

***Cutting-Edge Policies
on Indigenous Peoples
and Mining:
Key Lessons for
the World Summit
and Beyond***

a brief by
Viviane Weitzner

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55, Murray Street, Suite 200

Ottawa, Canada K1N 5M3

Telephone: (613) 241-3535

email: nsi@nsi-ins.ca

Fax: (613) 241-7435

web: <http://www.nsi-ins.ca>

Cutting-Edge Policies on Indigenous Peoples and Mining: Key Lessons for the World Summit and Beyond

By Viviane Weitzner, The North-South Institute

In Brief...

This Policy Brief highlights the main findings and policy implications of a collaborative research project with Indigenous Peoples in Guyana and Colombia to examine how mining activities affect Indigenous communities, and how policies and practice can be more aligned with Indigenous aspirations and decision-making processes. Specifically, it links project findings to the current themes and mining-related initiatives emerging in relation to the World Summit on Sustainable Development (WSSD). The Brief underscores that the Draft Plan of Implementation and current proposals for Type II partnerships are founded on several premises that "assume away" — or ignore — a series of fundamental issues:

- Mining projects may not contribute to poverty reduction or sustainable development when negative environmental and social impacts are considered, leading to questions as to whether mining projects should be promoted as a priority mechanism for poverty reduction.
- Indigenous Peoples may or may not be willing to participate in mining as a vehicle for development, depending on their vision of development and self-determination. Decision-making mechanisms should treat Indigenous Peoples as rights-holders in their traditional territories rather than simply stakeholders, and should recognize Indigenous Peoples' right to free, prior and informed consent.
- 'No-go' criteria need to be developed, particularly in the context of armed conflict where Indigenous Peoples are subject to severe human rights abuses in the name of progress.
- Partnerships with Indigenous Peoples **must** address power asymmetries in order to be equitable. Providing resources for the strengthening of Indigenous decision-making structures and self-governance processes is key in this regard.
- Corporate social responsibility should not be confused with or substituted for government social responsibility. Governments need to uphold and implement their national and international legal obligations to Indigenous Peoples, and strengthen legal, regulatory and judicial frameworks where these are weak.
- Corporations should embrace and implement the concept of free, prior and informed consent in their Aboriginal and/or sustainability policies and practice.
- There is a need for participatory research involving Indigenous Peoples to document the economic, environmental and social — particularly gender — impacts of mining activities, in order to help target policies and practice appropriately.



Introduction

For the last two years, The North-South Institute has been engaged in a collaborative research project with Indigenous Peoples in Guyana and Colombia to examine how mining activities affect Indigenous communities, and how policies and practice can be more aligned with Indigenous aspirations and decision-making processes.¹ The insights and lessons gleaned from this project have critical implications for governments, companies, international financial institutions, donors and non-governmental organizations involved in projects affecting Indigenous territories, whether these are mining-related or involve other natural resources. But they are particularly relevant in light of several themes emerging in negotiations at the World Summit on Sustainable Development (WSSD), namely: partnerships as the main vehicle for implementing sustainable development, corporate social responsibility, good governance and the role of mining in sustainable development.

The insights and lessons gleaned from this project have critical implications for governments, companies, international financial institutions, donors and non-governmental organizations involved in projects affecting Indigenous territories, whether these are mining-related or involve other natural resources.

This Policy Brief distills the main insights, lessons and recommendations from our project, linking them to the themes underpinning the WSSD. Section 2 briefly describes the project context, rationale and methodology. Section 3 presents the main analytical outcomes, while Section 4 discusses implications for policy and research through the lens of current WSSD proposals, highlighting key recommendations.

Clearly, while the WSSD offers an opportunity to highlight the key issues at stake and lessons learned in this project with the hope that these will help inform deliberations, they are of ongoing relevance in decision-making fora beyond the Summit and particularly in implementation of projects at the local level.



Project context, rationale and methodology

Over the last two decades, mining activities on or near Indigenous lands have increased exponentially. A combination of factors — including globalization and the liberalization of the market economy, policies of international financial institutions and official development agencies promoting mining as a viable vehicle for poverty reduction, and government revisions to mining codes to streamline environmental assessment and other procedures and provide 'friendlier' investment climates — has led to a situation in which the lands of Indigenous Peoples are increasingly looked to for their mineral potential.

But also in the last two decades, Indigenous Peoples have made important gains regarding the protection of their rights to land and territory, culture, autonomy, self-determination, development and identity. At the national level — largely on account of the rise of Indigenous movements — numerous countries have adopted laws and policies to promote and protect Indigenous rights. And at the international level, a variety of

instruments include provisions protecting Indigenous rights, such as ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, the Convention on Biological Diversity, the Draft UN and OAS Declarations on the Rights of Indigenous Peoples and the Durban Declaration and Programme for Action against racism, racial discrimination, xenophobia and related intolerance.

What are the appropriate mechanisms for approaching and involving Indigenous Peoples in decision-making regarding potential mining activities on or near ancestral lands?

In this context, companies, governments and international financial institutions considering undertaking — or funding — mining activities on ancestral lands are under increasing public pressure to ensure Indigenous rights are not violated. One of the key vehicles toward this end is to involve the would-be affected Indigenous Peoples in decision-making about potential projects.

