



# Mineral Resource Governance

Brief prepared for UNEP consultations on the United Nations Environment Assembly (UNEA)  
Resolution 4/19 on Mineral Resource Governance

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## Background and Contents

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On March 15, 2019, the United Nations Environment Assembly Resolution adopted [resolution 4/19](#) on mineral resource governance.

On September 16, 2020, MiningWatch Canada participated and presented in the North American consultation organized by the United Nations Environment Program (UNEP) on mineral resource governance (Appendix B). This brief represents MiningWatch's written submission to this consultation with the following content:

- **Recommendations**
- **Good governance: thorny questions**
- **Canada's governance failures at home and abroad**
- **Appendices**
  - **Critique of Mining Association of Canada's Voluntary TSM Standard**
  - **Presentation to North American Consultation**

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## Recommendations

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**1. Focus on developed *home* countries** – Recommendations in regard to good governance should focus more attention on policy and regulatory steps that can be taken by developed *home countries* of mining multinationals to enhance accountability of parent companies and to provide access to remedy for those who have been harmed by these multinationals practices overseas. See for example recommendations 2 and 3 in this regard.

**2. Mandatory human rights due diligence** – In regard to 5.(b) of the Mineral Resource Governance resolution<sup>1</sup> on due diligence, there are now a growing number of examples of mandatory human rights due diligence regulations (France) and proposals (among others by the EU).<sup>2</sup> MiningWatch Canada and other members of the Canadian Network on Corporate Accountability are calling for a comprehensive human rights due diligence law in Canada that compels businesses to respect international human rights standards across the entirety of their global operations and supply chains and holds them liable for harms caused by or on behalf of their operations.<sup>3</sup>

**3. Office of the Canadian Ombudsperson for Responsible Enterprise** – The Canadian Ombudsperson for Responsible Enterprise (CORE), established in 2019, needs to be empowered to compel testimony and the submission of documents in order to be able to effectively investigate allegations of human rights abuse linked to Canadian companies’ global operations and supply chains. These powers are still missing to this day. Yet, they were committed to by the Government of Canada in its announcement of the creation of the CORE in January 2018.

**4. Beneficial ownership and tax avoidance** – Secretly owned companies, where the identity of the beneficial owners is hidden, are a key mechanism through which money is laundered and taxes are avoided. Governments should collect and make publicly accessible information on the beneficial owners of extractive companies domiciled and operating in their countries.<sup>4</sup>

**5. Free Prior and Informed Consent – the right to say “no”** – Given the enormity of the environmental, social and economic impacts caused by mining, mineral resource governance must include provisions for Indigenous peoples and local communities to protect their environments, lands, territories, livelihoods, culture and values not only through consultation, but through the right to reject a project that they feel will force unacceptable consequences on their individual and collective rights. Good governance must reflect the provisions in the UN Declaration on the Rights of Indigenous Peoples.

**6. Mine Waste & Tailings Management** – Given the increasing incidents of large-scale failures of tailings impoundments with catastrophic impacts on environments, human life and health, and given the very long term costs and risks borne by communities and governments associated with tailings management both during and post mining, a governance model should include the 16 guidelines set out in [“Safety First: Guidelines for Responsible Mine Tailings Management.”](#)

**7. Transitioning away from new mining** – The Mineral Resource Governance resolution<sup>5</sup> at 5.(f) recognizes the need for “decoupling economic growth from environmental degradation” but implies that this is possible through “sustainable mining.” In spite of the success of the industry lobby in getting language linking sustainability and mining into various communiqués, such as the final report of 2002 World Summit on Sustainable Development in Johannesburg, the fact remains that continued mining of new minerals and metals is unsustainable. Recommendations under section 5 of the Resolution – whether it be regarding awareness building (a), capacity building (c), public-private partnerships (d), research, development and technological innovations (e), should be squarely focussed on efforts to transition away from new mining of minerals and metals and towards reducing consumption of metals and minerals –

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<sup>1</sup> United Nations Environment Assembly (UNEA) Resolution 4/19 on Mineral Resource Governance.

<https://wedocs.unep.org/bitstream/handle/20.500.11822/28501/English.pdf?sequence=3&isAllowed=y>

<sup>2</sup> See for example – <https://www.nortonrosefulbright.com/en/knowledge/publications/1a58997f/proposal-for-an-eu-wide-mandatory-human-rights-due-diligence-law>

<sup>3</sup> See Petition to the House of Commons <https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-2564>

<sup>4</sup> <https://www.pwyp.org/pwyp-news/pwyp-calls-for-commitments-on-beneficial-ownership-disclosure-and-protection-of-civic-space/>

<sup>5</sup> UNEA, *op. cit.*

particularly in the transportation, housing and urban development sectors of wealthy countries, as well as in the luxury markets of gold, diamonds, and gemstones – improving recycling and circularity of already mined metals, sourcing metals from waste (e.g. urban mining and mining tailings), substitution by less harmful material when possible (e.g. wood structures), and overall materials efficiency.

