economic benefits and employment and training opportunities (Hipwell, Mamen, Weitzner and Whiteman 2002; O’Faircheallaigh 2010). The strong overlap between mineral deposit locations and Aboriginal communities poses a mix of peril and opportunity for Aboriginal peoples. These agreements offer significant entrepreneurial and business opportunities for Aboriginal peoples, but they come at a cost, including limiting the right to object to certain aspects of a project or to take legal action against a mining company. The knowledge synthesis reveals the importance of negotiated agreements for building trust, cooperation, and mutual benefit between Aboriginal peoples and extractive industry.

Finally, a third major focus of research concerns the relationship between Canadian extractive industry and Indigenous communities in countries of the Global South. Since 2003, global mineral prices have risen dramatically, making large-scale mining in the Global South extremely profitable (Canel, Idemudia and North 2010; North, Clark and Patroni 2006). Canada is a major player in the latest global mining boom and our corporations have been the target of growing global protests against extractive industries, particularly when they operate within Indigenous peoples’ territories and against their expressed wishes (Drost and Stewart 2006; Gordon and Webber 2008; Osuoka and Zalik 2010). In response, the Canadian government has taken the lead in developing innovative corporate social responsibility programs. Corporate social responsibility (CSR) refers to a set of voluntary social, environmental and economic best practices developed primarily by private actors in response to pressures and demands by social actors to address the social and environmental issues historically externalized by private firms (Dashwood 2007; Sagebien et al. 2008). There is considerable debate in the literature over the effectiveness of corporate social responsibility programs at reducing the social and environmental costs of extractive industries. CSR advocates suggest that it is a practical solution for reconciling economics and ethics, while its detractors argue that it is a hollow experiment in public relations—or a “talk and dig” approach (Hart and Coumans 2013; Hilson and Haselip 2004; Kuyek 2006; Walter and Martinez-Alier 2010). More recent work has focused on ways to improve the effectiveness of CSR programs, including enhancing governance gaps or deficits in host countries to provide an enabling environment for CSR initiatives (Idemudia 2010) and improving community engagement and participation in the CSR process (Szablowski 2006). The knowledge synthesis suggests the need for legal and regulatory measures that move beyond voluntary codes of conduct.

The objectives of the knowledge synthesis project are threefold: (1) to identify promising policies and practices that are supportive of a sustainable partnership between Aboriginal peoples and Canada’s extractive industry both at home and abroad; (2) to highlight important knowledge gaps that need to be filled; and (3) to facilitate dialogue and the exchange of ideas between

governmental and non-governmental actors, stakeholders, and rights holders based on the knowledge synthesis results.

The project's findings suggest that the critical ingredients for building a sustainable partnership between Aboriginal peoples and extractive industry are the implementation of a free, prior, and informed consent (FPIC) regime in conjunction with negotiated agreements and in the spirit of respect, meaningful engagement and mutual benefits.

The knowledge synthesis revealed four key themes. First, for extractive sector activities to be compatible with Aboriginal peoples' rights, expectations and demands, the implementation of a regime of Free, Prior, and Informed Consent (FPIC), with the power to veto projects and plans that may impact their territories, is essential. FPIC regimes enable strong partnerships, nation-to-nation negotiations, and enhance Aboriginal-state relations. It is the first step to obtaining a social license to operate. The presence of veto power more frequently results in a company securing a stronger social license to operate than a conventional consultation process might achieve.

Second, voluntary codes of conduct, such as Corporate Social Responsibility (CSR) programs, are not enough. Enhanced legal and regulatory standards are essential. Indigenous communities worldwide are most vulnerable to asymmetrical power relations with extractive industries when there is legal uncertainty over land titles and a lack of recognition and respect for Indigenous rights. Negotiated agreements over benefits and impacts are a key mechanism to overcome power imbalances and ensure legal certainty. Impact and benefit agreements (IBAs) are standard practice in Canada. Similar agreements are needed to ensure protections for Indigenous peoples in countries without strong legal and regulatory standards.

Third, in the absence of FPIC and IBAs, Indigenous groups are more likely to resort to extra-systemic tactics to protect their lands and livelihoods. Confrontations with extractive industries pose significant risks for Indigenous peoples as well as to domestic political and economic stability. This is especially the case in countries of the Global South. Canadian corporations operating overseas must be willing go beyond the bare minimum of legal requirements in host countries and become employers of choice by following codes of conduct that are practiced at home. Extractive industries must operate in the spirit of respect, meaningful engagement, and mutual benefit in their interactions with Indigenous peoples.

Lastly, in terms of research gaps, the knowledge synthesis suggests that more comparative, cross-regional studies on extractive industry best practices are needed. Furthermore, in-depth research is needed on the gender and generational impacts of extractive industry operations on or near Aboriginal lands. New research is also needed on the possibility of extending FPIC regimes to non-Aboriginal populations within affected areas and the potentially positive impact this may have on relations between Aboriginal and non-Aboriginal Canadians.

The knowledge synthesis was undertaken with a team of graduate and undergraduate students at the University of Calgary. The students were divided into two teams, one focused on reviewing the literature on Aboriginal peoples and extractive industry in Canada and the other on Indigenous peoples and Canadian extractive industry in Africa, Asia, and Latin America.