But what are the appropriate mechanisms for approaching and involving Indigenous Peoples in decision-making regarding potential mining activities on or near ancestral lands? While much literature has been written on appropriate 'public participation' mechanisms, with some focusing on Indigenous Peoples, there is a dearth of research and literature highlighting the views of Indigenous Peoples themselves.

To begin to address this important research gap, The North-South Institute (NSI) partnered with the Amerindian Peoples Association (APA) of Guyana and the Institute of Regional Studies (INER) of Colombia's University of Antioquia on a collaborative research project to examine these issues within Latin America and the Caribbean — a region that has seen a dramatic increase in mining projects, particularly by Canadian mining companies. In 2000, Canadian companies held more than 25 per cent of the larger-company market in the region, with interests in almost 1,200 minerals properties.

The project's overall objective for Phase I (2000-2002) was to engage in a bottom-up examination of the issues at stake as a critical step in moving toward more appropriate corporate policy and practice. The fieldwork in Guyana and Colombia was guided by National Indigenous Advisory Committees, and was based on participatory methodologies. The intent was to create spaces for dialogue and strategizing in and among mining-affected Indigenous communities as the first step in a process leading to potential dialogue with other sectors.

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Analytical outcomes

What came out strongly and clearly was that Indigenous Peoples insist they are not just another stakeholder to be consulted; they are rights-holders whose identity, autonomy and cultural survival is inextricably linked to their relationship with the land.

The project outcomes are very rich and wide-ranging. For one, the Indigenous groups participating are extremely diverse, ranging from very traditional shifting farmers, to matrilinear goat-herders, to Amerindian communities entirely dependent on small-scale mining. In addition, the types of mining and resources extracted varied among project participants in the two countries. In Colombia, the focus was on large-scale coal mining and related developments, while in Guyana the research focused largely on small- and medium-scale mining of gold and diamonds, with consideration of large-scale activities where these existed.

There are also important differences in the socio- and geo-political situations in Colombia and Guyana. For example, even though it is undergoing one of the longest armed conflicts in history, Colombia is the most progressive Latin American country when it comes to Indigenous rights. It has ratified ILO Convention 169 and has also recognized Indigenous title to 25 per cent of the lands in the country (though enforcement of these rights is still an issue as outlined below). Guyana, less than one quarter of Colombia's size, has recognized Indigenous title to 14 per cent of the country's territory, representing one-seventh of the lands Amerindians see as their ancestral territories. The legal strength of these titles varies with the government of the day (titled lands have been de-reserved to allow for mining activities), and Guyana has not ratified ILO Convention 169.

Given these different contexts, the confluences in the experiences of the Colombian and Guyanese Indigenous participants in the NSI/APA/INER project are striking. To highlight a few:

Fundamental issues: Indigenous Peoples are not "just another stakeholder"

Project participants linked the fundamental issues underpinning Indigenous involvement in decision-making about mining activities to:

- differences between western and Indigenous views of what constitutes appropriate "development"
- lack of recognition of the full extent of ancestral lands, rights to self-determination and autonomy and
- the conflict in state and Indigenous positions regarding ownership over sub-surface resources on Indigenous lands.

What came out strongly and clearly was that Indigenous Peoples insist they are not just another stakeholder to be consulted; they are rights-holders whose identity, autonomy and cultural survival is inextricably linked to their relationship with the land.

Indigenous evaluations of their experiences interacting with the mining sector: Toward free, prior and informed consent

Indigenous project participants described their experiences with mining-related 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 identified reads like a manual of how-not-to-consult, with the benefits provided by mining companies described as short-term and tokenistic. But beyond these weaknesses, consultation processes have been destructive in and of themselves.

The catalogue of problems identified reads like a manual of how-not-to-consult, with the benefits provided by mining companies described as short-term and tokenistic. But beyond these weaknesses, consultation processes *have been destructive in and of themselves*. Among other things, they have:

- Diminished communities' autonomy and territoriality, particularly since participation in a consultation is often interpreted as validating a project;
- Weakened and replaced traditional authority structures by imposing other forms of decision-making and conflict management;
- Increased erosion of social cohesion through the creation of new — or the exacerbation of existing — internal conflicts; and
- Contributed to increased substance abuse, domestic and other violence (see Box 1).

Several project participants have started working on criteria and strategies for participation in projects affecting their ancestral lands. But the key issue for all project participants was very clear: *Indigenous Peoples want the right to free, prior and informed consent, which includes the right to say "no" to projects on their ancestral lands*. In this light, prior consultation processes must necessarily lead to Indigenous acceptance or rejection of a project proposal through appropriate mechanisms, instead of implying a negotiation on how to limit the negative impacts of a project that will go ahead regardless. In addition, if projects do go ahead on ancestral land with the consent of Indigenous Peoples, they want to be project partners rather than mere beneficiaries, with at least equal say in decision-making regarding outcomes and revenue-sharing.