**8. Deep Sea Mining** – The Mineral Resource Governance resolution<sup>6</sup> at 5.(g) calls for a “reduction of the impacts associated with the materials needed for the transition to an innovative and environmentally friendly economy” presumably referencing the needed transition to renewable and carbon free sources of energy that will stem the climate catastrophe. Deep sea mining is incompatible with calls to reduce mining’s impacts on the planet, as it proposes to greatly expand mining’s footprint on earth into ecosystems (from the seabed to the mid-ocean and surface waters) as yet unaffected by mining that are far less well understood, far more fragile, and far less amenable to mitigation of impacts than mining on land. The scientific consensus is that the deep sea ecosystems being targeted for mining are not well understood enough to allow for the development of responsible regulations.<sup>7</sup> Furthermore, the necessary governance of this experimental industry is also still weak.<sup>8</sup> On both counts the precautionary principle is compelling scientists,<sup>9</sup> civil society organizations,<sup>10</sup> and some governments<sup>11</sup> to call for a moratorium on deep sea mining.

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## Good governance: thorny questions

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### Good governance efforts focused on developing “host” countries

Discussions about mineral resource governance commonly posit that “good governance” of the mining industry, particularly by developing country governments, can address the suite of damaging economic impacts suffered by many developing countries that rely on resource extraction for income.<sup>12</sup> Additionally good governance is advanced as the solution to local level environmental degradation and human rights abuses associated with natural resource extraction. Good governance is always raised simultaneously with assertions that the exploitation of mineral resources can lead to “sustainable development.”<sup>13</sup>

Developing countries discussed in the context of the need for “good governance” are often the same ones that have been, and continue to be, persuaded to develop their mineral resources by International Financial Institutions, to which they are indebted, by the governments of mining multinationals, and by countries seeking secure supply for their own industries. The negative impacts of mineral extraction

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<sup>6</sup> *Ibid.*

<sup>7</sup> See for example: Haugan, P.M., L.A. Levin, D. Amon, M. Hemer, H. Lily and F.G. Nielsen. 2020. *What Role for Ocean-Based Renewable Energy and Deep Seabed Minerals in a Sustainable Future?* Washington, DC: World Resources Institute. [www.oceanpanel.org/blue-papers/ocean-energy-and-mineral-sources](http://www.oceanpanel.org/blue-papers/ocean-energy-and-mineral-sources).

<sup>8</sup> *Ibid.* p.45-46.

<sup>9</sup> *Ibid.* p.45

<sup>10</sup> See for example the [call for a moratorium](#) by the 80 member organizations of the Deep Sea Conservation Coalition.

<sup>11</sup> See for example: “Portugal’s Minister of the Sea supports 10-20 year moratorium on Seabed Mining” *Expresso*. 09/09/2020. <https://expresso.pt/sociedade/2020-09-09-Ministro-do-Mar-defende-moratoria-de-10-a-20-anos-para-a-mineracao-no-mar-profundo>

<sup>12</sup> [Discussion Paper for Regional Consultations on the Implementation of the United Nations Environment Assembly Resolution on Mineral Resource Governance](#) (UNEP/EA.4/Res. 19) June 2020; [Mineral Resource Governance in the 21st Century: Gearing extractive industries towards sustainable development](#). 2020. Ayuk, E. T., Pedro, A. M., Ekins, P., Gatune, J., Milligan, B., Oberle B., Christmann, P., Ali, S., Kumar, S. V, Bringezu, S., Acquatella, J., Bernaudat, L., Bodouroglou, C., Brooks, S., Buergi Bonanomi, E., Clement, J., Collins, N., Davis, K., Davy, A., Dawkins, K., Dom, A., Eslamishoar, F., Franks, D., Hamor, T., Jensen, D., Lahiri-Dutt, K., Mancini, L., Nuss, P., Petersen, I., Sanders, A. R. D. A Report by the International Resource Panel. United Nations Environment Programme, Nairobi, Kenya. (see for example p. 323).

<sup>13</sup> *Ibid.*

suffered by these developing countries are commonly grouped under the term the resource curse.<sup>14</sup> Although the resource curse can and does operate in developed economies and in countries with supposed “good governance,” such as Canada,<sup>15</sup> discussions about the need for good governance to counter the effects of the resource curse focus on developing countries, often host countries of multinational mining companies based in the global north.<sup>16</sup>

The focus on host country governance addresses the very real grievances expressed by communities whose lives continue to be severely impacted by mining and whose ability to protect values of importance to them is constrained, not to argue for the empowerment of communities to reject mining they consider harmful, but rather to argue that good governance of mining will make them less resistant. It does not acknowledge historical connections between extractive policies and the dispossession of local poor, and often indigenous, peoples nor the “permanence of colonial patterns of domination” that exploit both local economies as well as national level governance and economics.<sup>17</sup>