Box 1

Wayu Evaluation of Consultation in Coal Mining, Colombia

"Even though in Colombia there exist on paper laws, norms and conventions that supposedly protect the rights of Indigenous Peoples to be consulted, until now consultation for the Wayu people of southern Guajira has been:*

A violent process of imposition on behalf of the State in collaboration with multinationals, where consultation necessarily implies a negotiation in which the legitimate traditional representatives of the community are disregarded. A process that is totally unequal and inequitable, where there is not enough information, where many times communities are deceived, and where there is no respect for the spaces and times that communities use to resolve their problems. A strategy is used to divide the communities, encouraging corruption among community members, violating sacred sites, that finally results in the forced eviction and relocation of communities who are uprooted from their traditional territories with the consequences that today the Indigenous communities of southern Guajira are more poor and much more unprotected than they were before coal mining in the Guajira."

– Territorial Association of Cabildos of Southern Guajira, September 22, 2001, Santa Marta

(*emphasis as noted in original declaration)

Tipping the power balance: The role of governments, companies and communities

In order to work toward appropriate decision-making processes that lead to free, prior and informed consent, project participants suggest that several things need to happen to tip the existing power asymmetries, including:

- Governments need to uphold and implement their legal obligations to promote and protect Indigenous rights, overseeing and ensuring the fairness of consultations and negotiations between Indigenous communities and mining companies.
- Mining companies must demonstrate their willingness to support Indigenous Peoples' right to free, prior and informed consent by enshrining this principle in corporate policy and practice.
- Indigenous Peoples need to strengthen their decision-making processes and self-governance structures.



Implications for policy and practice: An analysis of WSSD proposals through the lens of the NSI/APA/INER project

The Indigenous perspectives gathered in this project have multiple implications for policy and research, and invite critical reflection on several interrelated themes of the WSSD, namely the role of mining in sustainable development, partnerships, good governance and corporate social responsibility.² This section first outlines the main mining-related proposals currently being considered in relation to the WSSD, and then provides a critical analysis of their implications in light of the NSI/APA/INER project findings.



Current proposals: A thumbnail sketch

In sharp contrast to the 1992 Earth Summit, where mining activities were not discussed or even mentioned in *Agenda 21* (the Summit's blueprint for action), mining has become a focal point in the WSSD process, agenda and outcomes. While mining is mentioned in other sections of the Draft Plan of Implementation, section 44 (See Box 2) sets the direction for the new Type II partnerships that will be forged to translate these directions into action.³

In sharp contrast to the 1992 Earth Summit, where mining activities were not discussed or even mentioned in Agenda 21 (the Summit's blueprint for action), mining has become a focal point in the WSSD process, agenda and outcomes.

Already several proposals have been made for Type II partnerships. The mining industry, through the International Council on Mining and Metals (ICMM), has proposed advancing three different types of public-private partnerships.⁴ One of these focuses on developing management tools to assist industry, government and other parties in developing and implementing community development strategies, recognizing the dearth of adequate examples for effectively addressing the complex issues at the heart of "the company-community interface." The proposal involves partnerships between industry, the World Bank and others, and considers addressing a variety of topics including human rights, community consultations, prior informed consent and Indigenous Peoples' concerns (ICMM 2002).

And government — specifically, the Government of Canada — is proposing the establishment of a global forum to enable an intergovernmental dialogue on the relationship between sustainable development and mining, minerals and metals. This would also include "participation by other interested and affected stakeholders, including the representatives of Indigenous people" (Four Worlds Institute for Human and Community Development 2002).

Finally, there have been discussions regarding the need to monitor Type II partnerships, with a widely endorsed suggestion being that this role be taken over by the Commission for Sustainable Development.

44. Mining, minerals and metals are important to the economic and social development of many countries. Minerals are essential for modern living. Enhancing the contribution of mining, minerals and metals to sustainable development includes actions at all levels to:
- a. [Agreed] Support efforts to address the environmental, economic, health and social impacts and benefits of mining, minerals and metals throughout their life cycle, including workers' health and safety, and use a range of partnerships, furthering existing activities at the national and international levels, among interested governments, intergovernmental organizations, mining companies and workers, and other stakeholders, to promote transparency and accountability for sustainable mining and minerals development;
 - b. [Agreed] Enhance the participation of stakeholders, including local and Indigenous communities and women, to play an active role in minerals and mining development throughout the life cycles of mining operations including after closure for rehabilitation purposes in accordance with national regulations, and taking into account significant transboundary impacts;
 - c. [Agreed] Foster sustainable mining practices through provision of financial, technical and capacity-building support to developing countries and countries with economies in transition for the mining and processing of minerals including small-scale mining, and, where possible and appropriate improve value added processing, upgrade scientific and technological information and reclaim and rehabilitate degraded sites.

4.2

Implications through the lens of the NSI/APA/INER Project

Probing premises and assumptions

Section 44 of the Draft Plan of Implementation and the current proposals for Type II partnerships are founded upon several premises, including that:

- mining can contribute to sustainable development and poverty reduction
- mining will go ahead and that stakeholders will want to participate actively in the lifecycle of mining development
- Indigenous Peoples are stakeholders and
- partnerships among various sectors in the mining sector are possible and should be encouraged.

The problem with the WSSD proposals is that they "assume away" — or ignore — some fundamental issues:

Mining may not be a mechanism for poverty reduction or sustainable development

Whether mining should be considered a mechanism for poverty reduction has been the subject of much controversy (see Box 3) and has resurfaced in light of a recent study showing that developing countries with large mining sectors tend to have less resilient and diversified economies and are generally economically worse off than countries without large mining sectors (Ross 2001). Yet international financial institutions, such as the World Bank Group and official development agencies, consistently justify their support for mining projects in terms of poverty reduction and as a means of attracting northern companies to work in developing countries. This has led a coalition of NGOs to call for a halt to public monies being used to support mining projects, which catalyzed the World Bank's Extractive Industries Review.

Box 3

Mining and the Rhetoric of Sustainable Development

Establishing links between mining and the concept of sustainable development is a relatively new — and also highly controversial — phenomenon. For many, the notion of mining as contributing to sustainable development is an oxymoron, as it involves a non-renewable resource that will eventually be depleted. Indeed, in the 1992 Earth Summit, discussions did not touch on mining activities, and mining was not mentioned in *Agenda 21*, the Earth Summit's blueprint for action.

Nonetheless, over the last few years companies and governments have attempted to link mining with sustainable development. In the lead-up to the WSSD, for example, several influential mining companies came together to form the Global Mining Initiative (GMI). These companies in turn spearheaded and funded the Minerals, Mining and Sustainable Development (MMSD) initiative, a two-year project that sought to engage the issues at the heart of mining and sustainable development, with the ultimate goal of improving the industry's image worldwide and influencing the agenda and outcomes of the WSSD.

And at the national and international level, governments are also probing the role of mining in sustainable development. The Government of Canada, for example, has issued a sustainable development strategy to guide its work in the sector, while at the annual Mines Ministers of the Americas meetings, leaders are looking to sustainable development as a framework for decision-making.

Several mining-affected communities and a number of NGOs, however, reject the notion that mining can contribute to sustainable development. They point to historical evidence that mining has not contributed — and most often does not contribute to sustainable development. Their concerns have catalyzed the World Bank's Extractive Industries Review, which may lead the Bank to reconsider funding extractive industries as a vehicle enabling poverty reduction.

Mining has not led to social welfare improvements, particularly in light of the severe impacts on the environment, traditional livelihood systems, cultural identity, community mental and physical health, women and youth.

The experience of all the mining-affected Indigenous communities in our project is that mining has not led to social welfare improvements, particularly in light of the severe impacts on the environment, traditional livelihood systems, cultural identity, community mental and physical health, women and youth. Our study looked at some of these issues, particularly as they relate to Amerindian communities dependent on small-scale mining in Guyana. While income at the household level may have increased, this has come with considerable social and environmental costs. Project participants identified a clear need to examine economic alternatives and sustainable livelihoods, especially given the number of Amerindian communities that have shifted from farming activities to rely solely on small-scale mining, and the negative ecological and social impacts associated with this activity. Youths are increasingly turning to small-scale mining activities, signaling an urgency to find and use cleaner technologies⁵ and diversify local economies. And Amerindian women are increasingly turning to prostitution as a livelihood, which raises deeper questions about how small-scale mining can lead to sustainable development.

In short, while at a global level there is a need for mining activities to take place, the link between mining and poverty reduction is not conclusively established. In fact, there is considerable evidence showing that mining often exacerbates poverty conditions, and that the overall social and environmental costs may be greater than the gains in terms of GDP. These issues should not be left unexamined by leaders at the WSSD and in subsequent implementation strategies. In addition, while the WSSD Plan of Implementation notes there is a need to create cleaner small-scale mining technologies, our project points to the urgency of examining economic alternatives, particularly in light of the large social and cultural impacts.

Indigenous Peoples are not simply another stakeholder, but are rights-holders in their traditional territories with their own vision of what constitutes appropriate 'development'. This needs to be respected in any discussion of proposed mining developments on Indigenous territory...

Indigenous Peoples may or may not be willing to participate in mining as a vehicle for development

Indigenous Peoples are not simply another stakeholder, but are rights-holders in their traditional territories with their own vision of what constitutes appropriate 'development'. This needs to be respected in any discussion of proposed mining developments on Indigenous territory, despite differences in state and Indigenous positions regarding ownership over sub-surface resources.

One approach that has been used to help bridge these differences and move forward in planning for development and conservation is co-management, which has been defined as "institutional arrangements whereby governments and Aboriginal (and sometimes other parties) enter into formal agreements specifying their respective rights, powers and obligations with reference to the management and allocation of resources in a particular area" (RCAP 1996). These are often negotiated in conjunction with land claims agreements in Canada, and — while not without their challenges — there are examples of arrangements in areas where land claims are outstanding in which parties have 'agreed to disagree' on positions of sovereignty, and have been able to enter into constructive relationships regardless (Weitzner and Manseau 2001).

The pro-mining vision espoused in the Plan of Implementation should not be imposed on Indigenous Peoples. Indigenous Peoples should have the right to give their free, informed and prior consent to any activities taking place on their lands — which includes the right to reject proposals — in keeping with their own development priorities and self-determination plans. Co-management should be considered as a potential vehicle for planning resource and other development affecting Indigenous lands.

Indigenous Peoples in Colombia find themselves trapped in the middle of a strategic alliance between multi-national mining and oil companies and illegal armed factions, and caught in the crossfire of a conflict in which they claim neutrality.