### **Who defines “good governance” of mineral extraction?**

Good governance in the context of mineral extraction is often defined by its proponents as a specific list of ills that need to be addressed, often involving “the need for new, improved, and strengthened institutions”<sup>18</sup> in host countries. These lists commonly lay out things developing host country governments need to improve on, such as ensuring better benefit sharing from extractive revenues, better managing local level conflict related to mining, combating corruption, or increasing transparency. But they do not commonly include development-deficit creating realities that need to be addressed internationally, such as the existence and abundant use by mining companies of secrecy jurisdictions and tax havens to avoid paying full taxes owed in the countries where resources are extracted, or secrecy by the industry regarding the beneficial ownership of companies making accountability difficult to obtain, or provisions in trade agreements that allow for the abusive use by mining companies of international tribunals to threaten countries with massive costs if they attempt to protect rights or environments, or avoidance of legal accountability through corporate structures that allow parent companies in developed countries to evade responsibility for harm done by their subsidiaries overseas.

### **How much does good governance of this industry cost?**

Another factor that is ill-defined is cost. What exactly would “good governance” of the mineral extraction sector, the institutions, education, capacity building and staffing required, cost a developing country? If development is a desired goal, do these management costs make sense given the often-low revenues received from mining, the environmental and social impact costs, the in-perpetuity costs of waste management post mining, and given alternative uses for limited government funds, such as education, infrastructure, health, that may provide for a more diversified (resource curse resistant) economy with less detrimental and long term environmental, health and human rights impacts?

### **Who is promoting a focus on “good governance” for developing host countries, and why?**

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<sup>14</sup> The resource curse covers a suite of negative impacts commonly suffered by mineral-rich developing countries that rely on resource extraction for development, leaving them economically worse off, over time, compared to similar countries that did not have, or exploit, a mineral endowment (Auty 1993, 2001; Sachs and Warner 1995, 2001). Negative impacts include: currency value inflation (causing the cost of local goods to rise with downward pressure on exportation); rising labour costs; loss of manufacturing and economic diversity; increased conflict; increased corruption; environmental degradation. Factors covered under the term include impacts caused by: (i) long-term trends in world prices, (ii) price volatility, (iii) permanent crowding out of manufacturing, (iv) autocratic/oligarchic institutions, (v) anarchic institutions, and (vi) cyclical Dutch Disease (Frankel 2012).

<sup>15</sup> <https://www.theglobeandmail.com/opinion/time-to-take-our-resource-curse-seriously/article22152128/>

<sup>16</sup> UNEP/EA.4/Res. 19 (Discussion Paper), *op. cit.*; Ayuk, et al., *op. cit.*

<sup>17</sup> Acuna, Roger Merino. 2015. The politics of extractive governance: Indigenous peoples and socio-environmental conflicts. *The Extractive Industries and Society*, 2, 85–92.

<sup>18</sup> Anthony Bebbington, Abdul-Gafaru Abdulai, Denise Humphreys Bebbington, Marja Hinfelaar, and Cynthia A. Sanborn. 2018. *Governing Extractive Industries: Politics, Histories, Ideas*. Oxford University Press.

It is interesting to note that the main proponents of a focus on what host countries need to do to develop “good governance” are the global mining industry itself (through industry associations such as the Mining Association of Canada, the Prospectors and Developers Association of Canada, ICMM), governments of global north home countries of mining multinationals (such as Australia and Canada), and global north countries, such as in Europe and North America, requiring security of supply of metals for their home based industries. It has to be recognized that this focus on what host countries should do to improve good governance diverts attention away from the ongoing failure of mining companies themselves to take the necessary steps to minimize the economic, environmental and social harm they do, as well as removing pressure from home countries of mining multinationals, who also avoid taking a range of available measures to hold their own mining multinationals to account at home for harm they do overseas.<sup>19</sup> In other words, focussing on what developing country governments should do diverts attention away from poor governance by global north home countries of multinationals and from ongoing failures to implement best practices of the mining companies themselves.

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## Canada’s governance failures at home and abroad

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**Weak governance at home** – Canada projects itself as a country with great expertise and experience in natural resource exploitation and governance. In the brief presentation I made in the North American consultation for this discussion on Mineral Resource Governance (Appendix B), I described just some of the ways in which Canadians and the Canadian environment suffer from many of the same mining-related harms experienced in many other parts of world including:

- economically and socially costly local level conflicts, often related to lack of respect for indigenous land rights and free prior and informed consent<sup>20</sup>;
- lack of protection for women in communities impacted by mining<sup>21</sup>;
- environmental disasters, such as the Mt. Polley tailings dam failure of 2014, with no sanction or penalty for the companies involved to this date<sup>22</sup>;
- corporate capture of regulators, for example the Auditor General of the province of British Columbia concluded in her report on the Mt. Polley disaster that regulators’ “compliance and enforcement activities of the mining sector are inadequate to protect the Province from significant environmental risks” and that “emphasis on mining promotion combined with a weak compliance and enforcement program creates the risk of regulatory capture for the ministry.”<sup>23</sup>;

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<sup>19</sup> Coumans, Catherine. 2019. Minding the “governance gaps”: Re-thinking conceptualizations of host state “weak governance” and re-focussing on home state governance to prevent and remedy harm by multinational mining companies and their subsidiaries. *The Extractive Industries and Society Volume 6, Issue 3*, July 2019, Pages 675-687.