'No-go' criteria need to be developed

There is no mention of 'no-go' areas for mining in the WSSD text and current proposals, with the exception of the ICMM Type II proposal to engage in a discussion of these issues regarding protected areas and biodiversity conservation.

Our project particularly highlighted the need to articulate 'no-go' zones for mining in war-torn areas. In Colombia, natural resource extraction overlaps with the areas of most violence in the country, which in turn overlap with Indigenous lands. Indigenous Peoples find themselves trapped in the middle of a strategic alliance between multinational mining and oil companies and illegal armed factions, and caught in the crossfire of a conflict in which they claim neutrality. Indigenous leaders such as Kimy Pernia Domico, who speak out on behalf of their people and against development, are often targeted for assassination.

While participants did not suggest there should be a halt to investments in Colombia, they did indicate ways in which human rights abuses could be minimized, including the presence of third-party observers in negotiations with mining companies. Clearly, there is a need to do further work to examine the issues at stake regarding investments in war-torn countries such as Colombia, and to develop criteria to guide decision-making regarding 'no-go' areas for social, ecological and/or economic reasons.

Foreign governments, international financial institutions and export credit agencies that support business links with Colombia should fund participatory research to develop 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 in the monitoring of enforcement once criteria are determined. For projects outside these 'no-go' areas, funders should support third-party monitoring in order to ensure that a foreign company's presence and operations are not exacerbating the conflict and human rights situation. They should also consider dedicating official development funds and technical assistance to projects leading to the transparency, accountability and strengthening of that country's relevant institutions. Finally, companies should not profit from the armed conflict to create, encourage or exploit disadvantageous conditions for negotiations, consultations, decisions or community participation regarding proposed projects within Indigenous lands.

Partnerships with Indigenous Peoples must address power asymmetries

A common assumption regarding true partnerships is that they involve a dialogue among equals, where partners have equal power in influencing the outcome of decisions. However, our project highlighted the asymmetrical power relations between Indigenous Peoples and external agents — whether mining companies, governments or non-governmental organizations⁶ — in decision-making processes about projects affecting ancestral lands, and the urgent need to balance these relations.

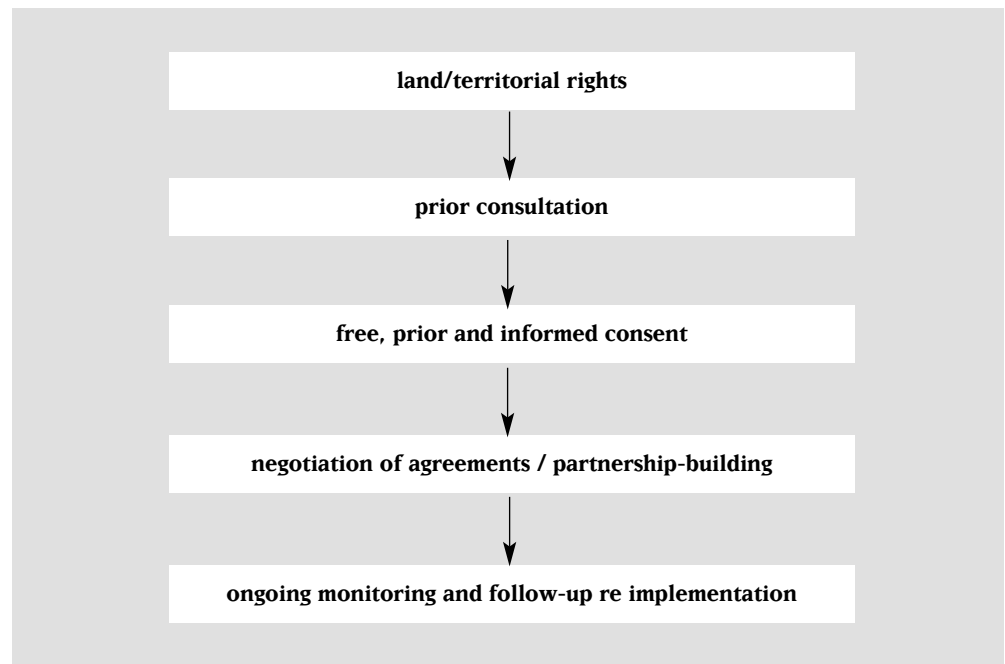
Our project identified a variety of elements and conditions that need to be in place **before** equitable partnerships can be forged involving Indigenous Peoples (see Appendix 1). The critical minimum pre-conditions and steps required for equitable decision-making regarding projects affecting Indigenous lands include:

- recognition of land rights⁷
- prior consultation leading to free, prior and informed consent
- where there is consent that a project go ahead, negotiation of agreements, partnership-building and ongoing monitoring and follow-up with regard to implementation (Box 4).

Capacity-building at each step of the way is clearly essential. In areas where land claims are not yet settled, rights to these lands must still be respected, the Indigenous Peoples treated as landowners, and the same steps taken as outlined in Box 4.