<sup>20</sup> Coumans, Catherine. 2018. Mining and Development: Is ‘Good Governance’ really the cure? In *Growing Bougainville’s future: Choices for an Island and its peoples*. Chapter 3, pp. 32-42. Jubilee Australia Research Centre; Dawn Hoogveen and Tyler McCreary. 2014. Struggles against gold-mine on indigenous land. *Canadian Dimensions*. 25 January.

<sup>21</sup> Gibson, G., K. Yung, L. Chisholm, and H. Quinn with Lake Babine Nation and Nak’azdli Whut’en. 2017. *Indigenous Communities and Industrial Camps: Promoting healthy communities in settings of industrial change*. The Firelight Group: Victoria, B.C.

<sup>22</sup> Amnesty International. 2017. *A breach of human rights: the human rights impact of the Mount Polley Mine Disaster, British Columbia, Canada*. May.; *Independent Expert Engineering Investigation and Review Panel*, 30 January 2015, p. 132.; Coumans 2018, *op. cit.*

<sup>23</sup> Auditor General of British Columbia. May 2016. *An Audit of Compliance and Enforcement of the Mining Sector*. p. 6. <https://bit.ly/1ZUJVJo>

- steadily eroding environmental protections, such as the decision to allow lakes and rivers to be dammed and used as tailings impoundments<sup>24</sup> leading to 64 such cases nationally by July 2020;
- increasing contamination of surface and ground water by mine waste (tailings and waste rock), as mining in Canada generates over 30 times the volumes of solid waste produced by all citizens, municipalities & industries combined on a yearly basis<sup>25</sup>;
- growing legacy costs associated with some 10,000 abandoned mines with official government cost estimates for cleaning up active and abandoned mine waste sites in Canada for which there was no, or insufficient financial assurance, to surpass \$10 billion.<sup>26</sup>;
- tax avoidance by companies operating in Canada.<sup>27</sup>

*All of these serious and ongoing costs to Canadians imposed by mining-related harms have been identified and discussed by civil society, academics, and various government agencies for decades.*

Additionally, Canadian policies actively contribute to global corrupt practices and tax avoidance. According to Transparency International (2017) Canada is tied with South Korea for the [weakest corporate transparency rules among all G20 nations](#) making Canada a haven for money laundering, or “snow washing.”<sup>28</sup> In its 2020 report Transparency International (TI) found that “with its limited level of enforcement in matters of foreign corruption, bribery and fraud almost unchanged since 2018, Canada ranks among the worst global exporters (...) In an increasingly worrisome trend, Canada is slipping further behind key OECD peers, such as the US, UK, Germany, France and Australia.” TI Canada Executive Director, James Cohen said “The truth is that Canada needs to drastically step up its efforts in ensuring we are not the source of corruption, or the place to hide the money from corruption.”<sup>29</sup>

Finally, Canada fails to hold Canadian mining companies to account, in Canada, for human rights and environmental abuses they cause or contribute to overseas.<sup>30</sup> After over a decade of lobbying by Canadian civil society organizations, academics, faith based groups and unions for an ombudsperson to investigate complaints against Canadian companies operating overseas, the Government of Canada reneged on its commitment of January 17, 2018 to create an ombudsperson with strong independent powers to compel documents and witnesses in the course of investigating complaints brought against Canadian mining companies. The Canadian Ombudsperson for Responsible Enterprise that was established in 2019 lacks the power to compel testimony or the submission of documents and cannot effectively investigate allegations of human rights abuse linked to Canadian companies’ global operations and supply chains.<sup>31</sup>

*Canada suffers from poor governance of mining in Canada, as well as poor governance of the harm done by its mining multinationals overseas.*

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<sup>24</sup> Watt, Dean. 2008. *When is a Lake not a Lake: Getting to the Bottom of the Metal Mining Effluent Regulations*. Environmental Law Centre. [https://elc.ab.ca/Content\\_Files/Files/NewsBriefs/WhenisLakenotaLake.pdf](https://elc.ab.ca/Content_Files/Files/NewsBriefs/WhenisLakenotaLake.pdf)