Box 4

Minimum pre-conditions and steps for dialogue regarding development on Indigenous lands



Redressing power imbalances requires actions at the community, government and company level to:

- **Strengthen traditional authorities and Indigenous leadership.** There is a clear, self-identified need for Indigenous Peoples to strengthen their customary decision-making processes and self-governance structures, while at the same time ensuring that strong and downwardly accountable decision-making structures and processes are in place for interaction with external agents. Focusing on the role of women in these processes is critical. While Indigenous Peoples need to engage in deep internal dialogue and reflection on these issues, many do not have the resources (time, funds, environment) or capacities needed. In addition, many have identified the need to interact with and learn from other Indigenous Peoples who are undergoing these processes, and to receive ongoing training related to national and international Indigenous rights and negotiation tactics. External agents — such as donors and NGOs — should help facilitate and enable an environment conducive to Indigenous institutional strengthening through the provision of resources and capacity-building as appropriate.
- **Strengthen the role of government in protecting and upholding Indigenous rights.** Indigenous participants noted that governments consistently side with companies rather than fulfilling their legal obligations to Indigenous Peoples, and are usually not present when consultations and negotiations proceed. If they are present, government officials tend to ignore Indigenous authorities and decision-making processes. In addition, participants underscored the weakness — or weakening — of state institutions, and the inadequacy of regulations around mining and protection of Indigenous rights.⁸ They pointed to the lack of adequate resources — financial and human — available at all levels of government, highlighting the need for institutional strengthening and capacity-building among governmental officials regarding international and domestic Indigenous rights.

Of course, it is important to underscore that many developing country governments are, in turn, in unequal relationships with external actors and structuring agents. Trends to streamline or weaken regulatory requirements, such as mining codes, in order to attract foreign direct investment and to downsize government departments and their human resources are the direct result of, among other things, structural adjustment programs and pressure for countries to pay back outstanding debt.

Shifting the role of government to enable equal partnerships therefore implies a move away from the current global trend toward what has been termed 'corporatism' or the 'corporate state'⁹ to more participatory democratic models. It also requires balancing the power inequalities that exist among government agencies: those that work toward developing mines on the one hand (e.g., ministries of mines or geological commissions), and those that protect the state's responsibilities to Indigenous Peoples (e.g., ministries of Amerindian affairs), the environment (e.g., ministries of the environment) and social issues (e.g., ministries that deal with health, labour and human rights concerns). And finally, it requires an

examination of policies that have discriminated against Indigenous Peoples, and action to change these as a means of addressing systemic conflicts and creating more balanced decision-making.

- **Enshrine the concept of free, prior and informed consent in mining companies' Aboriginal and/or sustainability policies.** Project participants underscored that mining companies need to adhere to ethical principles — including the right to free, informed and prior consent — when dealing with Indigenous Peoples, and should respect ancestral lands even if these have not been officially recognized. They should look to the final report of the World Commission on Dams (2001) with regard to implementing this concept. In addition, companies should work with Indigenous Peoples to develop more intercultural decision-making and conflict management processes.

Corporate social responsibility should not be confused with or substituted for government social responsibility

Over the last few years, industry has been pushing for voluntary measures as the main mechanism for guiding corporate social responsibility. There has been a proliferation of various codes of conduct which feature in recommendations by current industry initiatives such as the Minerals Mining and Sustainable Development (MMSD) project and the Global Mining Initiative (GMI). The problem with these measures is that there are no mechanisms for enforcing their implementation in practice, or for independent monitoring and verification of self-reporting. In addition, while some corporate officials would argue they need to be accountable to society in order to gain public approval and a 'social licence to operate', corporations are ultimately accountable to their shareholders — and this does not ultimately guarantee that they will act in a socially or environmentally responsible way.

Our project shows that there is a clear need for a movement away from reliance on self-regulation and voluntary corporate initiatives toward government regulatory frameworks and oversight. Governments have a critical role in fulfilling their fiduciary obligations to Indigenous people, and this responsibility cannot be left in the hands of corporations. This means developing and implementing strong frameworks and regulations that outline specific compliance mechanisms and a coherent set of rewards and penalties in order to guide decision-making about potential mining developments on or near Indigenous lands. It also questions the common supposition that companies should be responsible for developing and implementing consultation and decision-making processes with potentially affected communities. Finally, it underscores the importance of governments ratifying ILO Convention 169, and establishing mechanisms for speedily addressing land claims issues. At stake is the need to disentangle the concept of corporate social responsibility from government social responsibility, and the need for governments to uphold and implement their obligations to Indigenous Peoples.

While reflection on the outcomes will be deepened and sharpened through future phases of work, already this project provides some clear direction in moving toward cutting-edge policies and practice in decision-making processes involving Indigenous Peoples.

There is a need for participatory research to help target policies and practice appropriately

Appropriate policy depends to a large extent on having access to an appropriate information base. Our project uncovered a wide range of research gaps that need to be filled to target policies and practice appropriately regarding potential developments on Indigenous lands (see Appendix 2). In particular, there is a need to document the environmental and social — particularly gender — impacts of mining in order to look at the full costs of this activity and its implications for poverty reduction and sustainable development.

The World Bank Group, international donors and governments should fund participatory research involving Indigenous Peoples to fill the research gaps outlined in Appendix 2 in order to better target policy and practice appropriately.