<sup>25</sup> Lapointe, Ugo. 2020. *Mine Waste in Canada: A Growing Liability*. <https://miningwatch.ca/blog/2020/10/5/mine-waste-canada-growing-liability>; Lapointe, Ugo. 2019. *Mine Water Pollution in Canada: Are Waters & Fish Habitat Protected?* [https://miningwatch.ca/sites/default/files/2019-04-05-miningwatchcanada-cesdreport\\_7\\_0.pdf](https://miningwatch.ca/sites/default/files/2019-04-05-miningwatchcanada-cesdreport_7_0.pdf)

<sup>26</sup> Lapointe, 2020. *Op. cit.*

<sup>27</sup> Coumans, 2018. *Op. cit.*; Livesey, Bruce. Did this company engineer the largest tax dodge in Canadian history? *National Observer*, 25 April 25 2016, <https://bit.ly/2NCVYvV>

<sup>28</sup> See <https://endsnowwashing.ca/what-is-snowwashing>

<sup>29</sup> <https://transparencycanada.ca/news/worlds-largest-exporters-fail-to-punish-bribery-in-foreign-markets>

<sup>30</sup> Coumans, 2019. *Op. cit.*

<sup>31</sup> MiningWatch Canada. 2019. *Canada Still Needs an Ombudsperson to Investigate Mining Cases – Not an Advisor to the Minister of International Trade or another CSR Counsellor*. May; Mike Blanchfield. UN official criticizes Canadian delays setting up corporate ethics watchdog. 2019. *The Canadian Press*. April 30.

**Promoting Canadian expertise in Governance overseas** – Despite Canada’s failures in regard to good governance of its own mineral industry, Canada projects itself on the global stage as a country that can help other nations better “manage their natural resources.” Canada’s officials tout Canada’s presumed leadership in mining and in good governance as valued expertise to be shared. Since 2009 the Government of Canada has allocated tens of millions of dollars from public funds to programs purporting to develop better natural resource governance, particularly targeting countries hosting Canadian mining exploration and projects.<sup>32</sup> This extraterritorial role for Canada is strongly supported by the Canadian mining industry through its lobbying efforts and public statements.

The role is problematic, however, raising concern about conflict of interest given the explicit mandate of Canadian foreign affairs and trade ministries and Canadian missions abroad to promote and protect the interests of Canadian corporations operating overseas. The Government of Canada’s Global Markets Action Plan (GMAP), and associated policy of “economic diplomacy,” “aims to ensure all diplomatic assets promote Canadian business.” Announced in 2013, and still in force, then Minister of International Trade, Ed Fast, said the GMAP “represents a sea change in the way Canada’s diplomatic assets are deployed around the world” prioritizing economic and commercial objectives.<sup>33</sup>

In line with GMAP, Canada used Official Development Assistance funds to establish and fund institutions and programs that aim to extend Canadian involvement in the management of natural resources overseas. One example is the controversial<sup>34</sup> Canadian International Resource and Development Institute (CIRDI), which describes itself as a “centre of expertise on natural resource governance” that works with “governments that seek to strengthen their capacity to govern and manage their natural resources.” The focus of CIRDI is squarely overseas and has so far focussed on countries with Canadian exploration and mining interests. The Institute also funds research and publications, such as by the former director of the Prospector and Developers Association of Canada that strongly advocates that Canada keep its focus on strengthening governance overseas.<sup>35</sup>

In its new draft Responsible Business Conduct (RBC) policy, “A strategy for the future: Responsible Business Conduct for Canadian companies abroad”<sup>36</sup> Global Affairs Canada refers to weak voluntary standards of the Mining Association of Canada (Towards Sustainable Mining) as “an industry standard for responsible mining which is increasingly being adopted in mining jurisdictions around the world.” In spite of its weaknesses (see Appendix A), this voluntary Canadian industry standard is being actively promoted internationally by Canadian missions and by global affairs Canada. There are much stronger non-regulatory standards that would serve developing and host countries better as a model for governance, for example the multi-stakeholder [Initiative for Responsible Mining Assurance](#) (IRMA).

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<sup>32</sup> Coumans, 2019. *Op. cit.*

<sup>33</sup> For an analysis of the human rights impacts of Canada’s policy of economic diplomacy, particularly in regard to Latin America, see: Kamphuis, Charis. Canadian Economic Diplomacy: Policy Gaps, Human Rights Impacts & Recommendations (February 2018). Submission to the United Nations Working Group on Business & Human Rights on behalf of the Justice & Corporate Accountability Project, Available at SSRN: <https://ssrn.com/abstract=3125011>

<sup>34</sup> Munson, James. 2016. As Canada shares mining expertise, critics question GAC’s transparency. *iPolitics*. <https://ipolitics.ca/2016/05/12/as-canada-shares-mining-expertise-critics-question-gacs-transparency/>

<sup>35</sup> Andrews, Tony et al. 2017. The Rise in Conflict Associated with Mining Operations: What Lies Beneath? Canadian International Resource and Development Institute.

<sup>36</sup> [https://www.international.gc.ca/trade-commerce/consultations/responsible\\_business-conduit\\_responsable/issue-travail.aspx?lang=eng](https://www.international.gc.ca/trade-commerce/consultations/responsible_business-conduit_responsable/issue-travail.aspx?lang=eng)

# Critique of Mining Association of Canada's Voluntary TSM Standard

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## Introduction

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MiningWatch Canada works toward a world in which Indigenous peoples can effectively exercise their rights to self-determination, communities must consent before any mining activities may occur, and mineworkers are guaranteed safe and healthy conditions. We believe affected peoples and communities must have the means to protect their human rights, ways of life, livelihoods and environment from the potential or actual effects of mineral exploration and extraction activities, and have effective access to justice and reparations for mining harms.

We provide this critique of the Mining Association of Canada's voluntary *Towards Sustainable Mining* (TSM) guidelines because mining is inherently not sustainable, and any guidelines for mining should meet the highest possible standards. At the same time, strong and rigorously enforced regulations are critical to ensure that mining operations do not do unacceptable damage, regardless of voluntary guidelines. TSM does not meet the highest standards. Nonetheless, the Mining Association of Canada (MAC) promotes these standards internationally and Canadian tax dollars are supporting TSM as the "initiative has been adopted as a Canadian industry standard for responsible business conduct promoted by the TCS [Trade Commissioner Service] and the Government of Canada."<sup>37</sup>

Misleadingly, the Trade Commissioner web site announces that Finland, Argentina, Botswana, the Philippines, and Spain have adopted TSM<sup>38</sup> as if the national governments had adopted the standard, not the mining lobbies – chambers of mines and mining industry associations. (Since then, the chambers of mines in Brazil and Norway have also adopted TSM.) In Canada, MAC repeatedly references TSM to counter civil society efforts to induce the federal government to adopt strong accountability mechanisms and laws to hold Canadian mining companies to account in Canada for their abuses of human rights and environments overseas.

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## TSM: A Lagging Standard

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**TSM is voluntary.** TSM was created in 2004 by the Mining Association of Canada, a lobby group for the Canadian mining industry, and currently sets eight voluntary mine-site level protocols<sup>39</sup> for large-scale mining companies that are members of the Mining Association of Canada operating in Canada. Most mining companies operating in Canada are not MAC members.<sup>40</sup> The protocols are also used by some MAC members for their overseas operations, at their own discretion. Since 2018, companies must have

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<sup>37</sup> See [Canada sets a world standard for sustainable mining](#).

<sup>38</sup> *Idem*. In fact it is not countries, but the Chambers of Mines and mining associations in these countries that have adopted TSM: "...the Finnish Mining Association, Cámara Argentina de Empresarios Mineros (the national mining association in Argentina), the Botswana Chamber of Mines, the Chamber of Mines of the Philippines, and the Confederación nacional de empresarios de la minería y de la metalurgia, the national mining association of Spain, have also adopted TSM for their members." <https://mining.ca/wp-content/uploads/2019/07/TSM-Primer-English-Final-1.pdf>

<sup>39</sup> Indigenous and Community Relations; Safety and Health; Crisis Management and Communications Planning; Preventing Child and Forced Labour; Biodiversity Conservation Management; Tailings Management; Energy Use and Greenhouse Gas (GHG) Emissions Management. Water Stewardship has most recently been added but is not required for grading and reporting until 2021. <https://mining.ca/towards-sustainable-mining/protocols-frameworks/>

<sup>40</sup> Ontarians for a Just Accountable Mineral Strategy. [Unpacking the Mining Association of Canada's Towards Sustainable Mining Program](#). October 2019. p.6.

their Canadian facilities participate in TSM in order to belong to MAC. This means that these companies must self-grade (grades between C-AAA) the performance of their facilities in regard to the eight protocols. However, MAC currently has 43 members<sup>41</sup> and in the 2019 report, covering 2018, only 22 companies<sup>42</sup> self-reported. There is apparently no consequence for lack of reporting, even after an initial three year grace period for new members.

**TSM is not transparent** – Information on MAC’s website regarding TSM lacks transparency. For example, the fact that only 22 of MAC’s 43 member companies reported in 2018 has to be pieced together from different parts of the website. The 2019 report says only that 64 facilities are included, but it is unclear how many facilities are covered by TSM in total. It is also not presented up front whether the 22 companies that reported on their facilities actually reported on all of their facilities, or on each of the relevant protocols for each facility, or on each indicator for each protocol. Companies may not provide a grade for each indicator of each protocol for each facility.<sup>43</sup> The data upon which a company has graded itself is not made available. Every three years there is an independent audit by an auditor paid for by the company and chosen by the company from an approved list. The data that may cause the auditor to change a grade is also not made available.

**TSM does not set a high bar** – Although MAC touts TSM as demonstrating “leadership worldwide”<sup>44</sup> TSM actually ranks poorly against other comparable industry standards.