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Conclusion: Toward cutting-edge policies and practice

This Policy Brief has highlighted the main findings and policy implications of the first phase of a collaborative project, exploring Indigenous perspectives in Guyana and Colombia with regard to decision-making about mining activities and related developments on or near ancestral lands. As many project participants emphasized, this is only a first — and limited — snapshot of Guyanese and Colombian Indigenous perspectives. Phase II (currently planned for 2003-2005) will work toward filling the research needs identified in Phase I and to opening dialogue among various actors in the mining sector. It will include a Canadian component and perhaps other Latin American and Caribbean partners.

While reflection on the outcomes will be deepened and sharpened through future phases of work, already this project provides some clear direction in moving toward cutting-edge policies and practice in decision-making processes involving Indigenous Peoples.

Within the context of the WSSD, the project results underscore that the Draft Plan of Implementation and current proposals for Type II initiatives are based on several premises that “assume away” — or ignore — a series of fundamental issues. While some of these issues are being examined through other processes — which is an important first step — governments should carefully consider that:

- Mining projects may not contribute to poverty reduction or sustainable development when negative environmental and social impacts are considered.
- Indigenous Peoples may or may not be willing to participate in mining as a vehicle for development, depending on their vision of development and self-determination.

Decision-making mechanisms should treat Indigenous Peoples as rights-holders in their traditional territories rather than simply stakeholders, and should recognize Indigenous Peoples' right to free, prior and informed consent, which includes the right to reject proposals.

- 'No-go' criteria need to be developed, particularly in the context of armed conflict where Indigenous Peoples are subject to severe human rights abuses in the name of progress.
- Partnerships with Indigenous Peoples **must** address power asymmetries in order to be equitable. Providing resources for the strengthening of Indigenous decision-making structures and self-governance processes is key in this regard.
- Corporate social responsibility should not be confused with or substituted for government social responsibility. Governments need to uphold and implement their national and international legal obligations to Indigenous Peoples, and strengthen legal, regulatory and judicial frameworks where these are weak. Those governments that have not ratified ILO Convention 169 should consider doing so, as well as establishing mechanisms for speedily addressing land claims issues.
- Corporations should embrace and implement the concept of free, prior and informed consent in their Aboriginal and/or sustainability policies and practices.
- There is a need for participatory research involving Indigenous Peoples to document the economic, environmental and social — particularly gender — impacts of mining activities in order to help target policies and practices appropriately.

Finally, our research underscores the importance of listening to — and incorporating — the views of those most affected by decision-making to ensure that the resulting policies and actions lead to equitable development. In the words of one project participant:

"Indigenous People need to come together... and work together and see how best we can — in a very respectful manner, and a very friendly manner — get the governments to listen to us and to show them that, yes, we can contribute to development, but that they do have to listen to our views as well and allow us to participate in decision-making..."



Appendix 1: Pre-conditions for equitable dialogue leading to potential partnerships

Note: The more conditions present, the more equitable the dialogue

Indigenous Peoples

- Strong customary institutions: for "internal" consultation.
- Effective local-level institutions: for "external" consultations.
- Effective regional institutions: for speaking on behalf of affected Indigenous Peoples with one voice.
- Strong national organizations with adequate levels of funding: to represent local-level peoples at the national (and international) level and mobilize on their behalf.
- Ongoing capacity-building and institutional strengthening.

Government

- Strong and effective institutions for dealing with Indigenous Peoples, mining activities and environmental and social issues. Appropriate financial and human resources for fulfilling their mandate and responsibilities.
- Legal/regulatory instruments in place to protect Indigenous land rights, rights to prior consultation and free, prior and informed consent, including ratification of ILO Convention 169.
- Recognition of Indigenous title to land and territory, autonomy and self-determination.
- Appropriate justice system/rule of law.
- Transparency and accountability of the decision-making processes regarding developments affecting ancestral lands.
- Dissemination of culturally appropriate information on projects affecting Indigenous lands.
- Political will to enter into partnerships with Indigenous Peoples, and develop intercultural conflict management and decision-making processes.
- Respect for Indigenous self-governance structures, decision-making processes and self-determination.
- Respect for international human rights laws.
- Ongoing capacity-building and institutional strengthening.

Companies/NGOs

- Adherence to ethical principles for dealing with Indigenous Peoples, including free, prior and informed consent.
- Respect of ancestral lands, even if these have not been officially recognized.
- Respect for Indigenous self-governance structures, decision-making processes and self-determination.
- Respect for international human rights laws, including the right to prior consultation and free, prior and informed consent.
- Political will to enter into partnerships with Indigenous Peoples, and develop intercultural conflict management and decision-making processes.
- Transparency and accountability with respect to decision-making processes about projects affecting ancestral lands.
- Dissemination of culturally appropriate information on projects affecting Indigenous lands.
- Ongoing capacity-building and institutional strengthening.

Donors/International Financial Institutions

- Adequate incorporation of social concerns alongside environmental and economic concerns when funding projects or programs, and including strong and legitimate Indigenous representation in program planning and implementation for all projects affecting Indigenous lands.
- Respect for Indigenous self-governance structures, decision-making processes and self-determination.
- Dissemination of culturally appropriate information on projects affecting Indigenous lands.
- Respect for international human rights laws, including the right to prior consultation and free, prior and informed consent.