- ❖ **Poor issue coverage** – Although TSM has existed for 16 years now, it still only has eight parameters, or protocols, against which companies self-grade their facilities. Among the many areas not covered are Reclamation and Closure, Air Emissions and Dust, Noise and Vibration, Employment Conditions and Benefits, Gender, Mine Security, and Human Rights. In a comparison of eight global standard initiatives applicable to large-scale industrial mining, considering environmental, social and business practice standards, TSM scored lowest.<sup>45</sup>
- ❖ **Poor level of enforceability** – In considering the “level of compliance each initiative demands of its adherents”<sup>46</sup> on a range from “Optional” through “Conditional/Flexible” to “Obligatory” TSM again ranks lowest among the eight comparable standard initiatives.<sup>47</sup> For TSM, like other industry standards such as Bettercoal and the Responsible Mining Index, “compliance is required at a very basic level or the standard is used primarily as a reporting tool. In this group, a mine may participate in the initiative despite having a low level of performance compared to those defined in the standard.”<sup>48</sup> In the case of TSM, “there is no penalty for poor grades and no failing grade at all.”<sup>49</sup>
- ❖ **Weak Standards** – As noted, even after 16 years, TSM’s protocols don’t cover critically important areas even protocols that have recently been updated and revised remain weak. For example:

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<sup>41</sup> <https://mining.ca/members-partners/our-members/>

<sup>42</sup> <https://mining.ca/towards-sustainable-mining/tsm-progress-report/company-performance/>

<sup>43</sup> For example, Agnico Eagle did not report on all indicators related to a protocol for one of its facilities.

<sup>44</sup> <https://mining.ca/towards-sustainable-mining/tsm-guiding-principles/>

<sup>45</sup> *State of Sustainability Initiatives Review: Standards and the Extractive Economy*. International Institute for Sustainable Development. 2018. P. 35, 46. The initiatives to which TSM was compared were: Aluminium Stewardship Initiative; Bettercoal; Initiative for Responsible Mining Assurance; International Council on Mining and Metals; International Finance Corporation Environmental and Social Performance Standards; Responsible Jewellery Council; Responsible Mining Index.

<sup>46</sup> *Ibid.* p. 34.

<sup>47</sup> *Ibid.* p. 35.

<sup>48</sup> *Ibid.* p. 44.

<sup>49</sup> Ontarians for a Just Accountable Mineral Strategy. [Unpacking the Mining Association of Canada’s Towards Sustainable Mining Program](#). October 2019. p.2.

- The new protocol on **Indigenous and Community Relations**, completed in December 2019, does not acknowledge the requirement for companies to obtain Free Prior and Informed Consent from Indigenous peoples before proceeding with new projects or expansions. Companies only need to “demonstrate commitment to aim to obtain” FPIC.<sup>50</sup>
- The protocol on **Tailings Management** dates back to 2004 and has been revised in 2011, 2017, and 2019.<sup>51</sup> The five performance indicators are focussed on “the management of tailings facilities and internal accountability and review mechanisms,” but do not require measures that prioritize “zero harm to people and the environment and zero tolerance for human fatalities,”<sup>52</sup> by banning known risks, such upstream dam construction and dams that are located above inhabited areas. Neither do internal accountability and review mechanisms provide the transparency and accountability necessary for such high-risk facilities.

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## Appendix B

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### *Presentation to North American Consultation*

*Ten minute presentation made on September 16, 2020 for the North American consultation organized by the United Nations Environment Program (UNEP) – Catherine Coumans, MiningWatch Canada*

Thank you for this opportunity to speak about Mineral Resource Governance from the Canadian perspective.

I am going to start with a few overarching statements before providing further detail in response to the questions before us.

- First of all, Canada prides itself on having good governance in regard to mining, and seeks to export its experience and expertise in bilateral exchanges, particularly with developing countries, but the reality in Canada, is actually very disappointing, as I will briefly illustrate in this presentation.
- The Canadian mining industry promotes an active advisory role for the Canadian government in the management of mineral resource governance in developing countries, but in Canada the industry, through its organizations – the Mining Association of Canada and the Prospectors and Developers Association of Canada – actively lobbies *against* efforts to strengthen environmental protections and accountability mechanisms, often while pointing to the associations voluntary programs, such as Towards Sustainable Mining.
- MiningWatch Canada takes the position that effective governance of the mineral industry, in Canada and overseas, requires strong regulations aimed at environmental and social protection, as well as strong enforcement of those regulations. We also consider best practice, in regard to governance of the minerals industry, those initiatives that aim to reduce the reliance on newly mined primary metals, and strong policies and incentives to improve mineral efficiency, recycling, and a circular economy. The OECD ranked Canada worst in the G7 in this regard in 2017.

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<sup>50</sup> <https://mining.ca/wp-content/uploads/2020/05/Annual-Report-2019-English-final.pdf> p.7.

<sup>51</sup> [https://mining.ca/wp-content/uploads/2019/03/Tailings-Management-Protocol\\_2019-final.pdf](https://mining.ca/wp-content/uploads/2019/03/Tailings-Management-Protocol_2019-final.pdf)

<sup>52</sup> Morrill, J., et al. (2020), *Safety First – The Peoples’ Tailings Standard To End Mine Waste Disasters* Earthworks and MiningWatch Canada.

In the brief time I have I will provide just some examples of weak governance of the mineral industry in Canada and focus on just some initiatives supported by Canadian civil society and indigenous peoples to address these shortcomings.

### 1. What are the most pressing mineral resource governance challenges in your region?

In regard to pressing mineral resource governance challenges in Canada:

- We lack regulatory protection for indigenous rights in regard to mineral extraction, in particular for Free Prior and Informed Consent and the right to reject the imposition of a mine on indigenous lands and territories;
- We lack adequate protection for women, particularly indigenous women, in mining affected communities and in the context of mining camps, where gender violence has been shown to be a problem, but also in the context of the mining workforce;
- There is consistent weakening of regulatory environmental protections – for example, the addition of schedule 2 to the Metal and Diamond Mining Effluent Regulations, which opened the door to the use of natural water bodies, such as lakes and rivers, as tailings impoundments.
- We lack an effective regulatory response to the ongoing environmental and financial costs of abandoned mines in Canada. The liability associated with some 10,000 abandoned sites (with more added every year), and associated mine waste throughout the country, is large, with billions of tons of toxic mine wastes in sites that will need perpetual monitoring and maintenance, and environmental threats to surrounding waters and downstream communities in perpetuity. With currently over 20 billion dollars in estimated costs to the public, or over 200 billion if we include Canada’s oil sands, and only a fraction (less than 5 billion) held by governments in financial bonds.
- We lack effective protection from tailing dam failures – In 2014, Canada experienced the worst catastrophic tailings dam failure in our history, the Mt. Polley spill, with very serious and ongoing consequences for natural water bodies, including a previously pristine high mountain lake, and for communities, including indigenous peoples, downstream of the disaster. As key recommendations from an expert review of the failure have not been followed up on, and the company in question has not yet been held to account, sanctioned or fined, expert projections are that Canada will face more such tailings disasters in the years to come.
- Regulatory capture is also a problem in Canada – For example, a review of the Mt. Polley disaster, by the Auditor General of British Columbia, concluded that regulators’ “compliance and enforcement activities of the mining sector are inadequate to protect the Province from significant environmental risks” and that “emphasis on mining promotion combined with a weak compliance and enforcement program creates the risk of regulatory capture for the ministry.”
- Additionally, Canada lacks effective home state accountability mechanisms to address the environmental and human rights abuses of Canadian mining companies operating overseas.

### 3. Based on the mineral resource governance challenges and gaps in your region, what themes and issues should be the focus of future action, including by international or UN bodies, on Mineral Resource Governance?

I am going to jump now to just *some* initiatives and recommendations supported by Canadian civil society and indigenous peoples to address some of the issues I’ve raised, each of which deserve further focus and action.

- With respect to tailings management I would point to the 16 recommendations outlined in the Peoples' Tailings Guidelines called [Safety First: Guidelines for Responsible Mine Tailings Management](#). Published in June of this year;
- With respect to the mining cycle I will note that MiningWatch's indigenous partners in the Province of British Columbia, [First Nations Women Advocating Responsible Mining](#), support the standards developed by the *Initiative for Responsible Mining Assurance* (IRMA);
- Additionally, [British Columbia's Mining Law Reforms](#) presents over 60 standards and recommendations launched by civil society organizations in the Province of British Columbia in 2019;
- And in the Province of Quebec civil society organizations launched a [report in 2019](#) with five conditions to assure that mining impacts do not undermining the energy transition;
- Finally, the *Canadian Network on Corporate Accountability* advocates for stronger home state accountability mechanisms and regulations to protect the human rights of people affected by the operations of Canadian mining companies operating overseas, and to provide access to remedy in Canada for harms endured in countries outside of Canada. In particular this organization is pushing for the [Canadian Ombudsperson for Responsible Enterprise](#) to receive investigatory powers to compel evidence, as committed to by the Government of Canada, and for the creation of [mandatory Human Rights Due Diligence legislation](#) that will provide a cause of action for legal recourse in Canadian courts.

To conclude, a question: Given the realities in Canada, supposedly a strong governance country, I have questions about the definition of good governance – what constitutes good governance? – and what costs can governments expect to have to pay to implement good governance? – and what are the lost opportunity costs when having to pay for good governance for this particular industry? These questions are particularly relevant for developing countries, which are vulnerable to the suite of negative long-term impacts of resource extraction known as the resource curse and to cyclical Dutch disease and which need their limited resources for health, education, infrastructure, and other areas that will build a diversified economy.