Appendix 2: Research Gaps Identified

There is a need for participatory research involving Indigenous Peoples to:

- Map their traditional territories and prepare for land claims negotiations with governments.
- Examine alternative sustainable livelihoods for Indigenous communities that are dependent on small-scale mining. These studies should consider the macro policy environment as well, and situate policy recommendations within the international and national policy context.
- Document the extent of Indigenous involvement in mining, and map 'hotspots' where mining activities overlap with Indigenous lands. This type of data collection should be ongoing as a means of targeting policies and programs appropriately.
- Further examine the in-migration of displaced and landless peasants and garimpeiros on Indigenous lands in Guyana and Colombia, and policy alternatives to resolve conflicts and ensure sustainable livelihoods.
- Analyze how mining policy and practice affects women and men differently. In particular, more work needs to be done to document the impact of mining on Indigenous women, and to highlight culturally appropriate mechanisms for involving Indigenous women in decision-making about mining developments, including dispute resolution mechanisms. Undertaking gender impact assessments for proposed or existing mining activities and policies is a critical means of gathering this type of information and should be further developed and more widely used.
- Document and address the economic and social issues around small- and medium-scale mining. In addition, government policy should begin to address and target these often-marginalized sectors.
- Examine appropriate ways to develop mining policy in the context of ancestral lands, given that Indigenous Peoples view their land from a holistic and integrated perspective. More work should be done to examine integrated and cumulative impacts of development and other projects on ancestral lands, and to enshrine appropriate integrated and cumulative impact assessment in regulation. Mechanisms such as co-management should be examined as a potential means for developing and implementing this policy.
- Open up national spaces for dialogue among sectors: ethnic groups, businesspeople and the state.
- Open up spaces for reflection and exchange of experiences and perspectives among Indigenous Peoples and Indigenous organizations at the international level, in order to clarify tendencies, concepts and the reach of international human rights instruments and mineral policy.

Endnotes

- ¹ The North-South Institute would like to thank Canada's International Development Research Centre (IDRC) for funding the collaborative research project on which this Brief is based. We would also like to acknowledge the following private sector companies for supporting the NSI's Corporate Social Responsibility program: Syncrude Ltd., Rio Algom (now BHP Billiton) and Falconbridge Ltd.
- ² For a broader discussion of the policy and research implications, see the project's final synthesis report (Weitzner 2002), the Guyanese final report (Colchester et al. 2002) and the Colombian final report (Jimeno 2002). For a discussion of international literature on these issues, see Whiteman and Mamen 2000. All documents available at: www.nsi-ins.ca.
- ³ According to the official Summit web-site, Type II partnership initiatives are "non-negotiated partnerships and initiatives to implement Agenda 21... expected to become an important element of the outcomes from the World Summit on Sustainable Development. The Summit will not only result in a high-level political declaration and a programme of action for the further implementation of Agenda 21, which are fully negotiated and agreed to by all governments (Type 1 outcomes). Type 2 partnerships will also become an integral part of the Summit, even though they will not be negotiated by all present. Rather, they need be agreed only by those directly involved, who will commit themselves to taking the partnerships forward and making them a success." Voluntary partnerships that meet the required guidelines will be seen as official outcomes of the WSSD (see guidelines at www.johannesburgsummit.org). Many concerns have been expressed regarding these partnerships, including ensuring they do not replace government responsibility and that strong independent monitoring and accountability mechanisms are in place.
- ⁴ See ICMM's May 24, 2002 "Toronto Declaration" for details. Available at: www.icmm.com.
- ⁵ Particularly in light of the use of mercury and subsequent mercury pollution of the river systems on which Amerindians depend.
- ⁶ Project participants highlighted problematic experiences with NGOs involved in conservation schemes that could threaten traditional livelihood systems and access to ceremonial sites. Many of these NGOs do not follow appropriate consultation or decision-making mechanisms with regard to potential projects on Indigenous lands.
- ⁷ With clear recognition and settlement of land rights, many of the underlying issues related to consultation and creation of a level playing field for decision-making would begin to be addressed.
- ⁸ In Guyana, where there is no Ministry of Mines and no Ministry of the Environment, there is a lack of government resources for enforcement of existing regulations, lack of knowledge of the Mining Act among government officials (especially those parts referring to Amerindian land and rights) and widespread allegations of corruption. The government has been very reluctant to recognize Indigenous Peoples' territorial rights or institute effective mechanisms for consultation or negotiation with miners. In Colombia, there has been a 'dissolution' of the regional offices of the Indigenous Affairs Directorate of the Ministry of the Interior, and the national office has also been substantially weakened. Since the start of the Pastrana administration, there has been a halt to the elaboration of public policies regarding Indigenous Peoples. In 2001, the Mining Code underwent a revision (encouraged and financed largely by the Canadian International Development Agency), which did not include consultation with Indigenous Peoples; this has led to the weakening of regulations in order to provide an investment-friendly environment. In addition, ILO Convention 169 is not being implemented and there are also allegations of widespread corruption.
- ⁹ Where states are integrally linked to corporations, and governmental decision-making is heavily influenced by corporate economic power. As David Korten (2001) has written, "we often overlook the strength of the link between large corporations and government and the extent to which both, even in democratic countries, function as instruments of elite rule and are integrally linked." See also Korten 1995 and Saul 1995.

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